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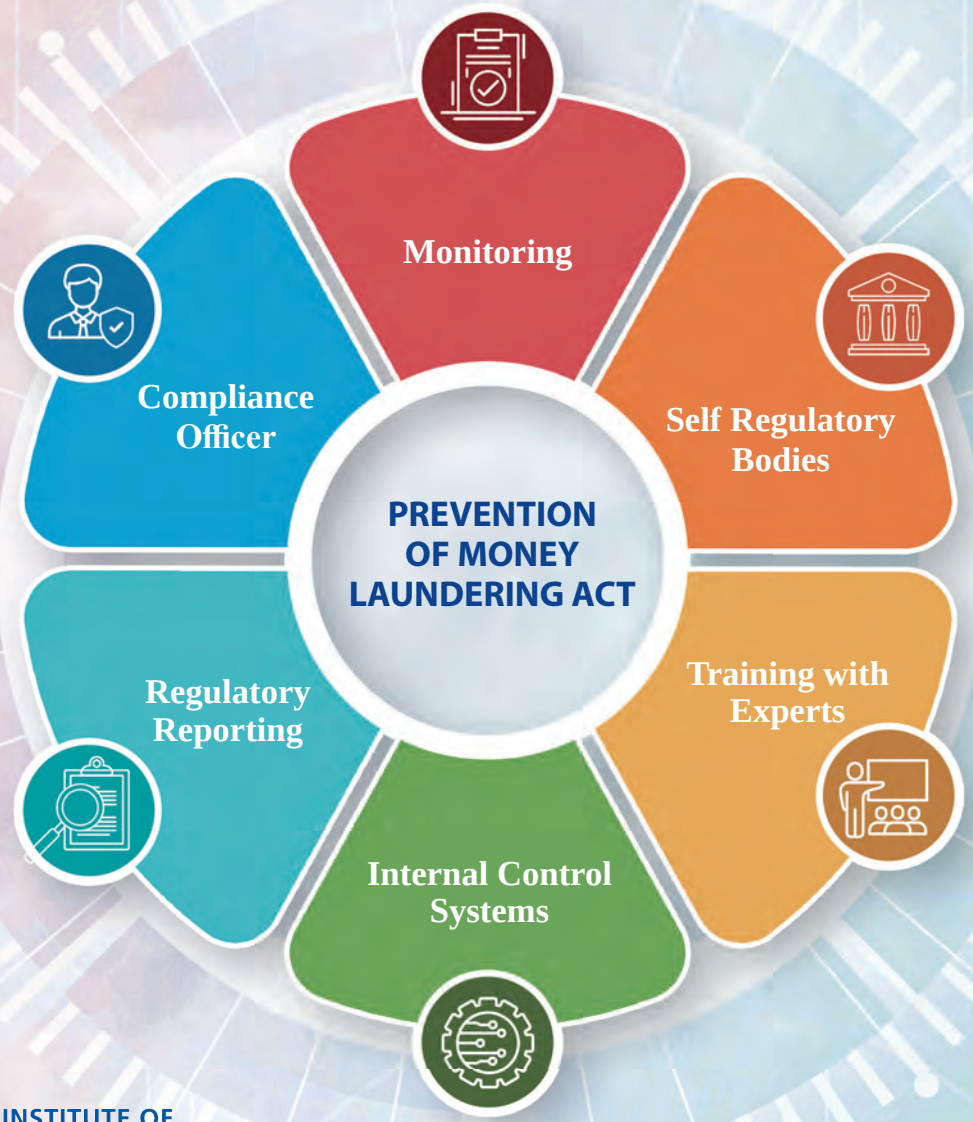

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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'Chartered Secretary' is generally published in the first week of every month. ■ Non-receipt of any issue should be notified within that month. ■ Articles on subjects of interest to company secretaries are welcome. ■ Views expressed by contributors are their own and the Institute does not accept any responsibility. ■ The Institute is not in any way responsible for the result of any action taken on the basis of the advertisements published in the journal. ■ ■ The write ups of this issue are also available on the website of the Institute.

EDITORIAL

Honourable Vice- President of India, Shri Jagdeep Dhankar's words in his Iconic Speech at the 51st National Convention are still echoing throughout our professional echelons where he proudly described Company Secretaries as the custodians of Corporate Governance upholding the compliance and governance of India Inc. high. He also augured the Company Secretaries being the epicentre of the change in the Regulatory Regime, playing multifaceted role in our country's economic landscape.

As an Institution and beacon of Good Corporate Governance, The ICSI reverberates with its Mission 'To develop high calibre professionals facilitating good Corporate Governance' and takes pride in representing this glorious profession at national as well as international forums.

To exclusively deliberate on the Role of Professionals in ensuring compliance of the Prevention of Money Laundering Act, this month's Journal is focusing on the 'PMLA Legislations: Role of CS in ensuring Compliance'.

Through various articles and research inputs, the Journal aptly reveals the significance of the PMLA which has the core purpose of curtailing money laundering, consequently leading to deterring the channels that fund terrorist activities. The Act urges the financial establishments to adopt the measures complying with the law and act as strongholds of upright pecuniary practices.

The Author draws attention on the role of Professionals with the article 'Prevention of Money Laundering Act- Role of CS In Ensuring Compliance' and emphasises the need for robust anti-money laundering measures, where the PMLA serves as a cornerstone in this effort, aiming to detect and prevent money laundering activities that could undermine the integrity of financial systems. In another article on 'Role of CS as Reporting Entities' the author reasons why in March 2023, the Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023 were introduced by the Department of Revenue under the Ministry of Finance. The article on 'PMLA Legislations -An Insight into Compliances' provides a deep study into the Prevention of Money Laundering Act (PMLA), 2002 which is known to have been legislated basically to sub-serve twin purpose. Firstly, to prevent money laundering and secondly to provide for confiscation of property derived from, or involved in money laundering and to ensure curbing of the tendency of committing scheduled offences. The author through the article 'Navigating PMLA Compliance in India: A Comprehensive Guide for Companies and Company Secretaries', provides guiding principles to navigate PMLA Compliance in India and how the implementation of PMLA compliance measures requires a proactive and collaborative approach led by Company Secretaries. The author through the article 'Criminal Liability of Transferee Company For Acts of Transferor Company After Amalagamation' explains how a transferee bank in a merger can be held accountable for corporate criminal liability arising from offenses committed by officials of the transferor bank prior to the merger of the two entities. A thought provoking Article on 'Recent Amendments in Compliances: Combating Money Laundering In India' brings forth how AML refers to extant web of legislations, regulations and procedures aiming at unearthing disguised illicit funds and assets transformed as legal income and assets. Through the Article on 'Unveiling Due Diligence and Internal Control Imperatives in India's PMLA Compliance' the author delves deep in the realm of financial safeguards and how the Prevention of Money Laundering Act (PMLA) takes center stage, with this article navigating the intricate landscape of due diligence and internal controls in the Indian financial sphere.

With deliberation on 'Decoding Whistle Blowing Policies of Indian Companies' the author brings forth the need for making whistleblowing, an integral part of corporate governance in exposing corruption, frauds, and other wrongdoings and has emerged as an effective mechanism of spotting questionable practices of corporations. Through the Article 'An analysis of jurisdiction of NCLT / Civil Court on company matters – Sections 408 and 430 of the Companies Act, 2013', the author attempts to provide an analysis to the much asked question- whether a civil court has jurisdiction, in a company matter in which a member is the person aggrieved or whether the NCLT alone has jurisdiction. Through Article 'Effectiveness of CSR - A Corporate Voluntary Code in Preventing Human Trafficking: A Doctrinal Analytical Approach' the author identifies and delves into the efficacy of CSR as a corporate voluntary code of conduct in preventing human trafficking while employing a doctrinal analytical approach.

The Institute is honoured to publish an Interview with CS (Dr.) Rikhab C Jain, a highly accomplished veteran of CS Profession, an IIM Calcutta Alumnus and Founder Chairman of T. T Group, which has been in Textile Business for more than 50 years.

Wishing our esteemed readers a Merry Christmas and a wonderful month ahead.

CS Asish Mohan
(Editor - Chartered Secretary)

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1. Inaugural function of 2nd Regional Conference of Corporate CS of SIRC was held on December 01, 2023 at Bengaluru. Shri Tejasvi Surya, Member of Parliament, Bengaluru South, graced the event as Chief Guest along with CS Manish Gupta President, The ICSI; CS B. Narasimhan, Vice President, The ICSI and other dignitaries.

2-3. Punjab State Conference 2023 organized by Ludhiana Chapter of NIRC of ICSI. The Conference was graced by Sh. Daljit Singh Grewal, Hon'ble MLA, State of Punjab; Smt.Kamna Sharma, RoC, Punjab & Chandigarh and CS Manish Gupta, President, The ICSI along with other dignitaries.

4. UP State Conference 2023 organised on the theme CS Professional: A Regulatory Prebiotic (A Global Perspective) organised by Ghaziabad Chapter of NIRC of ICSI. The Conference was graced by Shri Gopal Krishna Agarwal, National Spokesperson of Bhartiya Janata Party for Economic Affairs, Shri Aditya Burman, Director, Dabur India Limited and CS Manish Gupta, President, The ICSI alongwith other dignitaries.

5. CS Manish Gupta, President, The ICSI addressed a Half Day Seminar organized by Lucknow Chapter on 22 November, 2023 on the theme "SBO."

6-7. Diwali Poojan at NIRC of ICSI and ICSI HQ on November 10 2023.

8. CS Manish Gupta, President, ICSI signed MOU on behalf of ICSI with the Institute of Management Accountants USA. Also present at the ceremony: CS B. Narasimhan, Vice President, The ICSI; Mr. Jaywardhan Semwal, CMA, Chair, IMA India Regional Advisory Committee Member & IMA Global Board Member, Mr. Guruprasad V, ACA, ACMA, ACS, IMA Regional Advisory Committee Member & Former President IMA Bangalore Chapter and CS Nagendra D Rao, Former President, The ICSI.

9. The ICSI signed an MoU with Standing Conference of Public Enterprises (SCOPE) on December 5, 2023. SCOPE is an apex professional organisation representing the Central Government Public Enterprises and includes some State Enterprises, Banks and other Institutions as its members.

10. ICSI Academic Collaboration MOU was signed between the Institute of Company Secretaries of India and CSJM University, Kanpur on December 01, 2023.

11. Full Day Seminar organized by Gurugram Chapter on theme 'Compounding, Adjudication, Inspection & Investigation under the Companies Act, 2013' on November 17, 2023.

12. Annual Regional Conference organised by ICSI-WIRC on December 3-4, 2023 at Aamby Valley City, Pune. CS B. Narasimhan, Vice-President, The ICSI graced the Conference along with ICSI Central Council members and other dignitaries.

13. With a view to provide support to MSMEs sector in West Bengal by way of various developmental exercises; CS Sandip Kejriwal, Central Council Member on behalf of ICSI signed an MOU with the Directorate of MSME & Textiles, Govt. of West Bengal at the Bengal Global Business Summit held on November 21-22, 2023.

14. Seminar on "Significant Beneficial Owner (SBO)" organised by Faridabad Chapter of NIRC of ICSI on November 24, 2023. CS Ranjeet Pandey, Former President, ICSI presided over as the Speaker at the event.

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15. 2nd Two Days Residential Programme held at Araku Valley, jointly by Visakhapatnam, Hyderabad Chapter and Amravati Chapter of ICSI.

16. 15th Residential Corporate Leadership Development Program (CLDP) and 85th MSOP held from November 28, 2023 to December 13, 2023 at ICSI-CCGRT, Navi-Mumbai.

17. CS B. Narasimhan, Vice-President, The ICSI addressed College Dunia Higher Education Leader Summit of the educators as a panelist. The topic of panel discussion was "The Power of Artificial Intelligence: Transforming Education" on 24.11.2023.

18. ICSI organised a half-day training programme on SEBI LODR, Insider trading, & RPT for KMPs & Senior Officials of RITES in Gurgaon on 6th November 2023. CS Ranjeet Pandey, Former President, The ICSI addressed the participants.

Jury Meeting of 23rd ICSI National Awards For Excellence in Corporate Governance, 2023

Date & Venue: Thursday, November 23, 2023, Hotel The Lalit, New Delhi

Chairman: Hon'ble Mr. Justice Tirath Singh Thakur, Former Chief Justice of India

ICSI Training Programme on Companies Act, 2013 for the officials of SEBI

The ICSI conducted two days training programme on Companies Act, 2013 for the officials of SEBI on October 10-11, 2023 at NISM Test Centre, BKC, Mumbai. The training programme was attended by approximately 35 officials from SEBI including Chief General Manager, General Manager, Deputy General Manager, Manager, Assistant Manager etc. The faculties for various sessions were CS Savithri Parekh, Company Secretary and Compliance Officer, Reliance Industries Limited, CS Amita Desai, Practicing Company Secretary and Insolvency Professional, CS Narayan Shankar, Vice-President & Company Secretary, Mahindra & Mahindra Limited, CS Kalidas Ramaswami, Practicing Company Secretary, CS Shailashri Bhaskar, Practicing Company Secretary, CS B. Renganathan, Corporate Law Advisor, CS Makarand Joshi, Practicing Company Secretary, CS Rajendra Chopra, Company Secretary, Cipla Limited, CS Nitin Somani, Director & Founder, Sundae Capital Advisors Private Limited.

CS B. Narasimhan
Vice-President, The ICSI
(Opening Remarks)

CS Savithri Parekh
(Topic: Incorporation, MOA, AOA)

CS Kalidas Ramaswami
(Topic: Board Meetings- SS1 & General Meetings -SS 2)

CS Narayan Shankar
(Topic: RPTs & Requisitioned Meetings)

CS Shailashri Bhaskar
(Topic: Dividend & Interim Dividend)

CS Rajendra Chopra
(Topic: Directors, Intercorporate Loans & Investment)

CS Nitin Somani
(Topic: Merger, Amalgamation & Valuation)

CS Amita Desai
(Topic: Share Capital, Deposits, SBO)

CS Makarand Joshi
(Topic: Account, Audit & CSR)

CS B. Renganathan
(Topic: Corporate Reporting)

Group Photo with Participants

आ जागृविर्विप्र ऋता मतीनाम्

The intelligent learned is wakeful towards true knowledge

Dear Professional Colleagues,

Life has its own way of surprising us when we least expect it to. Each achievement, each moment of success adds further grit to this thought. But when you truly look deeper, the realization dawns – that the fruits reaped today are the result of the seeds sown and saplings planted long ago – and that thought itself brings with it, immense humility and reverence for those who have been through the road before us.

Each event of the month gone by had its way of telling us as to how proud we must feel for being part of the legacy. If the Institute of Company Secretaries of India is 55 years strong, our commitment to take it forward is no less either. And it feels great beyond words when we get an opportunity to tell the world as to what we are capable of and to hear from them their appreciation, their commendations and their expectations.

As I mention appreciation, I feel extremely delighted to share the news of an Article recently published on the 'Role of Company Secretary and Corporate Governance' in the monthly newsletter of the Ministry of Corporate Affairs.

The fine detailing of the various roles played and responsibilities undertaken by the Governance Professionals has given the profession greater impetus and to us moments of pride. To us it was a portrayal of the fact that "no good deed goes unrewarded". At the same time, the appreciation has revealed to us a vast sea of expectations wherein we Company Secretaries in our roles as Governance Professionals are envisioned to guide, handhold, and steer the Indian Corporate on the growth trajectory with far greater accountability, transparency and integrity.

The month gone by has given us its fair share of moments which I am more than elated to let you in on :

JURY MEETING 2023 : ANOTHER YEAR OF REWARDING EXCELLENCE

Reiterating the point from where I had begun, the moments of success cherished are not mere momentary achievements but a result of dedication, commitment and long drawn efforts of a lot many people.

If the Jury meeting of the ICSI National Awards for Excellence in Corporate Governance can be treasured as our accomplishment, the months of efforts of not just Team ICSI but a lot many other people is, what fills my heart with both pride to have the silent support of so many partners and gratitude towards each one of them.

Even though for the entire nation the ball was set rolling in the month of July with the opening of applications but for us it had truly began the day. We had made the first call to the Chairmen and members of Expert Groups and heard voices on the other end filled with the happiness to help...! If during the course of the Jury Meeting we were able to proudly quote the number of companies participating and their heightened interests in these Awards, it was because the corporates wanted to share with us how well they had performed on the governance front.

If the corporates have spent their months post filling in of questionnaires in great anticipation, ours have been filled with longer days and weekends invested in their evaluation. I cannot help but commend the dedicated efforts of TEAM ICSI - of the various departments coming together and pursuing this expansive activity with utmost assiduity- all of which led us to the memorable day of Jury meeting.

No words of gratitude would compare to the surge of emotions felt as we deliberated the significant efforts of the Hon'ble Justice Mr. Tirath Singh Thakur, Former Chief Justice of India, in steering the Meeting with utmost practicality and thorough understanding of our procedures and practices. I am equally thankful to all the members of the Jury hailing from varied backgrounds – from the Industry, Academia and Regulatory Authorities; for coming together at our table and guiding our way into adding another momentous page in our history.

And as I extend my heartiest thanks towards our Expert Group Members, our Field Visitors and Call makers to the Independent Directors, I feel indebted towards all the Past Presidents and the Teams who would have supported them in carrying this legacy on for 23 years.

I am more than hopeful that these Awards shall continue to play their designated roles of promoting excellence in governance in not just years or decades but centuries to follow...!!!

ICSI-CCGRT KOLKATA : ANOTHER FEATHER IN THE CAP

The name CCGRT or Centre for Corporate Governance, Research and Training comes with a lot of weight - not just in the manner of what it stands for but for the very purposes it is intended for. This year as the ICSI celebrated the completion of 24 years of the first CCGRT established by the ICSI in the year 1999 at Navi Mumbai, and 6 years of the second one established in the heart of the tech-city Hyderabad, we realised that the year 2023 had become all the more special with the completion of construction of the ICSI CCGRT at the eastern edge of the ICSI's national presence in Kolkata.

What began in 2020 was not just a dream of the then Council of which I was a part of but a cherished goal and aim for our dear friend and then Central Council Member, CS Deepak Kumar Khaitan. While his soul departed, and the loss is still grieved for till date, it is a matter of great pride for me to have had this opportunity of playing some part in making his dream come true. Although we have dedicated an Auditorium in the new compound to his name, his visions and values for the Institute and his commitment shall always be a part of our thoughts and lead our way.

I feel humbled to acknowledge the presence of Shri C. V. Ananda Bose, Hon'ble Governor of West Bengal for making time out of his pressing commitments and inaugurating the ICSI-CCGRT at Kolkata on December 06, 2023. His appreciation and lauding surely boosted our morales and added vigour in our step.

If the vision of the ICSI is "to be a leader in promoting good corporate governance", the accomplishment of the same lies in constant self-development - one which is possible only by way of continuous learning, knowledge attainment and skill upgradation - all of which are the ultimate goals of the CCGRT.

I am sure that these Centres will go a long way in shaping the governance culture of the nation and even steer global governance scenarios in ways unfathomable - signifying our thought of वसुधैव कुटुंबकम्।

ICSI CONVOCATIONS : सर्वं सम्भाव्यते त्वयि

The above Sanskrit verse, sourced from the Adi Parva of Mahabharata, is a reminder of the immense potential of the youth of this nation – one that we relish in each meeting with our students and young members – but more than that one which is visible each time without fail at the ICSI Convocations held in different parts of the nation.

This time as we cojoined the Inauguration Ceremony of the ICSI-CCGRT at Kolkata with the bi-annual convocation of Eastern Region – the joy and elation surpassed words and sentences. The presence of Shri C. V. Ananda Bose, Hon'ble Governor of West Bengal to guide the members, to share his expectations from our young members of the brigade and to share his personal experiences made the entire ceremony light hearted and yet one fostering life-long bonding.

It was not only the hoards of pictures and selfies clicked which is going to make its way into our phone galleries and memories but also the pledge taken together which shall guide our conduct in our professional journey.

The above verse meaning "You can do anything" is what I would want each of our member to take away as they begin their professional journeys – knowing that no task is impossible and no goal too big or unattainable. We can achieve what we aspire and if we can – might as well aspire to be the best…!

ICSI GLOBAL CONNECT : DUBAI CALLS AGAIN

Friends, they say "Once the sand of Dubai has settled on your shoulders… you can never shake it off." The city takes pride in having the first overseas Examination Centre of ICSI; of having the first Overseas Centre of ICSI, of playing the perfect host to the first International Conference of ICSI Overseas Centre; but more than that – the city takes pride – in calling us again, and again and again…

And this month, Dubai chose to call us for the ICGN - Hawkamah Dubai Conference. The Conference which was being hosted immediately before the 2023 United Nations Climate Change Conference (COP28), covered topics related to environmental and social issues, all from the overarching lens of promoting good governance practices. And where deliberations are raised on good governance, the presence of ICSI is bound to be felt. The moment felt equally opportune to meet with our members at ICSI Middle East (DIFC) NPIO wherein, a Half Day Event was organised to share further instances of collaboration and working together.

The moments have indeed filled us with hope for a far deeper global presence and expansive outlook in the days to follow.

To many more avenues of growth together…!

REMEMBERING THE LOST PILLARS : CS B. S. DORAISWAMY

An institution with a legacy of 55 years finds strength in the efforts placed in cementing its foundations by a lot of hands. Each President, each person who has been on this Chair, in this Office before me has placed in the best of efforts and dedicated a part of his life in the development of both the institution and the profession and it pains to lose any member of the fraternity.

One such name, CS B. S. Doraiswamy, Former President of the ICSI, had taken to the Chair in the year 1988 – when many of us had no clue that we would one day be a part of this illustrious profession.

As we pay our homage to his departed soul, his visions will be cherished and his contributions honoured. We hope to live up to the expectations of all those before us.

On that note, as we gear up to meet each other in a new year with the next edition, I expect each one of my members and students to have their new year resolutions – and pursue them with grit and resilience…

Happy reading !!!

Yours Sincerely

CS Manish Gupta
President, ICSI

OBITUARY

Late CS B. S. Doraiswamy

(1940-2023)

FORMER PRESIDENT

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

(1988)

"A visionary who strengthened the profession and achieved an important milestone with the historic Statutory Recognition for the Practising Company Secretaries "

CS B. S. Doraiswamy, *a visionary of the coveted profession of Company Secretaries,* alongwith his numerous contributions towards the profession, played a critical role in achieving an important milestone of Statutory Recognition to the Practicing Company Secretaries in India.

Having an early association with the Institute, he was elected as the President of The Institute of Company Secretaries of India for the year 1988.

Born in 1940, Shri Doraiswamy, held various senior positions in the Corporates and was the Fellow Member of the Institute. He served as Chairman of (SIRC) Southern India Regional Council during 1981-82. He was elected to the Central Council of ICSI for the Term 1983-85 and re-elected for the Term 1986-88. He served as the Vice-President of the Institute during the year 1987.

CS. B. S. Doraiswamy left for his heavenly abode on 28th November 2023; Through his valuable contribution to the profession of Company Secretaries, his memories will remain etched in our minds forever and he shall always be remembered for his outstanding contribution to the Institute's legacy.

INITIATIVES UNDERTAKEN DURING THE MONTH OF NOVEMBER, 2023

MEETINGS AND GREETINGS

During the month, ICSI delegation met with the following dignitaries:

- Dr. C. V. Ananda Bose, Hon'ble Governor of West Bengal
- Hon'ble Mr. Justice Tirath Singh Thakur, Former Chief Justice of India
- Shri Tejasvi Surya, Member of Parliament, Bengaluru South
- Sh. Daljit Singh Grewal, Hon'ble MLA, State of Punjab
- Smt.Kamna Sharma, RoC, Punjab & Chandigarh
- Ms. Suseela Menon, President CSIA

MASTER KNOWLEDGE SERIES: EEE

The ICSI, with the intent of reviving, refreshing and sharpening the knowledge of its members on the Companies Act, 2013 and SEBI Regulations has launched a Master Knowledge Series: EEE: Enable, Evaluate, Excel. The capacity building initiative is an attempt to keep members abreast of the various amendments in these laws and to enable them to brush up their knowledge on the subjects. During the month, following webinars were conducted:

Date	Topic	Faculty	Links
November 16, 2023	Fund raising by companies	CS B. Renganathan Corporate Law Advisor	www.youtube.com/watch?v= c9QD77-KEvs
November 22, 2023	Secretarial Audit & ASCR	CS Shailashri Bhaskar PCS	www.youtube.com/watch?v=r F0uV-_6Rw0
November 29, 2023	Corporate Restructuring: Building Strategic Alliances	CS Nitin Somani Director Sundae Capital Advisors Private Limited	www.youtube.com/watch?v= SYJ0iqWmpWY

VIEWS/REPRESENTATIONS/SUGGESTIONS SUBMITTED

Date	Purpose	Authority
November 20, 2023	Suggestions on facilitating ease of doing business in respect of SEBI LODR Regulations and ICDR Regulations	SEBI
November 20, 2023	ICSI Suggestions for strengthening Corporate Governance Framework	MCA
November 22, 2023	Request to consider Company Secretaries in Practice for empanelment as expert for conducting Third Party Audit and Certification under Section 37 read with Section 133(2)(z) of the Occupational Safety, Health and Working Conditions Code, 2020	Secretary and Labour Commissioner, Labour, Employment Training and Skill Department, Government of Jharkhand
November 24, 2023	Request to extend filing of DIR-6 to changes pertaining to E-mail and Mobile No. particulars by Directors	MCA

REGISTRATIONS OPEN FOR PMQ COURSES

The registrations for three Post Membership Qualification (PMQ) Courses in subjects like Internal Audit, Arbitration and Corporate Governance -June 2024 batch are open till 31st December 2023. Also, the online proctored MCQ based examination of PMQ Course -December '23 attempt is scheduled to be held on Saturday, December 16, 2023.

ONLINE ASSESSMENT OF CERTIFICATE COURSES

Online assessment of Certificate Course on IPR (Batch 5)/ Independent Directors (Batch 6)/ POSH (Batch 6)/ Valuation of Securities (Batch 3)/CCM (Batch 6) and Crash Course on Interpretation of Statutes was conducted between November 17-27, 2023. The online classes for Certificate Course on Financial Analysis - Batch 1 are in progress.

2ND ICSI GURU SHRESTHA AWARDS 2023

ICSI in its endeavour to acknowledge the immense contribution of educators in education is conducting 2nd Gurushrestha awards during the year 2023. The purpose of "ICSI Gurushrestha" Award is honouring those Teachers and Lecturers/Professors across India who have through their commitment and industry contributed immensely to improve the quality of Commerce/Finance Education at School as well as College /University level and have augmented the lives of

their students. The awards will be conferred upon to the faculties of universities with whom ICSI has entered into MoU. Professors/Lecturers working on full–time regular basis in Commerce/Law /Management Department of these Universities are eligible to apply. The faculties will be evaluated through a multi-layered evaluation process through an expert group and eminent jury comprising top academicians of the country.

TRAINING PROGRAMME ON COMPANIES ACT, 2013 FOR SEBI OFFICIALS AT MUMBAI

The ICSI conducted two days Training Programme on Companies Act, 2013 for the officials of SEBI on October 10-11, 2023 at NISM Test Centre, BKC, Mumbai. The Training Programme was attended by approximately 35 SEBI officials including Chief General Manager, General Manger, Deputy General Manager, Manager, Assistant Manager etc. The faculties for various sessions were CS Savithri Parekh, CS and Compliance Officer, Reliance Industries Limited; CS Amita Desai, PCS and Insolvency Professional; CS Narayan Shankar, VP & CS, Mahindra & Mahindra Limited; CS Kalidas Ramaswami, PCS; CS Shailashri Bhaskar, PCS; CS B.Renganathan, Independent Corporate Consultant; CS Makarand Joshi, PCS; CS Rajendra Chopra, CS, Cipla Limited; and CS Nitin Somani, Director & Founder, Sundae Capital Advisors Private Limited.

KNOWLEDGE ON DEMAND - TOPICS UPDATION

Knowledge on Demand initiative of the Institute, launched in May, 2023, is an endeavour to provide access to the repository of videos available with the Institute to facilitate the members in keeping them abreast of latest developments, widening their knowledge base at their convenience online 24x7 on the LMS Platform of the Institute. 1 CPE Credit (Unstructured) per session is awarded to the members. 28 topics covering 237 sessions have been uploaded under the Knowledge on Demand so far. Several new topics viz. PMLA & AML, FEMA, Arbitration, ESG Analysis, IPR, Commercial Contract Management, Forensic Audit, Corporate Reporting, Internal Audit, Lending Transactions and opportunities for CS in Banking, etc. have been updated in the recent past. Members may benefit from the programme by accessing the same at https://www.icsi.edu/home/knowledge-demand/

MoU WITH THE INSTITUTE OF MANAGEMENT ACCOUNTANTS

The ICSI has signed an MoU with The Institute of Management Accountants (IMA) on December 1, 2023. IMA is one of the largest and most respected associations focused exclusively on advancing the management accounting profession. IMA has a global network of about 1,40,000 members in 150 countries and more than 350 professional and student chapters. Headquartered in Montvale, N.J., USA, IMA provides localized services through its four global regions: The Americas, Asia/Pacific, Europe, Middle East and India.

The MoU focusses on collaborating for research in certain projects, seminars, conferences, and workshops towards the integration of management accounting and corporate secretarial practices and activities for the benefit of Members. The MoU shall also facilitate knowledge sharing and exchange of best practices in the areas of financial management, corporate reporting, and governance.

JOINT PROGRAMME

The ICSI joined as Knowledge Partner in the webinar on ***"Various Legal Issues being faced by the taxpayers and how to handle such investigation and Get Ready to file GSTR 9 and 9C"*** organised by **PHD Chamber of Commerce & Industry** on November 23, 2023.

GROUP HEALTH INSURANCE SCHEME

The Institute of Company Secretaries of India has launched the ICSI Group Voluntary Health Insurance Programme, exclusively for the members. The Institute has collaborated with the National Insurance Company and Marsh India, to offer top-notch insurance benefits, that will address the family's healthcare needs of the ones who voluntarily enroll for the services.

PLACEMENT OPPORTUNITIES FOR COMPANY SECRETARIES

The ICSI stands committed to help all the associated companies and availing the services extended by the cell to conduct their recruitment drives for the position of Company Secretary/ CS Trainee in a time bound, hassle-free and mutually beneficial manner, and to help the members and students in getting the right placement offer. The Institute receives requests from various offices of the Government/ PSUs/ Banks/ Corporates regarding the positions of Company Secretary/ CS Trainee from time to time and resumes of eligible Members and Students are sent to them.

During the month, following placement opportunities were posted on the Placement Portal:

S. NO.	ORGANIZATION	LOCATION	DESIGNATION
1	BEML Limited	Bengaluru	Management Trainee - CS
2	Gujarat State Petroleum Corporation Ltd.	Gandhinagar	Management Trainee (S&L)
3	India Optel Limited	Dehradun	Company Secretary
4	Ministry of Corporate Affairs	Kolkata	Young Professional
5	Odisha Hydro Power Corporation Ltd.	Bhubaneswar	Company Secretary
6	Office of the Official Liquidator	New Delhi	Consultant

7	Institute of Company Secretaries of India	Various Cities	Multiple Positions
8	Anzen Insurance Broking Pvt. Ltd.	Mumbai	Company Secretary
9	Arinna Lifesciences Limited	Ahmedabad	Company Secretary
10	Bansal Roofing Products Ltd	Vadodara	Company Secretary
11	Bioneeds India Pvt Ltd	Bengaluru	Company Secretary
12	Bolt-Tech Services Pvt Ltd	Various Cities	AM - Compliance & Ops
13	BOMS Pvt Ltd	New Delhi	Legal Compliance Officer
14	Brightbridge Advisors LLP	Mumbai	Company Secretary
15	Capacite Infraprojects Limited	Navi Mumbai	Assistant CS
16	CDC Development India Private Limited	Bengaluru	Company Secretary
17	Corpwis Advisors Private Limited	Mumbai	Manager - Eq Cap Market
18	Darwin Platform Group of Companies	Mumbai	Company Secretary
19	Duroply Industries Limited	Kolkata	Assistant CS
20	Elpro International Limited	Mumbai	Assistant CS
21	Fine 360 Degree Commitment	Mumbai	Company Secretary
22	Fine Jewellery Mfg. Ltd	Mumbai	Company Secretary
23	Finquest Group	Mumbai	Legal Manager
24	Gem Aromatics Limited	Mumbai	Assistant CS
25	Habitat Micro Build India Housing Finance	Bengaluru	Assistant CS
26	Hopeberry Retail Private Limited	Surat	Company Secretary
27	IIFL Samasta Finance Limited	Bengaluru	Assistant CS
28	Innovations Inv. Management India Pvt Ltd	Bengaluru	Company Secretary
29	Keynote Financial Services Limited	Mumbai	Associate - MB
30	LLM Appliances Private Limited	Chengalpattu	CS & Legal Officer
31	LTIMINDTREE	Bengaluru	Sr. Executive- Compliance
32	Mcwane India Private Limited	Coimbatore	Company Secretary
33	Medplus Health Services Limited	Hyderabad	Deputy Company Secretary
34	National Stock Exchange	Mumbai	Multiple Positions
35	Perfect Infraengineers Limited	Navi Mumbai	CS & Compliance Officer
36	PI Industries Limited	Gurgaon	Assistant CS
37	Pragati Agri Products Pvt Ltd	Kolkata	Company Secretary
38	Proyuga Advanced Technologies Limited	Hyderabad	CS & Compliance Officer
39	Racl Geartech Limited	Noida	Associate CS
40	Rapid Fleet Management Service Limited	Chennai	Company Secretary
41	Rashi Peripherals Private Limited	Mumbai	Assistant CS
42	Rashmi Group	Kolkata	Company Secretary
43	Ratnabhumi Developers Limited	Ahmedabad	CS & Compliance Officer
44	Resourceful Automobile Limited	New Delhi	Company Secretary
45	Samay Project Services Pvt Ltd	Chennai	Company Secretary
46	Sampati Securities Limited	Ahmedabad	Company Secretary
47	Sequent Scientific Limited	Thane	Company Secretary
48	Shigan Quantum Technologies Limited	Manesar	Assistant CS
49	Shree Vasu Logistics Limited	Raipur	CS & Compliance Officer
50	Shrem Infra Invest Private Limited	Mumbai	Company Secretary
51	South West Mining Limited	Ballari	Company Secretary
52	SPS Steels Rolling Mills Limited	Kolkata	Company Secretary
53	Standard Group	Hyderabad	Company Secretary
54	Bombay Dyeing and Mfg. Company Limited	Mumbai	AGM/DGM Secretarial
55	Tolani Shipping Company Limited	Mumbai	Assistant CS
56	Triveni Pattern Glass Private Limited	New Delhi	Company Secretary
57	Upgrad Education Private Limited	Mumbai	Associate - Secretarial
58	Yizumi Precision Machinery India Pvt Ltd	Ahmedabad	Company Secretary

For more details, kindly visit ICSI Placement Portal - https://placement.icsi.edu

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on 30th November, 2023)

Registered Users			Total no. of Vacancies
Members	Students	Corporates	Jobs/ Trainings
18,358	24,671	5,596	9,345

CAMPUS PLACEMENT PROGRAMME

The Campus Placement Programme of the Institute provides a unique opportunity to The Campus Placement Programme of the Institute provides a unique opportunity to corporates to peruse the profiles of qualified young and experienced Company Secretaries, interview them and select those ones whoever suits their requirement. Campus Placement drive is a one-stop solution for corporates and members. ICSI placement services have been beneficial to several members and students. A few of them received offers of Rs. 12.45 LPA from Vedanta Limited.

ICSI MEGA PLACEMENT DRIVE II OF 2023

The Institute conducted the ICSI Mega Placement Drive II of 2023 on 18th November 2023 at various Regional Offices & Chapters. For details, kindly visit https://www.icsi.edu/placement/important-announcement/

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- **Workshops**

Date	Topic
November 18, 2023	Managing Corporate Debtor as a Going Concern

- **Webinars**

Date	Topic
November 17, 2023	Code of Conduct for IPs and Disciplinary Proceedings and Impact of IBC on Ease of Doing Business
November 22, 2023	Anatomy of IBC Case Laws – 11

- **Round-table Discussion (Virtual)**

Date	Topic
November 01, 2023	IBBI Dis. Ppr on "Strengthening the Liquidation Process
November 07, 2023	Rationalisation of the Regulatory Framework for Enhancing the Effectiveness of IPEs in IRP
November 16, 2023	Proposed CIRP Amendments & Real Estate Related Proposals
November 24, 2023	Proposed CIRP Amendments & Real Estate Related Proposals (Part II)

ICSI REGISTERED VALUERS' ORGANISATION

Date	Programme	Topic
November 04, 2023	Online Case Study Workshop for Registered Valuers	Case Study on Business and Equity Valuation
November 14-20, 2023	50 Hours Course on Valuation of Securities/ Financial Assets	Valuation of Securities/ Financial Assets
November 17, 2023	Online Continuing Professional Education (CPE) Programme	Judicial Pronouncements and IBBI Orders on Valuation - Learning and Challenges

ICSI INTERNATIONAL ADR CENTRE

Date	Programme	Topic
November 24, 2023	Webinar Series on Mediation	Distinct and Salient Features of Mediation in Comparison to other Alternate Dispute Resolution Processes

ICSI-CCGRTs

ICSI-CCGRT, NAVI MUMBAI

- *Publications released during the 51st National Convention of Company Secretaries held at Varanasi from* November *2-4, 2023*
  - Compilation of ROC and RD Orders (MCA) under the Companies Act, 2013

    This publication delves deeper into the intricacies of cases adjudicated by ROC, spanning various sections of the Companies Act, 2013 and their corresponding rules from different regions of India and also that have undergone appeals to the Regional Director (RD), shedding light on the legal challenges confronted by companies operating in India.
  - Handbook on Limited Liability Partnership

    This comprehensive guide seamlessly synthesises the LLP Act, 2008 and accompanying rules and regulations in an accessible manner featuring in-depth analysis of pertinent case laws, real-world examples, practical compliance guidance, and comparative assessments. Through its wealth of insights, this handbook empowers readers with a practical and well-rounded understanding of applying LLP regulations within the ever-evolving Indian corporate landscape, providing them with the tools to thrive in this dynamic business growth era.
- *Student Training*

  15th Residential Corporate Leadership Development Program (CLDP) and 85th MSOP being conducted from November 28, 2023 to December 13, 2023 at

ICSI-CCGRT, Navi-Mumbai. The Inaugural Session of the program was held on November 28, 2023 in the presence of Chief Guest, CS Alok Mishra, Company Secretary - JSW Steel Limited. The program is being attended by 28 participants from across India. The program also incorporates soft skills sessions on communication skills & appearing before interviews, and other curricular and co-curricular activities for the overall personality development of participants.

ICSI-CCGRT, HYDERABAD

- 11th batch of 15 days residential "Corporate Leadership Development Programme (CLDP)" organized from October 26, 2023 to November 10, 2023. CS T Chandrasekhar, Director, Hetero Drugs of Companies, Hyderabad and Prof. V Keshav Rao, Advisor Centre for Corporate & Competition Law NALSAR University of Law, Hyderabad graced the occasion during inauguration and valedictory as Chief Guests, respectively. CS R Venkata Ramana, Council Member and Chairman, Management Committee of the ICSI CCGRT, Hyderabad was also present during inauguration & valedictory of the event. A total of 12 participants from all parts of the country participated in the program.

INITIATIVES FOR EMPLOYEES

- *Webinar on "Pledge to Stop Diabetes at the Gate" by Dr. Reddy's Foundation*

  A webinar was organized on the occasion of World Diabetics Day and Awareness Month on November 24, 2023 on the topic "Pledge to Stop Diabetes at the Gate" by Dr Reddy's Foundation for the benefit of ICSI employees and pensioners. All employees/veterans participated in the webinar presented by Dr. Surendran, Consultant Physician & Diabetology.

- *Service Camp by HDFC Life*

  A Service Camp, namely, 'Worksite Activity by the HDFC Life' was organized in connection with a MoU between the HDFC Life and ICSI for Term Insurance facility for the employees of the Institute. The camp was conducted at Noida Office on November 23, 2023 and many employees participated took benefit of the camp.

INITIATIVES FOR STUDENTS

ONLINE QUIZ ON CURRENT AFFAIRS AND GENERAL KNOWLEDGE 2023

The Institute, through a novel initiative, for creating awareness about the profession is organising Online Quiz on Current Affairs & General Knowledge. There is no participation fee and the students can register in the following category:

Students pursuing 11&12 class of any stream/ Students passed 12th/ pursuing Graduation.

The final round of the Online Quiz on Current Affairs and General Knowledge 2023 was conducted on 24th November 2023.

CONSTITUTION DAY ONLINE QUIZ 2023

To enhance the knowledge levels of students in Constitution of India and to generate interest among the students for in-depth study of the subject including greater conceptual clarity, the Institute organized Constitution Day Online Quiz - 2023 on November 26, 2023 for the following categories of students:

- Students pursuing 11th / 12th (Commerce Stream)/12th Passed (Commerce Stream)
- Students Pursuing Graduation (Commerce / Law / Management)
- Students of CS Executive & Professional Program

YUVOTSAV-2024 TO BE ORGANISED ON JANUARY 11-12, 2024

Yuvotsav-2024, National Conference of Student Company Secretaries will be organized on January 11-12, 2024 in Delhi/NCR. Students can participate in various competitions in Yuvotsav-2024 through their Regional/Chapter Offices. They also need to register online by remitting the requisite fee for the same. Around 23 competitions including Legal Puzzle, Elocution Competition, Debate Competition, Fashion show will be organized during Yuvotsav-2024. All interested students are requested to contact their respective regional/Chapter office to participate.

The link to register in Yuvotsav-2024 is: https://tinyurl.com/y5rkrvsp

CENTRALIZED FREE ONLINE CLASSES FROM DECEMBER 01 2023

ICSI is introducing free online Centralized classes for the students of Executive and Professional Programme (New Syllabus) from December 01, 2023 onwards. These Classes will be conducted free of cost for students eligible to appear in June 2024 examination and the duration of the classes will be 4-5 months. The best faculties in the country will be taking these classes and special sessions of experts will also be conducted. Students registered for these classes will be eligible to get exemption from pre-exam test subject to clearing of tests of respective group/s. Further, students registered for these classes will also be given free access to online doubt clearing classes conducted by the Institute.

ICSI WAIVER/ CONCESSION SCHEME FOR INDIAN ARMED FORCES, PARAMILITARY FORCES, AGNIVEERS AND FAMILIES OF MARTYRS

The Institute in alignment with the various initiatives of Govt. of India has launched ICSI Waiver/ Concession

scheme for Indian armed forces, paramilitary forces, Agniveers and families of Martyrs. Under the scheme, 100% concession will be given to the following categories in full Fee payable at the time of Registration in CS Executive programme. While all other fees, including those for trainings be applicable in full as per their respective category:

- *Wards and widows of martyrs (who have died during service; either during battle casualty or due to any other reason) of Indian Army, Indian Air Force, Indian Navy and all para-military forces.*
- *In Service/ Retired personnel of Indian Army, Indian Air Force, Indian Navy and all para military forces (including defence personnel who have taken retirement under short service commission).*
- *Wards of all personnel of Indian Army, Indian Air Force, Indian Navy and all para military forces (including wards of defence personnel who have taken retirement under short service commission).*
- *Candidates who are inducted as "Agniveer" under AGNEEPATH Scheme of the Government of India after completing four years under the Scheme (upon submission of documentary evidence the same).*

ICSI SAMADHAN DIWAS

ICSI successfully conducted the 37th Samadhan Diwas, on Wednesday, November 08, 2023. Samadhan Diwas is an unique initiative of the ICSI in which the students are given an opportunity to interact with the officials of ICSI and get on the spot solutions to their Issues/ Queries/ Complaints/ Grievances, which may include the following :-

- Issues relating to Switchover from Old training to New Training Structure.
- Issues relating to 15 days EDP in Classroom mode and e-EDP, 15 days CLDP in class room mode and 15 days online CLDP.
- Instant issue of sponsorship letters for Practical Training.
- Exemption related matters in Practical Training.
- Resolving the issues of Training Completion Certificate.

All the queries raised in the Samadhan Diwas were fully resolved on the spot. The students appreciated the efforts of the Institute for creating such a platform and requested to continue the same for their benefit.

REGISTRATION FOR CLASSES BY REGIONAL/ CHAPTER OFFICES AT THE TIME OF EXECUTIVE PROGRAMME REGISTRATION

Institute has facilitated Executive Programme students to register directly for the Executive Programme classes at the time of Executive registration. Executive Programme students can now register directly for the Executive Programme classes conducted by the Regional/Chapter Offices at the time of Executive Programme registration. This will help the students to join classes at their nearest Regional/chapter Office.

CONFIGURATION OF DECEMBER 2023 ENROLMENT SETUP FOR EXECUTIVE NEW SYLLABUS (2022), EXECUTIVE & PROFESSIONAL OLD SYLLABUS 2017

The first examination for Executive New Syllabus (2022) shall be conducted from December 2023 and accordingly the system has been successfully configured to enrol students for December 2023 session of examination. Subsequently Enrolment Setup also activated for Executive & Professional Old Syllabus (2017) students.

NEW FACILITY TO CHANGE PROFESSIONAL ELECTIVE SUBJECT WITH REQUISITE CHANGE FEE AFTER ENROLLING FOR CS EXAMS

After submitting the enrolment form, the Institute has received numerous requests to modify the elective subject. To facilitate these students, the Institute has decided to accommodate change requests with the requisite change fee from December 2023 Session onwards according to the schedule below:

Enrolment Services after submission of Enrolment Form for December 2023 session of Examination Change of elective subject	11th October 2023 to 20th November, 2023 Up to 16:00 Hours

RE-OPENING OF ONLINE CHANGE REQUEST WINDOW FOR DECEMBER 2023 EXAM SESSION

The Last date for submission of Change Request for December 2023 Session was November 20, 2023 upto 16:00 Hrs. In view to facilitate the students who could not submit Change Request for December 2023 Session, online window for submission of the said change request for December 2023 session for CS Executive/ Professional students, it was decided to re-open the online Change Request window from November 27, 2023 to November 28 till 12:00 midnight.

PAPER WISE EXEMPTION ON THE BASIS OF HIGHER QUALIFICATIONS

The Institute has decided that the students enrolling into the Company Secretary Course under New Syllabus, 2022 shall be eligible for paper-wise exemption (s) based on the higher qualifications acquired by them. Accordingly,

necessary announcement including process of claiming paper-wise exemption has been shared for information to all concerned:

https://www.icsi.edu/media/webmodules/ATTENTION_STUDENTS_RECIPROCAL_EXEMPTION_NEW_SYLLABUS_2022_Updated.pdf

PROFESSIONAL PROGRAMME PASS CERTIFICATE OF ICSI IN DIGILOCKER

The Institute decided to issue Professional Programme Pass Certificate online via DIGILOCKER. The same initiative was Launched at 50th National Convention of ICSI at Kolkata with the support of the National e-Governance Division (NeGD), Ministry of Electronics and Information Technology (MeitY), Govt of India. The students who passed on or after June 2021 Session of Examination can download Professional Pass Certificate from DIGI Locker. Announcement and Communication via Bulk Mail has been sent to students for extracting their Professional Pass Certificate for June 2022 & December 2022 Session of Examination

TRANSCRIPTS & EDUCATION VERIFICATION

It has been observed that on completion of Course the professionals are also applying for Foreign Courses / degrees /or immigration based on CS Qualification. 23 such Transcripts were issued in this line in the month of November 2023 under review. Likewise, on request of the employer/PSU/government authorities and other Education verifier agencies, 7 Education Verification requests of CS students were processed in the month of November 2023.

ACTIVATION OF SWITCHOVER OPTION ALONG WITH PRE-EXAMINATION FEE FOR STUDENTS OF PROFESSIONAL PROGRAMME OLD SYLLABUS (2017)

The Institute has notified that candidate who have registered under the CS Professional old syllabus (2017) can switch over to CS Professional new syllabus (2022) comprising 7 papers. Accordingly, the portal for switchover from old syllabus (2017) to New Syllabus (2022) along with Pre-Examination Fee will be activated for Professional Programme Students w.e.f., November 20, 2023.

ACTIVATION OF CHANGE ELECTIVE SUBJECTS FOR STUDENTS OF PROFESSIONAL PROGRAMME NEW SYLLABUS (2022)

Automation of Professional Registration of New Syllabus 2022 with two elective subjects on SMASH w.e.f. 1st August 2023. After launching Professional Programme Registration of New Syllabus, the Institute received numerous requests to change the elective subject originally selected during registration. To facilitate these students, the Institute decided to accommodate change requests for Professional Programme New Syllabus (2022) students w.e.f., November 21, 2023.

REAL TIME GUIDANCE FOR STUDENTS

The Institute has prepared Frequently Asked Questions (FAQs) on the queries received from Stakeholders / Students to give more clarity on the issues and real time guidance. The FAQs are hosted on website at:

- *FAQ for Executive Switchover*

  https://www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf; https://www.icsi.edu/media/webmodules/Declaration_to_cater_switchover_Request_of_executive_&_professional_old_ysllabus_students.pdf

- *FAQ for Professional Switchover to New Syllabus:*

  https://www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf

COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

During the month, following initiatives were taken for the CSEET students:

- ***CSEET (January 2024 session)***

  January 2024 session of CSEET is proposed to be held on January 06, 2024. Last date for registration for CSEET is December 15, 2023.

- ***CSEET classes (January 2024 session)***

  CSEET Classes are being conducted by Regional/ Chapter Offices for the students appearing in CSEET to be held in January 2024. Details of Regional/Chapter offices conducting classes are available at:

  https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

- ***Registration for CSEET Classes at the time of CSEET Registration***

  CSEET students can now register directly for the CSEET classes conducted by the Regional/Chapter Offices at the time of CSEET registration. This will help the students to join classes hassle free at their nearest location.

  Link to register https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

- ***Exemption to Graduates and Post Graduates from appearing in CSEET and enabling them to take direct admission in CS Executive Programme***

The Institute has decided to grant exemption to the following categories of students from appearing in CSEET enabling them to take direct admission in CS Executive Programme.

Graduates (having minimum 50% marks) or Post Graduates (without any criteria of minimum % of marks) in any discipline of any recognized University or any other Institution in India or abroad recognized as equivalent thereto by the Council.

To get exemption from CSEET on the basis of above qualification, such students shall be required to pay applicable exemption fees along with the requisite registration fees for the Executive Programme. For more details, please click

https://www.icsi.edu/media/webmodules/granting_exemption_230621.pdf

- ***Paper bound CSEET Reading Material to be provided mandatorily to all students***

  The Institute has decided that the ***CSEET Guide – I*** and ***CSEET Guide – II*** (will be sent to all the students registering for CSEET by post, for which ₹500 will be taken at the time of registration from the students registering for CSEET in addition to ₹1000 (CSEET Registration fee).

- ***CSEET Reference Reading Material (I and II) will be provided on optional basis to all students at the time of CSEET registration***

  CSEET Reference Reading Material (I and II) will be provided optionally to all the students at the time of CSEET registration. Students are required to remit ₹1000 in addition to ₹1500. The same is available at: https://www.icsi.edu/reference-reading-material/

ACADEMIC INITIATIVES

- *Student Company Secretary and CSEET Communique*

  The Student Company Secretary e-journal for Executive/ Professional Programme students of ICSI and CSEET Communique covering the latest update on the subject on the CSEET have been released for the month of **November**, **2023**. The journals are available on the Academic corner of the Institute's website at the link: https://www.icsi.edu/e-journals/

- *Research Tab under Academic Portal for students*

  A new research tab has been added under the Academic Portal to sensitize the students on emerging issues through research based academic outputs. The Research Tab can be accessed at https://www.icsi.edu/student-n/academic-portal/research-corner/.

- *Recorded Video Lectures*

  ICSI has been recording video lectures of eminent faculties for the students of ICSI which help them to prepare for the examination. Students of the Institute can access recorded videos available on the E-learning platform by logging in to https://elearning.icsi.in

  Login credentials are sent to all registered students at email. After successful login, go to "My courses" or "My Communities" section, where you can find the recorded videos and other contents.

- *Info Capsule*

  A Daily update for members and students, covering latest amendment on various laws for benefits of members & students available at https://www.icsi.edu/infocapsule/

ICSI CAREER AWARENESS

- ICSI through the support of Ministry of Defence is conducting extensive Career Awareness Programmes in various Army public Schools in the country to sensitize the students, parents and teachers about the CS Profession.

- Career Awareness Programmes, Career Fairs being conducted across the country by ICSI-HQ and Regional Chapter offices on regular basis to create awareness regarding CS Profession amongst the prospective students.

- ICSI-HQ in association with NIRC conducted following CAPs (Career Awareness Programmes) in the month of November, 2023 in addition to the other Programmes being conducted by RC/Chapter offices across the country:

Date	Event
November 01, 2023	Father Agnel School, Noida, Uttar Pradesh
November 03, 2023	Cambridge School, Indirapuram, Ghaziabad
November 07, 2023	Cambridge School, Greater Noida
November 08, 2023	JM International School, Delhi
November 24, 2023	Collegedunia Higher Education Leadership Summit, Delhi
November 26, 2023	EDU World Wide - 2023
November 28, 2023	EduNext Summit, New Delhi
November 29, 2023	Alhcon Public School, Delhi
November 29-30, 2023	18th FICCI Higher Education Summit 2023, Delhi

CS (Dr.) Rikhab Chand Jain, Founder Chairman, T.T Group

CS (Dr.) Rikhab C. Jain aged 79 years, is the Founder Chairman of T.T Group and has been in Textile Business for more than 50 years. He graduated from St. Xavier's College at Kolkata and completed his MBA in Marketing and Business Management from Indian Institute of Management, Kolkata. He is a Chartered Secretary from UK (FCSI), a Fellow Member of the Institute of Company Secretaries of India. He received an honorary PhD degree in Business Management from West Indies University. He was also a visiting Professor at Indian Institute of Management, Kolkata. He organized First Indian Knitwear Export Fair in 1994 at Taj Hotel, Mumbai and was also a Chief Co-ordinator of First International Knitting Congress held in New Delhi in 1985. As Chairman of Indian Knitting Industry centenary celebrations he was instrumental in bringing forth the biggest 8000 strong industry gathering at Kolkata and New Delhi. He was also the Chairman of Knitwear Cell of Apparel Export Promotion Council and an active Member in formulating AEPC incorporation by converting Knitwear & Garment Wing of TEXPROCIL. Shri Jain was also the Chairman of FOHMA & Hosiery Manufacturers' Association, Delhi & Northern India Textile Research Association. In his tenure, he organized various Trade Fairs and exhibitions and presented papers at National and International forums. He is a patron of sports organization particularly for veteran Cricket, Table Tennis, Basket Ball and Lal Bahadur Shastri Hockey tournaments. He has represented various state and national level committees on Textile Industry & Marketing. Shri Jain is a self-made entrepreneur and has also pioneered hosiery exports from India. During the past two decades he built up strong yarn exports and in 2001-2008, he pioneered cotton exports from India.

A member of the professional fraternity and being equally zealous Industrialist, how has your journey been like over the past 5 decades?

My professional journey started 6 decades back in the year 1964. Actually, I was admitted to St. Xavier College, Kolkata in 1961 for three years B.Com degree course. Calcutta University added a new subject to B.Com curriculum and that subject was "Secretarial Practice". A new course was made compulsory for B.Com students, but there was neither practically any text book nor any Professor having any meaningful experience to teach this new subject. All teachers and students were in problem. I decided to tackle it and I began to visit National Library, Kolkata which is one of the biggest library in India, Commercial library & University library and other city libraries and had gone through many text books, topic wise and made my own notes which helped me a lot and also gained my Professor's admiration for the same. The most powerful admirer was our Principal "Father Joris", who finally advised me to compile it in the shape of a text book as not a single text book was available on this subject. Thanks to his kindness. He volunteered to contact and advise a premier Publishing House, "World Press", Kolkata to publish my book on "Secretarial Practice". My friend Shri S.K. Dugar also joined me in this exercise. Meanwhile, while studying at St. Xavier, Kolkata, I started taking exams for Corporate Secretary and Chartered Secretary, U.K. Institutes. As a student, I started attending CIS, UK and Corporate Secretary Institute, UK, India Group's regular gatherings, meetings and lectures in Kolkata. I appeared for exams for both these U.K. Institutes and cleared all in first attempt. These exams tempted me to write an article in the Economics Times, New Delhi that Departmental Diploma course of Company Secretaryship should now be changed to a Degree course by establishing "The Institute of Company Secretaries". Sometime after that, the Government of India made conscious efforts to establish an Institute. When the Institute was established, I was enrolled as an Associate Member without any exam as I was already qualified by UK Institutes.

This journey helped me professionally. It also helped me as a student, as an academician and subsequently in my entrepreneurial business activities. These memberships tempted me to learn more carefully the subjects like Company Law, Industrial Law, Commercial Law, business correspondence and drafting documents etc. At an early age, this helped me a lot while I was at Indian Institute of Management (IIM), Kolkata as a student and subsequently as a visiting faculty member and a research associate. In a way my professional practical involvement as a Company Secretary never happened

after doing my MBA. In 1970, I shifted to Delhi and I started a Branch Garment factory in Delhi. Delhi based our marketing office already previously existed. Gradually I built up our business to a peak Turnover of Rs.800 Crores, Tirupati Texknit Limited, now known as T T Limited. In 1990 our Company was first in Garment Industry to raise a Public Issue which was 10 times oversubscribed. Our scrip (shares) got listed in BSE, DSE, CSE, and MSE. Subsequently it was also listed on NSE. Few years back after completion of 25 years of listing on BSE, we had the pleasure of holding Silver Bell Ringing ceremony at BSE. Business expanded to several textile verticals and Three Star Export House. This had helped me to run our business of NSE brokerage platform as well, in the name and style "Gangour Investment Limited". We also had an accredited Advertisement Agency by name Parichay Advertising. Actually knowledge is knowledge and any kind of knowledge can be used in any format if prudently it is tried to be used in any active enterprise. Our Company has also offered training to a number of Company Secretary Students.

Businesses have been largely impacted by the environmental and regulatory environment. How would we perceive the altering business dynamics of the country vis-à-vis global trends?

Atmospheric and Environmental Regulatory situation is worsening day by day, year by year. It is highly alarming and the whole world should be alarmed. Our Prime Minister, Shri Narendra Modi Ji is doing his best to facilitate controlling climate change caused by Environmental issues. He is pioneering for steady renewable energy production by all countries in the world. It is mainly caused by over exploitation of natural resources and thereby upsetting nature, causes may include building dams, tunnels, eliminating forests, increasing use of fossil fuels and polluting rivers, air and almost all seas and oceans. Even World too has felt various adversities because of pollution and earth warming. Everybody for last 10 years or more are trying to save the planet by avoiding climate change risk which may degenerate the whole world into a non-livable planet. The main issue is that appropriate technology to tackle such issues or counter such problems needs to be evolved. It should be user friendly. All such measures are still not very cost effective and therefore in a competitive world, such attempts are being pioneeringly used only by High Profit Industries and public entities where budget is no constraint, profit is no concern and funds are available for asking. In a competitive situation where most of the Industrial units and service providers do not find presently advocated measures "cost effective" to use these to tackle environmental issues. Even if law is imposed, it never gets implemented properly. People find out ways and means to avoid such practices as recommended by scientists and / or enforced by government. I would like to give instances like it is prescribed that "Don't use plastic bottle or plastic utensils or polythene but despite such restrictions imposed, such non usage of plastic does not see any encouraging compliance. Environmental damages impacting our health do raise serious issues. For human existence, corrective practices are not being rapidly adopted. I wish Scientists should undertake research on such issues as to how to make these corrective measures cost effective and user friendly.

Textile and Knitting sector has been a key role player in the Indian Manufacturing Industry. How would you demarcate its growth trajectory – its major achievements and challenges?

Textile and Knitting sectors have been traditionally a mother industry in India, in fact, so in almost any country until eighteenth century. Even before Islamic and European attackers entered India and established their rule, the Indian Textiles were traded for gold. In fact subsequently, Britishers inflicted injury to Indian Textile Industry and established the same in Britain. Britain used Indian Cotton and exported back clothing to India. To reverse this trend, Mahatma Gandhi himself actively promoted Swadeshi manufacturing of cloth primarily and he also encouraged village Industries. In post-Independence era, India gradually became economically developed. Various industries started flourishing. Indian Textile and Clothing Industries has reached to become World's leading textile manufacturing country. Population growth has expanded demand for clothing. Export is also growing. Income is growing leading to more consumption of clothing. Growth in non – textile segment is also very high now. Meanwhile textile sector is exposed to severe competition and driven to very low margin in the Textile Industry. Lot of big business houses opted out and picked up many high profit making industries and ventured into many different new segments, take advantage of new opportunities, new technology and innovation. However there is a good hope that in coming years, Textile Industry will definitely try to achieve higher targets and would be certainly expanding in a never before manner.

Digital Transformation and AI are the modern –day buzzwords. What has been their major impact in the overall economy in general and the manufacturing Industry in particular?

Digital transformation is changing life everywhere and India is now reported to be a No.-1 in digital transformation in the whole world. As per report, about 90% transactions are by now being done digitally. It helps to make transaction cost very low comparatively. Digitalization has reached even in small villages, in remote areas. Digitilisation has changed their lifestyle. It has made many things faster, easier and convenient. Number of mobile phones in

Indian hands is largest in the world. Every alternate Indian is having a mobile phone which is a primary instrument for digital transaction. Digital transaction has helped accuracy, avoid hassles particularly in financial transactions. It has helped Banks to reduce their working load and consequently has reduced manpower requirement. It has helped transmission of messages, communication of text, even financial transaction instantly materializing with superfast speed. This has helped villagers and workers and in fact everybody to transfer money during COVID infected areas and even order goods for delivery at door. Digital transformation is changing life. No doubt, fortunately in India expansion of digital transactions is speeded by various new innovations resulting in newly innovated mode of digital usage.

As far as AI is concerned, it is relatively a new concept in India and India will be very fast picking up at user level (ground level). Somehow, AI has brought several apprehensions about increase in cyber crimes and misuse of AI in various formats in each field of usage. Innovators and professionals are trying to mitigate such issues at a very fast speed and local laws to forbid misuse and other safety points about uses of AI are yet to be introduced in effective manner.

As far as economy and manufacturing industry is concerned, both digital transformation and AI are poised to again help a lot to make industry more competitive, more beneficial, more efficient, more efforts to reduce wastages, enhance productivity and savings. For economic growth and better life, definitely both these innovations will have wide impact for speeding up growth at a faster pace.

What opportunities will the Indian Business Sector be witnessing in the light of India's G20 Presidency? Is the industry future ready to tap in all the opportunities?

India was fortunate to get G20 Presidency and it has been nicely navigated by Hon'ble Prime Minister, Shri Narendra Modi Ji. Contacts with G20 countries which account for more than 60% of world's wealth and 60% plus world's production is opening various new gateways for business and industry. Joint ventures, soft diplomacy, cordial relations, increased inter country mobility and co-operation are various plus points for India from G20 presidency. Such development will definitely help Indian business sectors to achieve new destinations for their exports and origin for their imports. It will also offer new opportunities for funding, employment, business co-operation, faster know-how. More and more opportunities for international and inter-country co-operation and better relationship amongst G20 countries will help a lot.

ESG is the buzzword of the 21st Century. The present day corporate scenario cannot be fathomed without taking into account ESG considerations. In such a scenario, what initiatives are being taken – especially by the Textile Sector in making ESG an integral part of Board decision making?

Yes, ESG is the buzzword of the 21st Century and we have to travel a long way. Most of these issues have been duly answered by me in earlier questions mentioned hereinabove. However textile sector is no exception, it would also be in line with to spearhead ESG compliances. All shall take such decisions as to use the Environmental sustainable guidelines for the benefit of their own business entity for the benefit of humanity and of course for healthy growth of Indian economy. Textiles units have now largely installed zero discharge plants for water discharged after dying and printing activities. Synthetic Fibre manufacturers have to bear this responsibility in more reliable manner.

India is envisioned to become a $5 trillion economy by 2024-25. What role will Indian corporate and Company Secretary Professional be playing in achieving these milestones?

India is very hopeful to become a $5 trillion economy by 2024-25. Certainly, Indian nation is navigating its journey by speedy growth of each sector and government is ambitious and conscious to help achieve target positively. Corporate and Company Secretaries professionals are part of corporate decisions, administrative decisions even in non-profit entities and therefore they would be spearheading such initiatives and certainly corporate India, corporate world. Corporate sector and Company Secretaries will play a leading role to travel through this great and bright moment.

What is your take on the role of Company Secretaries particularly in the manufacturing industry and even further in smoothening the creases and strengthening governance structure making boards more effective in achieving their expected results?

Company Secretaries and The Institute of Company Secretaries of India have been successfully striving for steady growth of ICSI. It has been opening new doors of opportunities for Company Secretaries not only within India but outside India, specifically in developing countries and fast growing economies. Institute should be congratulated for recent attempts to start opening of ICSI branches in overseas countries to help and promote administration and corporate management and secretarial profession in a very prudent and professional manner. It

will help all such economies develop on sound lines and in a desirable manner. No limit to such opportunities. Almost in half of the world at least such professional training systems even do not exist so far. There is a clear scope for ICSI Branches to open. This should be done in a very professional and very innovative manner, so as to get iconic standard in administrative, corporate and academic practices.

Corporate Restructuring – Mergers and Amalgamations have altered the business dynamics in their own way. How do you perceive the present environment in terms of conduciveness for such business moves?

Corporate Restructuring – Mergers and Amalgamations are on a rise for various reasons including new openings and increase in competitiveness in all works of life. Present environment would be more conducive, if professional glitches are overcome and appropriate ease to do business is really achieved. Imposition of more and more regulatory conditions every morning and more and more tightening compliances are actually now skipping assured ease of doing business. We are once again returning in a license control era. Now it is time to simplify and rationalize regulatory requirements. Let us deliver ease of doing business in reality. For fault lines Regulators are open to take punitive actions but why to burden honest corporates with unnecessarily rigid load of compliances.

The Regulatory environment is witnessing a paradigm shift from financial to non financial reporting. How do you envision the ESG reporting landscape in India in the coming 5 years?

Regulatory Environment as I have mentioned in my earlier answers is becoming a headache. So many compliances stipulated are perhaps vibrating and beating heart beats. Sometimes new incumbents in Regulatory bodies start to show their worth by stipulating various new compliances and make rough road for corporate world. In the name of making more effective regulations, they keep adding up of compliances which in a way are new avatar of quota control regime. We talk of ease of doing business and we end up at hundreds of compliances. We are advocating for repealing of obsolete laws which are meaningless. There is a big initiative by Hon'ble Prime Minister, Shri Modi Ji to simplify laws and rationlise essential enactments. He is openly rightly advocating repealing hundreds of unwanted laws. Similarly regulatory system should review effectively and honestly to remove non-productive, and non-purposeful compliances. This would speed up growth and significantly reduce transaction cost. It would make India competitive in the world economy. ESG compliances are required but the Corporate World and others should observe it voluntarily to avoid harsh enactments.

An effective ESG landscape is a must. We must understand the ways and realize importance thereof for ourselves as well as for our next generation. It should not be enforced by draconian laws and should not be handed over to corrupt system to enforce.

As a Professional yourself, what role do you think professionals and especially Company Secretaries are playing and expected to play in the future in strengthening the economy of our country?

As Indian's growth trajectory is targeting $ 5 trillion economy, that makes Country's Corporate Management and Administrative requirements multiply. Growing number of multiple regulators' compliances would be required to be attended by efficient entities. Additionally, fast changing technology shall require up skilled Managers and Administrators. Corporate key persons include Company Secretary. Hence the spectrum of Secretarial and administrative responsibilities will undergo a sea change from the present day spectrum. Dynamically scenario has changed during past 30 years. More transparency, more up skilled responsibilities, new dimension of duties will require proper and timely understanding of changes and an up skilled knowledge. ICSI will be required to introduce massive changes in academic curriculum, teaching and training modes. Meanwhile ICSI is expected to expand significantly its overseas ventures. More inter country jobs are expected to be a fact of coming days. It is satisfying that Indian education and academic set up is ready to take up all such challenges. Indian higher education systems however need to seek world level iconic status for running of its universities and institutions including ICSI. All Professional administrators in this decade will have common issues to confront arising from the threat of terrorism, technology risks, health problems and issue of climate change. We in India, all Indian professional forums are sufficiently well equipped to assume future responsibilities in an appreciable manner.

I wish all ICSI Professionals, Members, Friends and others a "HAPPY & PROSPEROUS NEW YEAR, 2024!!!"

Thank You.

ICSI GLOBAL CONNECT

ICSI Delegation led by CS Manish Gupta, President, ICSI participated in ICGN - Hawkamah Dubai Conference

ICSI Delegation led by CS Manish Gupta, President ICSI met with Ms. Suseela Menon, President CSIA to discuss opportunities for Governance Professionals across the globe at ICSI HQ, New Delhi

ICSI Middle East (DIFC) NPIO organised Half Day Event on November 25, 2023 at Dubai

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)

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

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

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REGISTRATION OPENS

ICSI 3rd International Conference

Theme: Building Resilient & Sustainable Economies

Singapore | 5-6 April 2024

Co-Host: ICSI Overseas Centre, Singapore

PROGRAMME HIGHLIGHTS

- Two days Capacity Building Programme
- Engaging Sessions spanning global aspects
- Opportunity to explore New Horizons
- Networking with Global Leaders

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President, The ICSI	Vice President, The ICSI	Council Member & Chairman, International Affairs Committee, The ICSI	Secretary, The ICSI	Chairman, ICSI Overseas Centre, Singapore

ICSI 3rd International Conference

Delegate Fee (Non – Residential)

Category	Fee in INR*	Fee in Singapore Dollar**
ICSI Member/Member of Partner Organisation	15,000	250
ICSI Student	12,000	200
Others	20,000	325

*Exclusive of GST @18% **Taxes as applicable

Delegates from India register at
https://tinyurl.com/3intconf

Delegates from Outside India make payment in the below mentioned Bank Account (Singapore Dollar only) and then register at
https://tinyurl.com/3intconfSGD

BANK ACCOUNT DETAILS	
Beneficiary Name	The Institute of Company Secretaries of India
Account Number	912010040104826
Swift Code (Outside Country)	AXISINBB055
Bank Name & Branch	Axis Bank Ltd. Swasthya Vihar, New Delhi- 110092

Kindly Note:

- Prior Registration for the Conference is mandatory
- Delegate fee is payable in advance and is non-refundable. Please note that payments are not accepted through DD, Cheque, Cash etc.
- The fee includes literature, tea/coffee, high-tea and 2 lunches
- Delegates may arrange flight tickets, visa, stay and local travel on their own

ICSI Members attending the Conference shall be eligible for grant of CPE Credits in terms of ICSI (Continuous Professional Education) Guidelines, 2019.

FOR QUERY/ CLARIFICATIONS
Contact: +91 - 11 - 4534 1063/ 1064/ 1065/1087/1088 | Email: overseas@icsi.edu

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Inauguration of The ICSI Centre for Corporate Governance Research and Training (CCGRT) held on 6 December, 2023 at Kolkata

Chief Guest : Dr. C. V. Ananda Bose, Hon'ble Governor of West Bengal
Date and Venue : 6th December 2023, ICSI – CCGRT, Kolkata

Convocation 2023 - Eastern Region held on 6 December, 2023 at Kolkata

Chief Guest : Dr. C. V. Ananda Bose, Hon'ble Governor of West Bengal
Date and Venue : 6th December 2023, ICSI – CCGRT, Kolkata

WEBINAR ON

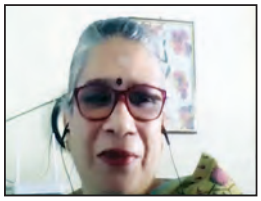
Fund raising by Companies held on 16.11.2023

Speaker:
CS B. Renganathan
Corporate Law Advisor

Moderator:
CS Rakesh Kumar
Assistant Director,
The ICSI

WEBINAR ON

Secretarial Audit & Annual Secretarial Compliance Report held on 22.11.2023



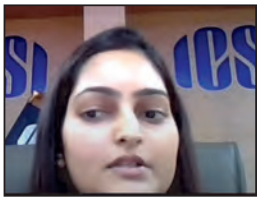
Speaker:
CS Shailashri Bhaskar
Practicing Company Secretary

Moderator:
CS Kanika
Executive (Academics)
The ICSI

WEBINAR ON

Corporate Restructuring: Building Strategic Alliances held on 29.11.2023

Speaker:
CS Nitin Somani
Director, Sundae Capital Advisors Private Limited



Moderator:
CS Richa Gupta
Executive (Academics)
The ICSI

WEBINAR ON

SS-1 & SS-2 : Standardizing Compliance held on 06.12.2023

Speaker:
CS Sudhakar Saraswatula
Chief Consultant, Mehta & Mehta (Corporate Legal firm)

Speaker:
CS Nagendra D. Rao
Chairman, Secretarial Standards Board and Former President, The ICSI

Moderator:
CS Ankita Mathew
Executive (Academics), The ICSI

AT A GLANCE

Articles P - 37

Articles
Part-I

namely, customer identification, enhanced client due diligence, maintenance of records, customer acceptance, reporting and tracking certain transactions.

- **LW 85:12:2023** In the opinion of the Court, these facts constitute sufficient cause and the Appellant company has rightly refused to register the shares of the Respondents. In view of the above legal and factual position, the order of the CLB is unsustainable and is accordingly set aside.[Del]
- **LW 86:12:2023** It is well settled that Section 14 of the IBC does not create a bar for finalisation of the assessment and adjudication proceedings in respect of the taxes.[KER]
- **LW 87:12:2023** The establishment of the appellant is a commercial establishment predominantly carrying on commercial activity. Therefore, it cannot be denied that the business of the appellant will fall in the category of trading and commercial establishments. In the circumstances, the case of the appellant will be governed by the PF coverage notification issued under clause (b) of sub-Section (3) of Section 1.[SC]
- **LW 88:12:2023** In the absence of order of forfeiture coupled with a totally different opinion of the petitioner at an initial stage, the petitioner has no authority to withhold gratuity of the respondent. [P&H]
- **LW 89:12:2023** The Haryana State Employment of Local Candidates Act, 2020 is held to be unconstitutional and violative of Part III of the Constitution of India and is accordingly held ultravires and is ineffective from the date it came into force.[P& H]
- **LW 90:12:2023** The Respondent has effected recovery contrary to law laid down by Hon'ble Supreme Court and is liable to refund the already recovered amount. [P&H]
- **LW 91:12:2023** The petition lacks Delhi jurisdiction and is thus liable to be dismissed. [DEL]

From The Government P-119

- The Limited Liability Partnerhip (Significant Beneficial Owners) Rules, 2023
- Simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination
- Most Important Terms and Conditions (MITC)
- Procedural framework for dealing with unclaimed amounts lying with Real Estate Investment Trusts (REITs) and manner of claiming such amounts by unitholders
- Procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders
- Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors
- Simplification and streamlining of Offer Documents of Mutual Fund Schemes
- International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds
- Regulatory measures towards consumer credit and bank credit to NBFCs
- Implementation of Section 51A of UAPA,1967: Updates to UNSC's 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 05 Entries
- Formation of new districts in the State of Rajasthan – Assignment of Lead Bank Responsibility
- Guidelines on import of silver by Qualified Jewellers as notified by – The International Financial Services Centres Authority (IFSCA)
- 'Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds
- Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices

Other Highlights P-127

Call For ARTICLES

Call for Articles for Publication in Chartered Secretary Journal – January 2024

Initial Public offer : Opening Doors of Funding and Opportunity

IPO or Initial Public Offer does not merely allow a company to raise equity capital from public investors, but is the transition road making a private company go public. Not only is there an inflow of funds; but at the same time the company opens its doors to larger number of compliances, is obligated to a far greater number of stakeholders, is under constant scrutiny and 24X7 in public eye.

As a company, if the transition changes the fate for the entire lifetime of the company, so does it change the functioning of the various components – demanding a shift in the ideologies of the decision makers – the Board, the KMPs and the senior management.

Company Secretaries play a crucial role in an initial public offering (IPO) where broadly, In view of the same and more, we are pleased to inform you that the January 2024 issue of Chartered Secretary Journal will be devoted to the theme **"Initial Public Offer : Opening doors of funding and opportunity"** covering inter alia the following aspects:

- **IPO Frenzy : The craze of going public**
- **IPOs & FPOs : Decoding the legislative side**
- **Public Offers : Widening the stakeholder base**
- **IPOs : Expanding responsibilities and accountabilities**
- **IPO Memory Lane : Journey down the 2 decades**
- **IPO Processes : Partners who make it possible**
- **CS as IPO Guides : Roles and responsibilities**

And many more...

Members and other readers desirous of contributing articles may send the same latest by **Friday, December 22, 2023** at **cs.journal@icsi.edu** for **January 2024** issue of Chartered Secretary Journal.

The length of the article should ordinarily be between 2,500 - 4,000 words. However, a longer article can also be considered if the topic of discussion so demands. The articles should be forwarded in MS-Word format.

All the articles are subject to plagiarism check and will be blind screened. Direct reproduction or copying from other sources is to be strictly avoided. Proper references are to be given in the article either as a footnote or at the end. The rights for selection/rejection of the article will vest with the institute without assigning any reason.

Regards,
Team ICSI

Articles in Chartered Secretary

Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/ argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to cs.journal@icsi.edu
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor..... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
   a. the article titled"....." is my original contribution and no portion of it has been adopted from any other source;
   b. this article is an exclusive contribution for Chartered Secretary and has not been/nor would be sent elsewhere for publication; and
   c. the copyright in respect of this article, if published in Chartered Secretary, shall vest with the Institute.
   d. the views expressed in this article are not necessarily those of the Institute or the Editor of the Journal.
3. I undertake that I:
   a. comply with the guidelines for authors,
   b. shall abide by the decision of the Institute, i.e., whether this article will be published and/or will be published with modification/editing.
   c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

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1 ARTICLES

Prevention of Money Laundering Act-Role of CS in Ensuring Compliance

The amendments to the PMLA Act have expanded the scope of reporting entities to include Company Secretaries. As reporting entities, Company Secretaries are now required to adhere to various obligations aimed at preventing money laundering and other financial crimes. These obligations include maintaining records of financial transactions, identifying and verifying clients, and promptly reporting any suspicious transactions to the Financial Intelligence Unit (FIU).

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INTRODUCTION

Indeed, the role of a Company Secretary (CS) has evolved significantly over the years, and their importance in the corporate world cannot be overstated. The recent amendment of the Prevention of Money Laundering Act, 2002 (PMLA) further underscores the crucial role that Company Secretaries play in ensuring compliance and combating financial crimes.

The amendments to the PMLA Act have expanded the scope of reporting entities to include Company Secretaries. As reporting entities, Company Secretaries are now required to adhere to various obligations aimed at preventing money laundering and other financial crimes. These obligations include maintaining records of financial transactions, identifying and verifying clients, and promptly reporting any suspicious transactions to the Financial Intelligence Unit (FIU).

This regulatory change not only enhances the accountability of Company Secretaries but also underscores the trust placed in them to act as gatekeepers in the financial system. The increased responsibilities also present challenges, requiring Company Secretaries to stay abreast of evolving regulations, develop a deep understanding of anti-money laundering practices and implement robust compliance mechanisms within the organizations they serve.

Despite the challenges, the expanded responsibilities also bring about numerous opportunities for Company Secretaries to add significant value to their roles. Here are some avenues where Company Secretaries can leverage their expertise:

1. **Compliance Management:** Company Secretaries can specialize in compliance management, helping organizations navigate complex regulatory frameworks, ensuring adherence to legal requirements, and mitigating legal risks.
2. **Risk Management:** With the increasing focus on financial crimes, Company Secretaries can contribute to risk management by developing and implementing strategies to identify, assess, and mitigate risks associated with money laundering and other financial offenses.
3. **Training and Education:** Company Secretaries can play a vital role in educating and training their organizations on compliance with PMLA and other relevant regulations. This includes conducting training programs for employees on recognizing and reporting suspicious transactions.
4. **Ethical Governance:** Company Secretaries can champion ethical governance practices within their organizations, promoting a culture of integrity, transparency, and accountability.
5. **Advisory Services:** Given their expertise in regulatory matters, Company Secretaries can offer advisory services to businesses, helping them navigate the complexities of compliance and risk management.

6. **Technology Integration:** Embracing technological solutions for compliance and risk management is crucial. Company Secretaries can explore and implement innovative technologies to enhance efficiency and accuracy in compliance processes.

UNDERSTANDING THE PREVENTION OF MONEY LAUNDERING ACT

Enacted in 2002, the PMLA aims to prevent money laundering and the utilization of illicit funds for illegal activities, including terrorism. It establishes legal and regulatory frameworks to detect and deter money laundering activities, making it imperative for businesses to implement robust compliance measures.

The Act mandates the establishment of a three-tiered structure comprising the Financial Intelligence Unit-India (FIU-IND), the designated authority, and reporting entities. Reporting entities, which include banks, financial institutions, and designated non-financial businesses and professions, play a crucial role in the implementation of the PMLA.

THE ROLE OF PROFESSIONALS UNDER PMLA ACT

The inclusion of Company Secretaries (CS), Chartered Accountants (CA), and Cost Accountants (CMA) under the Prevention of Money Laundering Act, 2002 (PMLA) is a significant development that places additional responsibilities on these professionals to combat money laundering in the country. Let's break down what this means for them and why they might feel a heightened sense of responsibility.

1. **Scope of PMLA:**

   The Prevention of Money Laundering Act, 2002, is a law in India that aims to prevent money laundering and related offenses. Money laundering involves the processing of criminal proceeds to disguise their illegal origin. The PMLA provides for the confiscation of property derived from money laundering and imposes obligations on certain professionals to report transactions suspected to be involved in money laundering.

2. **Inclusion of Professionals:**

   The inclusion of Company Secretaries, Chartered Accountants, and Cost Accountants under the PMLA signifies that these professionals are now considered as 'Reporting Entities.' As reporting entities, they are obligated to adhere to the regulations laid down in the Act and report any suspicious transactions to the designated authorities.

3. **Increased Responsibility:**

   The inclusion of these professionals implies an enhanced role in the fight against money laundering. They are now required to implement stringent due diligence procedures, maintain records of transactions, and report any transactions that they suspect to be related to money laundering. This significantly increases the responsibility on their part to contribute to the larger goal of curbing illicit financial activities.

4. **Regulatory Compliance:**

   The professionals covered by the PMLA must comply with the regulations and guidelines issued by the regulatory authorities. This involves developing and implementing robust anti-money laundering (AML) and know-your-customer (KYC) policies within their organizations.

5. **Legal Consequences:**

   Failure to comply with the obligations under the PMLA can result in legal consequences. Penalties may be imposed on professionals who neglect their reporting duties or knowingly facilitate money laundering activities.

6. **Need for Caution:**

   The professionals in question may feel a sense of being in "deep water" due to the increased scrutiny and accountability. The consequences of non-compliance

can be severe, and therefore, they need to exercise greater caution in their professional duties to ensure adherence to the PMLA.

AML &CFT GUIDELINES: THE COMPLIANCE EXPECTED

Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) guidelines are designed to help organizations, including financial institutions and professionals in various sectors, comply with regulations and contribute to the prevention of illicit financial activities. The compliance expected from entities and professionals typically includes the following key aspects:

1. **Customer Due Diligence (CDD):**
   - Identification and Verification: Implement robust procedures to identify and verify the identity of clients, customers, and beneficial owners.
   - Risk-Based Approach: Adopt a risk-based approach to assess the level of due diligence required based on the risk profile of clients.
2. **Enhanced Due Diligence (EDD):**
   - Apply enhanced due diligence measures for higher-risk customers, transactions, and business relationships.
   - Monitor and review these relationships more frequently to ensure ongoing compliance.
3. **Record-Keeping:**
   - Maintain comprehensive records of customer transactions and due diligence measures for a specified period.
   - Ensure that records are accessible for regulatory examinations and audits.
4. **Suspicious Activity Reporting:**
   - Establish procedures for identifying and reporting suspicious transactions or activities.
   - Train staff to recognize red flags and unusual patterns that may indicate potential money laundering or terrorist financing.
5. **Internal Controls and Compliance Culture:**
   - Implement internal controls and policies to detect and prevent money laundering and terrorist financing.
   - Foster a compliance culture within the organization, emphasizing the importance of adhering to AML/CFT guidelines.
6. **Training and Awareness:**
   - Provide regular training to employees to keep them informed about the latest AML/CFT regulations, procedures, and red flags.
   - Ensure that employees are aware of their role in maintaining compliance.
7. **Regulatory Reporting:**
   - Comply with reporting requirements mandated by regulatory authorities.
   - Submit timely and accurate reports on suspicious transactions to the relevant financial intelligence unit or regulatory body.
8. **Technology and Automation:**
   - Leverage technology and automation to enhance the effectiveness and efficiency of AML/CFT processes.
   - Implement systems that can flag and analyze unusual transactions or patterns.
9. **Cross-Border Transactions:**
   - Exercise caution and diligence in dealing with cross-border transactions.
   - Be aware of the potential risks associated with international transactions and customers.
10. **Regular Audits and Assessments:**
    - Conduct regular internal audits to assess the effectiveness of AML/CFT procedures.
    - Engage external auditors periodically to ensure an independent evaluation of compliance measures.
11. **Regulatory Updates and Adaptation:**
    - Stay informed about changes in AML/CFT regulations and adapt policies and procedures accordingly.
    - Maintain a proactive approach to compliance with evolving regulatory requirements.

Failure to comply with AML/CFT guidelines can result in severe legal and financial consequences. Therefore, organizations and professionals must prioritize the establishment and maintenance of robust AML/CFT frameworks to mitigate risks and contribute to the global effort against money laundering and terrorist financing.

PREVENTION OF MONEY LAUNDERING PMLA AND WEAPONS OF MASS DESTRUCTION (WMD) ACT: ROLE OF PRACTISING PROFESSIONALS

The PMLA is an Indian law enacted in 2002 with the objective of preventing money laundering and related offenses. It aims to combat money laundering activities and the financing of terrorism. The act places certain obligations on financial institutions and professionals to report suspicious transactions and maintain records. Practicing Professionals, such as Chartered Accountants, Company Secretaries, and Advocates,

may have roles in advising clients on compliance with Anti-Money Laundering Regulations and reporting obligations.

The term "Weapons of Mass Destruction" typically refers to nuclear, chemical, biological, and radiological weapons capable of causing significant harm on a large scale. Laws related to WMDs vary by jurisdiction, and international agreements may also apply. Professionals involved in fields such as law, international relations, and security may play a role in advising on compliance with relevant laws and regulations.

Role of Practicing Professionals:

- **Legal Advisors:** Professionals in the legal field play a crucial role in advising businesses and individuals on compliance with PMLA and WMD Act regulations. They may provide guidance on the legal implications of transactions and help clients navigate the complexities of these laws.
- **Financial Advisors:** Chartered Accountants and Financial Consultants may assist clients in establishing robust financial systems that comply with Anti-Money Laundering Regulations. They may also be involved in reporting suspicious financial transactions.
- **Corporate Governance Professionals:** Company Secretaries and Governance professionals can help ensure that companies have adequate internal controls and mechanisms to prevent money laundering and comply with regulations related to WMDs.
- **Risk Management Professionals:** Individuals involved in risk management can help organizations assess and mitigate the risks associated with money laundering and potential involvement with WMD-related activities.
- **Training and Awareness:** Practicing professionals may also play a role in educating their clients and organizations about the importance of compliance with these laws and the potential consequences of non-compliance.

WEAPONS OF MASS DESTRUCTION (WMD) ACT: DECODING EXPECTATIONS OF FIU-INDIA

The Weapons of Mass Destruction Act, enacted by the Government of India, is a comprehensive legal instrument aimed at preventing the proliferation of weapons capable of causing mass destruction. These weapons include nuclear, biological, and chemical weapons, along with the means of their delivery. In the context of financial transactions related to WMD proliferation, the role of the Financial Intelligence Unit-India becomes paramount.

Understanding the WMD Act: Key Provisions

The WMD Act delineates a robust legal framework to counter the financing of weapons of mass destruction.

> The PMLA mandates the establishment of a three-tiered structure comprising the Financial Intelligence Unit-India (FIU-IND), the designated authority, and reporting entities. Reporting entities, which include banks, financial institutions, and designated non-financial businesses and professions, play a crucial role in the implementation of the PMLA.

It incorporates provisions that empower authorities to track, investigate, and prevent financial transactions supporting WMD proliferation. Key aspects of the Act include:

1. **Definitions and Scope:** The Act provides clear definitions of weapons of mass destruction, delineating what falls under its purview. It also specifies the scope of activities that are prohibited, emphasizing the importance of preventing the financing of WMD-related endeavors.
2. **Obligations of Reporting Entities:** Financial Institutions and designated non-financial businesses and professions are designated as reporting entities under the Act. They are obligated to establish and maintain policies and procedures to detect and report transactions related to WMD proliferation.
3. **Suspicious Transaction Reports (STRs):** The Act mandates the reporting of suspicious transactions related to WMD proliferation to the FIU-India. It outlines the criteria for identifying transactions that may be linked to the financing of weapons of mass destruction.
4. **FIU-India's Role:** The FIU-India acts as the central agency for receiving, processing, analyzing, and disseminating information relating to financial transactions linked to the proliferation of weapons of mass destruction. It plays a crucial role in facilitating coordination among various agencies and international counterparts.

Expectations from FIU-India

FIU-India shoulders significant responsibilities in the effective implementation of the WMD Act. Key expectations from FIU-India include:

1. **Timely and Effective Analysis:** FIU-India is expected to analyze the information received promptly and effectively. The analysis should be thorough, taking into account the complexities of financial transactions and their potential links to WMD proliferation.
2. **Coordination with Law Enforcement Agencies:** The FIU-India is the linchpin in coordinating

efforts between various law enforcement agencies. It should ensure seamless information sharing and collaboration to investigate and prosecute those involved in financing WMD activities.

3. **International Cooperation:** Given the transnational nature of WMD proliferation, FIU-India is expected to collaborate with international counterparts. This involves sharing information, participating in joint investigations, and staying abreast of global developments in the fight against the financing of weapons of mass destruction.

4. **Capacity Building:** FIU-India is expected to continuously enhance its capabilities to keep pace with evolving threats. This includes investing in technology, training personnel, and adopting best practices in financial intelligence and analysis.

Challenges in Implementation

Despite the robust legal framework, the implementation of the WMD Act poses several challenges:

1. **Technological Challenges:** Keeping up with technological advancements is crucial for tracking sophisticated financial transactions. FIU-India needs to invest in cutting-edge technology to analyze vast amounts of data effectively.

2. **Cross-Border Transactions:** The global nature of financial transactions requires seamless coordination with international entities. Overcoming jurisdictional challenges and ensuring effective collaboration can be complex.

3. **Resource Constraints:** Adequate resources, both financial and human, are imperative for the FIU-India to fulfill its obligations. Resource constraints may hinder the efficiency of the analysis and reporting process.

4. **Public-Private Partnership:** Building effective partnerships between the public and private sectors is essential. Encouraging reporting entities to actively engage in identifying and reporting suspicious transactions requires continuous efforts.

Suggestions for Improvement

To enhance the efficacy of the WMD Act implementation, several measures can be considered:

1. **Capacity Building Initiatives:** Invest in training programs and skill development for FIU-India personnel to enhance their capabilities in analyzing complex financial transactions.

2. **Technology Upgradation:** Continuous investment in state-of-the-art technology is vital for staying ahead of those attempting to exploit the financial system for WMD proliferation.

3. **International Collaboration Platforms:** Strengthen platforms for international collaboration, ensuring that FIU-India has the necessary channels to exchange information with foreign counterparts.

4. **Public Awareness Programs:** Increase awareness among reporting entities and the general public about the importance of reporting suspicious transactions related to WMD proliferation. This can be achieved through targeted awareness campaigns and training sessions.

DUE DILIGENCE AND INTERNAL CONTROL MECHANISM: LINCHPINS OF PMLA COMPLIANCE

The Prevention of Money Laundering Act (PMLA) is a crucial piece of legislation designed to combat the global menace of money laundering and the financing of terrorism. In this complex landscape, financial institutions play a pivotal role in ensuring compliance with PMLA regulations. Two key components that form the backbone of an effective Anti-Money Laundering (AML) framework are due diligence and internal control mechanisms. These linchpins not only safeguard financial institutions but also contribute significantly to the broader effort of curbing illicit financial activities.

Due Diligence: A Pillar of PMLA Compliance

Due diligence is the cornerstone of any effective Anti-Money Laundering program. It involves the thorough investigation and verification of the identities of clients and counterparties, along with an assessment of the nature and purpose of their financial transactions. Understanding the risk profile of clients is crucial in identifying and preventing potential money laundering activities.

Financial Institutions must conduct customer due diligence (CDD) and enhanced due diligence (EDD) as part of their risk management processes. CDD involves verifying the identity of clients, understanding the nature of their business, and assessing the risks associated with the client relationship. EDD is applied to high-risk clients and involves a deeper level of scrutiny, including the source of funds and the reasons behind complex transactions.

Internal Control Mechanism: Safeguarding Against Money Laundering Risks

An effective internal control mechanism is vital for identifying, mitigating, and managing money laundering risks within financial institutions. This involves the establishment of comprehensive policies, procedures, and systems to monitor and control financial transactions. Internal controls act as a proactive defense against money laundering, providing a structured framework for compliance.

Key elements of an internal control mechanism include:

1. **Risk Assessment:** Regular risk assessments help financial institutions understand the evolving nature of money laundering risks. By identifying vulnerabilities, institutions can tailor their internal controls to address specific threats effectively.
2. **Transaction Monitoring:** Automated systems for transaction monitoring are critical for detecting suspicious activities. Unusual patterns, large transactions, or transactions deviating from established norms trigger alerts for further investigation.
3. **Record Keeping:** Maintaining accurate and detailed records is essential for compliance. This includes documentation of customer due diligence, transaction history, and any suspicions or reports filed.
4. **Employee Training:** Employees are often the first line of defense against money laundering. Regular training programs ensure that staff members are well-informed about the latest trends in money laundering and are equipped to identify and report suspicious activities.
5. **Whistleblower Mechanism:** Establishing a confidential reporting mechanism encourages employees to report concerns without fear of reprisal. This aids in early detection and prevention of money laundering activities.

In the fight against money laundering, due diligence and internal control mechanisms are linchpins that uphold the integrity of financial institutions and the broader financial system. Strict adherence to these principles not only ensures compliance with PMLA regulations but also contributes to the global effort to curb illicit financial activities. Financial institutions must continuously evolve their due diligence processes and internal control mechanisms to stay ahead of emerging money laundering threats, fostering a robust and resilient financial ecosystem.

CHALLENGES AND EMERGING TRENDS IN PMLA COMPLIANCE

While Company Secretaries are central to PMLA compliance, they face several challenges in an ever-evolving regulatory landscape. The emergence of new technologies, complex business structures, and global interconnectedness present challenges that require adaptive and innovative compliance strategies. Company Secretaries must stay abreast of emerging trends, such as the use of cryptocurrencies and online platforms for money laundering, and proactively incorporate measures to address these challenges.

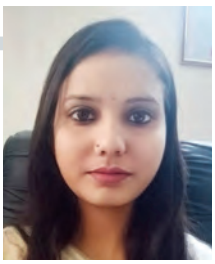
CONCLUSION

In conclusion, the Prevention of Money Laundering Act is a critical legislative instrument aimed at safeguarding the integrity of financial systems. Company Secretaries, with their expertise in governance and compliance, play an indispensable role in ensuring that organizations not only comply with the letter of the law but also adhere to the spirit of anti-money laundering efforts. Their multifaceted responsibilities encompass policy formulation, risk assessment, due diligence, reporting, record-keeping, employee training, and internal audit – all of which contribute to the effective implementation of PMLA provisions. As the regulatory landscape continues to evolve, Company Secretaries must remain vigilant and proactive in adapting compliance frameworks to address emerging challenges and contribute to the global fight against money laundering.

ARTICLE

Role of CS as Reporting Entities

The PMLA amendment rules have introduced a new clause, which defines "Politically Exposed Persons" (PEPs) as individuals who have been "entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials".



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INTRODUCTION

PMLA: THE OLD AND THE NEW LEGISLATIONS

PML (Maintenance of Records) Amendment Rules, 2023

Earlier in March 2023, the Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023 were introduced by the Department of Revenue under the Ministry of Finance. These rules widened the ambit of reporting entities under money laundering provisions to incorporate more disclosures for non-governmental organisations and defined politically exposed persons (PEPs) under the PMLA in line with the recommendations of the FATF.

The new rules require reporting entities like financial institutions, banking companies, or intermediaries to disclose beneficial owners in addition to the current KYC requirements through documents like registration certificates and PAN (Permanent Account Number).

Amendments to PMLA, 2002

i. **Politically exposed person**

The amendment rules have introduced a new clause, which defines "Politically Exposed Persons" (PEPs) as individuals who have been "entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials".

ii. **Beneficial ownership**

In line with existing provisions of The Income-Tax Act, 1961 and The Companies Act, the amended rules have now lowered the threshold for identifying beneficial owners by reporting entities, where the client is acting on behalf of its beneficial owner. Earlier, definition of "beneficial owner" included, among other things, the ownership of or right to more than 25 percent of the company's shares, capital, or profits. This threshold of 25 percent has been lowered to 10 percent, bringing more indirect players into the reporting net. The amendments require "reporting entities"- banks, other financial institutions, and businesses operating in the real estate and jewellery industries – to gather data on each person or organization that has a 10 percent ownership in their clients.

iii. **Non-profit organization**

The definition of "non-profit organization" has been expanded, which will now include any entity or organization constituted for religious or charitable purposes referred to in Section 2(15) of the Income-tax Act, 1961; or registered as a trust or a society under the Societies Registration Act, 1860 or any similar state legislation; or a company registered under Section 8 of the Companies Act, 2013.

If the client is a non-profit organization, reporting entities must also register the client's information on the NITI Aayog's DARPAN portal.

iv. **Due diligence and documentation**

The necessary due diligence documentation has now expanded beyond just getting the fundamental KYCs of clients, such as registration certificates, PAN copies, and documents of officers with the authority to act on their behalf. Depending on the legal structure of the firm, it now also involves the submission of information,

such as the names of those in top management positions, partners, beneficiaries, trustees, settlors, and writers. Moreover, clients must now provide information about their registered office and primary place of business to financial institutions, banks, or intermediaries.

v. **Crypto currency and virtual digital assets (VDAs)**

The new rules have brought crypto currency and VDAs under the ambit of Anti-Money Laundering law (AML). As per new rules, an entity dealing in VDAs will now be considered a 'reporting entity' under the PMLA. The amendment will require intermediaries in the crypto ecosystem, such as crypto exchanges, wallets, and other service providers, to establish and implement PMLA measures and systems. These measures include conducting KYC checks during customer onboarding, retaining customer data for a specified period, monitoring and reporting suspicious transactions, and having policies for tracking transactions.

The transactions related to crypto currency and VDAs which are covered by the PMLA now include:

i. Converting virtual digital assets into fiat currencies and vice versa.

ii. Exchanging one or more forms of virtual digital assets.

iii. Transferring virtual digital assets.

iv. Securely storing or managing virtual digital assets.

v. Providing financial services related to the sale of virtual digital assets by an issuer. (India Briefing).

WMD ACT: DECODING EXPECTATIONS OF FIU-INDIA

Ministry of Finance has issued an order dated January 30, 2023, detailing the procedure for implementation of Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 ("WMD Act").

The WMD Act seeks to prohibit unlawful manufacture, transport, or transfer of WMD (chemical, biological and nuclear weapons) and their means of delivery. Under the amendments of 2022, the scope of the WMD Act has been enhanced to include the financing of such banned activity. Pursuant to the order dated January 30, 2023, SEBI has issued a circular dated April 26, 2023, providing directions to Stock Exchanges and SEBI registered Intermediaries. Over and above the anti-money laundering provisions all SEBI-registered Intermediaries have to comply with the following regulatory requirements:

i. Effective date: the norms prescribed by SEBI are effective immediately from the date of the circular i.e. April 26, 2023.

ii. Maintain a list of designated individuals: All Intermediaries must maintain a list of designated individuals as notified by the Ministry of External Affairs. The said list shall be made available on the FIU India portal and by SEBI.

iii. Verify the existing list of clients: Verify the existing database of clients vis-a-vis the designated list and immediately report to FIU IND without delay.

iv. Run periodical checks on the clients: Upon onboarding and on periodical basis review the existing list of clients and any match has to be reported to FIU IND and SEBI. STR is to be filed if there are transactions undertaken by such clients.

v. Restrictions to undertake financial transactions for such clients: Unlike AML which prevents tipping off, under WMD the Intermediaries shall prevent such individual/entity from conducting financial transactions, without delay, in case there are reasons to believe beyond doubt that funds or assets held by a client would fall under the purview of WMD Act.

WMD order also provides for process in case of exemptions upon block/freezing of assets and inadvertent freezing of assets.

SEBI-registered intermediaries must immediately set up a process and framework to comply with the norms of WMD Act. (LinkedIn)

AML AND CFT GUIDELINES: THE COMPLIANCE EXPECTED

The present document shall be referred to as the AML & CFT Guidelines (hereinafter called "The Guidelines") in respect of financial transactions carried out by relevant persons, such as, individuals who obtained certificate of practice under section 6 of the Chartered Accountants Act, 1949, under section 6 of the Company Secretaries Act, 1980 and under section 6 of the Cost and Works Accountants Act, 1959, as notified by the Central Government, vide notification F.No. P-12011/12/2022-ES Cell-DOR, dated May 03, 2023 (hereinafter referred to as 'the notification'). For the purpose of the present guidelines, money laundering has the same meaning as in Section 3 of Prevention of Money-Laundering Act, 2002 ('PMLA'). PMLA lays down record-keeping and reporting obligations for financial institutions and persons carrying on designated business or profession, with the latter defined in sub-clause (vi) of clause (sa) of Sub-Section (1) of Section 2, which states that 'person carrying on designated business or profession', includes persons carrying on such other activities as the Central Government may, by notification, so designate from time-to-time. In exercise of said powers, the Central Government, vide notification F.No.P-12011/12/2022-ES Cell-DOR dated May 03, 2023, notified certain financial transactions carried out by relevant persons, such as,

individuals who obtained certificate of practice under Section 6 of the Chartered Accountants Act, 1949, under Section 6 of the Company Secretaries Act, 1980 and under Section 6 of the Cost and Works Accountants Act, 1959. The Central Government vide notification F.No. P-12011/12/2022-ES Cell-DOR dated May 03, 2023, has notified the financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the activities listed below, as an activity for the purposes of sub-clause (vi) of clause (sa) of sub-Section (1) of Section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003)

i. buying and selling of any immovable property;

ii. managing of client money, securities or other assets;

iii. management of bank, savings or securities accounts;

iv. organisation of contributions for the creation, operation or management of companies;

v. creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

Explanation 1:-For the purposes of this notification 'relevant person' includes –

i. An individual who obtained a certificate of practice under Section 6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;

ii. An individual who obtained a certificate of practice under Section 6 of the Company Secretaries Act, 1980 (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;

iii. An individual who has obtained a certificate of practice under Section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959) and practicing individually or through a firm, in whatever manner it has been constituted.

CS AS REPORTING ENTITIES: ROLES AND RESPONSIBILITIES

India, as a member of the Financial Action Task Force ("FATF"), is actively participating in developing and promoting policies against money laundering, terrorist financing, and the financing of weapons of mass destruction. In line with FATF's objectives, member countries review each other's anti-money laundering legislations. India is actively prioritizing compliance with FATF Recommendations as its upcoming mutual evaluation is tentatively scheduled for the end of this year. Particularly, Recommendation 22 urges member countries to include lawyers, notaries, independent legal professionals, and accountants involved in the activities mentioned below in Notification dated May 3, 2023 as "Reporting Entities". Recommendation 22[1] also addresses the treatment of trusts and company service providers as reporting entities. The Prevention of Money-Laundering Act, 2002 (PMLA) aims to prevent money laundering and enable the confiscation of property associated with such activities. Under PMLA "Reporting Entities" are required to verify client and beneficial owner identities, maintain transaction records, and implement enhanced due diligence for specific transactions.

A. **First Notification:**

The Ministry of Finance ("MoF") issued a notification vide no. S.O. 2036(E) dated May 3, 2023 that made changes to the relevant Sections of the PMLA. As a result, practicing Chartered Accountants (CA), Company Secretaries (CS), and Cost and Work Accountants (CWA), who carry out financial transactions on behalf of their clients, are now required to undergo the Know Your Client (KYC) process before commencing any work on behalf of their clients. They are now considered as "reporting entities" under PMLA and, inter alia, are obligated to report the specified financial transactions undertaken during the course of their professional activities carried out on behalf of their clients, to the Financial Intelligence Unit – India (FIU-IND). The intention behind these measures is to hold these professionals accountable for any dubious transactions conducted on behalf of their client. Below financial activities carried out by practicing professionals such as CA, CS and CWA in India are covered by the PMLA:

i. Buying and selling any immovable property.

ii. Managing client money, securities, or other assets.

iii. Management of bank, savings, or securities accounts.

iv. Organization of contributions for the creation, operation, or management of companies.

v. Creation, operation, or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

However, the Ministry has not yet issued any further notification, guidelines etc in this regard. The Government, in collaboration with the Indian institutes for Chartered Accountants, Company Secretaries and Cost Accountants should undertake training sessions for professionals and should refer to practices in other jurisdictions to provide guidance for these practicing professionals on the way forward.

B. **Second Notification:**

Within a week of issuing the first notification, MoF issued another Notification dated May 9, 2023 and further broadened the scope of the PMLA wherein Directors, nominee shareholders, formation agent of Companies/ LLPs are brought under the purview of PMLA.

Below activities when carried out in the course of business on behalf of or for another person are covered by the PMLA:

i. acting as a formation agent of companies and limited liability partnerships;

ii. acting as (or arranging for another person to act as) a Director or Secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;

iii. providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;

iv. acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and

v. acting as (or arranging for another person to act as) a nominee shareholder for another person.

The said notification also excludes from its ambit certain activities carried out by;

i. CA, CS or CWA, who is engaged in formation of a company to the extent of certifying forms as required under the Companies, Act 2013;

ii. any activity that is carried out by an employee on behalf of its employer in the course of his employment or any activity;

iii. any activity carried out under a lease or tenancy agreement where the consideration is subject to a deduction of income tax; and

iv. any activity of a person which falls within the meaning of intermediary under the PMLA. As a result, a wide range of consultants has now been brought under the purview of the PMLA and are now subject to the stringent compliance requirements. The requirements include, inter alia, require enhanced client due diligence, transaction reporting, and maintenance of detailed records, which needs to be reported to FIU. However, the Ministry should clarify the meaning of certain contentious terms such as "formation agent" or "arranging for another person to act as". Additionally, it is important to establish some threshold value of the financial transactions for reporting to FIU to ensure that small consultants are not burdened with disproportionate compliance requirements.

C. Third Notification (Latest Notification):

The MoF has now issued third notification vide no. F.NO.9-41/2022-23/Intermediaries/ TCSP/FIU-IND. dated July 17, 2023 to all professionals offering services related to the incorporation of entities and trusts, as well as providing services such as registered office facilities, resident directors, or nominee shareholders. These professionals are collectively referred to as "Trust and Company Service Providers" or "TCSP".

> The Prevention of Money-Laundering Act, 2002 (PMLA) aims to prevent money laundering and enable the confiscation of property associated with such activities. Under PMLA "Reporting Entities" are required to verify client and beneficial owner identities, maintain transaction records, and implement enhanced due diligence for specific transactions.

TCSP have been covered within the definition of 'Reporting Entity' under PMLA framework by the virtue of notification issued earlier on May 9, 2023. The current notification clarifies that TCSPs have to strictly comply with the obligations under the PMLA and rules framed thereunder including registration with FIU-IND in Finnet 2.0 portal https://fiuindia.gov.in/files/misc/finnet2.html.

It further mandates such Reporting Entities to appoint Principal Officer and Designated Director, formulate risk management policies, perform customer due diligence, record keeping, training of employees and implementation of internal mechanism to detect and report suspicious transactions to FIU-IND. All reporting entities are subject to various compliance obligations under the PMLA and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. The key roles and responsibility of a "reporting entity" is summarized below:

i. **Registration with FIU-IND** – It is to be noted that registration with FIU-IND is a pre-requisite for a reporting entity to become compliant with the reporting obligations under PMLA. The same must be complied with immediately.

ii. **Verification of Identity**- Every reporting entity shall implement a know-your-client/ customer (KYC) procedure to verify the identity of its 'clients' and the 'beneficial owner'. The reporting entity is required to file an electronic copy of the KYC records with a Central KYC Records Registry (established under the PMLA) within 10 days of the commencement of the account-based relationship.

iii. **Enhanced Due Diligence** - In case of certain specified transactions i.e., where the cash deposit or withdrawal, transaction in foreign exchange, high value import or remittance, exceeds the specified limit or where there is a high risk of money laundering or terrorist financing, the reporting entity is required to carry out enhanced due diligence prior to the commencement of each such specified transaction, without which such transaction must not be permitted to be carried out.

iv. **Maintenance of Record** - A reporting entity is required to maintain a record of certain transactions for at least 5 years from the date of each such transaction, along with all necessary related information to permit the reconstruction of individual transactions. It is also required to maintain a record of documents evidencing the identity of its clients and beneficial owners as well as account files and business correspondence relating to the clients for a period of 5 years after the business relationship between a client and the reporting entity has ended.

v. **Access to information** - Every reporting entity is responsible for communicating the name, designation, and address of a designated Director from its Board and the Principal Officer (an officer appointed by the reporting entity) to the authorized officer of the government ("Authorised Officer"). The Principal Officer has the obligation to provide specific information to the Authorised Officer. Additionally, each reporting entity must establish an internal mechanism to detect the transactions mentioned above and to provide information regarding such transactions.

vi. **Our Observations**- The purpose of these notifications is to prevent professionals from unintentionally or knowingly facilitating suspicious financial transactions. It is noteworthy that the actions associated with establishing shell companies using proxies have also been included within the scope of the PMLA. The third notification offers some clarification regarding TCSPs and emphasizes the necessity for them to fully adhere to the obligations outlined in the PMLA and the rules established under it. This includes the requirement for TCSPs to register with FIU-IND. In our perspective, it is essential for all practicing professionals, to exercise heightened caution when performing client KYC and due diligence. In line with global initiatives aimed at mitigating the risks associated with money laundering and terrorist financing activities, several jurisdictions now mandate that these professionals take reasonable steps to identify and authenticate a client's identity before commencing work on a matter. They are also required to gather evidence regarding the nature and purpose of business relationships involved in specific types of cases. Furthermore, it is anticipated that the Ministry will issue additional notifications, FAQs, guidelines, and other relevant materials including FAQs and guidance notes on AML/ KYC Standards for its members to ensure the effective implementation of the reporting and compliance requirements under the PMLA. However, it is also expected of the Ministry that it does work along with other professional bodies to frame the relevant guidelines, who have reporting obligations pursuant to these regulations and nature of business to ensure that the larger purpose behind this regulation doesn't gets lost in the professional outcry on account of any ambiguity on professional liability while carrying out any such activities.(Law street India)

DUE DILIGENCE AND INTERNAL CONTROL MECHANISMS: LINCHPINS OF PMLA

Prior to an acquisition, investment, business partnership, or bank loan, due diligence is a process of study and analysis that is started to determine the value of the topic of whether there are any substantial issues related to the diligence or the results of these investigations are then compiled in a report known as the due diligence report.

Introduction

Analysing numerous factors to determine an entity's commercial potential is known as due diligence. Evaluating the entity's overall financial sustainability in terms of its assets and liabilities examining the entity's operations and confirming the relevant facts in relation to a proposed transaction. The term "due diligence" refers to a thorough assessment of a company's financial management system. It comprises a thorough examination of the organization's internal control system, financial reports, and document flow. The evaluation also contains management reporting data, which deals with handling data on the company's assets and liabilities, expense structure, and earnings from main operations, among other things.

Transaction Covered Under Due Diligence

A. **Mergers and acquisitions**

Due diligence is performed from both the buyer's and the seller's perspectives. The seller focuses on the buyer's past, the financial capacity to consummate the purchase, and the capacity to uphold obligations made, whereas the buyer investigates the financials, lawsuits, patents, and a wide range of other important information.

B. **Partnership**

Strategic partnerships, business coalitions, and other types of collaborations are subject to due diligence.

C. **Collaborations and joint ventures**

The reputation of the combined company is an issue when two businesses join forces. It is crucial to comprehend the other company's position and assess whether its resources are adequate.

D. **Common Offer**

Decisions about public issues, disclosures in a prospectus, post-issue compliance, and similar problems are involved during the making of a public offer. Normally, these would demand careful consideration.

E. **Need For Due Diligence Report**

The saying "discovering skeletons in the closet before the deal is preferable than discovering them later" is appropriate when it comes to due diligence. The information obtained throughout this process must be made public because it is crucial for decision-making. The due diligence report describes the company's revenue-growth strategy (monetary as well as non-monetary). It serves as a convenient reference for quickly understanding the circumstances at the time of buying, selling, etc. The ultimate objective is to gain a comprehensive understanding of how the company will operate in the future. The due diligence report details how the company plans to boost revenues (monetary as well as non-monetary). It acts as a quick reference for realizing the situation at the moment of buying, selling, etc. Getting a clear image of how the business will function in the future is the ultimate goal. Financial due diligence can help resolve issues that might arise later on during the purchase in advance. When both sides are aware of one another's financial situations, an informed decision or negotiation can be made. The use of deliverables can be flexible thanks to financial due diligence. A third party's objective opinion promotes more confidence between the parties. It is possible to predict the entity's prospective future position, which will be a key deal-maker or deal-breaker for both entities.

Preparing the Due Diligence Report. The three W's must be taken into consideration when writing the due diligence report. Which are:

To whom are you trying to reach?

What do you hope to achieve?

What factors will be crucial in making decisions?

To keep the report concise, unnecessary details should be omitted.

Concentration Areas for a Due Diligence Report

a. **Feasibility**: A detailed examination of the target company's business and financial plans can be used to determine the viability of the endeavour.

b. **Financial Aspect**: Important financial information and ratio analysis are required to fully comprehend the situation.

c. **Environment**: No company runs in a vacuum. Consequently, it is essential to consider the macro environment and how it will affect the target organization.

d. **Personnel**: The competence and reputation of the individuals running the organization are crucial considerations.

e. **Existing and Future Liabilities**: It is important to consider any ongoing legal proceedings and regulatory concerns.

f. **Technology:** The evaluation of the technology available to the organization is a crucial issue to take into account. A required evaluation is one that helps determine future courses of action.

g. **Effect of synergy**: The ability to create synergy between the target company and the current company is a decision-making tool.

Due Diligence Methods

a. Business Due Diligence: Business due diligence entails investigating the parties to the transaction, the business's potential, and the investment's quality.

b. Legal Due Diligence: This process primarily focuses on a transaction's legal elements, potential legal problems, and other legal-related issues. It encompasses both intra-corporate transactions and transactions between corporations. This diligence includes the currently existing documentation as well as several regulatory checklists.

c. Financial Due Diligence: This involves validating the financial, operational, and commercial presumptions. The acquiring corporation can now breathe a sigh of relief after learning this. Here, a thorough review of accounting principles, audit procedures, tax compliance, and internal controls is conducted.

Business due diligence entails investigating the parties to the transaction, the business's potential, and the investment's quality. This process primarily focuses on a transaction's legal elements, potential legal problems, and other legal-related issues. It encompasses both intra-corporate transactions and transactions between corporations. This diligence includes the currently existing documentation as well as several regulatory checklists.

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ARTICLE

Customer Due Diligence under PMLA (Prevention of Money Laundering Act)

Customer due diligence (CDD) is of utmost significance with respect to Anti-Money Laundering (AML) and Know Your Customer (KYC) initiatives. CDD is the act of performing background checks and other screening on the customer. It is to ensure that customers are properly risk-assessed before being on boarded. Banks apply CDD to approve loan amounts for businesses, and individuals. The process is usually conducted to determine aspects ranging from their loan repayment ability, and creditworthiness, to fraud detection and involvement in unfair activities such as money laundering. Banks rely on providers of top due diligence services for CDD.

Due Diligence in Mergers and Acquisitions Transactions

General perspective that the Buyer needs to make an informed decision on the Seller is not applicable in Mergers and Acquisitions Transactions. Due diligence has value for both parties in a M&A scenario. Like the Buyer and seller also determine if entering into the scheme would be beneficial financially and from a reputation perspective. The Buyer like in general transactions needs to be aware of the risks involved to reduce them to the level of appetite, and achieve accuracy in the valuation of the target company, which helps determine in closure or avoidance of the deal and also in negotiating better. Depending on the depth of the situation almost all types of due diligence such as Financial Due Diligence, Tax Due Diligence, and Legal Due Diligence form part of Acquisition Due Diligence.

Discrepancies in Due Diligence

The acquiring company receives a cursory awareness of the target company thanks to due diligence. As a result, businesses might not always be successful.

The employees, competencies, and work culture—all crucial to a seamless operation—remain a mystery to the purchasing firm.

You should receive the level of certainty you require regarding the potential investment and any associated risks from the due diligence report. The report needs to be able to give the acquiring firm enough information to prevent the signing of any onerous contracts that might compromise the current return on investment.

PMLA AND WMD ACT: ROLE OF PRACTISING PROFESSIONAL

Sub-Section 2(1)(sa)(vi) authorises the Central Government to designate by notification when certain other activities performed for or on behalf of another natural or legal person will come under the ambit of money laundering. Under this provision, on 3rd May 2023, notification number S.O. 2036(E) has been issued by the Ministry of Finance, Department of Revenue, and Government of India. As per this notification, the below-mentioned financial transactions carried out by a 'relevant person' on behalf of their client shall be considered as an activity relating to money laundering. The term 'relevant person' has been defined in the explanation to mean a Practising Company Secretaries (CS), a Practising Chartered Accountants (CA) and a Practising Cost Accountants (CMA).

The following financial transactions have been identified in the notification:

a. Buying and selling of any immovable property;

b. Managing of client money, securities or other assets;

c. Management of bank, savings or securities accounts;

d. Organisation of contributions for the creation, operation or management of companies;

e. Creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

Hence, going forward practising CSs, CAs and CMAs will be covered under the scanner as and when they execute any financial transactions on behalf of a client. Members belonging to all the three professions are on thin ice now. Their vigilance, carefulness, due-diligence and strict professionalism will be tested more rigorously from now on.

CONCLUSION

The new notification under PMLA is a bold step of the government towards speeding up its battle against anti-money laundering activities. The new provisions are expected to help probing against dubious transactions by shell companies involved in money laundering. But by providing an inclusive definition of 'relevant person' to include these three professions only, the government has clearly shown its intent of keeping practising advocates or any other person out of the net, although they might also be in the position to do any of the financial transactions identified in the notification as connected to money laundering, on behalf of the client. However, the more optimistic thinking on the part of these professionals would be to consider this move as a reassurance of the reliance the government has always had on these three professions, this time in its battle against money laundering. Reporting authorities are mediums in the hands of the government for gaining information about dubious transactions. So, CS, CA and CMAs are now expressly clothed with the responsibility of being whistle blowers in case they come across any such transactions. If they are not careful enough, they will be hauled up for being partners in the crime of money laundering by their clients. If professionals have been handling the money of the client for financial transactions on their behalf whether in India or abroad, now it is a better idea for them to stay away from doing so.

PMLA Legislations - An Insight into Compliances

The Finance Ministry's decision to include specific transactions conducted by Accountants and Company Secretaries on behalf of their clients is expected to heighten their accountability and liability under the PMLA. The move will alter the way they do due diligence of transactions, source of funds examination and reporting of irregularities.

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INTRODUCTION

The Prevention of Money Laundering Act (PMLA), 2002 is known to have been legislated basically to sub-serve twin purpose. Firstly, to prevent money laundering and secondly to provide for confiscation of property derived from, or involved in money laundering and to ensure curbing of the tendency of committing scheduled offences.

The object behind the enactment of this Act is:

- To prevent money laundering and
- To provide for the confiscation of property derived from or involved in money laundering and
- For matters connected therewith or incidental thereto.

The Preamble to the Act further provides that the Political Declaration and Global Programme of Action was adopted by the General Assembly of the United Nations at its seventeenth special session on the 23rd day of February 1990. The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June 1998 called upon the Member States to adopt national money laundering legislation and programme and whereas it is considered necessary to implement the aforesaid resolution and the Declaration.

Political Declaration and Global Programme of Action devoted to the question of international co-operation against:

- Illicit production, supply, demand trafficking; and
- Distribution of narcotic drugs; and
- Psychotropic substances

METHODS THROUGH WHICH BLACK MONEY IS MADE AND LAUNDERED

There are multiple methods through which black money is made, laundered and huge profit is made. Some of them are:

- Cash Smuggling: Moving cash from one location to another or depositing the cash in Swiss bank account.
- Structuring: Cash is broken down into formal receipts to buy money orders etc. Smaller amounts are hard to detect.
- Laundering via Real Estate: Buying a land for money and then selling it making the profits legal.
- Stock Market scams.
- Creating bogus companies and booking false incomes.
- Hawala
- Drug trafficking
- Bribery and corruption.
- Kidnapping and extortion.

UNDERSTANDING MONEY LAUNDERING

Let us understand Money Laundering with the example of Hawala.

Hawala system works with a network of operators called Hawaladars or Hawala agent. For a Hawala transaction, customer contacts a Hawala agent at the source location. The Hawala agent at that end collects money from the person who wishes to make a transfer. The agent then calls up his counterpart in the country where the transfer has to be made.

The counterpart then hands over the cash to the recipient after deducting a commission. The source agent promises to settle the debt to the destination agent through an informal settlement.

For example, a person in country 'X' wants to transfer some money to someone in country 'Y' gives the money to the Hawala broker in country 'Y'. The agent accepts it and calls up his colleague in country 'Y'. His colleague gives the money in country 'Y's currency to the person in country 'Y' to whom it has to be transferred. An identification code is requested, ensuring the authenticity of the receiver. The same modus operandi is followed within the country as well.

In a Hawala transfer, the money enters the hawala system in local currency and leaves as local or foreign currency. The currency exchange happens at a rate set by agents and not the official rate.

CYCLE OF MONEY LAUNDERING

The cycle of money laundering can be broken down into three distinct stages:

- Placement: First and initial stage where black money is injected into the formal financial system.
- Layering: Second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it becomes difficult to detect the origin of the money.
- Integration: Third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving it as clean money.

OFFENCE OF MONEY-LAUNDERING [SECTION 3]

A person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:

- Concealment; or
- Possession; or
- Acquisition; or use; or
- Projecting as untainted property; or
- Claiming as untainted property,

In any manner whatsoever.

The process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

PUNISHMENT FOR MONEY-LAUNDERING [SECTION 4]

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the schedule i.e., Offences under the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985, the maximum punishment may extend to ten years and shall also be liable to fine.

Whoever commits the offence of money-laundering shall be punishable	Where the proceeds of crime involved in money-laundering relate to any offences pertaining to the NDPS Act, 1985
With rigorous imprisonment from 3 to 7 years, and fine	The maximum punishment may extend to ten years and fine.

ATTACHMENT OF PROPERTY INVOLVED IN MONEY-LAUNDERING (SECTION 5)

Order for provisional attachment: where the Director or any other officer not below the rank of Deputy Director authorized by the Director, for the purposes of this section has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

- Any person is in possession of any proceeds of crime; and
- Such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter.

He may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days (180 days) from the date of the order.

CS AS REPORTING ENTITIES: ROLES AND RESPONSIBILITIES

Every Reporting Entity shall verify the identity of its clients and the beneficial owner, by-

- Authentication under the Aadhaar.
- Offline verification under the Aadhaar.

- Use of passport issued.
- Use of any other officially valid document or modes of identification.

MAINTENANCE OF RECORDS OF TRANSACTIONS (MAINTENANCE OF RECORDS) RULES, 2005- RULE 3

Every reporting entity shall maintain the record of all transactions including the record of:

- All cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency;
- All series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;
- All transactions involving receipts by non-profit organizations of value more than rupees ten lakh, or its equivalent in foreign currency;
- All suspicious transactions whether or not made in cash and by way of-
  - i) Deposits and credits, withdrawals into or from any account by way of cheques, pay orders, demand draft, travellers cheque or any other mode.
  - ii) Money transfer or remittances in favour of own clients or non- clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by pay order or cashier cheque or demand draft or wire transferor electronic remittance or internet transfer etc.
- All cross-border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency
- All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity.

CLIENT DUE DILIGENCE-RULE 9

Subject to the provisions of sub-rule (1), every reporting entity shall within ten days after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the Central, KYC Records Registry.

Where the client is an individual, he shall for the purpose of sub-rule (1) submit to the reporting entity-

> The Preamble to The Prevention of Money Laundering Act (PMLA), 2002, further provides that the Political Declaration and Global Programme of Action was adopted by the General Assembly of the United Nations at its seventeenth special session on the 23rd day of February 1990. The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June 1998 called upon the Member States to adopt national money laundering legislation and programme and whereas it is considered necessary to implement the aforesaid resolution and the Declaration.

- The Aadhaar number;
- The Permanent Account Number or Form no. 60 as defined in Income -tax Rules, 1962;
- Such other document including in respect of the nature of business and financial status of the client, or the equivalent e-documents thereof as may be required by the reporting entity.

Where the client is a company, it shall submit to the reporting entity the certified copies of the following documents, or the equivalent e-documents thereof namely: -

- Certificate of incorporation;
- Memorandum and Articles of Association;
- Permanent Account Number (PAN) of the Company;
- A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees, as the case may be, to transact on its behalf; and.
- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the Company's behalf.

Where the client is a partnership firm, it shall submit to the reporting entity, the certified copies of the following documents, or the equivalent e-documents thereof namely:

- Registration certificate;
- Partnership deed;
- PAN of the partnership firm;

- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the firm's behalf.

Where the client is a trust, it shall submit to the reporting entity, the certified copies of the following documents, or the equivalent e-documents thereof namely:

- Registration certificate;
- Trust deed;
- PAN or Form no. 60 of the trust.
- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the trust's behalf.

Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity, the certified copies of the following documents, or the equivalent e-documents thereof namely:

- Resolution of the managing body of such association or body of individuals;
- PAN or Form no. 60 of the unincorporated association or a body of individuals;
- Power of attorney granted to him to transact on its behalf;
- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the trust's behalf.
- Such information as may be required by the reporting entity to collectively establish the existence of such association or body of individuals.

In case of officially valid document furnished by the client does not contain updated address, the following documents or their equivalent e-documents thereof shall be deemed to be officially valid documents for the limited purpose of proof of address: -

- Utility bill which is not more than two months old of any service provider (electricity, telephone, post-paid mobile phone, piped gas, water bill);
- Municipal tax receipt;
- Pension or family pension payment orders (PPOs) issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;
- Letter of allotment of accommodation from employer issued by State Government or Central Government Departments, statutory or regulatory bodies, public sector undertakings, scheduled

commercial banks, financial institutions and listed companies and leave and licence agreements with such employers allotting official accommodation.

Where a client has provided his Aadhaar number for identification and wants to provide a current address, different from the address as per the identity information available in the Central Identities Data Repository, he may give a self-declaration to that effect to the reporting entity.

SUSPICIONS OF MONEY LAUNDERING OR FINANCING OF THE ACTIVITIES RELATING TO TERRORISM

When there are suspicions of money laundering or financing of the activities relating to terrorism or where there are doubts about the adequacy or veracity of previously obtained client identification data, the reporting entity shall review the due diligence measures including verifying again the identity of the client and obtaining information on the purpose and intended nature of the business relationship, as the case may be.

RISK ASSESSMENT

Every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas and products, services, transactions or a body or authority duly notified by the Central Government.

The risk assessment mentioned above shall:

- Be documented;
- Consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
- Be kept up to date; and
- Be available to competent authorities and self-regulating bodies.

ENHANCED DUE DILIGENCE (EDD)-VERIFICATION OF IDENTITY OF CLIENT-SECTION 12AA(1)

Every reporting entity shall, prior to the commencement of each specified transaction: -

- Verify the identity of the clients;
- Take additional steps to examine the ownership and financial position including sources of funds of the clients;
- Take additional steps to record the purpose behind conducting the specified transaction and the intended nature of the relationship between the transacting parties;
- Transaction not allowed, if the client does not furnish the identity;
- Where the client fails to fulfill the conditions laid down under the Act, the reporting entity shall not allow the specified transaction to be carried out.

'Specified transaction' means:

- Any withdrawal or deposit in cash, exceeding such amount;
- Any transaction in foreign exchange, exceeding such amount;
- Any transaction in any high value imports or remittances;
- Such other transaction or class of transactions, in the interest of revenue or where there is a high risk or money-laundering or terror financing.

MONITORING OF TRANSACTIONS-SECTION 12AA(3)

Where any specified transaction or series of specified transactions undertaken by a client is considered suspicious or likely to involve proceeds of crime, the reporting entity shall increase the future monitoring of the business relationship with the client, including greater scrutiny or transactions.

RETENTION OF RECORDS-SECTION 12AA(4)

The information obtained while applying the enhanced due diligence measures shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

CONCLUSION

The Act and Rules notified thereunder impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information in prescribed form to Financial Intelligence Unit-India (FIU-IND).

The Finance Ministry's decision to include specific transactions conducted by Accountants and Company Secretaries on behalf of their clients is expected to heighten their accountability and liability under the PMLA. The move will alter the way they do due diligence of transactions, source of funds examination and reporting of irregularities.

ARTICLE

Navigating PMLA Compliance in India: A Comprehensive Guide for Companies and Company Secretaries

Compliance with PMLA regulations is of paramount importance for companies operating in India due to several reasons. First and foremost, adherence to these regulations is a legal obligation that, if not met, can lead to severe penalties and legal actions against the company and its executives. Moreover, money laundering poses a significant threat to the stability of financial systems, and companies play a crucial role in preventing their entities from being misused for illicit financial activities.

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INTRODUCTION

Brief overview of the Prevention of Money Laundering Act (PMLA) in India

The Prevention of Money Laundering Act (PMLA) is a crucial piece of legislation in India aimed at combating money laundering and related financial crimes. Enacted in 2002, the PMLA provides a comprehensive legal framework to prevent and control money laundering activities. The act encompasses various provisions and regulations that empower authorities to investigate and take action against those involved in money laundering and related offenses. It is essential for companies operating in India to understand the intricacies of the PMLA to ensure strict compliance and mitigate the risk of legal consequences.

Importance of compliance with PMLA regulations for companies

Compliance with PMLA regulations is of paramount importance for companies operating in India due to several reasons. First and foremost, adherence to these regulations is a legal obligation that, if not met, can lead to severe penalties and legal actions against the company and its executives. Moreover, money laundering poses a significant threat to the stability of financial systems, and companies play a crucial role in preventing their entities from being misused for illicit financial activities. By complying with PMLA regulations, companies contribute to maintaining the integrity of the financial system and fostering a transparent and accountable business environment.

Role of Company Secretaries in ensuring PMLA compliance

Company Secretaries play a pivotal role in ensuring the compliance of companies with the Prevention of Money Laundering Act (PMLA). Their responsibilities encompass implementing robust anti-money laundering (AML) policies, conducting risk assessments, and overseeing due diligence procedures. Company Secretaries facilitate communication between the board and relevant authorities, ensuring timely submission of reports and disclosures required by PMLA. They play a crucial role in educating the board and employees about PMLA regulations, fostering a culture of compliance within the organization. By maintaining meticulous records and monitoring transactions, Company Secretaries contribute significantly to mitigating the risk of money laundering and safeguarding the company's integrity.

UNDERSTANDING PMLA REGULATIONS

A. Key provisions and requirements under the PMLA

- **Customer Due Diligence (CDD):** The PMLA places a strong emphasis on conducting thorough due diligence on customers to identify and verify their identities. This includes obtaining information on the purpose and nature of the business relationship.
- **Record Keeping:** Companies are mandated to maintain detailed records of transactions and customer identification data for a specified period. This provision ensures a comprehensive audit trail and facilitates regulatory scrutiny when necessary.
- **Reporting of Transactions:** The PMLA requires companies to report suspicious transactions to the Financial Intelligence Unit (FIU) of India. Timely reporting is critical in preventing money laundering and other financial crimes.

- **Internal Policies and Procedures:** Companies are obligated to establish and implement internal policies, procedures, and controls to prevent money laundering. These should be tailored to the specific risks faced by the company and must be communicated and enforced across all levels of the organization.
- **Appointment of a Compliance Officer:** The act mandates the appointment of a designated compliance officer responsible for ensuring the implementation of anti-money laundering measures within the organization.

B. Impact of non-compliance on companies and individuals

- **Financial Penalties:** Non-compliance with PMLA regulations can lead to substantial financial penalties. Companies failing to adhere to these regulations may face fines, impacting their financial health and viability.
- **Legal Consequences:** In addition to financial penalties, companies and individuals involved in non-compliant activities may face legal consequences, including prosecution and imprisonment. This can severely damage the reputation of the company and result in personal liabilities for executives.
- **Reputational Damage:** Non-compliance can tarnish the reputation of a company, leading to a loss of trust among clients, stakeholders, and the broader market. Rebuilding a damaged reputation can be a challenging and lengthy process.
- **Operational Disruptions:** Regulatory actions resulting from non-compliance can disrupt the normal operations of a company, leading to significant business interruptions and financial losses.

C. Recent amendments and updates to PMLA regulations

- **Expansion of the Definition of Beneficial Ownership:** Recent amendments may have expanded the scope of beneficial ownership, requiring companies to conduct more comprehensive due diligence to identify and verify beneficial owners.
- **Enhanced Reporting Obligations:** Updates to PMLA regulations may introduce additional reporting obligations or modify existing ones, necessitating companies to stay vigilant and adapt their compliance mechanisms accordingly.
- **Technological Advances:** Amendments may address the integration of technological advancements, such as the use of artificial intelligence and data analytics, in enhancing anti-money laundering efforts.
- **International Cooperation:** Changes in PMLA regulations may reflect increased collaboration with international bodies to strengthen global efforts against money laundering and terrorist financing.

Keeping abreast of these recent amendments is crucial for Company Secretaries to ensure that their organizations remain compliant with the evolving regulatory landscape and effectively mitigate the risks associated with money laundering. Regular updates and training programs are essential to incorporate these changes seamlessly into the company's existing compliance framework.

THE RESPONSIBILITIES OF COMPANY SECRETARIES

A. Overview of the company secretary's role in corporate governance:

- **Corporate Governance Facilitator:** Company Secretaries play a pivotal role in facilitating effective corporate governance within an organization. They act as a liaison between the board of directors, senior management, and various stakeholders, ensuring that corporate decisions align with legal and ethical standards.
- **Regulatory Compliance Expertise:** Company Secretaries are well-versed in regulatory frameworks and compliance requirements. Their expertise is instrumental in guiding the organization through complex legal landscapes and ensuring adherence to relevant laws and regulations, including those related to anti-money laundering (AML) such as the Prevention of Money Laundering Act (PMLA).

B. Specific responsibilities related to PMLA compliance

1. Establishing and maintaining a robust anti-money laundering (AML) framework

- **Policy Development:** Company Secretaries are responsible for developing comprehensive AML policies tailored to the specific risks and vulnerabilities of the organization. These policies outline procedures for customer due diligence, transaction monitoring, and reporting suspicious activities.
- **Implementation:** Once policies are developed, Company Secretaries oversee their effective implementation across all levels of the organization. This involves conducting training sessions to ensure that employees understand and adhere to AML policies and procedures.
- **Regular Review and Update:** The regulatory landscape is dynamic, and AML frameworks must evolve accordingly. Company Secretaries regularly review and update AML policies to align with changes in regulations, business operations, and emerging risks.

2. **Conducting risk assessments and due diligence procedures**

   - **Risk Identification:** Company Secretaries lead efforts to identify and assess the money laundering and terrorist financing risks faced by the organization. This involves analysing the nature of the business, client relationships, and geographic locations of operations.
   - **Due Diligence Procedures:** Based on identified risks, Company Secretaries develop and implement due diligence procedures for onboarding new clients, monitoring existing relationships, and assessing high-risk transactions. These procedures help mitigate potential risks associated with money laundering.

3. **Ensuring proper record-keeping and documentation**

   - **Record Management:** Company Secretaries oversee the establishment and maintenance of a robust record-keeping system. This involves ensuring that all transactions and customer information are accurately documented and stored in a secure and accessible manner.
   - **Compliance Audits:** Regular audits are conducted to verify the accuracy and completeness of records. Company Secretaries collaborate with internal audit teams to identify and rectify any discrepancies, ensuring compliance with PMLA regulations.

4. **Reporting suspicious transactions to appropriate authorities**

   - Vigilance and Monitoring: Company Secretaries instil a culture of vigilance within the organization. They ensure that employees are trained to recognize and report any suspicious transactions promptly.
   - Timely Reporting: In the event of identifying suspicious activities, Company Secretaries are responsible for ensuring that the organization promptly reports such transactions to the appropriate authorities as mandated by PMLA regulations.

IMPLEMENTING PMLA COMPLIANCE MEASURES

A. Designing and implementing internal policies and procedures

- **Policy Development:** Company Secretaries take the lead in crafting comprehensive internal policies and procedures that align with the requirements of the Prevention of Money Laundering Act (PMLA). These policies address specific risks associated with the company's operations and outline procedures for customer due diligence, record-keeping, and reporting.
- **Tailoring Policies to Business Operations:** Recognizing the unique nature of each business, Company Secretaries ensure that PMLA policies are tailored to the specific risks and vulnerabilities of the organization. This involves a careful analysis of the company's industry, client base, and geographic reach.
- **Ensuring Accessibility and Understanding:** Company Secretaries are responsible for disseminating and ensuring the accessibility of PMLA policies across all levels of the organization. They conduct training sessions to ensure that employees understand the policies and are equipped to implement them in their daily tasks.

B. Training company employees on PMLA regulations and AML best practices

- **Educational Programs:** Company Secretaries organize training programs to educate employees about PMLA regulations, anti-money laundering (AML) best practices, and the importance of compliance. These programs may include workshops, seminars, and online training modules.
- **Continuous Awareness:** Recognizing that regulatory landscapes evolve, Company Secretaries ensure that training programs are ongoing and that employees stay updated on any changes to PMLA regulations. This continuous awareness is critical in maintaining a proactive and vigilant organizational culture.
- **Customized Training:** Different departments may face distinct challenges in PMLA compliance. Company Secretaries tailor training programs to address the specific needs of various departments, ensuring that employees understand how compliance measures relate to their roles.

C. Collaborating with other departments to integrate compliance measures into daily operations

- **Cross-Departmental Coordination:** Company Secretaries collaborate with departments such as finance, legal, risk management, and operations to integrate PMLA compliance measures seamlessly into daily operations. This involves regular communication and coordination to address department-specific challenges.
- **Embedding Compliance in Processes:** Working closely with department heads, Company Secretaries ensure that PMLA compliance is embedded into existing processes and workflows. This proactive approach minimizes disruptions and promotes a culture of compliance.

- **Communication Channels:** Company Secretaries establish effective communication channels to relay regulatory updates and compliance requirements to relevant departments promptly. This ensures that all stakeholders are on the same page regarding PMLA compliance measures.

D. Conducting regular audits and assessments to identify and address potential compliance gaps

- **Audit Planning and Execution:** Company Secretaries, often in collaboration with internal audit teams, plan and execute regular audits to assess the effectiveness of PMLA compliance measures. These audits are designed to identify any gaps or weaknesses in the implementation of policies and procedures.
- **Risk Assessment:** Regular risk assessments are conducted to identify emerging risks and adapt compliance measures accordingly. Company Secretaries use the results of these assessments to refine and enhance the organization's PMLA compliance framework.
- **Addressing Non-Compliance:** In the event of identifying compliance gaps or areas of non-compliance, Company Secretaries take prompt action to address these issues. This may involve revising policies, providing additional training, or implementing corrective measures to strengthen the overall compliance posture.

In conclusion, the implementation of PMLA compliance measures requires a proactive and collaborative approach led by Company Secretaries. From policy development to continuous training and regular audits, Company Secretaries play a central role in ensuring that PMLA compliance becomes an integral part of the organization's DNA, promoting a culture of vigilance, responsibility, and adherence to regulatory standards.

CHALLENGES IN PMLA COMPLIANCE

A. Evolving nature of money laundering and terrorist financing activities

- **Sophistication of Schemes:** Money laundering and terrorist financing activities continually evolve, becoming increasingly sophisticated and complex. Company Secretaries must stay vigilant and update PMLA compliance measures to detect and prevent emerging schemes effectively.
- **Adaptation to New Industries:** Criminal organizations adapt their methods to exploit vulnerabilities in emerging industries. Company Secretaries face the challenge of identifying and addressing money laundering risks unique to their company's sector, staying ahead of criminals attempting to exploit regulatory gaps.

> Keeping abreast of the recent amendments is crucial for Company Secretaries to ensure that their organizations remain compliant with the evolving regulatory landscape and effectively mitigate the risks associated with money laundering. Regular updates and training programs are essential to incorporate these changes seamlessly into the company's existing compliance framework.

- **Cross-Border Transactions:** The global nature of money laundering poses challenges, especially in industries with extensive cross-border transactions. Company Secretaries must navigate the complexities of international regulations and ensure compliance with both domestic and foreign AML requirements.

B. Technological advancements and their impact on compliance measures

- **Cryptocurrencies and Blockchain:** The rise of cryptocurrencies and blockchain technology presents challenges in monitoring and tracing financial transactions. Company Secretaries need to understand the implications of these technologies on traditional AML measures and adapt compliance strategies accordingly.
- **Automation and AI:** Technological advancements in automation and artificial intelligence (AI) can be a double-edged sword. While they enhance efficiency, they also pose challenges in terms of detecting subtle money laundering patterns that may evade traditional detection methods. Company Secretaries must ensure that their AML frameworks incorporate these technological advancements.
- **Cybersecurity Risks:** As companies embrace digital transformations, the risk of cyber threats increases. Money launderers exploit vulnerabilities in cybersecurity to facilitate their activities. Company Secretaries need to collaborate with IT departments to implement robust cybersecurity measures that complement PMLA compliance efforts.

C. Global and domestic regulatory changes affecting PMLA compliance

- **Harmonization of International Standards:** The global fight against money laundering involves the continuous harmonization of international standards. Changes in global AML standards may impact domestic regulations, requiring Company Secretaries to stay informed

and adapt their compliance measures to align with evolving international norms.

- **Rapid Legislative Changes:** Regulatory bodies frequently introduce amendments and updates to PMLA regulations to address emerging risks. Company Secretaries must stay agile and ensure that the organization promptly incorporates these changes into its compliance framework to avoid regulatory penalties.
- **Interagency Collaboration:** Increasing collaboration between regulatory agencies globally and domestically requires Company Secretaries to navigate a complex web of regulations. Establishing effective communication channels with regulatory bodies is crucial for staying informed and ensuring compliance with evolving standards.
- **Industry-Specific Regulations:** Different industries may face unique challenges and regulatory requirements related to PMLA compliance. Company Secretaries must be aware of industry-specific regulations and collaborate with industry associations to stay ahead of compliance challenges.

In summary, the challenges in PMLA compliance are multifaceted, ranging from the evolving nature of illicit activities to the impact of technological advancements and the dynamic regulatory landscape. Company Secretaries play a critical role in addressing these challenges by staying informed, adapting compliance measures, and fostering a culture of vigilance and adaptability within the organization.

BEST PRACTICES FOR COMPANY SECRETARIES

A. Staying informed about changes in PMLA regulations

- **Continuous Education:** Advocate for continuous education for Company Secretaries to stay abreast of changes in PMLA regulations. Encourage participation in training programs, workshops, and industry conferences to enhance knowledge and awareness.
- **Regulatory Updates Monitoring:** Establish a system for regular monitoring of regulatory updates related to PMLA. This can include subscribing to regulatory newsletters, maintaining relationships with legal experts, and actively participating in industry forums.

B. Building a proactive and responsive compliance culture within the organization

- **Leadership Support:** Emphasize the importance of PMLA compliance from top-level leadership. Leaders should actively support and promote a culture of compliance, making it clear that adherence to regulations is a non-negotiable aspect of the company's operations.
- **Employee Training and Awareness:** Implement comprehensive training programs for all employees to ensure a deep understanding of PMLA regulations. Foster a culture where employees feel empowered to report suspicious activities and are aware of their role in maintaining compliance.

C. Engaging with industry associations and regulatory bodies to stay updated on industry-specific challenges

- **Participation in Industry Forums:** Encourage Company Secretaries to actively participate in industry associations and forums. This provides opportunities to share insights, learn from peers, and stay informed about industry-specific challenges and best practices.
- **Collaboration with Regulatory Authorities:** Foster relationships with regulatory bodies and authorities relevant to the industry. Regular communication with these entities ensures that

Company Secretaries are well-informed about upcoming changes and can proactively adapt their compliance measures.

- **Benchmarking with Peers:** Promote benchmarking activities where Company Secretaries can compare their organization's compliance measures with industry peers. This facilitates the identification of potential gaps and areas for improvement.

The best practices outlined for Company Secretaries emphasize the importance of staying informed, fostering a compliance-oriented culture, and actively engaging with industry associations and regulatory bodies to navigate the complexities of PMLA regulations effectively.

CONCLUSION

A. **Recap of the importance of PMLA compliance for companies in India:** The Prevention of Money Laundering Act (PMLA) in India stands as a critical safeguard against illicit financial activities, underscoring the importance of stringent compliance for companies. Adherence to PMLA regulations is not merely a legal obligation but a fundamental necessity to ensure the integrity of the financial system. Companies play a vital role in preventing money laundering and terrorist financing activities, contributing to the stability and transparency of the Indian financial landscape.

B. **Emphasis on the pivotal role of Company Secretaries in ensuring effective compliance:** Company Secretaries emerge as linchpins in the intricate web of PMLA compliance, serving as the bridge between the Board of Directors, senior management, and regulatory authorities. Their multifaceted responsibilities encompass the development and implementation of robust Anti-Money Laundering (AML) frameworks, conducting risk assessments, ensuring proper record-keeping, and facilitating a proactive compliance culture within the organization. The pivotal role of Company Secretaries extends beyond procedural tasks; it involves strategic foresight, adaptability, and a commitment to upholding the reputation and financial integrity of the company.

C. **Call to action for companies to prioritize and invest in robust PMLA compliance measures:** The call to action for companies is clear: prioritize and invest in robust PMLA compliance measures. In an era of evolving financial crimes and dynamic regulatory landscapes, the proactive commitment to compliance is an investment in the company's sustainability and credibility. Company Secretaries should be empowered with the necessary resources, training, and support to carry out their crucial role effectively. It is incumbent upon companies to recognize that compliance is not just a regulatory checkbox but a strategic imperative that safeguards the organization's interests, fosters trust among stakeholders, and contributes to the broader integrity of the financial system. As the regulatory environment continues to evolve, companies that prioritize and invest in robust PMLA compliance measures not only mitigate legal risks and penalties but also position themselves as responsible corporate citizens. By adopting a proactive stance and collaborating with regulatory bodies, industry associations, and Company Secretaries, organizations can navigate the complexities of PMLA regulations with resilience and integrity, ensuring a sustainable and ethical business environment for the benefit of all stakeholders.

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ARTICLE

Criminal Liability of Transferee Company For Acts of Transferor Company After Amalgamation

The Companies Act, 2013 does not contain any express definition of amalgamation. The Black Dictionary defines the term 'amalgamation' as the act of combining or uniting or consolidation/ amalgamation of two small companies to form a new corporation. The Companies Act outlines and regulates the procedure for amalgamation and spells out its legal effect, which results in extinguishment of the corporate identity of the transferor company.

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INTRODUCTION

The expression 'criminal liability' is defined by Cambridge Business English Dictionary as the responsibility for any illegal behavior that causes harm or damage to someone or something. Criminal liability was imposed only for intentional misconduct, and the requirement of fortuity generally included the coverage of criminal liabilities. The criminal case launched against a person comes to an end when he dies. Criminal action cannot be taken against a company which is a nonexistence even though it is a separate entity. The earlier notion amongst the legal historians was that corporations in their corporate capacity were incapable of committing crimes such as felony, treason or perjury, rather, only the individual members were capable of doing so and could be held liable for the same. The members of the company increasingly began pooling in resources for initiating business ventures as well as to safeguard themselves for any future losses. Thereafter, once these corporations began owning property and engaging in business, they came to be recognized in law as *person.*

ISSUE

The issue to be discussed in this article is whether the transferee company is liable for the criminal liability of the transferor company after amalgamation with reference to decided case laws.

AMALGAMATION

The Companies Act, 2013 does not contain any express definition of amalgamation. The Black Dictionary defines the term 'amalgamation' as the act of combining or uniting or consolidation/amalgamation of two small companies to form a new corporation. The Companies Act outlines and regulates the procedure for amalgamation and spells out its legal effect, which results in extinguishment of the corporate identity of the transferor company.

The Supreme Court, in 'General Radio & Appliances Company Limited v. M.A. Khader (dead) by legal heirs' - 1986 (2) SCR 607, held that after the amalgamation of two companies, the transferor company ceases to have any entity, and the amalgamated company acquires a new status, and it is not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets.

POWERS OF RESERVE BANK OF INDIA

Section 45 of Reserve Bank of India Act provides that where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking Company. Section 45(5)(e) provides that the scheme aforesaid may contain for the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the reconstruction or amalgamation.

CRIMINAL LIABILITY OF CORPORATE ENTITIES AFTER AMALGAMATION

There was some divergence of opinion amongst certain High Courts about the criminal liability of corporate entities. The Calcutta High Court, in 'Sunil Banerjee v. Krishna Nath' - AIR 1949 Cal 689, held that only natural persons, could be ascribed with intention or 'mens rea'. A juristic person such as a company could not be ascribed with criminal intent. Whereas the Bombay High Court differed in this aspect. In 'Esso Standard Inc. v. Udharam Bhagawandas Japanwalla' - (1975) Comp cas 16 (Bom) held that that a strict test of mens rea was required to locate or ascribe criminal responsibility of a company, on the concerned decision maker. The High Court relied on

the approved opinion of Lord Diplock whose view is that what natural persons are to be treated in law as being the company for the purpose of acts done in the course of its business, including the taking of precautions and the exercise of due diligence to avoid the commission of a criminal offence, is to be found by identifying those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company.

In 'Iridium India Telecom v. Motorola Inc.' - (2010) 14 (ADDL) SCR 591, the Supreme Court held that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea.

The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons.

In 'Religare Finvest Limited v. State of NCT of Delhi and another' - SC - Criminal Appeal No. 2242 of 2023, decided on 11.09.2023, Religare Finvest Limited ('RFL' for short) and its group companies viz., RHC Holding Private Limited and Ranchem Private Limited obtained short term loans from the Lakshmi Vilas Bank ('LVB' for short) for which four fixed deposits of the value of Rs.750 crores were furnished as security to the Lakshmi Vilas Bank. RFL felt that LVB had conspired with RHC Holding and Ranchem. Therefore Religare Finvest Limited filed a criminal complaint against Lakshmi Vilas Bank. An FIR was filed by Economic Offences Wing under Sections 409 and 120B of the Indian Penal Code. In the complaint, it was alleged that Lakshmi Vilas Bank debited an amount of Rs.723.71 crores from Religare Finvest Limited's current account for the default of RHC Holding Private Limited and Ranchem Private Limited.

In the meanwhile due to high net levels of Non-Performing Assets, inadequate Capital to Risk (Weighted) Average Ratio and Common Equity Tier-I Capital, two years of negative Return on Assets, and high leverage, the Reserve Bank of India placed Lakshmi Vilas Bank under 'Prompt Corrective Action'. Reserve Bank of India imposed moratorium on Lakshmi Vilas Bank under Section 45(2) of the Banking Regulation Act, 1949.

The Central Government directed for non voluntary amalgamation of Lakshmi Vilas Bank with DBS Bank, vide their order dated 25.11.2020, due to unstable economic condition of LVB. A supplementary charge sheet was issued impleading LVB through its Director as an accused along with the bank officials and RHC Holding Private Limited and Ranchem Private Limited. It is alleged that LVB obtained fixed deposits from RLF

@ 4.5% interest. The LVB lent the money at a rate of 10% p.a. without proper authorization from RLF. The loans advanced by LVB to RHC Holding and Ranchem against FDs of RFL were ultimately utilized by RHC Holding. In absence of sufficient documentation supporting explicit authorization from RFL led to the allegation that LVB facilitated the diversion of funds for the promoter's personal gain. LVB was benefited by earning Rs.115 crores, interest. It was alleged that the parties involved acted in connivance with each other and committed acts of commission and omission in furtherance of the conspiracy to cheat the complainant company.

DBS was issued a notice on 16.02.2021. DBS, being aggrieved against the notice, filed a Criminal Miscellaneous petition before Delhi High Court with the prayer to quash the supplementary charge sheet dated 12.02.2021 and summoning order dated 16.02.2021. The DBS alleged that LVB had ceased to exist due to the non-voluntary amalgamation scheme and that DBS should not face prosecution for the acts and omissions of the entity which it merged with, as directed by the Government of India and the RBI. Clause 3(3) of the Amalgamation scheme provides for the institution of criminal proceedings against officials of Lakshmi Vilas Bank and therefore, liability should not be attributed to the rescuer bank. The High Court quashed the summoning order against the DBS. The court directed the involved parties to seek clarification regarding the interpretation of Clause 3(3) of the scheme in respect of criminal proceedings constituted against transferor bank if be carried forward to transferee bank or not after the amalgamation from Reserve Bank of India. The High Court further held that the court stayed the summoning order issued on February 16, 2021, against DBS Bank till clarification was issued by Reserve Bank of India.

Being aggrieved against the above said order, DBS filed civil appeal before the Supreme Court. Religare Finvest Limited submitted the following before the Supreme Court-

> Criminal action cannot be taken against a company which is a nonexistence even though it is a separate entity. The earlier notion amongst the legal historians was that corporations in their corporate capacity were incapable of committing crimes such as felony, treason or perjury, rather, only the individual members were capable of doing so and could be held liable for the same. The members of the company increasingly began pooling in resources for initiating business ventures as well as to safeguard themselves for any future losses. Thereafter, once these corporations began owning property and engaging in business, they came to be recognized in law as person.

- The High Court ought not to have indefinitely stayed the summoning order, especially when it observed that quashing the summoning order against DBS would not be in public interest. The High Court denied such interim measure in its previous order dated 17.12.2021.
- The direction to approach Reserve Bank of India for clarification is beyond the scope of the original petition as DBS did not assert or seek relief in its quashing petition for the parties to approach the Reserve Bank of India for clarification.
- If the High Court deemed it necessary to seek Reserve Bank of India's view, it should have ideally impleaded Reserve Bank of India as a necessary party.
- The Reserve Bank of India cannot sit in appeal over the findings of the High Court.
- The criminal proceedings do not automatically abate upon the amalgamation of a company.
- Clause 3(3) of the scheme incorporates the notion of criminal accountability, and there is no such bar on transferring criminal liability onto the transferee bank.
- The High Court's decision essentially denies the petitioner the chance to pursue the case on merits, and instead, it necessitates involving an external body to interpret the amalgamation scheme.
- As the trial is in its early stages, an indefinite stay will further delay the trial process.

The DBS contended the following before the Supreme Court-

- Acts outlined in the charge sheet occurred well before the appointed date of the amalgamation, i.e., 27.11.2020.
- Lakshmi Vilas Bank was not implicated as an accused prior to the appointed date and was only added in the supplementary charge sheet.
- Before the amalgamation, Lakshmi Vilas Bank had no ties to DBS.
- Lakshmi Vilas Bank ceased to exist in terms of Clause 7(2) of the scheme of amalgamation.
- Only the actual wrongdoer can only be punished for its wrongdoing, and no vicarious criminal liability can be inherited by a transferee company.
- Non-voluntary scheme of amalgamation necessitated to safeguard the public interests, Lakshmi Vilas Bank ceased to exist and criminal proceedings against Lakshmi Vilas Bank shall abate.
- The transfer pertained to civil liability, with no provision concerning the continuation of criminal proceedings for the transferee company.
- Even in the case of a natural person where upon the demise of an accused person, criminal proceedings do not pass on to legal heirs or successors.
- While the Reserve Bank of India and the Central Government took proactive measures by formulating the Scheme under Section 45(7) of the Banking Act to safeguard the interests of Lakshmi Vilas Bank's depositors, employees, and others, another arm of the Government, represented by Respondent No.1, cannot vitiate the process by imposing criminal liability against DBS for the past actions of Lakshmi Vilas Bank.
- Religare Finvest Limited itself argued before the High Court that an interpretation from the Reserve Bank of India was necessary and that the Court should not make a determination on this matter.
- Subsequent to the Impugned Order, Reserve Bank of India through its letter dated 14.06.2023, provided clarification that criminal proceedings against the officials of the transferor bank do not get carried forward to the transferee.

The Supreme Court heard the submissions of the parties to this case. The issue to be discussed in this case was framed by the Supreme Court as to whether a transferee entity can be fastened with corporate criminal liability for the offences which the amalgamating entity- the erstwhile Lakshmi Vilas Bank is accused of.

The Law Commission, in its 41st and 47th Report, had stated that in every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only.

The Supreme Court noticed that a criminal liability of a company-

- is recognized where it can be attributable to individual acts of employees, directors or officials of a company or juristic persons;
- recognized even if its conviction results in a term of imprisonment;
- cannot be transferred *ipso facto*, except when it is in the nature of penalty proceeding;
- the legal effect of amalgamation of two companies is the destruction of the corporate existence of the transferor company (in this case, Lakshmi Vilas Bank); it ceases to exist;
- that apart, only defined legal proceedings, are succeeded to by the transferee company, which, in this case, is the DBS Bank.

The Supreme Court observed that clause 3 of the scheme provides that legal proceedings would be continued by or against the transferee bank. The proviso to this clause provides that where the officers of the company contravenes the provisions of the Act or scheme.

Every scheme of amalgamation is statutory and sanctioned under the Banking Act. It aims at securing larger public interest and health of the banking industry. The criminal liability of the individuals now attributed to DBS is actions of Anjani Kumar Verma, S. Venkatesh, Pradeep Kumar Parthsarathi Mukherjee. They were all officials of Lakshmi Vilas Bank. Their individual responsibility and accountability in criminal law, is remains unaffected by the amalgamation. Therefore, there is in fact, no involvement of DBS Bank, revealed in the charge sheet filed by the Delhi Police. In completely ignoring these aspects and proceeding on a rather superficial basis, the High Court, in the opinion of Supreme Court, fell into error.

The Supreme Court set aside the impugned judgment.

CONCLUSION

A transferee bank in a merger can be held accountable for corporate criminal liability arising from offenses committed by officials of the transferor bank prior to the merger of the two entities. The Religare judgment, as discussed above, serves as a reminder of the complexities surrounding corporate criminal liability and underscores the need for adopting a tailored approach in every consensual merger. It becomes paramount to shield the transferee party from any potential liabilities, assuming such party is independent of the past activities of the transferor entity.

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ARTICLE

Recent Amendments in Compliances: Combating Money Laundering In India

The righteousness of the financial system is seriously threatened by the money laundering acts and terrorism financing. The Financial Action Task Force (FATF) established in 1989 has been instrumental in setting up global standards and executing solutions to stop these illegal activities. In accordance with the recommendations of FATF, The Prevention of Money Laundering Act, 2002 ("PMLA") was passed in India and the Prevention of Money Laundering Rules were issued thereunder ("PML Rules") to accommodate the key juridical shell for prosecuting money laundering offences in India. PMLA puts in place a broad structure for Anti Money Laundering ("AML") compliance requirements befitting financial institutions, banking companies, intermediaries and persons dealing with a designated business or profession (collectively called as "Reporting Entities").

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INTRODUCTION

The righteousness of the financial system is seriously threatened by the money laundering acts and terrorism financing. The Financial Action Task Force ("FATF") established in 1989 has been instrumental in setting up global standards and executing solutions to stop these illegal activities. In accordance with the recommendations of FATF, The Prevention of Money Laundering Act, 2002 ("PMLA") was passed in India and the Prevention of Money Laundering Rules were issued thereunder ("PML Rules") to accommodate the key juridical shell for prosecuting money laundering offences in India. PMLA puts in place a broad structure for Anti Money Laundering ("AML") compliance requirements befitting financial institutions, banking companies, intermediaries and persons dealing with a designated business or profession (collectively called as "Reporting Entities"). AML refers to extant web of legislations, regulations and procedures aiming at unearthing disguised illicit funds and assets transformed as legal income and assets. The AML regulations in India are applied to numerous entities – companies, banks, crypto exchanges, foreign portfolio investors, Non-Governmental Organizations and trusts, etc. and narrow down the ease of transformation of such funds. The reporting entities have to ensure proper implementation of provisions of PMLA and PML rules and are necessitated to undertake specific AML measures namely, customer identification, enhanced client due diligence, maintenance of records, customer acceptance, reporting and tracking certain transactions.

Recently India had made amendments to its AML laws by expanding the scope of reporting entities to include the representatives of the company named as Director or proxy Nominee Director banking intermediaries and financial companies to aid the investigation agencies in revealing dubious transactions of shell companies. The Ministry of Finance, Government of India, vide its notification dated 03 May, 2023[1] made significant revisions to PMLA and widened its ambit. The key changes also include the expansion of the definition of proceeds of crime, which includes any property involved in money laundering or is connected to any offence under PMLA. Additionally certain amendments have added the Company Secretaries (CS), Chartered Accountants (CA) and Cost and Works Accountants (CWA) who are accountancy professionals. Nonetheless the lawyers and legal professionals are not brought within the amended definition of covered entities under the PMLA.

The three statutory bodies ("SRBs") which are, ICSI-Institute of Company Secretaries of India, ICAI- The Institute of Chartered Accountants of India and ICMAI-The Institute of Cost Accountants of India have role and duty in regulating the relevant persons who are qualified and entering in the said profession. Additionally they have to perform the roles of supervision, advising and monitoring (such as, enforcing the rules for ensuring high ethical and moral standards are sustained by the professionals practicing such professions) for ensuring the aspirations laid down in the PMLA and its rules are achieved in letter and in spirit. The following legal obligations cast on SRBs in relation to AML, Countering the Financing of Terrorism ("CFT") and Combating Proliferation Financing ("CPF"):

I. **To Understand, Mitigate and Manage Money Laundering/Terrorism Financing/ Proliferation Financing Risk** - SRBs ought to take crucial steps to

1. *Ministry of Finance, Department of Revenue, Notification No. S.O. 2036(E) issued on 03 May, 2023, Available at: https://egazette.gov.in/WriteReadData/2023/245631.pdf.*

spread awareness about and encourage compliance relating to legal provisions on AML, CFT and CPF by their members. SRBs must ensure that the norms and system are in apt place for taking action against the member who fails to comply with AML or CFT or CPF provisions.

II. **To Monitor and Supervise** – For effectively monitoring relevant persons the SRBs must take measures via, on-site and off-site supervision in accordance with the notifications/guidelines/ethical standards of SRBs.

III. **To frequently supervise AML/CFT compliances** – SRBs must dynamically set the AML/CFT supervision frequency in line with the identified risks and combine periodic and ad hoc reviews of AML?CFT supervision.

IV. The SRBs must communicate their regulatory expectations to the regulated members, which includes issuing guidance on suspicious transaction report filing with Financial Intelligence Unit– India ('FIU-IND') to relevant persons and issuing guidance on the procedures for Know your Customer, Client Due Diligence, sanctions screening, transaction monitoring, record keeping and review.

These notifications came in aftermath of allegations levelled against certain known companies and one of the pivotal catalyst is the well-known loan apps scam[2], wherein certain accounting professionals facilitated the institution of shell companies for these loan platform via, apps. These professionals used their office addresses, became directors and gained access of the bank accounts of these shell companies. Unfortunately the personal data of recipients of loan was compromised and this lead to grave concerns of the data security and privacy. The Indian Government in response took quick legal action and appropriate disciplinary actions against these involved professionals. For the prevention of recurrence of such scams and enhancing accountability. Further vide a notification issued by the Ministry of Finance on 09 May, 2023[3], noticeably broadened PMLA by bringing within the ambit of PMLA certain activities which are carried out in the normal course of business on behalf of or for a different person. These notifications unambiguously ensure that the practicing professionals abide in conformation with the PMLA provisions while carrying out critical financial transactions on behalf of their clients.

THE REVAMPED PROVISIONS

A. **Reporting Entities –** Certain obligations are imposed upon the 'Reporting Entities', which includes financial institutions, banking companies, intermediaries, virtual wallets and 'persons carrying on designated business or profession'. Further the concept of 'persons carrying on designated business or profession' is elaborated by including the individuals who are engaged in specific activities related to playing games of chance in cash or kind enveloping those related with casinos. Furthermore, the coverage extends to include Inspector-General of Registration appointed under the Registration Act, dealers in precious metals or stones, real estate agents, persons engaged in safekeeping and administering cash and liquid securities on behalf of others, and other activities which are designated by the Central Government via, notifications[4]. This implies that Central Government is the authority empowered to notify additional persons and activities to be covered under the ambit of PMLA. So, the Central Government has to play a proactive role and is empowered to adapt the legislations to changing state of affairs and addressing emerging risks in financial sector.

B. **Accounting Professonals and Financial Activities–** PMLA after the amendment, is applied to 'relevant persons' who are, practicing professionals who have obtained a certificate of practice as Chartered Accountants[5], Company Secretaries[6] and Cost and Works Accountants[7] when they carry out any financial transaction on behalf of their clients.[8] It is pertinent to note that the financial transactions[9] or the activities should be done in the course of their profession and mere felicitation is excluded. Financial transactions includes only the transactions involving money, hence, every transaction is not included. The exact scope of these financial activities is not defined, as a result there is lack of precision on these activities therefore, further clarifications in the interpretation are necessary for avoiding any ambiguity.

It is germane here to note that these issued notifications are not applicable to advocates and lawyers who in the course of their profession are undertaking such financial transactions on behalf of their clients. This is due to the client-attorney privileged confidential communication between lawyers and their clients as is granted to them as a fundamental principle of the legal profession.

C. **Certain Specific Activities Included Under The Purview of PMLA** – On 09 May, 2023 the Government of India issued another notification for including additional specific activities within

2. *Devesh K Pandey, "Enforcement Directorate chargesheet recounts misery of victims in Chinese Loan App Case", The Hindu, 18 March, 2023, Available at: https://www.thehindu.com/news/national/chinese-loan-app-case-enforcement-directorate-chargesheet-recounts-misery-of-victims/article66635357.ece.*

3. *Ministry of Finance, Department of Revenue, Notification No. S.O. 2135(E) issued on 09 May, 2023, Available at: https://egazette.gov.in/WriteReadData/2023/245764.pdf.*

4. *Section 2(1)(sa)(vi) of the Prevention of Money-laundering Act, 2002 (15 of 2003).*

5. *Chartered Accountant who obtains Certificate of Practice under Section 6 of the Chartered Accountants Act, 1949 (38 of 1949).*

6. *Company Secretary who obtains Certificate of Practice under Section 6 of the Company Secretaries Act, 1980 (56 of 1980).*

7. *Cost and Works Accountant who obtains Certificate of Practice under Section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959).*

8. *Ministry of Finance, Department of Revenue, vide, May 03, 2023 Notification- S.O. 2036(E).*

9. *List of certain financial transactions carried on behalf of the client are enumerated in the Notification No. S.O. 2036(E).*

the sphere of PMLA and notified that the reporting entities carrying on these specific activities on behalf of or for another are collectively called as 'Trust and Company Service providers'. These certain activities are listed below:

a. **Formation Agents** - The amendment has widened PMLA by including individuals acting as formation agents for the companies and limited liability partnerships. Nevertheless this provision is not applicable to activities undertaken by Advocates, Chartered Accountants, Company Secretaries and Cost Accountants in practice for the formation of these business entities to the extent of filing the declaration requisite under the Companies Act, 2013. Hence, this amendment ensures the enhancement of the regulation and oversight of the individuals engaged in the formation of these legal entities and also appropriately exempts the qualified professionals engaged in such activities in their professional capacity.

b. **Directors, Secretaries or Partners**- The PMLA now encompasses individuals acting as Directors, Secretaries or partners in companies, limited liability partnerships or firms who either directly or indirectly. However, the activities carried out by employees within the course of or in relation to their employment on behalf of their employers are explicitly excluded. This is to ensure that the employees performing their designated duties in the course of employment are not subject to PMLA provisions.

c. **Providers of Registered offices, Business Addresses, Correspondence Address, Accommodation or Administrative offices**- Individuals who provide registered offices, business address, correspondence address, accommodation or administrative office for companies, trusts or limited liability partnerships are now included under PMLA provisions. The exemption to this amendment exists for the activities associated with agreements of lease, sub-lease, tenancy or any other arrangement for the use of land or building or space and also such agreements should be subject to income tax deduction. It is ensured by this provision that individuals engaged in the activities of legitimate leasing on which income tax deductions are applicable are kept out of the purview of PMLA.

d. **Trustees and Nominee Shareholder**- The amendment now covers trustees for express trusts or other types of trusts and nominee shareholder acting on behalf of others. Nonetheless any activities carried out by the intermediaries like, share transfer agents, stock brokers, portfolio managers, merchant bankers, etc., are definitely excluded.

> Recently India had made amendments to its AML laws by expanding the scope of reporting entities to include the representatives of the company named as Director or proxy Nominee Director banking intermediaries and financial companies to aid the investigation agencies in revealing dubious transactions of shell companies. The Ministry of Finance, Government of India, vide its notification dated 03 May, 2023 made significant revisions to PMLA and widened its ambit.

COMPLIANCES FOR ACCOUNTING PROFESSIONALS UNDER THESE AMENDMENTS

The contemporary developments in the PMLA have delivered a new spur of duties and commitments for the reporting entities within its expanded ambit to fight money laundering and terrorist financing. The compliances to be made include stricter due diligence mechanisms, improvised reporting requisites and additional monitoring and record keeping compliances. Reporting entities have to strictly comply and monitor client identity maintain records. For enhancing transparency of clients of reporting entities, Rule 10 was amended, according to which the reporting entities must determine if a client is acting on behalf of the beneficial owner and must also ensure by checking the beneficial owner's identity at the initial stage of an account-based relationship with such client.[10]

The revised regulations now require the accounting professionals, such as CA, CS and CWA for undergoing a Know Your Customer ("KYC") prior to initiating any work on behalf of their clients. This shows that if the accountants manage their clients' finances then they are now considered as reporting entities. As per these new regulations the accountants must carry out client due diligence (CDD) on the clients' ownership and their financial status.[11] The source of their funds and documents relating with the purpose of transaction must also be seen and recorded by the accountants.

The financial transactions notified by the Central Government and which are covered by May 03, 2023 notification comprise acquisitions and selling of immovable properties, management of clients' finances, securities and other assets, management of savings or securities account, organization of contributions for crating, operating or managing companies, limited liability partnerships or trusts and acquisition and selling of business entities.

10. *Rule 10 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 was amended by the Ministry of Finance via, notification issued on 04 September, 2023, Available at: https://fiuindia.gov.in/pdfs/AML_legislation/AMLCFTguidelines10032023.pdf.*

11. *Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 provides for 'Client Due Diligence'.*

COMPLIANCES FOR REPORTING ENTITIES UNDER THESE AMENDMENTS

The reporting entities have to implement a comprehensive structure and strategies for identifying their clients and the beneficial owners, which includes collection of requisite documents and adopting advanced identity verification apparatus. Rule 7(3) of the PML Regulations cast obligations on reporting entities for evolving internal mechanisms to fulfill the purpose of detecting transactions as are specified under Rule 3(1) and to furnish information about these transactions to FIU-IND.[12] Identity verification can be ensured via, offline Aadhaar and Passport verification or validation of other official documents as are notified by the Central Government.

The reporting entities are required to maintain a record of all activities and transactions in such a manner that allows for reorganization of all individual transactions. Records of clients and beneficial owner identity, accounting documents and business correspondence are also the requisites to be maintained the reporting entities. Except as otherwise authorized by any other applicable laws, the information and records that are retained, confirmed or provided must be kept private and confidential. These records should be maintained for five years from the date of transaction or five years after the business relationship or account is closed, whichever is later.

IMPLICATIONS OF THE AMENDMENTS

Practicing CA, CS and CWA have been brought under the purview of money laundering law by the Finance Ministry though lawyers and legal professionals are explicitly excluded. By excluding advocates and lawyers, the PMLA Amendments have acknowledged the importance of preserving privilege of client-attorney communication and upholding legal confidentiality principle, thereby fosters trust and facilitates open communication. The amendment positively addresses the inclusion of formation agents but it does not provide a clear clarification of the term 'formation agents'. The PMLA strengthens the measures against money laundering by focusing on those individuals who have authority or influence within business organizations and demarcates between individuals who are employees and those having key decision are making roles. The PMLA targets illicit activities while allowing unhindered proceedings legitimate business operations. The amendment makes a distinction between trustees, nominee shareholders and intermediaries while distinguishing between various roles and responsibilities in the financial set-up.

Besides verifying clients' identity before each transaction, the reporting entities are also required to examine the financial position, ownership and source of the funds their clients as well as recording the purpose of transaction and proposed relationship between the parties. The reporting entity cannot proceed further if their client fails fulfilling verification stipulation. This supplemented due diligence is not required for all transactions, rather it is for specified transactions, namely, cash withdrawals or deposits, transactions involving foreign exchange, etc.

Upon the satisfaction of reporting entities that the transaction is suspicious, then they have to report about it to the FIU-IND not later than seven working days from

the date of suspecting such transaction.[13] The reporting entities have to register themselves on the FIU-IND Portal: FINNET 2.0 and the appointment of a Designated Director and Principal Officer have to made in this behalf. FIU-IND is the national central agency vested with the responsibility of receiving, processing and analysing information associated with suspected financial transactions.[14] Then this information is disseminated to Enforcement Agencies and Foreign FIUs. This has been highlighted by the recent FIU–IND notification released. In order to execute and perform the said obligation the relevant persons must carry out financial transactions and they must necessarily have a robust AML/CFT/CPF. Intelligence sharing and information sharing agreements between public authorities such as, law enforcement agencies and FIU-IND is pivotal for combating money-laundering/terrorism financing/proliferation financing. This relationship should be secure, robust and subject to legal compliances. The information to be shared could be risks of money-laundering/terrorism financing/proliferation financing, case studies of money-launderers and terrorist financers, feedback on suspicious transaction reporting and sharing targeted confidential information, etc.

CONCLUSION

The Government of India took a significant step forward in bolstering financial security of India and waging a war against money-laundering and related financial crimes. Aligning with the propositions of the FATF, India has demonstrated its commitment to international regulations and combating illicit activities which undermine the integrity of the global financial structure. A paradigm has shifted with these developments to AML in India which requires the reporting entities to adopt profuse all-encompassing compliances and procedures. Nonetheless, it is indispensable for the Government to provide intelligible definitions and guidelines which leave no room for ambiguity. Ample amount of resources and training should be provided to accounting professionals, reporting entities and law enforcement agencies for implementing these provisions of the amendments effectively. Continuous and frequent monitoring and evaluations must be in place for ensuring compliances and identifying areas of refinement. Though the recent amendments to PMLA are a positive initiative, it is at the same time crucial to recognize the prevalent gaps and to work towards their resolution.

12. *Rules 7(3) and 3(1) of the Prevention of Money-laundering (Maintenance of Records) Rules 2005.*

13. *Detailed under Rule 3(1) the Prevention of Money-laundering (Maintenance of Records) Rules 2005.*

14. *Rule 8(2) read with Rule 3(1)(D) of the Prevention of Money-laundering (Maintenance of Records) Rules 2005.*

ARTICLE

Unveiling Due Diligence and Internal Control Imperatives in India's PMLA Compliance

The PMLA unfurls as a regulatory framework designed to shield the Indian financial domain from the insidious activities of money laundering and terrorist financing. Enacted in 2002, this legislative edifice serves as the vanguard against financial malfeasance, orchestrating a symphony of regulatory measures to fortify the nation's economic integrity.

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INTRODUCTION

In the intricate landscape of financial regulations in India, the Prevention of Money Laundering Act (PMLA) serves as a stalwart shield against the nefarious activities of money laundering and terrorist financing, requiring financial institutions to implement due diligence and internal controls since its enactment in 2002. This article embarks on a comprehensive journey through the intricacies of the PMLA, focusing on the vital roles of due diligence and internal controls. From unraveling Customer Due Diligence (CDD) complexities to exploring regulatory guidelines, the exploration aims to emphasize the significance of these practices in safeguarding the financial system's integrity, considering the evolving complexity of financial transactions.

UNDERSTANDING THE PMLA FRAMEWORK

A. Overview of the PMLA

The PMLA unfurls as a regulatory framework designed to shield the Indian financial domain from the insidious activities of money laundering and terrorist financing. Enacted in 2002, this legislative edifice serves as the vanguard against financial malfeasance, orchestrating a symphony of regulatory measures to fortify the nation's economic integrity.

B. Purpose and Objectives

At its core, the PMLA is a sentinel with the singular purpose of curtailing money laundering and deterring channels that fund terrorist activities. Its objectives go beyond legalities, urging financial institutions to adopt measures that comply with the law and act as bastions of ethical financial practices.

C. Necessity of Due Diligence and Internal Controls

In the dynamic landscape of financial transactions, due diligence and internal controls are not just regulatory obligations but indispensable tools against financial malfeasance. The PMLA places these mechanisms at the forefront, recognizing their necessity in maintaining the sanctity of the financial ecosystem. Through due diligence, the identities of financial actors are scrutinized, and internal controls act as custodians, ensuring the resilience of the financial infrastructure against illicit activities.

D. Historical Background

PMLA, origins trace back to international initiatives, recognizing that addressing financial malfeasance required a comprehensive legislative response. The historical journey of the PMLA reflects a united global effort to establish barriers against the illicit flow of funds.

1. **PMLA Enactment in India:**
    - Enacted in 2002, the Prevention of Money Laundering Act (PMLA) in India aims to prevent money laundering and facilitate the confiscation of illicitly obtained property.
    - The act applies to a wide spectrum, including individuals, companies, and partnership firms.
2. **Amendments in 2023:**
    - Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023 was introduced on March 7, 2023, by the Ministry of Finance, Department of Revenue, expanding the scope of money laundering provisions.
    - Notably, NGOs are now included and Politically Exposed Persons (PEP) are defined as individuals with prominent public functions in foreign countries.
    - The amendments aim to strengthen regulations, particularly focusing on client due diligence and record-keeping.

3. **Further Revisions in May 2023:**
    - On May 3, 2023, additional revisions to the PMLA, 2002, were made.
    - These revisions extend the application of the money laundering law to include Practicing Chartered Accountants (CAs), Company Secretaries (CSs), and Cost and Management Accountants (CMAs).
    - The update mandates these professionals to report suspicious transactions, enhancing scrutiny and accountability.

E. Legal and Regulatory Framework in India

Through amendments, the legislation aligns with broader Indian financial regulations, engaging with entities like the Reserve Bank of India (RBI) and other regulatory bodies overseeing and enforcing the PMLA:

1. **Financial Intelligence Unit-India (FIU-IND):**
    - **Responsibility:** FIU-IND is the central national agency responsible for receiving, processing, analyzing, and disseminating information related to suspicious financial transactions.
    - **Role:** Implementing the PMLA and ensuring compliance with its provisions.
    - **Activities:** FIU-IND receives suspicious transaction reports (STRs) from various financial institutions and forwards them to relevant law enforcement agencies for further investigation.
2. **Reserve Bank of India (RBI):**
    - **Responsibility:** RBI, as India's central banking institution, plays a key role in shaping and enforcing guidelines related to financial transactions, including those under the PMLA.
    - **Role:** Issues guidelines and regulations that financial institutions must adhere to in implementing due diligence and internal control mechanisms.
    - **Activities:** RBI's guidelines cover aspects such as customer due diligence (CDD), transaction monitoring, and reporting requirements.
3. **Enforcement Directorate (ED):**
    - **Responsibility:** ED, under the Ministry of Finance, is responsible for enforcing economic laws and fighting economic crimes, including those related to money laundering.
    - **Role:** Authority to investigate and prosecute offenses under the PMLA.
    - **Activities:** ED can impose penalties on reporting entities for non-compliance with the PMLA, and it has the power to freeze and seize assets suspected to be involved in money laundering or terrorist financing activities.
4. **Securities and Exchange Board of India (SEBI):**
    - **Responsibility:** SEBI regulates the securities market in India, and it is involved in implementing PMLA guidelines related to securities transactions.
    - **Role:** Issues guidelines and regulations for entities under its purview to ensure compliance with PMLA provisions.
5. **Other Regulatory Authorities:**
    - Various other regulatory bodies, including insurance regulators, pension regulators, and sector-specific regulators, contribute to the implementation of PMLA guidelines in their respective domains.

DUE DILIGENCE IN PMLA COMPLIANCE

A. Customer Due Diligence (CDD)

1. Importance and Significance

Customer Due Diligence (CDD) goes beyond a procedural formality; it acts as the guardian at the gate, safeguarding the integrity of financial transactions. The crucial role lies in revealing the proper identity of individuals. By scrutinizing customers, CDD serves as the primary defense against the infiltration of illicit funds and potential terrorism financing. Its importance surpasses regulatory compliance; it is the foundation of a resilient financial system.

2. Process of Verifying Customer Identity

Verifying customer identity is a meticulous activity for financial institutions, involving the authentication of individuals behind transactions. This process includes collecting and verifying critical identification data such as names and addresses and other defining information. Serving as a gatekeeper, the verification ensures transparency, resilience, and guards against undercover maneuvers exploiting the financial ecosystem's vulnerabilities.

3. Guidelines and Regulations

Customer Due Diligence operates within the framework of guidelines, prominently set by regulatory bodies like the Ministry of Finance and RBI. These guidelines outline information collection, verification procedures, and the identification of beneficial owners.

Guidelines to be followed: Financial institutions, reporting entities, and professionals in India are required to follow the guidelines and regulations issued by the aforementioned authorities. They cover areas such as customer due diligence, reporting of suspicious transactions, risk assessments, and internal control mechanisms. Adherence to these guidelines is crucial for effective implementation of the PMLA and for preventing money laundering and terrorist financing activities.

B. Regulatory Compliance

1. RBI Guidelines

RBI plays a crucial role in shaping the due diligence landscape under the PMLA. Through its guidelines, it serves as the architect of a robust framework, establishing standards for financial institutions. These guidelines go beyond regulatory benchmarks; they embody a collective commitment to financial probity. Financial institutions, as custodians of economic integrity, follow these guidelines, ensuring compliance with the RBI's vision for a secure and transparent financial ecosystem.

2. Obtaining and Verifying Customer Identification Data

The crux of regulatory compliance lies in the meticulous process of obtaining and verifying customer identification data. Financial institutions, guided by RBI directives, are mandated to collect information, ranging from basic demographic details to more intricate facets of identity. This process is a pledge to ensure that every financial actor is known and accounted for. Verification, a meticulous act of scrutiny, validates the authenticity of this data, fortifying the financial system against potential infiltrations by those who seek to cloak their financial activities.

3. Identification of Beneficial Owners

Beyond individual identities, due diligence delves into the intricate layer of identifying rightful beneficial owners, adding complexity. This process extends financial institutions' vigilance, acknowledging that true transparency requires a comprehensive understanding of financial actors. In the regulatory framework directed by the RBI, these components interweave, creating a point of due diligence that aligns with legal obligations and embodies a commitment to ethical financial stewardship.

INTERNAL CONTROL MECHANISMS

A. Risk Assessment

1. Definition and Significance

Definition: Risk assessment in the context of the PMLA is the systematic process of identifying, evaluating, and mitigating risks associated with customers, products, services, and transactions within financial institutions.

Significance: It plays a crucial role in proactively identifying vulnerabilities within the financial system. Financial Institutions, through comprehensive evaluations, can customize due diligence and monitoring efforts, focusing on areas prone to money laundering and terrorist financing activities. This proactive approach acts as a preemptive strike against illicit financial maneuvers.

> At its core, the PMLA is a sentinel with the singular purpose of curtailing money laundering and deterring channels that fund terrorist activities. Its objectives go beyond legalities, urging financial institutions to adopt measures that comply with the law and act as bastions of ethical financial practices.

2. Conducting Risk Assessments

Case: In the case of a high-net-worth individual (HNWI), a financial institution's risk assessment involves scrutinizing financial transactions, business dealings, and associations. If the assessment uncovers cross-border transactions with countries having weak financial regulations, the institution implements enhanced due diligence. This example underscores how risk assessments tailor preventive measures to specific scenarios.

B. Monitoring

1. Real-time Transaction Monitoring

Definition: Real-time transaction monitoring involves the continuous scrutiny of financial transactions as they occur, utilizing automated systems to identify patterns or anomalies that may indicate illicit activity.

Case: In a real-time monitoring scenario, a financial institution uses sophisticated algorithms to analyze a customer's transaction history. The system flags a series of unusually large cash withdrawals and wire transfers to offshore accounts. The real-time monitoring system immediately alerts compliance officers, allowing them to investigate and take appropriate action promptly.

2. Identifying Suspicious Behavior

Case: Consider a customer who, historically, has engaged in moderate financial activities but suddenly initiates a flurry of transactions involving large sums of money with no apparent logical purpose. This change in behavior triggers suspicion. Internal controls prompt the institution to delve deeper into the customer's activities, ensuring that the sudden spike is thoroughly scrutinized for potential money laundering.

C. Reporting

1. Reporting to FIU

Definition: Reporting to the Financial Intelligence Unit (FIU) involves the submission of Suspicious Transaction Reports (STRs) for transactions or activities that raise suspicions of money laundering or terrorist financing.

Case: A bank encounters a series of transactions involving a business client that appear to be structured to avoid triggering reporting thresholds. The compliance team investigates further and, upon finding irregularities indicative of potential money laundering, files an STR with the FIU. This reporting initiates a more in-depth investigation by law enforcement agencies.

2. Role of Internal Reporting Mechanisms

Case: An employee at a financial institution notices unusual behavior during the customer on-boarding process, where a client provides inconsistent identification documents. The employee promptly reports this to the internal reporting mechanism, triggering an internal investigation. This mechanism acts as a frontline defense, catching potentially suspicious activities before they escalate.

D. Training

1. Employee Awareness

Definition: Employee awareness involves ensuring that all staff members are cognizant of the risks associated with money laundering and terrorist financing and are equipped to identify and report suspicious activities.

Case: A bank conducts regular training sessions for its employees, educating them on the latest money laundering techniques and typologies. An employee in the compliance department, through this awareness, identifies a customer attempting to structure transactions to avoid detection. The employee's vigilance stems from the training received.

2. Training Programs

Case: A financial institution invests in comprehensive training programs that include real-life case studies, interactive workshops, and scenario-based simulations. Employees are exposed to practical situations, enhancing their ability to recognize and respond to potential money laundering activities effectively.

E. Record Keeping

1. Comprehensive Records

Definition: Comprehensive record-keeping involves maintaining detailed and accurate records of customer transactions, identification data, and other relevant information.

Case: A financial institution maintains meticulous records of all transactions, including the source of funds, purpose, and beneficiaries. This comprehensive documentation proves invaluable during audits and investigations, providing a clear trail of financial activities.

2. Duration of Record Retention

Case: In adherence to regulatory requirements, a bank retains customer transaction records for a minimum of five years from the date of the transaction. This extended retention period ensures that historical data is readily available for scrutiny during audits or investigations, contributing to the institution's commitment to transparency.

Through these internal control mechanisms, organizations not only comply with regulatory requirements but actively fortify their defenses against the ever-evolving landscape of financial crime.

ROLE OF FIU IN PMLA

A. Overview of FIU

1. Responsibilities

The Financial Intelligence Unit (FIU) is the central nerve center in combating money laundering and terrorist financing. It receives and processes, analyzes, and disseminates information about suspicious financial transactions. The FIU's role goes beyond passive reception; it acts as a proactive guardian, initiating actions to prevent illicit financial activities.

2. Receiving and Processing STRs

As the repository for Suspicious Transaction Reports (STRs), the FIU is instrumental in aggregating information from financial institutions. It processes these reports, extracting critical insights crucial for a comprehensive understanding of emerging financial threats. The timely and efficient processing of STRs constitutes the cornerstone of the FIU's operational efficacy.

B. FIU Data Analytics

1. Techniques and Tools

The FIU employs cutting-edge data analytics techniques and tools to filter through vast datasets. Utilizing data mining, pattern recognition, and predictive modeling, these methodologies empower the FIU to discern patterns indicative of money laundering activities.

In 2020, using data analytics tools, the FIU revealed a money laundering case involving a shell company. The analysis of the company's financial transactions identified irregularities indicative of illicit activities. Data analytics tools helps a lot in uncovering and preventing financial crimes.

2. Diverse Reporting and Verification

FIU's data analytics prowess is not confined to STRs alone. It extends to other crucial reports, including cash transaction reports (CTRs), counterfeit currency reports (CCRs), cross-border wire transfer reports

(CBWTRs), and non-profit transaction reports (NTRs). By subjecting these diverse data sources to rigorous analysis, the FIU broadens its scope, identifying potential threats across multiple dimensions that may go unnoticed through conventional means. The symbiotic relationship between the FIU and data analytics emerges as a linchpin in the overarching strategy to maintain the integrity and prevent its exploitation for illicit activities.

PREVENTING MONEY LAUNDERING: ROLE OF PROFESSIONALS

A. Responsibilities of Reporting Entities

1. Regulatory Compliance

Company Secretaries (CS), Chartered Accountants (CA), and Cost Accountants (CMA) play a crucial role in regulatory compliance under the PMLA. Beyond a legal obligation, their commitment ensures ethical financial practices and safeguarding the financial system. For instance, a Company Secretary ensures rigorous client on-boarding in line with PMLA, encompassing due diligence, verification of beneficial owners, and reporting obligations, acting as a protective shield against money laundering.

2. Internal Control Mechanisms

Reporting entities, including CS/CMA/CAs, are instrumental in implementing internal control mechanisms. This includes policies, risk assessments, monitoring, and reporting, serving as a proactive defense against money laundering. CS/CMA/CA designs risk assessment frameworks and monitors transactions to detect potential money laundering. Adhering to internal controls ensures transparent and compliant financial activities.

B. Penalties for Non-Compliance

1. Legal Consequences

Non-compliance with the PMLA can lead to severe legal consequences for reporting entities. The Enforcement Directorate can impose monetary penalties, and willful violations may result in imprisonment for individuals. This underscores the gravity of adhering to regulatory requirements. For instance, financial institutions failing to conduct proper customer due diligence could face substantial penalties, legal steps.

2. Reputational Impact

Non-compliance carries a significant reputational impact. Reporting entities risk losing clients and business opportunities due to a damaged reputation. The consequences of tarnished credibility extend beyond immediate penalties, potentially leading to long-term setbacks for the professionals involved. Due to negligence in reporting suspicious transactions, CS/CA/CMAs may have to face public scrutiny and media attention. The reputational damage can affect

the individual's practice and create a ripple effect in the broader professional community, highlighting the critical importance of maintaining an ethical reputation in the financial realm.

GLOBAL COOPERATION AND INDIA'S ANTI-MONEY LAUNDERING EFFORTS

A. India's Anti-Money Laundering Landscape

1. Financial Action Task Force (FATF) Membership

India actively engages in global efforts against money laundering and terrorist financing as a member of the Financial Action Task Force (FATF). The FATF, a global standard-setting watchdog, collaborates with nations to strengthen anti-money laundering measures. India aligns with FATF recommendations, amending the PMLA to address evolving financial challenges.

2. Evaluation of India's Regime

Periodic evaluations by the FATF serve as benchmarks for India's anti-money laundering and counter-terrorist financing regime. Acknowledging India's progress in fortifying its regulatory framework, the evaluations provide constructive feedback, facilitating further enhancements. This underscores India's policy to international cooperation in combating financial crimes.

B. Global Cooperation

1. Interconnected Financial Systems

Recognizing the cross-border nature of financial crimes, India actively collaborates with other nations to combat money laundering. Joint operations involving Indian and international law enforcement agencies dismantle transnational money laundering networks, highlighting the efficacy of global cooperation. Information-sharing agreements play a crucial role in facilitating these operations.

2. Global Reporting & Shared Responsibilities

Through international channels, India may share information on suspicious transactions and cooperate with other nations in investigating and prosecuting individuals involved in money laundering. Also,

India actively participates in international forums to share best practices, contribute to capacity-building initiatives, and learn from the experiences of other nations in the global fight against money laundering.

INTERNAL CONTROLS: SAFEGUARDING AGAINST MONEY LAUNDERING

A. Ensuring Compliance through Internal Control Mechanisms

1. Risk-Based Approach

Definition: A risk-based approach involves tailoring internal control mechanisms to the specific risks associated with customers, products, services, and transactions.

Case: Financial institutions, through risk-based approach, identify high-risk customers engaging in complex transactions. They enhance monitoring and reporting mechanisms for these customers, aligning internal controls with the elevated risk level.

2. Regular Audits and Governance

Importance: Regular audits and governance ensure the ongoing effectiveness of internal control mechanisms. They provide a systematic evaluation of adherence to policies and procedures.

Case: An external audit of a bank's internal controls reveals gaps in the monitoring system. The governance board mandates immediate corrective actions, illustrating the dynamic role of audits and governance in reinforcing compliance.

B. Emerging Technologies in Internal Controls

1. Role of Technology in Due Diligence

Impact: Technology, including artificial intelligence (AI) and data analytics, revolutionizes due diligence processes. It enhances the efficiency and accuracy of customer identification and risk assessment.

Case: An accounting firm adopts AI-driven tools to streamline customer due diligence. The technology not only accelerates the process but also identifies patterns in client data, strengthening the firm's ability to assess risks.

2. Blockchain and Transaction Transparency

Innovation: Blockchain technology, with its decentralized and transparent ledger, introduces a new dimension to transaction transparency. It reduces the risk of manipulation and ensures an immutable record of financial activities.

Case: Financial institutions, leveraging blockchain, enhance transparency in cross-border transactions. The technology provides an unalterable record, reducing the risk of fraudulent activities often associated with complex international transactions.

TECHNOLOGY IN PREVENTING MONEY LAUNDERING: A PARADIGM SHIFT

A. Artificial Intelligence (AI) in AML Compliance

1. Enhanced Risk Assessment

Application: AI algorithms analyze extensive datasets to detect subtle patterns indicative of money laundering risks. This boosts the accuracy of risk assessments, enabling financial institutions to proactively address evolving threats.

Case: AI-driven risk assessment tools detect unusual transaction patterns in real-time, triggering immediate investigation. The system adapts its risk models through continuous learning from historical data, providing a proactive approach to risk mitigation.

2. Automated Customer Due Diligence (CDD)

Efficiency Gains: AI automates the customer due diligence process, expediting identity verification and background checks. This not only improves operational efficiency but also ensures thorough scrutiny, reducing the risk of on-boarding high-risk individuals.

Case: Financial institutions employ AI-powered software to verify customer identities by cross-referencing multiple databases. The system flags inconsistencies, prompting manual review only when necessary, streamlining the on-boarding process.

B. Data Analytics for Detecting Anomalies

1. Pattern Recognition

Functionality: Data analytics tools scrutinize large datasets to detect unusual patterns that may signify money laundering activities. This goes beyond rule-based systems, allowing for the identification of complex, non-linear relationships.

Case: Using data analytics, banks identify a network of seemingly unrelated transactions that collectively form a sophisticated money laundering scheme. The system's ability to recognize intricate patterns unveils activities that traditional methods might overlook.

2. Predictive Modeling for Trend Analysis

Proactive Detection: Predictive modeling anticipates future trends based on historical data, enabling early detection of potential money laundering activities and to intervene before illicit schemes gain momentum.

Case: Financial regulatory bodies employ predictive modeling to forecast emerging trends in the financial sector. The analysis reveals a surge in a specific type of transaction used for money laundering, prompting preemptive regulatory measures.

In the ever-evolving landscape of financial crime, the integration of AI and data analytics heralds a

paradigm shift. These technologies not only enhance the effectiveness of anti-money laundering measures but also enable a proactive stance against emerging threats.

CHECKPOINT FRAMEWORK FOR SAFEGUARDING

1. **Customer Due Diligence (CDD) and Reporting:**
   - Implement enhanced CDD for clients.
   - Identify and verify clients as PEPs and include NGOs.
   - Ensure timely reporting of suspicious transactions to the FIU.
2. **Internal Controls and Risk Assessment:**
   - Conduct updated risk assessments.
   - Strengthen transaction monitoring systems.
   - Provide comprehensive training to employees.
3. **Record Keeping and Documentation:**
   - Maintain thorough documentation.
   - Ensure compliance with record retention requirements.
4. **Compliance and Governance:**
   - Regularly update internal policies.
   - Strengthen board oversight of AML and CTF measures.
5. **Technological Integration:**
   - Adopt AI and data analytics for enhanced due diligence.
6. **International Collaboration:**
   - Actively engage with global forums.
7. **Continuous Monitoring and Adaptation:**
   - Stay vigilant for regulatory updates.
   - Conduct periodic reviews.

CONCLUSION

Safeguarding against financial crimes necessitates a holistic approach, blending due diligence and internal controls as the linchpin against money laundering. Technological advancements, embracing AI, data analytics and blockchain, offer transformative tools to counter emerging threats. Global collaboration, exemplified by India's engagement with the FATF, underscores the collective commitment to prevent financial wrongdoing. Compliance is vital for reporting entities, and beyond legal obligations they need to play guardian role ensuring financial system resilience. Non-compliance not only invites legal repercussions but also jeopardizes reputation. A call to action urges adaptability to regulatory changes, technological preparedness, and sustained global collaboration for a robust defense against the ever-evolving landscape of money laundering and financial crimes.

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ARTICLE

Decoding Whistle Blowing Policies of Indian Companies

Whistle blowing mechanism to expose frauds and other wrongdoings was legislated in India by the Indian Companies Act, 2013. Section 177 (Clauses 9 and 10) of the Act states that every listed company (and the classes of companies as prescribed) shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. While the regulatory framework on whistle blowing laid down by the Indian Companies Act and the SEBI Regulations are followed by the companies as per the rulebook, the quality of policies varies considerably across the companies. What is lacking in most policies is the goal of promoting a culture of ethical values to encourage whistle blowers, to communicate and explain the whistle blowing policy to the employees at all levels.

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INTRODUCTION

Whistleblowing, an integral part of Corporate Governance in exposing corruption, frauds, and other wrongdoings has emerged as an effective mechanism of spotting questionable practices of corporations. Protection of whistle-blowers is a *sine qua non* of the whistleblowing which has been recognized globally by enacting laws to protect whistle-blowers against retaliation. UK was one of the first European countries to legislate on the protection of 'whistle-blowers'. Public Interest Disclosure Act, 1998 (PIDA) regarded as an 'exemplary piece of legislation'[i]. PIDA applies to every employee in the UK whether they are in the private, public or the voluntary sector and covers workers, contractors, trainees, agency staff, homeworkers, professional and police officers. It sets out a framework for public interest whistleblowing and protects workers from detrimental treatment or victimization from their employer if, in the public interest, they blow the whistle on wrongdoing.

US has been at the forefront of legislating comprehensive laws to encourage and protect corporate whistle-blowers[ii]. Sarbanes-Oxley (SOX) Act, 2002 introduced many provisions to facilitate and protect corporate whistle blowers who report financial reporting and securities violations. The Act requires listed US companies to establish internal whistleblowing systems, casting responsibility on the audit committee of listed companies to 'establish procedures for the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters and the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters' *[Section 301(m)(4)].*

India presently does not have a separate piece of legislation to address the issue of whistleblowing. The Narayan Murthy Committee on Corporate Governance appointed by the Securities and Exchange Board of India (SEBI) in 2002 proposed that a whistle blower policy should be made mandatory for listed companies in India. However, after stiff resistance from the corporate sector, it was made a non-mandatory requirement. Eleven years later, by the Indian Companies Act, 2013 which mandated listed companies to establish whistleblowing mechanism. Section 177 (Clauses 9 and 10) of the Act states that

every listed company (and the classes of companies as prescribed) shall establish a vigil mechanism for Directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. It further mandates adequate safeguards against victimization of persons using such a mechanism. The Act requires details of vigil mechanism to be disclosed on the company's website and in the report of the Board of Directors. Regulation 22 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations] also reiterates the provisions of Section 177 of the Companies Act, 2013.

This article is based on content analyses of the top 100 listed Indian companies attempts to de-code the whistleblowing policies of the Indian companies to deduce variations in the tone, coverage, conditions, reporting media and guidelines of protected disclosure, and more importantly protection provided against retaliation. The study is first in the Indian context to document whistleblowing practices in India.

DECODING WHISTLEBLOWING POLICIES OF INDIAN COMPANIES

Nomenclature/Title of the Whistleblowing Policy

The title of the whistle blowing (WB) policy suggests underlying intentions and signals the scope of the policy. The most common titles used by the Indian companies were 'Whistleblowing/Whistle Blower Policy'; 'Vigil Mechanism Policy'; and 'Whistle Blower/ Vigil Mechanism Policy'. A few companies had the nomenclatures like 'Integrity Policy'; 'Ombudsperson Policy'; 'Ethical View Reporting Policy'; and 'Speak Up' Policy'. The titles like "Direct Touch" "Non -Retaliation Policy"; "Tell Us"; "Whistleblowing Compliance Policy"; and "Group Integrity Whistleblowing Policy" have also been adopted by a very few companies. While it is generally in line with the global nomenclatures[iii], the title 'vigil mechanism' is in consonance with the nomenclature prescribed by the Indian regulations.

General Content and Purpose of the Policy

The presence of WB policy extends/infers the organisational support to the internal reporting process. It is positively associated with trust in the management and ethical climate in the organisation[iv]. It also increases the likelihood of internal whistle blowing and makes management accountable for their handling of whistle blower concerns.

The analyses of the top 100 Indian listed companies decode that 74 percent of the companies expounded the objective or purpose of the policy with statements like, 'to provide an environment that promotes responsible and protected whistleblowing'; 'to provide a platform and mechanism for the employees and Directors to voice genuine concerns. More than 50 percent of the companies clearly articulated the process and the procedure to strengthen the internal whistleblowing mechanism. The policies also notified the definitions of keywords like, 'Protected Disclosure', 'Act', 'Alleged Wrongful Conduct', 'Audit Committee', 'Disciplinary Action', 'Good Faith', 'Employee' and others.

The assiduous analyses of the policies show a lackadaisical attitude of two-third of the companies to the internal reporting process evident from the fact that only 35 percent of the companies communicated their employees about the WB policy. This is further vindicated by our analysis that nearly 50 percent of the companies did not lay down the WB policy and procedures in clear terms. While the Indian Companies Act, 2013 and the SEBI regulations mandate setting-up of vigil mechanism to address whistle blower complaints, more clarity is required on the implementation of whistleblowing policies and procedures.

Tone of Policy

The tone is a fundamental element in whistleblowing policy wherein the language of the policy like reporting is 'a requirement', or 'a duty', or 'a responsibility' may give rise to promissory obligations and contractual rights through employment contract. The tone of the WB policy *inter se* indicates whether the company encourages and supports the policy which cannot be prescribed by the regulations. The content analyses of WB policies of Indian companies overwhelmingly point out that the policies were laid down to comply the requirement of Section 177 (Indian Companies Act, 2013) and the SEBI (Listing Regulations and Disclosure Requirements) Regulations, 2015. Only a little above 40 percent of the companies encouraged raising of concern about actual or suspected misconduct to the management as everyone's duty, obligation, or responsibility to support compliance programme**.** These policies stated, 'employees are encouraged to report'; 'envisages for employees to report'; 'expectations from employees'; or 'to facilitate employees to report'.

Issues/Violations reported

The important question in WB policy is, 'what are the wrongdoings to be reported'? Wrongdoing is 'a conduct falling along a spectrum of behaviour ranging from serious illegality to unprofessional or improper behaviour in the organisation'. Table 1 presents a detailed analysis of WB policies of Indian Companies in this regard.

Table 1: Issues/Violations reported

Issues	Percent of companies
Violations of code or internal policies	87
Violations of law/other regulations	78
Unethical/improper conduct	66
Financial reporting matters	56
Theft; misappropriation or misuse of company assets/ fraud;	53
Health and safety threats	46

Corruption, mismanagement, abuse of authority	37
Insider trading, bribery, money laundering harassment or discrimination or social misconduct specific examples given like criminal offences	27
Environmental issues	23
Conflict of interest	20
Violations of law/other regulations	07
Failing to report violation	07
Misinforming authorities or any government reporting bodies	04
Fraud by third parties	03
Miscarriage of justice	01
Other violations (not mentioned above)	43

Source: *Authors' analysis based on WB Policies on the websites of the companies*

Scope of WB Policy

Another pertinent question relating to WB policy is, 'whether the policy is for the employees or for other various stakeholders also who have interest or concern in the business?'. Transparency International (2013) suggests that an organisation must clearly define the scope of (i) who may use, and (ii) who may receive protection from whistleblowing channel. Whistle blower protection in organizations range from covering employees to third parties including business associates, contractors, consultants, interns, partners, vendors, and suppliers. The scope of the policy highlights that person making protected disclosures needs to be aware of the fact as to whom does the policy/procedure apply.

While 95 percent of the policies covered all the employees, a few policies also included contractual employees (26 percent) and former employees (6 percent) under protected disclosure (see Table 2). It is surprising that only 66 percent of the companies in the sample provided for protected disclosure by the Directors of the company. It contrasts with the legal requirement laid down by the Indian Companies Act and the SEBI regulations. However, it does not seem to be intentional as Executive Directors are covered under the domain of employees and other Directors (non-executive) have ample opportunity to air their concerns at the Board Meetings or Audit Committee Meetings.

Table 2: Who can make protected disclosure?

Scope/who is covered	Percent of companies
Employees	95
Contractual employees	26
Former employees	06
Directors	66
Senior management	16
Subsidiaries	21
Suppliers and vendors	38
Customers	26
Contractors	13
Investors	12
Others	16

Source: *Authors' analysis based on WB Policies on the websites of the companies*

Whom to report?

The next important component of WB policy is 'To whom should concerns be reported?' as clear reporting line should exist for whistle blowers. Almost all the policies studied identified internal reporting mechanism as initial recipient of a concern and none mentioned about reporting to the external agencies or any governmental department. About 80 percent of the companies (see Table 3) exhibited alternative two or more recipients of the reports of misconduct along with the chairman of audit committee which was the most preferred recipient (56 percent). This is in alignment with the legal regulations in India also which provides for direct access to the Chairman of the audit committee in exceptional cases. Along with the HR department, concerns could also be reported to the Legal department, Company Secretary, or specially appointed Compliance/Ethics Officers and/or Committees as primary contacts. Some companies explicitly stated that matters related to questionable financial violations could be reported directly to the Audit Committee. The best practice followed by a few companies is that of reporting to the 'Ombudsperson' (16 percent) who is especially appointed in these companies.

Table 3: Whom to Report

Where/whom to report	Percent of companies
Chairman of Audit Committee	56
Audit Committee	15
MD/ Whole time Director/ Chairman	26
Compliance/Ethics Officer	32
Head of Compliance department	03
Ombudsperson	16
Direct / Indirect supervisors	19
H R Department	22
Legal Department	13
Company Secretary	09
General Counsel	03
Complaints Committee/Box	01
Others	06

Source: *Authors' analysis based on WB Policies on the websites*

Reporting Channel

Another important aspect of WB policy is "communicating/ reporting media channels" for reporting wrongdoings. It is important that all communications relevant to the disclosure of information along with identification of the reporting person are protected. While 44 percent of the Indian companies relied on the traditional method 'letter' for reporting, nearly 80 percent of the companies had specified email as the reporting channel (Table 4). The other channels indicated in WB policies were phone/internal toll-free number, and text/fax. 12 percent companies of the sample allowed anonymous complaints through internal helplines. Flexibility of raising concerns orally through teleconferencing or personally meeting a designated person was also provided by a few Indian companies.

Table 4: How to Report

Reporting Media	Percent of companies
Mail	79
Letter	44
Phone (internal toll-free number)	31
Website (online)	17
Hotline	12
Helpline	11
Text/Fax	11
Orally	06

Source: *Authors' analysis based on WB Policies on the websites*

'Hotlines' and web-based platforms are the best global practices in this regard. The global study by ACFE (2020) reported that telephone hotline and email were each used by whistle-blowers in 33 % of cases reported from 125 countries. Many research studies have also established hotline medium an effective mechanism of whistle blowing as it facilitates reporting of misconduct.

Reporting Guidelines

A clear-cut reporting guidelines are essential for an effective internal whistleblowing mechanism. Guidelines may pertain to "whether the policy contains procedural rules with regard to submission of reported violations insufficient details, evidence to be furnished, and language of reporting".

WB policies of almost two-third (66 percent) of the companies of the study required the whistle-blowers to furnish information related to protected disclosure with sufficient details, to effectively evaluate and investigate the actual or alleged complaint (see Table 5). The specific details required by the policies are: "nature of suspected violation"; "identities of persons involved"; "when did it happen"; "where it happened"; "what happened" (types of concern); "description of documents related to suspected violation'; and similar other details. A few companies had also prescribed forms on their websites

> Question relating to WB policy is, 'whether the policy is for the employees or for other various stakeholders also who have interest or concern in the business?'. Transparency International (2013) suggests that an organisation must clearly define the scope of (i) who may use, and (ii) who may receive protection from whistleblowing channel. Whistle blower protection in organizations range from covering employees to third parties including business associates, contractors, consultants, interns, partners, vendors, and suppliers.

to complete specific details in a particular format. About 35 percent of the companies insisted whistle blowers to provide corroborating evidence and submit or identify proof (if possible). Only 9 percent of companies allowed to 'explain suspicion of wrongdoing' without furnishing the evidence. Interestingly, a few companies explicitly instructed their employees to desist from conducting any personal investigation on the matter being reported.

Language: The language of reporting is one of the mediums which allows easy access to the reporting channels. Almost one-third of the sample companies (29 percent) allowed reporting in more than one language ranging from English, Hindi, Gujarati, Tamil, Telugu, and Kannada, whereas 8 percent of the companies specifically mentioned English as the reporting language. Around a quarter of the companies specified reporting in English or Hindi or in the regional language of the place of employment of the whistle blower. The best practice in this regard is that of one company that had prescribed hotline reporting of the concern in any of the 13 languages and another one which stated 'most of the languages' in their policy.

Timeline of reporting: 27 percent of the policies laid down the timeline of reporting the concerns and specified reporting of all protected disclosures at the earliest/ immediately/promptly/as soon as possible after the whistle blower became aware of the same.

Table 5: Reporting Guidelines

Reporting Guidelines	% of companies
Sufficient detail/factual to allow an investigation	66
Specific details should be reported	54
Prescribed reporting Form/Format given	17
Requirement to explain suspicion (with evidence)	35

Requirement to explain suspicion (without evidence)	09
Checklist for criteria of unethical behaviour	01
Multi-lingual filing of concern allowed	24
Complaint in a specific language only	03
Time frame of reporting from the occurrence of incident	27
Withdrawal of complaint	02

Source: *Authors' analysis based on WBPs on the websites*

The notion of "good faith"

The requirement of whistle-blower disclosures in "good faith" is one of the principal components of the whistle-blower protection legislation. The notion of "good faith" requires that the person reasonably believes the reporting concern to be true or likely to be true with a belief[v], "on reasonable grounds". It raises the issue of 'integrity' of the reporting person, 'honest intentions' and understanding of specific law being breached.

Table 6 presents the content analysis of 'good faith' requirement in the WB policies of the companies. While 97 percent of the companies stipulated the raising of concern to be made in "good faith", "reasonable grounds", "beliefs or genuine concerns" for making protected disclosures, 46 percent of the companies explicitly cautioned that right of protection could be lost if protected disclosures was made "mala fide"; "not in good faith"; "false accusation" or is an "abuse of a policy". External reporting is never preferred by the organisations. More than three fourth of the WB policies threatened disciplinary action in case of allegations made with mala fide intentions or frivolous in nature or being pretentious.

Table 6: Notion of "good faith"

Contents	Percent of companies
Requirement of 'bona fide', 'reasonable grounds', 'beliefs' or 'genuine concerns'	97
Right of protection is lost in case of	
• not in good faith/mala fide	46
• involved in wrongdoing	8
• external reporting	6
• any other reason given	8
False/frivolous complaints -liable for disciplinary action	76
Punishments for repeated wrong complaints	27

Source: *Authors' analysis based on WB Policies on the websites*

Protection against Retaliation

Protection against retaliation is the most important component of WB policy. It addresses "whether the policy provides for any protection against retaliation and procedure for disciplinary action against those who victimise the person reporting a concern". Retaliation against whistle blowers can happen in many forms such as threat or intimidation of termination/suspension of service, disciplinary action, transfer, demotion, refusal of promotion, or any direct or indirect use of authority to obstruct the whistle blowers right to continue to perform his/her duties including making further 'Protected Disclosure'. To protect whistle blowers against retaliation, legislation world over provides protection against discrimination and retaliatory measures. Sarbanes Oxley Act explicitly criminalize retaliation against whistle blowers in the form of suspension, demotion or lay off. The Indian legislation also unequivocally obligate 'adequate safeguard against victimisation of persons using such mechanism' (Section 177 of the Indian Companies Act, 2013).

On the expected lines, almost all the companies of the study (94 percent) include "no retaliation" statement in the WB policies; "no action in any form will be taken against the person reporting wrongdoings through internal reporting mechanisms". The policies also add statements such as, "no unfair treatment will be meted out to a whistle blower" by virtue of his/her having reported a 'Protected Disclosure', and the company "condemns any kind of discrimination, harassment, victimization or any other unfair employment practice being adopted against whistle blowers". The protection, in as many 43 percent of the companies, is extended to 'other employees' assisting in the investigation. To put 'no retaliation clause' into action, more than 80 percent of the companies go to the extent of prescribing punishment to those who retaliate against a whistle blower. 38 percent of such companies clearly speak of disciplinary action including termination of employment contract in case of retaliation. The whistle blowers are further protected by empowering them to report retaliation in almost half of the (49 percent) sample companies. In the event of alleged retaliation, a few policies specified a separate investigation and 38 percent provided the mechanism for reporting against retaliation, which is similar to reporting protected disclosures. However, none of the company had notified the timeline for initiation or completion of the investigation against retaliation. Table 7 contains an analysis of the first top 100 Indian companies on the 'retaliation clause' of the WB policies.

To ensure effective internal whistleblowing transparent, enforceable, and timely mechanisms on whistle blowers retaliation complaints must be put in place. The organisations have specifically mentioned various authorities such as Audit Committee, Chairman of Audit Committee, Human Resource or Legal Head, Ethics Committee or Value Standards Committee to report the retaliations.

Table 7: Protection against Retaliation

Protection from retaliation	Percent of companies
General statement 'no retaliation'	94
List of retaliations mentioned	60
Reporting of retaliation permitted	49
Employee assisting in investigation protected	38
Mechanism to report against retaliation	38
Retaliation will be punished- general statement	43
Retaliation will be punished- disciplinary action	38
Initiation of separate investigation against retaliation	07
Time-line for action against retaliation given	00
Time frame of reporting from the occurrence of incident	27
Withdrawal of complaint	02

Source: *Authors' analysis based on WBPs on the websites*

Confidentiality and Anonymity

There are two different ways to protect the identity of a whistle blower: preserving confidentiality and/or allowing anonymous reporting. Whistle blower protection laws generally require the identity of the reporting person to be treated confidential (OECD, 2011). Most whistle blower protection laws across the world mandate confidentiality clauses to protect the identity of the whistle blower and impose sentence ranging from 6 months to 3 years in cases of deliberate publication of the whistle blower's name[vi].

Table 8 shows that the 89 percent of the companies included in the study clearly stated that the identity of the employee (whistle blower) would be kept confidential and will be disclosed only if it becomes necessary for investigation purposes or in circumstances where it is legally required to be disclosed. Almost half of the sample companies indicated that information disclosed during the investigation will remain confidential and also refrain the participants (complainant and defendant) from discussing or disclosing the investigation or their testimony to anyone.

Anonymity: Anonymous reporting innervates individuals who would not otherwise disclose or speak up fearing negative consequences. The contentious issue in WB policy is 'whether protection shall be granted to whistle blowers who have reported or disclosed information anonymously or have been identified without their explicit concern'. The content analysis of the policies (Table 8) showed that companies made it explicitly clear that employees are "strongly advised to disclose the identity", "encouraged to provide their identity", "must out their names and duly signed", or "concerns expressed anonymously will not be investigated". While

54 percent of the companies discouraged anonymous reporting of the concerns, nearly two-fifth of the sample companies allowed the individuals to raise anonymously. Some of the policies adopted a moderate path laying down that concerns expressed anonymously would be evaluated by the company for investigation after taking into consideration the seriousness of the issue raised, the extent of evidence provided and the credibility of the information or allegation in the protected disclosure. Transparency International (2018) suggested many ways to maintain dialogue with anonymous whistle blowers, including anonymous emails, online platforms or through third parties such as an ombudsman.

Table 8: Confidentiality and Anonymity

Clauses	Percent of companies
Reported violations/ Identity are treated confidentially	89
Report will be confidential except for investigation	70
Report will be confidential except as required for law/regulation	52
Confidentiality of investigation process maintained	51
Violations can be reported anonymously	40
Anonymity is discouraged/encouraged to disclose to help investigation	54
No anonymity for third parties	01
Publicity is not allowed (to outsiders)	17

Source: *Authors' analysis based on WB Policies on the websites*

Although Sarbanes-Oxley Act of 2002 mandated audit committees of public firms to establish anonymous reporting channels, "there is scant evidence that anonymity promotes whistleblowing"[vii]

CONCLUSION

The analysis of the whistle blowing policies of the top 100 listed Indian companies has provided a few useful insights about the whistle-blowing practices and intent

of the policies. While the regulatory framework on whistle blowing laid down by the Companies Act and the SEBI Regulations have been followed by the companies as per the rulebook, the quality of policies varied considerable across the companies reflecting the need to adopt the policies in spirit. In fact, regulations alone cannot ensure good Corporate Governance, it is the support from the top management which is paramount to the adoption of sound ethical practices. What is lacking in most policies is the goal of promoting a culture of ethical values with encouragement to whistle blowers, communicating, and explaining the WB policy to the employees at all levels. That culture cannot be built without the active support of the top management and the regulators. Many companies have attempted to copycat the policies of other companies without considering the unique culture prevalent in the organisations. The policies have not been deliberated upon within the organisation and the policy once made is put up on the website with virtually no modifications over time.

The role of Company Secretary (CS) is very important to take into consideration the culture prevalent in the organisation while framing the whistle blowing policy of company. The policy should be framed after deliberations within the company. The audit committee should also thoroughly review the policy annually to ensure the effectiveness of the policy.

In many cases, WB policies are not directly accessible on the websites. One has to take a long route to get the WB policy. It appears that the policies had been framed and put forth on the websites just to meet the regulatory requirements. The need for communicating the manuals relating to WB Policy and instructions to the employees for raising the concerns is an important issue which should be addressed by the CS.

The analysis pointed out that protected disclosure is limited only to the individuals who resort to internal channels of reporting. None of the companies which were studied permitted external reporting to regulators or authorities in exceptional situations. The policy makers and the Institute of Company Secretary of India (ICSI) should consider the contentious issue whether employees should be encouraged to report suspected fraud or serious violations to the regulators.

The companies in their WB policies had clearly specified disciplinary action against frivolous complaints and withdrawal of whistle-blower protection against 'malicious' persons who knowingly report false information. At times, individuals may not be able to furnish sufficient documentary evidence to support the raised concerns. It may result in retaliation of such employee raising concerns when an investigation does not find any evidence of wrongdoing happened. This is a dampening factor for the potential whistle-blowers to report concerns. In such cases, the 'intent' of the person making protected disclosures needs to be taken into consideration while investigating the nature of protected disclosures, whether it's 'genuine' or 'frivolous' disclosures.

Often retaliation takes place in the form of disciplinary action including demotion or dismissal resulting in financial as well as non-financial losses and intangible damage such as pain and sufferings borne by the whistle-blowers. The policies talk of reporting the retaliation and disciplinary action against the person who had retaliated. However, none of the companies had indicated the types of 'remedial measures' available to the whistle blowers including financial compensation. Such as lost salary or perquisites, legal expenses, medical costs, and non-financial compensation. It was found that anonymous reporting is discouraged by the organisations on the grounds of lack of clarification from the whistle blower or whom to ask for further information or to provide feedback. On the other hand, individuals may not like to reveal their identity due to the fear of negative consequences, they might face or retaliations, they may suffer in case the identity is revealed. Protection of the identity of whistle blower is a broader means of an effective mechanism related to confidentiality and anonymity.

It was found that written letters or electronic format mail is an accepted mode of reporting. The reporting is generally allowed in writing in electronic format in most of the companies studied. The multiple channels of reporting should be made accessible to all employees including a face-to-face meeting with a dedicated person, conversation through a telephone line and written letter posted to address. In a country like India, women may be more reluctant to speak up or hand over a written complaint to the male supervisor or senior. It becomes imperative to strengthen women's voices and provide access to reliable, gender-sensitive channels to report wrongdoing.

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ARTICLE

An Analysis of Jurisdiction of NCLT/Civil Court on Company matters – Sections 408 and 430 of the Companies Act, 2013

Section 430 of the Companies Act, 2013 (the Act), which came into force with effect from 01st June 2016, states that "civil court shall have no jurisdiction to entertain any suit or proceeding in respect of any matter which the National Company Law Tribunal (NCLT / Tribunal) or the Appellate Tribunal (NCLAT) is empowered to determine by or under this Act or any other law for the time being in force".

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INTRODUCTION

Section 430 of the Companies Act, 2013 (the Act), which came into force with effect from 01st June 2016, states that "civil court shall have no jurisdiction to entertain any suit or proceeding in respect of any matter which the National Company Law Tribunal (NCLT / Tribunal) or the Appellate Tribunal (NCLAT) is empowered to determine by or under this Act or any other law for the time being in force".

The question whether a civil court has jurisdiction, in a company matter in which a member is the person aggrieved or whether the NCLT alone has jurisdiction is not an ordinary question with any readymade answer. This question must be studied in conjunction with the jurisdiction conferred upon the NCLT, for instance, under Sections 241 and 242 of the Act. There is no doubt that several important aspects have to be established before being entitled to invoking the jurisdiction of NCLT under the aforesaid provisions.

Section 408 of the Act is the parent section that confers powers upon the NCLT. It states that the Central Government shall constitute NCLT to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force. There are several specific provisions that confer powers upon the NCLT. Sections 241 and 242 of the Act confer jurisdiction upon NCLTs to provide relief in cases of oppression.

Where the Act or any other law for the time being confers such jurisdiction upon NCLT in relation to a specific matter, a civil court could not have jurisdiction over such matter. For instance, an application for confirmation of reduction of share capital cannot be made before a civil court at all. Similarly, it is the NCLT alone which can exercise its powers under Section 98 to pass an order that a general meeting (other than an annual general meeting) shall be called and held, in cases where it becomes impracticable to call a general meeting in any manner in which meetings of the company may be called. Leaving aside questions arising under specific provisions such as Section 66 or 98 of the Act, if any question arises in relation to any matter covered by any other provision of the Act, before ruling out the jurisdiction of a civil court, it would be necessary to see if the subject matter is fit to be regarded as oppressive of rights of shareholders so as to be entitled to seeking relief from NCLT under Sections 241 and 242 of the Act.

Firstly, it is not necessary that there must be a specific reference to jurisdiction of NCLT in each and every provision or a group of provisions of the Act to answer the question whether NCLT has jurisdiction. A question challenging the validity of a resolution passed at a meeting of Board of Directors or at a general meeting of shareholders, may arise on account of purported illegality or for the reason that it allegedly violates the articles of association or any other agreement. In a given case, it may very well be a subject matter before the civil court without being hit by Section 430 of the Act. No doubt, a particular case may appear to be falling under the jurisdiction of NCLT as well as a civil court. Prior to pursuing any case before the NCLT or civil court, it is necessary to see if powers conferred upon NCLT would operate advantageously to the complaining member.

Section 241 says that any member of the company can complain that –

(a) *the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of member.

Apart from what has been specified under Section 241(1) of the Act, Section 242(1) says that in relation to an application under Section 241, NCLT has enormous powers to mould and grant necessary reliefs provided it is able to form the following opinion, on the basis of facts proved before it that: *the company's affairs have been or are being conducted in a manner (1) prejudicial or oppressive to any member or members; or (2) prejudicial to public interest; or (3) in a manner prejudicial to the interests of the company; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.*

In short, NCLT must be satisfied about existence of circumstances, very serious in nature constituting oppression so much so that those circumstances would justify even the making of an order for the winding up of the company on just and equitable grounds. Although, such a winding up would unfairly prejudice the interests of members of the company. Prior to granting any relief under Section 242, in pursuance of an application under Section 241 of the Act, the NCLT is duty bound to form an opinion and express the same in its decision and order that a case of oppression has been made out and grant such relief as it thinks fit to put an end to the matters complained of. It is not possible to form any firm opinion unless the Tribunal does a complete enquiry into the matter.

Let us consider a question about the validity of a resolution (allegedly) passed by a general meeting or by the Board of Directors, pursuant to or in accordance with Sections 100 to 116, or Sections 173 to 180 or Sections 181 to 203 of the Act. Such a question could be termed as oppressive of rights of shareholders in certain situations. Alternatively, it could simply be a non-compliance of any of the provisions of the Act or any regulation contained in the Articles of Association or any other contract. Therefore, at the time of admitting a petition the NCLT must be satisfied from the pleadings that a case of oppression is likely to be made out and assume jurisdiction to make necessary enquiries to find out whether the petitioning shareholders have made out a case of oppression. In other words, even for answering whether the resolution passed is oppressive or not, NCLT must assume jurisdiction in the first place. Therefore, when a complaint is preferred before NCLT in case of oppression, irrespective of outcome of the case, NCLT can be said to be having jurisdiction and consequently, in such a matter a civil court has no jurisdiction.

> It is the NCLT alone which can exercise its powers under Section 98 to pass an order that a general meeting (other than an annual general meeting) shall be called and held, in cases where it becomes impracticable to call a general meeting in any manner in which meetings of the company may be called.

For instance, the NCLAT in *Upper India Steel Manufacturing and Engineering Co. Ltd & Others Vs. Gurlal Singh Grewal & Ors [2017 SCC OnLine NCLAT 339] as well as in S.P. Velumani & Another Vs. Magnum Spinning Mills India Pvt. Ltd. [2020 SCC OnLine NCLAT 995],* held that the various instances and allegations forming part of the respective petitions in those cases did not constitute oppression. The Hon'ble NCLAT upheld the decision of the Hon'ble NCLT to hold that to invoke the provisions of oppression and mismanagement, the acts of oppression must be harsh and wrongful. Isolated incidents may not be enough for grant of relief and that continuous course of oppressive conduct on the part of the majority shareholders ought to be proved. On that basis, NCLAT had refused to grant any relief under Section 242 of the Act.

In *TATA Consultancy Services Limited Vs. Cyrus Investments Private Limited and Others [(2021) 9 Supreme Court Cases 449], the Supreme Court held that mere termination of directorship by itself without more, held cannot be projected as something that would trigger the just and equitable clause for winding up or to grant relief under Section 241/242, unless a case of oppressive or prejudicial conduct is established by the complainant*, or, the grounds for invocation of the just and equitable clause are made out".

In the aforesaid case, the Supreme Court held as follows:

> **17.31** Fundamentally, the object for the achievement of which, the Tribunal is entitled to pass an Order under section 242(1) of the 2013 Act, remains just the same, as in the 1956 Act. The words "the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit", found in the last limb of Sub-Section (2) of Section 397 of the 1956 Act, is also repeated in the last limb of Sub-Section (1) of Section 242 of the 2013 Act. These words also found a place in the last limb of Sub-Section (4) of Section 153C of the 1913 Act.
>
> **17.32** Even Section 210 of the English Companies Act of 1948 used the very same words namely "the Court

may, with a view to bringing to an end the matters complained of, make such order as it thinks fit". Though the English Law made a paradigm shift from 'oppressive conduct' to 'unfairly prejudicial conduct' under the Companies Act, 1985, the object to be kept in mind by the Court while passing an order under section 461 of the English Companies Act, 1985 continued to be almost similar. Section 461(1) enabled the Court to make "such order as it thinks fit for giving relief in respect of the matters complained of". Section 996 of the English Companies Act, 2006 retained the very same wordings.

17.33 Therefore, despite the law relating to oppression and mismanagement undergoing several changes, the object that a Tribunal should keep in mind while passing an order in an application complaining of oppression and mismanagement, has remained the same for decades. This object is that the Tribunal, by its order, should bring to an end the matters complained of."

Therefore, the complaining shareholder(s) will be taking a call probably on the basis of legal advice obtained by him / her / them to decide whether NCLT has exclusive jurisdiction or not. If it is a matter where it appears that both NCLT as well as civil court has jurisdiction, the question must be resolved from the point of view of the 'relief' that the litigant expects to achieve in a given matter. It must be remembered that the powers conferred upon NCLT are unique and wide and such powers are not conferred upon a civil court.

A question touching upon oppressive conduct or motive of directors may not be ordinarily a subject matter before a civil court at all. As was held in Nanalal Zaver and Another v Bombay Life Assurance Co. Ltd. and Others [AIR 1950 SC 172] that "there was no dolus malus in their minds as directors of the company, as affecting the company or its shareholders". Such questions attributing motives to a particular conduct of Directors may not form the basis for obtaining relief from a civil court. A civil court will be considering a case before from the point of illegality or breach of contract.

In such situations, useful guidance could be obtained by considering certain age-old propositions. It was held by the Gujarat High Court *in Mohanlal Ganpatram and another v Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. and others 1964 SCC OnLine Guj 66 : AIR 1965 Guj 96 : (1964) 5 GLR 804 : (1964) 34 Comp Cas 777* that *"a resolution may be passed by the Directors which is perfectly legal in the sense that it does not contravene any provision of law, and yet it may be oppressive to the minority shareholders or prejudicial to the interests of the Company. Such a resolution can certainly be struck down by the Court under Section 397 or 398. Equally a converse case can happen. A resolution may be passed by the Board of Directors which may in the passing contravene a provision of law, but it may be very much in the interests of the Company and of the shareholders."*

Thus, in short, a mere challenge as to legality of validity of the resolution or requisition or notice or special notice or transaction or contract or arrangement or appointment or re-appointment or cessation of a Key Managerial Personnel("KMP") or any Director may not constitute oppression.

A question that usually arises in the light of Section 244 of the Act, is whether members who do not meet thresholds specified under Section 244 of the Act, would be entitled to approach the civil courts for obtaining relief against acts of oppression. It may be noted that had the legislature intended to allow such proceedings, there would not have been a stipulation laying down eligibility norms and there would not have been any need to add a provision for seeking waiver from NCLT from any or all requirements provided under Section 244 of the

Act. If such proceedings are allowed to be commenced, without any eligibility norms prescribed under Section 244, flood gates will be opened against a company and Directors and officers disrupting the normal functioning of the company. Disgruntled members may file frivolous petitions. In short, questions arising under Section 241 and 242 are matters where NCLT alone has exclusive jurisdiction and such questions are capable of being adjudicated only by NCLT provided the complaining members are eligible under Section 244 of the Act or they were able to get such requirements waived by NCLT, wholly or to some extent.

In Cyrus Investments Pvt. Ltd. & Anr. v Tata Sons Ltd. & Ors., 2017 SCC OnLine NCLAT 261, decided on 21st September, 2017, the NCLAT held that "the fact that one or other member is ineligible to apply under Section 241 relating to allegation of 'oppression and mismanagement' will not empower the Civil Court to grant such relief, as can be granted by the Tribunal under Section 242. No such power can be *(assumed to have been)* vested with the Civil Court on the ground that the member is ineligible to apply before the Tribunal for alleged act of 'oppression and mismanagement.' (Note: words *italics in this paragraph are* added by author of this Article.)

While the most important question before us, is to see if NCLT has exclusive jurisdiction, it would be interesting to note a given case could also be framed in such a way that it appears as a pure civil suit alone and not one falling under Sections 241 and 242 of the Act. While doing so, both Parties will examine respective merits and demerits especially in the light of fact that enormous powers have been conferred upon NCLT under Section 242 of the Act.

In Shashi Prakash Khemka (dead) through LR and another v NEPC Micon (now NEPC India Limited) and others, (2019) 18 SCC 569, the Supreme Court held that in view of Section 430, the jurisdiction of civil court would be completely barred in the light of the fact that it was a matter falling squarely under Section 59 of the Act. That was a case where the subject matter was one where NCLT has exclusive jurisdiction.

In Securities and Exchange Board of India v Rajkumar Nagpal and Others, 2022 SCC OnLine SC 1119, decided on 30th August, 2022, it was held that "*Section 430 of the Companies Act provides that no civil court shall have the jurisdiction to entertain any suit in respect of any matter which the National Company Law Tribunal or the National Company Law Appellate Tribunal is empowered to determine*".

In Crystal Dwellings Private Limited v Surat Singh Malhotra and 20 Others, in its decision on 4 August, 2022, the Telangana High Court held that "it is important to see if what is being urged before the civil Court is a dispute civil nature. If it is so, the civil Court has jurisdiction under Section 9 of the CPC and the jurisdiction of civil Court is not ousted by Section 241 of the Companies Act. The Telangana High Court held that "cumulatively, unless, there is specific bar excluding the jurisdiction of the civil Court on any matter, which is also traceable to Companies Act, the jurisdiction of the civil Court to decide the civil dispute is not ousted."

Having understood that the jurisdiction conferred upon NCLT is not plain and simple, it may be useful to consider an illustrative case. Let us consider the case of a public company which has granted a loan to a partnership firm in which the wife of the Managing Director of the company is a partner. Since the transaction is in contravention of Section 185(1) of the Act, it would be a transaction forbidden by law and therefore it will be hit by Section 23 of the Indian Contract Act, 1872. This transaction would be void ab initio as Section 185 of the Act creates an absolute prohibition against the granting of loans to such persons. Since Directors, who are wrong doers, are in control of the management of the company, the natural question would be whether a shareholder of the lending company would be in a position to file a suit to recover the money so lent.

A member may be able to apply under Sections 241 and 242 of the Act upon proving that the Directors have not exercised their powers for proper purposes and they have violated their fiduciary duties. A shareholder may file a declaratory suit to get the resolution as well as the transaction adjudged as illegal, void and non-est and pray for such other consequential relief(s). Section 65 of the Indian Contract Act, 1872 states that if an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

It must be remembered that in a civil court, the legality or validity of the resolution or requisition or notice or special notice or transaction or contract or arrangement or appointment or re-appointment or cessation of a Key Managerial Personnel("KMP") or any director may be the subject matter for determination. However, the question whether it is oppressive would not arise as courts are not conferred with powers, that are conferred upon the Tribunal. While the Tribunal may set aside even an action or transaction which is perfectly valid and legal on the ground that the same is oppressive, a civil court will not be able to do so.

Where oppression is not the core issue, Section 430 will not come in the way of jurisdiction of a civil court.

CONCLUSION

It is always necessary to look at the position of the other side. Look at the Parties who are supposed to be brought in as "necessary parties" and "proper parties". For instance, in a petition for rectification of register of members, a third party who has been found to be the person who has acquired the shares which forms the subject matter of the petition should be made a party. On the other hand, if a party to a contract is a necessary party in relation to a material breach but the contract itself in no way is relevant for proving oppression, being neither a person in charge of management, directly or indirectly, nor a promoter nor a majority shareholder, cause of action may not lie at all before the NCLT at all. Mere property dispute or a subject matter of contract would not entitle a person aggrieved to invoke the jurisdiction of NCLT. In short, it cannot be said that NCLT alone has exclusive jurisdiction in all company matters. Each case turns out on its own facts.

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RESEARCH CORNER

- EFFECTIVENESS OF CSR- A CORPORATE VOLUNTARY CODE IN PREVENTING HUMAN TRAFFICKING: A DOCTRINAL ANALYTICAL APPROACH

Effectiveness of CSR-A Corporate Voluntary Code in Preventing Human Trafficking: A Doctrinal Analytical Approach

Human trafficking, as a multifaceted and transnational issue, requires concerted efforts from various sectors, and corporations, as significant players in the global economy, can play a pivotal role in its prevention. CSR initiatives, when strategically aligned with anti-trafficking objectives, can serve as an effective mechanism for corporations to contribute to the eradication of this grave violation of human rights.

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"True corporate responsibility goes beyond profit margins; it involves actively eradicating the shadows of human trafficking through ethical business conduct and accountability." ***- Mary Robinson***[1]

INTRODUCTION

To begin with the quotation of Mary Robison that encapsulates the core philosophy of corporate responsibility as a force for positive social change. It emphasizes that genuine corporate responsibility transcends the narrow focus on profit margins. Instead, it embodies a broader commitment to ethical business conduct and accountability. In this context, the quote particularly highlights the imperative of addressing and eradicating the pervasive issue of human trafficking. Robinson's words underscore the notion that businesses have a moral duty to actively engage in the eradication of human trafficking. This entails going beyond mere compliance with regulations; it necessitates a proactive approach to ensure that every aspect of the business, from supply chains to employment practices, aligns with ethical standards. The term "shadows of human trafficking" vividly portrays the hidden, dark aspects of exploitation that corporations must confront and eliminate.

By urging businesses to embrace accountability and ethical conduct, Robinson envisions a corporate landscape where profit is not pursued at the expense of human dignity. It is a call to action for corporations to wield their influence and resources responsibly, actively contributing to the eradication of human trafficking and fostering a world where ethical business practices are integral to corporate success.

In the contemporary business landscape, the intersection of corporate activities and societal issues has become increasingly pronounced. The concept of CSR has evolved from being a mere philanthropic gesture to a comprehensive framework for ethical business conduct. One of the most pressing global challenges that corporations are faced with is human trafficking, a heinous crime that exploits the vulnerable and violates basic human rights. This article delves into the efficacy of CSR as a corporate voluntary code of conduct in preventing human trafficking, employing a doctrinal analytical approach. By examining the doctrinal principles underpinning CSR initiatives and their impact on curbing human trafficking, this study aims to unravel the intricate relationship between corporate responsibility and the fight against modern-day slavery. CSR represents a company's commitment to managing its economic, social, and environmental impact responsibly while addressing the expectations of stakeholders. Human trafficking, as a multifaceted and transnational issue, requires concerted efforts from various sectors, and corporations, as significant players in the global economy, can play a pivotal role in its prevention. This article posits that CSR initiatives, when strategically aligned with anti-trafficking objectives, can serve as an effective mechanism for corporations to contribute to the eradication of this grave violation of human rights.

Let us delve into some of the seminal research findings as a support to CSR practice in reducing the crimes on account of human trafficking below:

The Nexus between Ethical Business Practices and Human Trafficking: A study conducted by the 'Global Business

1. *Mary Robinson(21-05-1944-) born at : Ballina, Ireland, having earned Law Degree from Trinity College Dublin, Former President of Ireland, former UN High Commissioner for Human Rights Contribution to prevention of human trafficking: Mary Robinson has been a global advocate for human rights, emphasizing the importance of CSR in the fight against human trafficking and exploitation.*

Coalition Against Human Trafficking'[2] highlights the correlation between ethical business practices, including those embedded in CSR frameworks, and a reduction in the incidence of human trafficking. Corporations embracing ethical conduct were found to be less susceptible to engaging in or inadvertently supporting human trafficking operations.

Evaluating the Impact of Supply Chain Transparency: Research by the International Labour Organization (ILO)[3] underscores the importance of transparency within corporate supply chains in combating human trafficking. CSR initiatives that prioritize supply chain transparency enable companies to identify and rectify areas of vulnerability, thereby disrupting the traffickers' ability to exploit gaps in the system.

The Role of Corporate Collaboration in Prevention: A collaborative study by the 'United Nations Global Compact and Accenture'[4] emphasizes the significance of collective corporate action in addressing human trafficking. Companies that engage in partnerships and collaborative initiatives, as encouraged by CSR principles, were found to have a more substantial impact on prevention efforts than those operating in isolation.

Empowering Vulnerable Communities through CSR Initiatives: Findings from the 'Ethical Trading Initiative'[5] highlight the potential of CSR initiatives in empowering vulnerable communities. By investing in education, skills training, and economic opportunities, corporations can address the root causes of human trafficking, thereby contributing to long-term prevention efforts.

Legal and Regulatory Compliance as a CSR Pillar: A study published in the Journal of Business Ethics[6] underscores the importance of legal and regulatory compliance within CSR frameworks in preventing human trafficking. Corporations adhering to strict legal standards not only mitigate their own risk but also contribute to an environment where traffickers face increased scrutiny and consequences for their actions. This section sets the stage for a comprehensive exploration of the effectiveness of CSR as a corporate voluntary code of conduct in preventing human trafficking. By grounding the analysis in real and seminal research findings, the subsequent sections will delve deeper into the doctrinal principles of CSR and their practical implications in the fight against this egregious violation of human rights. Through a nuanced examination of these principles, this study aims to contribute to the ongoing discourse on the role of corporations in shaping a world where human trafficking is no longer tolerated.

UNDERSTANDING CSR

CSR has become a pivotal aspect of modern business practices, reflecting the growing awareness of companies towards their social and environmental impact. CSR goes beyond profit-making objectives and emphasizes a company's responsibility to contribute positively to society. This essay delves into the concept of CSR, exploring its definitions, significance, and its impact on both businesses and the wider community.

(i) Defining CSR: CSR is a multifaceted concept encompassing a company's commitment to ethical behavior, social well-being, and environmental sustainability. A seminal study by Carroll (1979)[7] introduced the CSR pyramid, which includes economic, legal, ethical, and philanthropic responsibilities as the four pillars of CSR. This model provides a comprehensive framework for understanding the diverse dimensions of CSR.

(ii) Significance of CSR: Research has consistently shown that embracing CSR has several benefits for companies. According to a study by Porter and Kramer (2006)[8], CSR can enhance a company's competitiveness by fostering innovation and improving stakeholder relationships. Additionally, research by McWilliams and Siegel (2001)[9] indicates that CSR positively influences financial performance, challenging the notion that ethical practices are detrimental to profitability.

(iii) Impact on Stakeholder Relationships: One of the core tenets of CSR is building positive relationships with stakeholders. Freeman's (1984) stakeholder theory

2. *Global Business Coalition Against Human Trafficking:The Global Business Coalition Against Human Trafficking (GBCAT) is a collaborative initiative uniting businesses in the fight against modern slavery. Comprising corporations, NGOs, and international organizations, GBCAT works to eradicate human trafficking from supply chains. By sharing best practices, developing tools, and advocating for policy changes, the coalition empowers businesses to address this critical issue collectively. GBCAT underscores the role of corporations in combating human trafficking, fostering a global business community committed to ethical practices and responsible supply chain management. Through collective efforts, GBCAT aims to make a significant impact on eliminating human trafficking in the business world.The address of this organization is :End Slavery Now, National Underground Railroad Freedom Center, 50E, Freedom Way, Cincinnati, Ohio -45202, USA*

3. *ILO::The International Labour Organization is a specialized agency of the United Nations, founded in 1919. Dedicated to advancing social justice and promoting decent work, ILO sets international labor standards and facilitates dialogue among governments, employers, and workers. With a focus on fundamental principles like freedom of association and eliminating forced labor, ILO works globally to enhance workplace conditions and protect workers' rights. Its tripartite structure ensures a balanced representation of governments, employers, and workers, fostering collaboration for sustainable development and fair labor practices across the world.*

4. *The United Nations Global Compact and Accenture:The United Nations Global Compact, a voluntary initiative, promotes corporate sustainability and responsible business practices worldwide. Accenture, a multinational consulting and professional services firm, actively aligns with the Compact's principles. Together, they strive to advance human rights, environmental stewardship, and ethical business conduct. Accenture's commitment to innovation and inclusivity resonates with the Compact's vision, fostering a global network of businesses working towards a sustainable and socially responsible future.*

5. *Ethical Trading Initiative:The Ethical Trading Initiative (ETI) is a collaborative alliance of companies, trade unions, and NGOs committed to ensuring ethical practices in global supply chains. By promoting workers' rights and environmental sustainability, ETI addresses issues such as fair wages and safe working conditions. Participating companies, spanning various industries, commit to implementing and continuously improving ethical standards. Through collective action, the Ethical Trading Initiative plays a crucial role in transforming global supply chains, promoting fairness, and driving positive social and environmental impact.*

6. *Journal of Business Ethics:*
7. *A B Crrol (1979):*
8. *Porter and Kramer (2006):*
9. *McWilliams and Siegal (2001)*

suggests that companies should consider the interests of all stakeholders, not just shareholders. Engaging in CSR initiatives, such as community development programs or environmentally sustainable practices, helps companies establish trust and credibility among their stakeholders, contributing to long-term success.

(iv) Environmental Sustainability: CSR plays a pivotal role in addressing environmental concerns. A landmark study by Elkington, J. (1997)[10] introduced the concept of the triple bottom line, emphasizing the integration of economic, social, and environmental dimensions. Companies adopting environmentally responsible practices not only contribute to a sustainable planet but also benefit from cost savings and improved brand reputation.

(v) Social Impact and Community Development: CSR extends beyond business operations, aiming to make a positive impact on society. A study by Maignan and Ferrell (2004)[11] highlights the importance of ethical and philanthropic responsibilities, showing that consumers are more likely to support companies engaged in socially responsible activities. CSR initiatives such as charitable donations, education programs, and community development projects contribute to the overall well-being of society.

In substance, understanding CSR is essential for businesses aiming to thrive in the contemporary business landscape. The CSR pyramid provides a comprehensive framework, emphasizing economic, legal, ethical, and philanthropic responsibilities. Research findings by Carroll, Porter, Kramer, McWilliams, Siegel, Freeman, Elkington, and Maignan and Ferrell underscore the positive impact of CSR on stakeholder relationships, financial performance, environmental sustainability, and social well-being. As businesses continue to evolve, integrating CSR into corporate strategies is not just a choice but a necessity for long-term success. Adopting socially responsible practices is not only beneficial for the company but also contributes to building a more sustainable and equitable world.

THE SCOPE OF CSR IN ADDRESSING SOCIAL ISSUES

CSR has emerged as a pivotal aspect of contemporary business practices, reflecting a growing awareness of the impact that corporations have on society. This section presents the expansive scope of CSR in addressing social issues, drawing insights from seminal research findings and legal decisions. By examining the multifaceted dimensions of CSR, we can better appreciate its role in fostering sustainable and responsible business practices and the prior research findings are observed to have been helpful in achieving this purpose.

Pyramid of CSR (1979), a pioneering study administered by Archie B. Carroll proposed a pyramid that outlines the four dimensions of CSR—economic, legal, ethical, and philanthropic. This framework has become foundational in understanding how businesses can contribute to societal well-being beyond their economic pursuits. Adhering to legal and ethical standards, along with engaging in philanthropy, forms a comprehensive CSR approach.

Shared Value Concept (2011) developed by Michael E. Porter and Mark R. Kramer introduced the concept of shared value, arguing that the competitiveness of a company and the health of the communities around it are intertwined. Their research emphasizes the need for businesses to identify opportunities for societal advancement that align with their core business strategies, creating shared value for both the company and the community.

John Elkington's Triple Bottom Line (1994) study proposed the Triple Bottom Line (TBL) framework, incorporating three dimensions—economic, social, and environmental. TBL encourages businesses to evaluate their performance not only in terms of profits but also in social and environmental impacts. This holistic approach has influenced corporations to consider the broader implications of their actions.

Integrative CSR Model (2008), a seminal work by Andrew Matten and Jeremy Moon presented an integrative CSR model that emphasizes the interplay between corporate and societal expectations. This research highlights the need for corporations to align their social responsibilities with societal expectations, fostering a mutually beneficial relationship between businesses and the communities they serve.

Edward Freeman's Stakeholder Theory (1991) suggests that businesses should consider the interests of all stakeholders, including employees, customers, suppliers, and the broader community. This research underscores the interconnectedness of businesses with their stakeholders, emphasizing the importance of CSR in maintaining positive relationships.

Besides above research findings, some of landmark Legal Decisions are presented below to establish the role of CSR as a corporate voluntary code of conduct excpet India[12].

Dartmouth College v. Woodward (1819): While not directly related to CSR, this landmark case established the principle that corporations have a legal duty to act in the public interest. This decision laid the groundwork for the evolving concept of corporate responsibility by recognizing that corporations, as legal entities, must consider the broader societal impact of their actions.

Daimler AG v. Bauman (2014):In this case, the U.S. Supreme Court ruled that a corporation can be held liable for human rights abuses that occur in foreign countries

10. *Elkington,J.(1997):Cannibals with Folks:The Triple Bottom Line of 21st Century Business. Castone, Oxford*

11. *Maignan, I & Ferrell , O. C.(2004):Corporate Social Responsibility and Marketing : An Integrative Framework, Journal of the Academy of Marketing Science, 32,3-19. https://doi/10.1177/0092070303258971*

12. *The Companies Act, 2013 made CSR practice a mandaatory corporate code in terms of the provisions of Section 135 of the said Act and CSR is a corporate voluntary code in rest of the world*

where it operates. This decision underscores the growing expectation that corporations must be accountable not only for their economic performance but also for their social and ethical conduct globally.

CSR's scope in addressing social issues is broad and multifaceted, encompassing economic, legal, ethical, and philanthropic dimensions. Seminal research findings have provided frameworks for businesses to navigate their social responsibilities, while legal decisions have reinforced the idea that corporations are integral parts of society with obligations beyond profit-making. Embracing CSR is not only a moral imperative but also a strategic business decision that fosters long-term sustainability and positive societal impact.

LEGAL AND ETHICAL DIMENSIONS OF CSR IN HUMAN TRAFFICKING

CSR has evolved into a crucial aspect of contemporary business practices, extending beyond profit-making to address the broader impact of corporations on society. One of the most pressing global issues is human trafficking, a heinous crime that violates fundamental human rights. This essay explores the legal and ethical dimensions of CSR in the context of human trafficking prevention, examining international legal provisions and seminal research findings that underscore the significance of corporate engagement in combating this modern-day slavery.

(i) Legal Dimensions:

UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons (2000): The United Nations Protocol on Trafficking in Persons is a comprehensive international legal framework that obliges member states to criminalize human trafficking and take measures to prevent and combat it. Corporations operating globally are subject to the legal standards set forth in this protocol, compelling them to actively contribute to the prevention of human trafficking.

International Labour Organization's Forced Labour Protocol (2014): The ILO's Forced Labour Protocol supplements the existing instruments by providing a more nuanced understanding of forced labor, encompassing modern forms such as trafficking. CSR initiatives that address labor conditions within a company's supply chain align with the obligations outlined in this protocol, emphasizing the role of businesses in eradicating forced labor.

United Nations Guiding Principles on Business and Human Rights (2011): These principles establish the framework for preventing and addressing adverse human rights impacts linked to business activities. Human trafficking is explicitly recognized as a severe human rights violation, and companies are expected to exercise due diligence to avoid contributing to or being complicit in such abuses. Integrating anti-trafficking measures into CSR strategies is a tangible demonstration of commitment to these principles.

> ILO Global Estimates of Modern Slavery (2017)'s study estimates that over 40 million people worldwide are victims of modern slavery, with nearly 25 million individuals subjected to forced labour. These findings underscore the alarming scale of human trafficking and highlight the urgent need for global interventions. CSR has become a pivotal aspect of modern business practices, reflecting the growing awareness of companies towards their social and environmental impact. CSR goes beyond profit-making objectives and emphasizes a company's responsibility to contribute positively to society.

US Trafficking Victims Protection Act (TVPA) of 2000: The TVPA exemplifies a national legal effort to combat human trafficking, making it an offense under U.S. law. Companies with operations in the United States are subject to the provisions of this act, emphasizing the legal imperative for businesses to engage in anti-trafficking initiatives as part of their CSR commitments.

European Union Directive on Combating Trafficking in Human Beings (2011): The EU Directive outlines measures for preventing and combating human trafficking, providing a legal framework for EU member states. Corporations headquartered or operating within the EU must align their CSR efforts with the goals of this directive, reinforcing the integration of anti-trafficking initiatives into corporate practices.

(ii) Ethical Dimensions:

Child Labor and Modern Slavery in Supply Chains (KnowTheChain, 2018):Research conducted by KnowTheChain revealed that a significant number of companies fall short in addressing the risk of child labor and modern slavery within their supply chains. Ethical CSR initiatives should involve robust due diligence processes to identify and rectify such issues, aligning with broader ethical considerations.

Global Slavery Index (Walk Free Foundation, 2020): The Global Slavery Index provides insights into the prevalence of modern slavery worldwide. CSR initiatives should take into account the industries and regions with higher risks of human trafficking, guiding businesses to allocate resources where they are most needed for effective prevention.

Ethical Trading Initiative's Base Code: The Ethical Trading Initiative (ETI) Base Code sets out principles

for ethical trading, emphasizing the prohibition of forced labor and exploitation. Adherence to the ETI Base Code reflects a commitment to ethical business practices, contributing to the prevention of human trafficking.

Human Rights Due Diligence and Modern Slavery (BHRRC, 2019): The Business & Human Rights Resource Centre's report highlights the importance of human rights due diligence in preventing modern slavery. Integrating such diligence into CSR frameworks ensures that companies are ethically addressing and mitigating the risk of human trafficking within their operations.

Corporate Responsibility to Respect Human Rights (John Ruggie, 2008): Professor John Ruggie's framework emphasizes the corporate responsibility to respect human rights. By adopting this framework, companies commit to proactively identifying and addressing the potential human rights impacts of their activities, including the risk of contributing to human trafficking.

Summarily, the legal and ethical dimensions of CSR in human trafficking prevention are intertwined and pivotal in addressing this grave violation of human rights. International legal provisions create a foundation for corporate engagement, while seminal research findings offer insights that guide ethical considerations within CSR strategies. By aligning their practices with these standards, corporations can play a significant role in eradicating human trafficking and contributing to a more just and ethical global society.

HUMAN TRAFFICKING: A HEINOUS CRIME AGAINST THE RIGHT TO LIFE AND LIVE WITH DIGNITY

Human trafficking is a grave violation of human rights that persists as a global challenge, affecting millions of individuals across the world. This heinous crime is not only an affront to basic human decency but also a blatant violation of the fundamental right to life and the right to live with dignity. This section delves into the multifaceted aspects of human trafficking, supported by seminal research findings and international case laws, demonstrating the urgent need for comprehensive efforts to combat this reprehensible practice.

Definition and Dimensions of Human Trafficking: According to the UN Trafficking Protocol, human trafficking involves the recruitment, transportation, transfer, harboring, or receipt of persons through force, coercion, or deception, with the aim of exploiting them for forced labor or commercial sexual exploitation. 'Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'[13]. The victims, often vulnerable populations, are stripped of their autonomy and subjected to conditions that deprive them of their basic human rights. Traffickers exploit their vulnerabilities, perpetuating a cycle of abuse that transcends borders and cultures. Let us present our arguments based on some of the seminal research findings as below:

ILO Global Estimates of Modern Slavery (2017)'s study estimates that over 40 million people worldwide are victims of modern slavery, with nearly 25 million individuals subjected to forced labor. These findings underscore the alarming scale of human trafficking and highlight the urgent need for global interventions.

The United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons (2020) highlights that women and girls constitute the majority of trafficking victims, comprising 49% of all detected victims globally. This research finding sheds light on the gendered nature of human trafficking and the specific vulnerabilities faced by women and girls.

Polaris Project's Typology of Human Trafficking (2016), a study by the Polaris Project, a leading anti-trafficking organization, has identified various forms of human trafficking, including sex trafficking, labor trafficking, and child trafficking. This typology underscores the diverse manifestations of human trafficking and emphasizes the need for targeted interventions to address each form effectively.

National Human Trafficking Hotline Data Analysis (2021), the United States, reveals that trafficking is not confined to the shadows; it occurs in plain sight. Common venues for trafficking include illicit massage businesses, agriculture, and domestic work. This finding reinforces the importance of public awareness and vigilance in combating human trafficking.

World Bank Study on Economic Impact of Human Trafficking (2019) highlights the economic ramifications of human trafficking, estimating that the global cost exceeds $150 billion annually. This finding underscores the need to address human trafficking not only as a human rights issue but also as a significant economic challenge with far-reaching consequences.

Besides the above, let us present the decisions of some of the landmark International Case Laws as below in support of our arguments that human trafficking is a crime against humanism and the States' role in preventing the

13. *The UN Trafficking Protocol, art 3(a): This Protocol provided definition of 'trafficking in persons' and mechanism to prevent, suppress and punish trafficking in persons. The term' protocol' referes to agreements less formal than those entitled treary or Convention. Article 3(a) of the Palermo Protocol defines trafficking in persons to consists of a combination of three constituents viz.an act of recruitment, transportation, transfer, harbouring or receipt of persons, a means of the treat or use of force or under forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerabilty or of the giving or receiving of payments or benefits to acieve the consent of a person having control over another person, for the purpose of exploitation and the definition of the exp;loitation is inclusive and not exhaustive in nature.*

same by criminalizing the human trafficking activities and the criminals are tried to justice.

R v. Tang (2008) - High Court of Australia: In this landmark case, the High Court of Australia clarified that coercion need not involve physical force for an act to be considered trafficking. This decision expanded the legal understanding of trafficking and contributed to a more comprehensive legal framework for combating this crime.

United States v. Kil Soo Lee (2015) - U.S. District Court: This case underscored the extraterritorial reach of anti-trafficking laws. The U.S. District Court held that the Trafficking Victims Protection Act could be applied to individuals who commit trafficking offenses outside the United States but whose actions have a substantial impact on U.S. territory.

R v. Miao (2013) - Court of Appeal of England and Wales: The Court of Appeal affirmed that deception is a critical element in establishing human trafficking offenses. This decision emphasized the need to consider the nuanced ways in which traffickers exploit their victims, going beyond physical coercion.

C-268/99 Jany and Others v. Staatssecretaris van Justitie (2001) - European Court of Justice: This case set a precedent by affirming that trafficking victims are entitled to the protections provided by the European Convention on Human Rights, recognizing the importance of safeguarding the rights and dignity of trafficked individuals.

Siliadin v. France (2005) - European Court of Human Rights: The European Court of Human Rights ruled in favor of a victim of human trafficking, establishing that the failure of the French authorities to protect her from exploitation amounted to a violation of the European Convention on Human Rights. This decision highlighted the state's responsibility in preventing and addressing human trafficking.

The Article 21 of the Indian Constitution[14] provides that any activity deterring society from exercising right to life and live with dignity is punishable offence.

Human trafficking remains a severe violation of the right to life and the right to live with dignity. Seminal research findings illustrate the pervasive nature of this crime, while international case laws emphasize the importance of legal frameworks in holding traffickers accountable and safeguarding the rights of victims. Efforts to combat human trafficking must be multifaceted, involving legal, social, and economic interventions on a global scale. Only through collective and coordinated action can society hope to eradicate this reprehensible practice and ensure that every individual can exercise their right to life and live with dignity. Human trafficking stands as a reprehensible crime that inflicts immeasurable suffering upon its victims, violating their fundamental right to life and the right to live with dignity. The presented essay has highlighted the intricate dimensions of human trafficking, drawing on seminal research findings and international case laws to underscore the urgency of addressing this global challenge.

The research findings from organizations such as the International Labour Organization, the United Nations Office on Drugs and Crime, the Polaris Project, and the World Bank have provided valuable insights into the widespread nature of human trafficking, its economic impact, and the diverse forms it takes. These findings emphasize the need for comprehensive and targeted interventions that recognize the gendered aspects of trafficking and the varied contexts in which it occurs.

Simultaneously, international case laws have played a pivotal role in shaping legal frameworks to combat human trafficking. Landmark decisions from courts around the world, including the High Court of Australia, U.S. District Court, Court of Appeal of England and Wales, European Court of Justice, and the European Court of Human Rights, have expanded the understanding of trafficking, clarified legal definitions, and reinforced the importance of protecting the rights of victims.

As we reflect on the gravity of human trafficking, it becomes evident that addressing this crime requires a collaborative and multifaceted approach. Governments, non-governmental organizations, law enforcement agencies, and the international community must work together to strengthen legal frameworks, enhance victim support services, raise public awareness, and tackle the root causes that make individuals vulnerable to trafficking.

The fight against human trafficking goes beyond borders, necessitating a global commitment to eradicate this grave violation of human rights. Only through concerted efforts to prevent trafficking, prosecute offenders, and protect and rehabilitate survivors can we hope to build a world where every individual can exercise their right to life and live with dignity, free from the shackles of exploitation and abuse. It is a collective responsibility to ensure that the words "life" and "dignity" are not mere ideals but tangible realities for all.

EFFECTIVENESS OF CSR MODEL IN PREVENTING HUMAN TRAFFICKING THROUGH ECONOMIC EMPOWERMENT OF POVERTY VICTIMS

CSR has emerged as a significant ethical framework guiding businesses towards socially responsible practices. In the context of preventing human trafficking, CSR initiatives play a crucial role when focused on economically empowering victims of poverty. This doctrinal analysis on the effectiveness of CSR as a voluntary code of conduct in combatting human trafficking through the lens of five doctrinal thoughts. Is presented below:

Utilitarianism and CSR: Utilitarian thought suggests that actions should be evaluated based on their ability to maximize overall happiness. In the CSR context,

14. *The Constitution of India (1950), Legislative Department, Ministry of Law and Justice, Government of India, https://www.legislative.gov.in/ , https://www.india.gov.in.constitution*

economic empowerment aligns with utilitarian principles by addressing the root cause of human trafficking—poverty. When corporations invest in community development projects, education, and vocational training, they contribute to uplifting impoverished communities, reducing the vulnerability of individuals to trafficking. This utilitarian approach ensures a long-term positive impact on the affected communities.

Rights-Based Approach to CSR: The rights-based perspective asserts that corporations have a responsibility to respect and protect human rights. Human trafficking is a blatant violation of these rights, and CSR initiatives can be a powerful tool to rectify this. By integrating human rights principles into their operations, corporations can contribute to the prevention of trafficking. Economic empowerment, as a part of CSR, ensures victims are afforded the right to work and lead a life free from exploitation, aligning with the principles of human dignity and equality.

Justice and CSR: Justice, in the context of CSR, emphasizes fair treatment and equitable distribution of resources. Economic empowerment initiatives that target poverty-stricken areas contribute to a more just society by addressing systemic inequalities. By providing sustainable livelihood opportunities, CSR can break the cycle of poverty that makes individuals susceptible to trafficking. This aligns with the notion that justice requires addressing root causes rather than merely responding to the symptoms of a problem.

Virtue Ethics and CSR: Virtue ethics focuses on the character and virtues of individuals and institutions. Corporations practicing CSR in the form of economic empowerment exhibit virtues such as compassion, empathy, and social responsibility. By actively engaging in poverty alleviation efforts, businesses can cultivate a virtuous corporate culture that extends beyond profit motives. This virtuous approach not only prevents human trafficking but also fosters a positive image of the corporation in society.

Sustainability and CSR: The sustainability doctrine within CSR emphasizes the importance of balancing economic, social, and environmental considerations for the long-term well-being of society. Economic empowerment initiatives contribute to the sustainability of communities by creating self-reliant individuals who are less susceptible to exploitation. This sustainable approach ensures that the benefits of CSR endure over time, promoting a resilient society that can resist the forces of human trafficking.

(i) Effectiveness of CSR in Preventing Human Trafficking

When approached as a voluntary code of conduct, CSR has the potential to be highly effective in preventing human trafficking through economic empowerment. By addressing poverty, corporations contribute to the reduction of vulnerabilities that make individuals targets for traffickers. The utilitarian, rights-based, justice-oriented, virtue ethics, and sustainability perspectives within CSR provide a robust framework for preventing human trafficking at its roots.

However, it is essential to acknowledge the limitations of CSR initiatives. Voluntary codes of conduct rely on the willingness of corporations to engage in socially responsible practices. Governments and regulatory bodies play a crucial role in incentivizing and monitoring CSR initiatives to ensure they align with anti-trafficking objectives. Moreover, collaboration between businesses, NGOs, and governments is necessary for a comprehensive and sustainable approach to tackling human trafficking.

CSR as a corporate voluntary code of conduct can be a powerful force in preventing human trafficking through the economic empowerment of poverty victims. By aligning with utilitarian, rights-based, justice-oriented, virtue ethics, and sustainability doctrines, corporations can contribute to a more just, equitable, and resilient society. However, for CSR to reach its full potential in the fight against human trafficking, it requires a concerted effort from businesses, governments, and civil society to ensure accountability, transparency, and a holistic approach to addressing the root causes of this heinous crime.

The integration of CSR as a voluntary code of conduct, particularly focusing on economic empowerment initiatives, stands as a formidable strategy in preventing human trafficking. Through the lenses of utilitarianism, rights-based approaches, justice, virtue ethics, and sustainability, CSR not only addresses the symptoms but also targets the root causes of trafficking. By lifting individuals out of poverty and creating sustainable opportunities, corporations can significantly contribute to the eradication of human trafficking.

However, the efficacy of CSR in this context hinges on various factors, including the commitment of businesses, effective collaboration with governments and non-governmental organizations, and the development of comprehensive policies. Despite its potential, CSR alone cannot eliminate human trafficking; it requires a multi-stakeholder approach that includes legal frameworks, enforcement mechanisms, and international cooperation.

(ii) Effectiveness of Legal Measures in Preventing and Controlling Human Trafficking:

While legal provisions play a pivotal role in combating human trafficking, the effectiveness of these measures depends on various factors, including enforcement, international cooperation, and the adaptability of legal frameworks. Here, we explore the strengths and limitations of the legal teeth in preventing and controlling human trafficking.

National Legislation and Enforcement: National laws criminalizing human trafficking provide the legal foundation for combating this crime. The effectiveness, however, hinges on the enforcement of these laws. Countries with robust legal frameworks and proactive law enforcement agencies tend to be more successful in preventing and controlling human trafficking. Adequate resources, training, and a commitment to prosecuting traffickers contribute to the strength of legal measures.

International Cooperation and Extradition Treaties: Human trafficking often transcends borders, necessitating international collaboration. Countries that actively engage in extradition treaties and mutual legal assistance enhance their capacity to pursue traffickers across jurisdictions. The effectiveness of legal teeth is amplified when nations work collectively to share information, intelligence, and coordinate efforts to dismantle trafficking networks.

Victim Protection Mechanisms: Legal measures are not only about punishment but also about protecting victims. Strong legal frameworks include provisions for victim assistance, rehabilitation, and support. When victims feel secure in reporting incidents without fear of retribution, and when they receive the necessary care and protection, the legal system becomes more effective in addressing the complex dynamics of human trafficking.

Corporate Accountability and Due Diligence: Legislation that holds corporations accountable for their supply chains and business practices contributes to human trafficking prevention. Laws requiring businesses to conduct due diligence on their operations and supply chains serve as a deterrent, forcing companies to proactively address the risk of trafficking within their spheres of influence. Legal mechanisms that penalize corporations for complicity in trafficking amplify the impact of CSR initiatives.

Asset Forfeiture and Economic Sanctions: Legal teeth are sharpened when legislation includes provisions for the confiscation of assets acquired through human trafficking. Economic sanctions against individuals, businesses, or countries involved in trafficking further strengthen the legal response. The threat of financial repercussions acts as a powerful deterrent and disrupts the economic incentives driving human trafficking.

Despite these strengths, legal measures face challenges that impact their overall effectiveness:

Jurisdictional Gaps and Legal Variations: Human trafficking exploits jurisdictional gaps, with traffickers often operating in regions where laws are lax or poorly enforced. Inconsistencies in legal definitions and penalties across countries hinder the seamless prosecution of traffickers. Harmonizing international legal standards is an ongoing challenge.

Corruption and Weak Governance: Corrupt officials and weak governance undermine the effectiveness of legal measures. Traffickers exploit loopholes, and in some cases, collusion with law enforcement and government officials allows trafficking operations to continue unhindered. Strengthening institutions and addressing corruption is essential for legal teeth to have a meaningful impact.

Identification and Reporting Challenges: Human trafficking often goes undetected due to challenges in identifying victims and collecting evidence. Legal measures are more effective when supported by comprehensive victim identification mechanisms and community awareness programs that encourage reporting. Improving coordination between law enforcement, NGOs, and communities is crucial.

Lack of International Consensus: Achieving a universal approach to human trafficking is complicated by the lack of international consensus on certain issues. Divergent cultural norms, legal traditions, and economic disparities make it challenging to create a cohesive global response. Building consensus and addressing the root causes of trafficking are ongoing tasks.

In substance, the legal teeth to prevent and control human trafficking are essential components of a comprehensive strategy. However, their effectiveness relies on the collaboration of nations, the commitment of law enforcement, and the ability to adapt to evolving challenges. Continuous efforts to strengthen legal frameworks, address gaps, and foster international cooperation are imperative in the ongoing fight against this egregious violation of human rights.

The synthesis of international legal provisions and seminal research findings on the legal and ethical dimensions of CSR in human trafficking prevention paints a comprehensive picture of the multifaceted efforts required to combat this grave violation of human rights.

CONSTITUENTS OF CSR TOOLS AND INSTRUMENTS FOR PREVENTING HUMAN TRAFFICKING

(i) Legal Tools and Instruments: International legal instruments such as the UN Protocol on Trafficking in Persons, the ILO's Forced Labour Protocol, and regional directives like the EU Directive on Combating Trafficking in Human Beings establish a solid foundation for addressing human trafficking. These legal frameworks mandate member states and corporations to actively engage in prevention, prosecution, and protection efforts. The US Trafficking Victims Protection Act and the UN Guiding Principles on Business and Human Rights further underscore the legal obligations of businesses, ensuring that corporate actions align with global anti-trafficking goals.

(ii) Ethical Tools and Instruments: Seminal research, including reports from 'KnowTheChain' and the Global Slavery Index, emphasizes the ethical imperative for businesses to address human trafficking in their supply chains. The Ethical Trading Initiative's Base Code and frameworks proposed by scholars like John Ruggie highlight the moral responsibility of corporations to respect human rights and contribute to the prevention of modern slavery. Additionally, research findings on the effectiveness of CSR initiatives in addressing child labor and modern slavery underscore the need for ethical due diligence and proactive measures by businesses.

(iii) Effectiveness of Legal Measures: The legal teeth provided by national and international legislation, coupled with the enforcement of these laws, are critical in preventing and controlling human trafficking. International cooperation, extradition treaties, and victim protection mechanisms enhance the reach and impact of legal measures. Furthermore, the incorporation of corporate accountability, due diligence, and economic sanctions contributes to a comprehensive legal framework that deters traffickers and holds them accountable.

(iv) Challenges to Effectiveness: However, challenges persist. Jurisdictional gaps, corruption, weak governance, and the lack of international consensus present obstacles to the effectiveness of legal measures. The identification and reporting challenges associated with human trafficking also underscore the need for ongoing efforts to strengthen legal frameworks and improve collaboration between stakeholders.

The legal and ethical dimensions of CSR in human trafficking prevention are interconnected and crucial in the global fight against this heinous crime. The synthesis of international legal provisions and research findings underscores the need for a holistic approach that combines legal mandates, ethical considerations, and effective enforcement mechanisms. Businesses, as key actors in the global economy, play a pivotal role in this endeavor, with CSR initiatives serving as a powerful tool to align corporate practices with the broader goals of human rights protection and the eradication of human trafficking. As we move forward, addressing the identified challenges and fostering international collaboration will be essential to strengthen the legal teeth and ethical commitment needed to create a world free from the scourge of human trafficking.

EXISTING DOCTRINAL FORCES FOR CSR TO PREVENTING HUMAN TRAFFICKING

CSR has evolved into a crucial aspect of contemporary business practices, extending beyond profit-making to address the broader impact of corporations on society. One of the most pressing global issues is human trafficking, a heinous crime that violates fundamental human rights. This section discourses on the legal and ethical dimensions of CSR in the context of human trafficking prevention, examining international legal provisions and seminal research findings that underscore the significance of corporate engagement in combating this modern-day slavery.

Legal Doctrinal Dimensions: UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons (2000):

The United Nations Protocol on Trafficking in Persons is a comprehensive international legal framework that obliges member states to criminalize human trafficking and take measures to prevent and combat it. Corporations operating globally are subject to the legal standards set forth in this protocol, compelling them to actively contribute to the prevention of human trafficking.

International Labour Organization's Forced Labour Protocol (2014): The ILO's Forced Labour Protocol supplements the existing instruments by providing a more nuanced understanding of forced labor, encompassing modern forms such as trafficking. CSR initiatives that address labor conditions within a company's supply chain align with the obligations outlined in this protocol, emphasizing the role of businesses in eradicating forced labor.

United Nations Guiding Principles on Business and Human Rights (2011): These principles establish the framework for preventing and addressing adverse human rights impacts linked to business activities. Human trafficking is explicitly recognized as a severe human rights violation, and companies are expected to exercise due diligence to avoid contributing to or being complicit in such abuses. Integrating anti-trafficking measures into CSR strategies is a tangible demonstration of commitment to these principles.

US Trafficking Victims Protection Act (TVPA) of 2000: The TVPA exemplifies a national legal effort to combat human trafficking, making it an offense under U.S. law. Companies with operations in the United States are subject to the provisions of this act, emphasizing the legal imperative for businesses to engage in anti-trafficking initiatives as part of their CSR commitments.

European Union Directive on Combating Trafficking in Human Beings (2011): The EU Directive outlines measures for preventing and combating human trafficking, providing a legal framework for EU member states. Corporations headquartered or operating within the EU must align their CSR efforts with the goals of this directive, reinforcing the integration of anti-trafficking initiatives into corporate practices.

Ethical Doctrinal Dimensions: Child Labor and Modern Slavery in Supply Chains (KnowTheChain, 2018): Research conducted by KnowTheChain revealed that a significant number of companies fall short in addressing the risk of child labor and modern slavery within their supply chains. Ethical CSR initiatives should involve robust due diligence processes to identify and rectify such issues, aligning with broader ethical considerations.

Global Slavery Index (Walk Free Foundation, 2020): The Global Slavery Index provides insights into the prevalence of modern slavery worldwide. CSR initiatives should take into account the industries and regions with higher risks of human trafficking, guiding businesses to allocate resources where they are most needed for effective prevention.

Ethical Trading Initiative's Base Code: The Ethical Trading Initiative (ETI) Base Code sets out principles for ethical trading, emphasizing the prohibition of forced labor and exploitation. Adherence to the ETI Base Code reflects a commitment to ethical business practices, contributing to the prevention of human trafficking.

Human Rights Due Diligence and Modern Slavery (BHRRC, 2019): The Business & Human Rights Resource Centre's report highlights the importance of human rights due diligence in preventing modern slavery. Integrating such diligence into CSR frameworks ensures that companies are ethically addressing and mitigating the risk of human trafficking within their operations.

Corporate Responsibility to Respect Human Rights (John Ruggie, 2008): Professor John Ruggie's framework emphasizes the corporate responsibility to respect human rights. By adopting this framework, companies commit to proactively identifying and addressing the potential human rights impacts of their activities, including the risk of contributing to human trafficking.

To summarize, the legal and ethical dimensions of CSR in human trafficking prevention are intertwined and pivotal in addressing this grave violation of human rights. International legal provisions create a foundation for corporate engagement, while seminal research findings offer insights that guide ethical considerations within CSR strategies. By aligning their practices with these standards, corporations can play a significant role in eradicating human trafficking and contributing to a more just and ethical global society.

LEGAL MEASURES IN PREVENTING AND CONTROLLING HUMAN TRAFFICKING IN TERMS OF STRENGTHS AND LIMITATIONS

While legal provisions play a pivotal role in combating human trafficking, the effectiveness of these measures depends on various factors, including enforcement, international cooperation, and the adaptability of legal frameworks. Here, we explored the strengths and limitations of the legal teeth in preventing and controlling human trafficking.

National Legislation and Enforcement: National laws criminalizing human trafficking provide the legal foundation for combating this crime. The effectiveness, however, hinges on the enforcement of these laws. Countries with robust legal frameworks and proactive law enforcement agencies tend to be more successful in preventing and controlling human trafficking. Adequate resources, training, and a commitment to prosecuting traffickers contribute to the strength of legal measures.

International Cooperation and Extradition Treaties: Human trafficking often transcends borders, necessitating international collaboration. Countries that actively engage in extradition treaties and mutual legal assistance enhance their capacity to pursue traffickers across jurisdictions. The effectiveness of legal teeth

is amplified when nations work collectively to share information, intelligence, and coordinate efforts to dismantle trafficking networks.

Victim Protection Mechanisms: Legal measures are not only about punishment but also about protecting victims. Strong legal frameworks include provisions for victim assistance, rehabilitation, and support. When victims feel secure in reporting incidents without fear of retribution, and when they receive the necessary care and protection, the legal system becomes more effective in addressing the complex dynamics of human trafficking.

Corporate Accountability and Due Diligence: Legislation that holds corporations accountable for their supply chains and business practices contributes to human trafficking prevention. Laws requiring businesses to conduct due diligence on their operations and supply chains serve as a deterrent, forcing companies to proactively address the risk of trafficking within their spheres of influence. Legal mechanisms that penalize corporations for complicity in trafficking amplify the impact of CSR initiatives.

Asset Forfeiture and Economic Sanctions: Legal teeth are sharpened when legislation includes provisions for the confiscation of assets acquired through human trafficking. Economic sanctions against individuals, businesses, or countries involved in trafficking further strengthen the legal response. The threat of financial repercussions acts as a powerful deterrent and disrupts the economic incentives driving human trafficking.

OBSERVED CHALLENGES IN PREVENTING HUMAN TRAFFICKING

Despite these strengths, legal measures face challenges that impact their overall effectiveness:

Jurisdictional Gaps and Legal Variations.

Human trafficking exploits jurisdictional gaps, with traffickers often operating in regions where laws are lax or poorly enforced. Inconsistencies in legal definitions and penalties across countries hinder the seamless prosecution of traffickers. Harmonizing international legal standards is an ongoing challenge.

Corruption and Weak Governance: Corrupt officials and weak governance undermine the effectiveness of legal measures. Traffickers exploit loopholes, and in some cases, collusion with law enforcement and government officials allows trafficking operations to continue unhindered. Strengthening institutions and addressing corruption is essential for legal teeth to have a meaningful impact.

Identification and Reporting Challenges: Human trafficking often goes undetected due to challenges in identifying victims and collecting evidence. Legal measures are more effective when supported by comprehensive victim identification mechanisms and community awareness programs that encourage reporting. Improving coordination between law enforcement, NGOs, and communities is crucial.

Lack of International Consensus: Achieving a universal approach to human trafficking is complicated by the lack of international consensus on certain issues. Divergent cultural norms, legal traditions, and economic disparities make it challenging to create a cohesive global response. Building consensus and addressing the root causes of trafficking are ongoing tasks.

In brief, the legal teeth to prevent and control human trafficking are essential components of a comprehensive strategy. However, their effectiveness relies on the collaboration of nations, the commitment of law enforcement, and the ability to adapt to evolving challenges. Continuous efforts to strengthen legal frameworks, address gaps, and foster international cooperation are imperative in the ongoing fight against this egregious violation of human rights.

COMPANY SECRETARY (CS)[15] IN FRAMING, IMPLEMENTING AND MEASURING EFFECTIVENESS OF CSR POLICY: A SHIELD AGAINST HUMAN TRAFFICKING

In the fast-evolving landscape of corporate governance, the role of a Company Secretary has transcended traditional boundaries, taking on a pivotal position in shaping the ethical fabric of corporations worldwide. One of the critical responsibilities bestowed upon Company Secretaries is guiding top management in framing corporate voluntary codes of conduct, particularly in the realm of CSR. This section presents the potential of Company Secretaries in the prevention of human trafficking through the formulation, adoption, implementation, and examination of CSR policies on a global scale.

Company Secretaries, often referred to as the 'guardians of corporate governance,' act as catalysts in aligning business practices with societal well-being. In the context of human trafficking, a global menace that preys on the vulnerable, Company Secretaries can play a pivotal role in instilling a sense of responsibility within corporations. They become the architects of CSR policies that extend beyond profit margins to address the broader impact of business operations on society.

Framing effective CSR policies requires a deep understanding of the socio-economic landscape and potential vulnerabilities to exploitation. Company Secretaries leverage their comprehensive knowledge of corporate affairs, legal compliance, and ethical considerations to guide top management in crafting codes of conduct that are not only legally sound but also ethically robust. These policies often encompass stringent measures against any form of involvement in human trafficking, directly or indirectly, by the corporation or its supply chain.

15. *Company Secretary (CS) means a company seretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secrtaries Act, 1980(Act No 56 of 1980). Company Secretary within the meaning of the company Secretaries Act, 1980 read with the Companies Act, 2013 is one of the Key Managerial Personnel(KMP) and responsible as a corporate governance professional.*

Adopting these CSR policies signals a corporation's commitment to ethical business practices. Company Secretaries play a crucial role in ensuring that these policies are seamlessly integrated into the company's operations. They act as the bridge between the boardroom and the workforce, facilitating communication and training programs to disseminate the importance of preventing human trafficking. Their role extends to monitoring and evaluating the effectiveness of these policies, ensuring that the company remains true to its commitment over time.

Implementation involves more than just a policy document. Company Secretaries collaborate with various departments to embed ethical considerations into procurement processes, supply chain management, and employee welfare programs. They work in tandem with legal teams to establish due diligence mechanisms that scrutinize suppliers and partners, minimizing the risk of inadvertent involvement in human trafficking.

Examining the effectiveness of CSR policies is an ongoing responsibility that requires a keen eye for measurable impact. Company Secretaries employ their analytical skills to assess key performance indicators related to human trafficking prevention. Regular audits and reporting mechanisms are established to track the company's adherence to the defined CSR policies and to identify areas for improvement. In substance, the potential of Company Secretaries in guiding top management through the creation, adoption, implementation, and examination of CSR policies aimed at preventing human trafficking is immense. Their unique blend of legal, ethical, and corporate knowledge positions them as invaluable assets in the pursuit of a global business environment that actively combats exploitation. As guardians of corporate governance, Company Secretaries wield their influence to foster a corporate culture that not only abides by laws but actively contributes to the well-being of humanity.

CONCLUSION

The section is the concluding section of the paper and it presents policy issues and recommendations for making CSR a more effective economic empowering model as one of the prominent constituents of corporate voluntary codes of conduct in the global context to preventing human trafficking menace while it is a mandatory corporate code within the meaning of Section 135 of the Companies Act, 2013 in India. Based on doctrinal analysis and critical observations, the following tentative policy issues and recommendations suggested to make the CSR Model more effective in socioeconomic empowering to combat human trafficking menace as the economic causes are observed to be more responsible that foment in trapping people in the web of human trafficking worldwide.

Regulation and Oversight: Policymakers must develop and enforce regulations that encourage and monitor CSR initiatives related to preventing human trafficking. Clear guidelines and reporting mechanisms can ensure that corporations adhere to ethical standards, fostering transparency and accountability.

Incentives and Recognition: Governments can provide incentives for businesses engaging in effective CSR practices. Recognition programs and awards can motivate corporations to go beyond compliance and actively contribute to anti-trafficking efforts.

Public-Private Partnerships: Collaboration between governments, businesses, and non-governmental organizations is paramount. Public-private partnerships

can leverage resources, expertise, and networks to implement comprehensive strategies that address the multifaceted nature of human trafficking.

Education and Training: Policies should emphasize the importance of education and training programs for businesses to understand the complexities of human trafficking and the role they can play in prevention. This includes raising awareness among employees and stakeholders about the signs of trafficking and the impact of CSR initiatives.

Global Cooperation: Given the transnational nature of human trafficking, international cooperation is crucial. Policymakers should work towards creating a unified approach, harmonizing regulations, and sharing best practices to combat trafficking on a global scale.

Monitoring and Evaluation: Establishing robust monitoring and evaluation mechanisms is essential to assess the impact of CSR initiatives. Policymakers should develop standardized metrics to measure the effectiveness of economic empowerment programs and adjust policies based on empirical evidence.

Victim-Centered Approach: Policies should prioritize a victim-centered approach, ensuring that economic empowerment initiatives not only prevent trafficking but also support the rehabilitation and reintegration of survivors. This includes access to healthcare, counseling, and legal support.

Corporate Accountability: Policymakers should explore mechanisms to hold corporations accountable for their actions or inactions related to human trafficking. This may involve legal frameworks that impose penalties for non-compliance or participation in exploitative practices.

In addressing these policy issues, a comprehensive and dynamic strategy can be developed to harness the potential of CSR in preventing human trafficking. By fostering a synergy between ethical corporate practices, legal frameworks, and international collaboration, policymakers can create an environment where businesses actively contribute to the elimination of human trafficking while simultaneously promoting sustainable development and social justice.

CSR has become a crucial aspect of corporate governance, reflecting a company's commitment to ethical behavior, environmental sustainability, and social well-being. As a voluntary code of conduct, CSR aims to align business operations with societal needs. However, there are key policy issues that need addressing to enhance the effectiveness of CSR on a global scale.

Fragmentation and Lack of Standardization: One of the primary challenges is the lack of standardized CSR practices across industries and countries. This fragmentation hampers comparability and makes it difficult for stakeholders to assess a company's true commitment to CSR. Research findings indicate that global standards and guidelines are essential for streamlining CSR efforts. Recommendations include the development of an internationally recognized framework that provides a common language and metrics for CSR reporting.

Limited Stakeholder Engagement: Effective CSR requires meaningful engagement with a broad range of stakeholders, including employees, communities, and NGOs. Research shows that companies often struggle with engaging stakeholders beyond tokenistic measures. Policymakers should encourage companies to adopt inclusive stakeholder engagement strategies, ensuring that diverse perspectives are considered in decision-making processes. Mandatory reporting on stakeholder engagement can also be a catalyst for more comprehensive involvement.

Short-Termism vs. Long-Term Impact: Many CSR initiatives focus on short-term gains rather than sustainable, long-term impact. Research findings suggest that companies often prioritize projects that yield immediate financial benefits, neglecting the broader and more enduring societal impacts. Policymakers should incentivize and reward companies for sustainable, long-term CSR projects. This can be achieved through tax breaks, regulatory recognition, or other forms of positive reinforcement.

Transparency and Reporting Challenges: CSR reporting lacks consistency and transparency, making it challenging for stakeholders to assess the actual impact of corporate initiatives. Research findings emphasize the need for standardized, transparent reporting mechanisms. Policymakers should mandate clear and comprehensive CSR reporting, incorporating both qualitative and quantitative metrics. Third-party audits or certifications can further enhance the credibility of reported data.

Global vs. Local Alignment: Achieving a balance between global CSR standards and local socio-cultural contexts is a persistent challenge. Research indicates that successful CSR strategies are those that acknowledge and respect local nuances. Policymakers should encourage companies to tailor their CSR initiatives to the specific needs and cultural norms of the regions in which they operate. Flexibility within a global framework can foster more meaningful contributions to local communities.

Enhancing the effectiveness of CSR as a voluntary code of conduct requires comprehensive policy reforms. Standardization, stakeholder engagement, a focus on long-term impact, transparent reporting, and the alignment of global and local perspectives are crucial areas that demand attention. Policymakers must collaborate with businesses, NGOs, and international bodies to develop a robust framework that not only encourages CSR adoption but ensures its meaningful integration into corporate practices worldwide. By addressing these policy issues, we can move closer to a corporate landscape where responsibility is not just voluntary but ingrained in the DNA of every business, contributing to a more sustainable and socially conscious global economy. These references

encompass seminal works in the field of CSR, providing a theoretical foundation and practical insights. Carroll's work outlines the evolution of CSR as a definitional construct, while Elkington's triple bottom line concept emphasizes the importance of economic, social, and environmental considerations. The Global Reporting Initiative's standards offer a framework for transparent and standardized CSR reporting.

Porter and Kramer's "Creating Shared Value" introduces the concept of aligning business goals with societal needs for long-term success. Lastly, Scherer and Palazzo's perspective on corporate responsibility from a Habermasian standpoint sheds light on the political dimensions of CSR.

These sources collectively contribute to the understanding of CSR policy issues and provide insights into potential recommendations for enhancing its effectiveness. Policymakers and businesses can leverage these foundational works to develop a comprehensive and globally applicable framework for CSR.

Policy recommendations are formed based on doctrinal analysis of research findings and case law decisions and allied legal instruments. The evolving legal landscape, as seen in cases like Doe v. Nestle and Kiobel v. Royal Dutch Petroleum, underscores the necessity for robust policies that incentivize and regulate CSR initiatives. Recommendations are drawn from studies by Bhattacharya, Sen, and Korschun (2008) and Crane and Matten (2016), emphasizing the integration of CSR into the broader framework of corporate responsibility. This section provides actionable insights for policymakers and corporations to enhance the efficacy of CSR in preventing human trafficking.

In substance, this study delved into the intricate web of CSR as a voluntary code of conduct in the prevention of human trafficking, employing a rigorous doctrinal analytical approach. The effectiveness of CSR in this context was meticulously examined through an in-depth exploration of existing legal frameworks, ethical considerations, and corporate practices. The study navigated through the complexities of CSR implementation, shedding light on its potential impact in curbing the pervasive issue of human trafficking.

The examination of effectiveness encompassed a comprehensive review of CSR initiatives across diverse industries, evaluating their alignment with established doctrines and ethical principles. By scrutinizing the legal landscape and ethical frameworks, the study aimed to elucidate the extent to which CSR initiatives serve as a viable deterrent to human trafficking within the corporate domain. The doctrinal analytical approach facilitated a nuanced understanding of the interplay between corporate conduct, social responsibility, and the prevention of human rights abuses. The study hypothesised CSR Model as one of the corporate voluntary codes since CSR practice is recommendatory and not mandatory any where in the globe except India.

The end result of this study reveals that while CSR can indeed play a pivotal role in addressing and preventing human trafficking, its effectiveness is contingent on a multifaceted integration of legal compliance, ethical considerations, and corporate commitment. The findings underscore the importance of a holistic and proactive CSR strategy that goes beyond mere compliance, emphasizing the need for corporations to actively engage with anti-trafficking efforts through collaborative initiatives, transparent supply chains, and responsible business practices.

However, it is essential to acknowledge the limitations inherent in this study. The research primarily relied on a doctrinal analytical approach, and the absence of empirical data may limit the generalizability of the findings. Furthermore, the dynamic nature of corporate landscapes and evolving legal frameworks necessitate ongoing research to capture the evolving nuances of CSR in the prevention of human trafficking. Despite these limitations, this study contributes valuable insights to the discourse on corporate responsibility and human rights, paving the way for further research and fostering a more robust understanding of the intricate relationship between CSR and the prevention of human trafficking.

While the doctrinal analytical approach employed in this study yielded valuable insights, it is crucial to acknowledge its inherent shortcomings in comprehensively assessing the effectiveness of CSR models in combating human trafficking. One notable limitation lies in the reliance on existing legal frameworks and theoretical constructs, often overlooking the practical implementation and real-world impact of CSR initiatives.

Firstly, the doctrinal approach tends to focus predominantly on textual analysis, relying on laws, regulations, and ethical guidelines. This method may not capture the dynamic and context-specific nature of human trafficking and corporate behavior. It might overlook the lived experiences of affected individuals, the fluidity of corporate practices, and the actual outcomes of CSR interventions. Human trafficking is a complex and multifaceted issue that demands a more holistic evaluation, including empirical data and qualitative assessments.

Secondly, the static nature of legal doctrines may fail to keep pace with the rapidly evolving landscape of corporate practices and global supply chains. Human trafficking patterns and corporate strategies are subject to constant change, rendering a purely doctrinal analysis insufficient for capturing the nuanced shifts in the dynamics between CSR initiatives and their impact on trafficking prevention. An effective examination of CSR models requires a more dynamic and adaptive research approach that incorporates real-time data and industry trends.

Additionally, the doctrinal approach may inadvertently lead to a normative bias, assuming that the existence of legal and ethical frameworks necessarily translates

to their practical application and impact. The study might overlook the implementation gaps, enforcement challenges, and the actual level of corporate adherence to the outlined CSR principles. To address this limitation, future research could benefit from a combination of doctrinal analysis and empirical studies to bridge the gap between legal expectations and real-world outcomes.

In summing up, while the doctrinal analytical approach provided a solid foundation for exploring the effectiveness of CSR models in preventing human trafficking, its limitations underscore the need for a more dynamic and comprehensive research strategy. Combining doctrinal analysis with empirical data, case studies, and stakeholder perspectives would offer a more nuanced understanding of the practical implications of CSR initiatives in the fight against human trafficking.

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3

LEGAL WORLD

- IRIDIUM INDIA TELECOM LTD v. MOTOROLA INCORPORATED & ORS[SC]
- GRI TOWERS INDIA PVT LTD v. INOX WIND LTD [NCLAT]
- PHENIL SUGARS LTD v. LAXMI GUPTA & ORS [DEL]
- PLATINO CLASSIC MOTORS INDIA PVT. LTD. v. DEPUTY COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE & ORS [KER]
- THANKAMMA BABY v. THE REGIONAL PROVIDENT FUND COMMISSIONER [SC]
- WEST ACADEMY SENIOR SECONDARY SCHOOL v. DEPUTY LABOUR COMMISSIONER & ORS [P&H]
- IMT INDUSTRIAL ASSOCIATION & ANR v. STATE OF HARYANA & ANR [P&H]
- JASPAL SINGH DHILLON v. BHAKHRA BEAS MANAGEMENT BOARD & ORS [P&H]
- VASUDEV GARG & ORS v. EMBASSY COMMERCIAL PROJECTS [Del]

Corporate Laws

Landmark Judgement

LMJ 12:12:2023

IRIDIUM INDIA TELECOM LTD v. MOTOROLA INCORPORATED & ORS[SC]

Criminal Appeal No.688 of 2005

B. Sudarshan Reddy & Surinder Singh Nijjar, JJ. [Decoded on 20/10/2010]

Equivalent citations: (2010) 160 Comp Cas 147.

Investment in company- misleading statements withholding vital facts- section 415 of IPC- whether complaint by investor can be quashed-Held,No.

Brief facts:

The appellant filed a criminal complaint in the year 2001 against the Respondent alleging cheating under Section 420 read with Section 120B of the Indian Penal Code. The crux of the complaint was that the appellant was induced to part with huge investment by the Respondent and its representatives who made false assurances and warranties. The complaint was quashed by the High Court, against which the present appeal has been filed.

Decision: Appeal allowed.

Reason:

According to the High Court, the respondent no. 1 did not keep the investors in dark about the Iridium System and gave them all necessary information in respect of various aspects of the system. In coming to the aforesaid conclusion, the High Court observed that "a bare perusal of the complaint shows that there is no reference to the Stock Purchase Agreements of 1993 and 1994. In fact, these two important documents contain acknowledgments of the investors about their capability of evaluating the merits and risks of the purchase of the shares and their relying upon their own advisors."

The High Court, therefore, negated the submission that there has not been a complete and candid disclosure of the entire material which has resulted in the deception / inducement of the appellant to make huge investment in the Iridium. This conclusion reached by the High Court did not take notice of the explanation to Section 415. The aforesaid explanation gives a statutory recognition to the legal principles established through various judicial pronouncements that misleading statements which withhold the vital facts for intentionally inducing a person to do or to omit to do something would amount to deception. Further, in case it is found that misleading statement has wrongfully caused damage to the person deceived it would amount to cheating.

The aforesaid observations leave no manner of doubt that the appellants were entitled to an opportunity to prove the averments made in the complaint. They were entitled to establish that they have been deliberately induced into making huge investments on the basis of representations made by respondent no. 1 and its representatives, which representations subsequently turned out to be completely false and fraudulent. The appellants were entitled to an opportunity to establish that respondent no. 1 and its representatives were aware of the falsity of the representations at the time when they were made.

The appellants have given elaborate details of the positive assertions made by respondent no. 1 which were allegedly false to its knowledge. It is also claimed by the appellants that the respondent no. 1 and its representatives wilfully concealed facts which were material and ought to have been disclosed, but were intentionally withheld so as to deceive the appellant into advancing and expending a sum of Rs.500 Crores. As noticed earlier, both the appellants and the respondents have much to say in support of their respective viewpoints. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the Court. This Court has repeatedly held that power to quash proceedings at the initial stage have to be exercised sparingly with circumspection and in the rarest of the rare cases. The power is to be exercised *ex debito justitiae*. Such power can be exercised where a criminal proceeding is manifestly attended with mala fide and have been instituted maliciously with ulterior motive. This inherent power ought not to be exercised to stifle a legitimate prosecution. In the present case, the parties are yet to place on the record the entire material in support of their claims. The issues involved are of considerable importance to the parties in particular, and the world of trade and commerce in general.

In such circumstances, in our opinion, the High Court ought to have refrained from indulging in detailed analysis of very complicated commercial documents and reaching any definite conclusions. In our opinion, the High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case.

LW 84:12:2023

GRI TOWERS INDIA PVT LTD v. INOX WIND LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 1106 of 2023

Ashok Bhushan, Barun Mitra & Arun Baroka. [Decided on 20/10/2023]

Section 9 of the Insolvency and Bankruptcy Code, 2016 read with section 14 Limitation Act,1963 - time barred application-dismissed by NCLT-whether correct-Held, Yes.

Brief facts:

The Operational Creditor supplied goods to the Corporate debtor, on various dates in pursuance to 3 purchase orders placed by the Corporate Debtor. In response to Purchase Orders 1 and 2 (stage 1) Operational Creditor issued 65 invoices on different dates from 31.10.2013 to 29.03.2014 out of which unpaid amount was Rs.72,55,402/-. In response to 3rd Purchase Order, Operational Creditor issued three invoices amounting to Rs. 21,91,122/- (Stage 2). Operational Creditor issued demand notice dated 27.07.2022 claiming amount of Rs.1,78,78,390/- total amount of which included principal amount under Stage 1 and Stage 2 and interest. It is pertinent that the Operational Creditor had first filed a civil suit against the outstanding dues pertaining to stage 1 and thereafter withdrawn the civil suit and filed the section 9 application before the NCLT.

The date of default as per Part-IV of Section 9 Application was 30.04.2015 for Stage 1 and on 23.10.2018 for Stage 2. Section 9 application was filed by Operational Creditor on 05.12.2022. Adjudicating Authority by impugned order has dismissed the Section 9 application on the ground that it is barred by limitation as well as there being no agreement placed on record for interest it does not fulfil the threshold of Rs.1 Crore. Aggrieved by the impugned order, this Appeal has been filed.

Decision: Dismissed.

Reason:

The Appellant having advanced the submission to the effect that the Appellant was entitled for exclusion of period under Section 14 of the Limitation Act during which period the suit filed by the Appellant was pending in the Civil Court, we need to first consider the above submission.

The law laid down by the Hon'ble Supreme Court is that even if Section 14 of the Limitation Act does not apply in an appeal, however, the principles underlying Section 14 can be applied while considering exclusion of period under Section 14. Thus, we proceed to examine the contentions of the parties on the premise that principles underlying Section 14 are also attracted in an appeal filed under Section 61 of I&B Code.

One of the conditions which is required to be fulfilled for extending the benefit of Section 14 as per the law laid down by the Hon'ble Supreme Court is "failure of the prior proceedings due to defect of jurisdiction or other cause of like nature". The withdrawal of the suit filed by the Appellant on its own application cannot be said to be failure of prior proceeding due to defect of jurisdiction or other cause of a like nature. When we look into the order passed by the Civil Court as extracted above, it is clear that the Appellant himself has withdrawn the suit for filing the application, which was withdrawn with subject to payment of cost of Rs.5,000/- to the Defendant.

The Suit was withdrawn without any liberty to institute a fresh suit which is clear from the order itself. Order XXIII Rule 3 of the CPC itself contemplated that when the Court is satisfied that a suit must fail by reason of some formal defect, or where there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, Court shall grant liberty to institute a fresh suit. No such liberty has been granted to the Operational Creditor to institute a fresh suit. We, thus, are satisfied that the Appellant is not entitled for benefit of Section 14 of the Limitation Act as has been contended by Counsel for the Appellant.

Benefit of Section 14 of the Limitation Act was sought by the Appellant on the basis of filing of suit and pendency of the suit during the period 03.10.2017 till 18.07.2022. As noted above, suit was withdrawn without any liberty from the Court to institute a fresh proceeding and termination of suit cannot be held on ground of defect of jurisdiction on cause of like nature. Thus, an essential condition for extending the benefit of Section 14 is absent. We, thus, are satisfied that delay in filing Section 9 application with delay cannot be said to be a sufficient cause within the meaning of Section 5.

In the circumstances, we are also satisfied that the present was a case filed by the Operational Creditor only for recovery of its contractual dues with regard to default committed as per the case of the Appellant on 30.04.2015 for stage 1 and 23.10.2018 for stage 2. The Adjudicating Authority did not commit any error in rejecting Section 9 application as barred by time. We do not find any merit in this Appeal. The Appeal is dismissed.

LW 85:12:2023

PHENIL SUGARS LTD v. LAXMI GUPTA & ORS [DEL]

CO.A (SB) 9/2015 & CO.APPL. 615/2015

Pratibha M Singh , J. [Decided on 10/11/2023]

Companies Act,1956- Section 111A - refusal to register transfer of shares- appellant refused to register share transfer in the name of respondents- respondents were inimically disposed to appellant – whether the refusal is correct-Held, Yes.

Brief Facts:

The present appeal has been filed by the Appellant under Section 10F of the Companies Act, 1956 (hereinafter 'the Act') against the impugned judgment and order passed by the Company Law Board (CLB). Vide the impugned order, the CLB has held that the reason given by the Appellant to refuse registration of shares of the Respondents do not fall within the ambit of Section 111A of the Act. The appeal at hand arose out of an application filed by the Respondents against the Appellant Company - M/s Basti Sugar Mills (now 'Phenil Sugars Ltd.') seeking a prayer to the effect that their shareholding ought to be registered by the company.

Decision: Allowed.

Reason:

The Company Law Board, it appears, was of the view that the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression "without sufficient cause" used in Section 58(4), it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation

can also be a cause. Whether the same is sufficient in the facts and circumstances of a given case for refusal of registration, is for the Company Law Board to decide since the aggrieved party is given the right to appeal. The contention of the Appellant before the Company Law Board that the whole transfer is deceptive and mala fide in the background of the Respondent company, should have been considered."

The Supreme Court in *Balwant Singh v. Jagdish Singh AIR 2010 SC 3043* has explained the meaning of the expression 'sufficient cause'. It observed as under:

"...The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one."

Further, the Supreme Court while interpreting the said expression in the context of Section 5 of the Limitation Act, 1963 observed as under:

"11. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

Thus, the interpretation of the expression 'sufficient cause' in the context of refusal by a Company to register shares has to be pragmatic, reasonable and in consonance with the purpose of the legislation. Moreover, it has to be kept in mind that the legislature deliberately used the expression "sufficient cause" in proviso to Section 111A (2) as against the expression "contravention of any of the provision of law" used in proviso to Section 111A (3) of the Companies Act, 1956.

In the opinion of the Court, the import of the expression 'sufficient cause' cannot be reduced to mean only violation or contraventions of law. Any mala fide transfer done with the intention of obstructing the functioning of the company can also constitute sufficient cause for refusing the registration of transfer of shares. There is no doubt in the mind of the Court that a company can refuse registration of transfer of shares if:

i. There is an apprehension that the transfer is not in the best interest of the company and all its stakeholders including the shareholders;

ii. The said apprehension is reasonable and there is material on record to support the apprehension.

In the case at hand, Respondent No.4 was associated with the Appellant company in the past. Respondent No.1 is stated to be his wife while Respondent No.5 is his daughter. On the other hand, Respondent Nos.2 and 3 are alleged to be relatives of the Ex-statutory director of the Appellant company. The Respondents have filed multiple complaints against the Appellant company to various statutory authorities. There are various allegations against Respondent no.4 and the manner in which he has functioned as an auditor of the Company. In this background, the allegation of the Appellant company is that the Respondents seek to cause hurdles in the way of bona-fide corporate decisions taken by the Appellant Company. The Respondents have chosen not to appear before this Court to rebut the allegation of the Appellant.

In the opinion of the Court, these facts constitute 'sufficient cause' and the Appellant company has rightly refused to register the shares of the Respondents. In view of the above legal and factual position, the order of the CLB is unsustainable and is accordingly set aside.

LW 86:12:2023

PLATINO CLASSIC MOTORS INDIA PVT. LTD. v. DEPUTY COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE & ORS [KER]

WP(C) NO. 7997 OF 2023

Dinesh Kumar Singh, J. [Decided on 26/10/2023]

Insolvency and Bankruptcy Code,2016- liquidation proceedings- claims as to finalised tax demands- whether allowable-Held, Yes.

Brief facts:

In response to the public notice, the Liquidator of the petitioner has received claim in Schedule II, Form C from the 1st respondent presenting five items of claims, finalisation of tax demands arising out of assessment proceedings, before the Official Liquidator.

Decision: Dismissed.

Reason:

I have considered the submissions. From perusal of Section 14 of the IBC and several Judgments of the other High Courts as well as the Supreme Court, it is well settled that Section 14 of the IBC does not create a bar for finalisation of the assessment and adjudication proceedings in respect of the taxes. On the resolution once the reference has been admitted, there is moratorium for recovery of the tax dues but, there is no bar for finalisation of the assessment and adjudication proceedings. On perusal of the impugned orders Exhibits P-7 to P10, it is evident that the petitioner was issued notice to which reply was filed and after hearing, these orders in Exhibits P-7 to P-10 has been finalised. Therefore, I do not find any substance in the submissions of the Learned Counsel for the petitioner that: since the Official Liquidator was not heard, the order has become bad. It is the petitioner who was issued notice. The representative of the petitioner remained present during the hearing. His reply was also filed in the show cause notice and thereafter the orders in Exhibits P-7 to P-10 has been passed. Thus, I find no substance in the writ petition and the same is hereby dismissed. The Official Liquidator should consider the five claims of the petitioner in accordance with the law.

Industrial & Labour Laws

LW 87:12:2023

THANKAMMA BABY v. THE REGIONAL PROVIDENT FUND COMMISSIONER [SC]

Civil Appeal No. 4619 of 2010 with connected appeal

Abhay S. Oka & Sanjay Karol, JJ. [Decided on 07/11/2023]

Employees Provident Fund (Miscellaneous Provisions) Act,1952- establishment carrying on commercial activity- whether covered under the PF coverage notification- Held, Yes.

Brief facts:

The appellant is engaged in manufacturing, assembling, and selling umbrellas. The respondent issued a notice to the appellant, alleging that the 1952 Act was applicable to the appellant. Thereafter, the respondent held that the case of the appellant was covered by the notification dated 7th March 1962. A Review Petition was filed by the appellant, which was rejected by the respondent. An appeal preferred by the appellant to the Appellate Authority against the decision of the respondent was dismissed. Being aggrieved by the said orders, a Writ Petition was filed by the appellant. The learned Single Judge dismissed the Writ Petition, and the order of the learned Single Judge has been confirmed by the impugned judgment by a Division Bench of the Kerala High Court in a Writ Appeal filed by the respondent. Hence the present appeal to the Supreme Court.

Decision: Dismissed.

Reason:

Before we deal with the contentions raised by the appellant, we must note here that the Constitution Bench of this Court, in the case of *Mohmed Ali & Ors v. Union of India & Anr, 1963 Supp (1) SCR 993* has dealt with the issue of interpretation of the provisions of the 1952 Act and in particular sub-Section (3) of Section 1 of the 1952 Act. The Constitution Bench held that:

a) The 1952 Act was made to institute provident funds for the benefit of the employees in factories and other establishments;

b) The provisions of the 1952 Act constitute social justice measures; and

c) The underlying idea behind the provisions of the 1952 Act is to bring all kinds of employees within its fold as and when the Central Government might think it fit after reviewing each class of establishments.

After considering clause (a) of sub-Section (3) of Section 1, the Constitution Bench held that, in so far as establishments which do not come within the description of the factories engaged in industries enumerated in schedule I are concerned, the Central Government has been vested with the power of specifying such establishments or class of establishments as it might determine to be brought within the purview of the 1952 Act.

Clause (a) of sub-Section (3) is applicable only to those factories engaged in any industry specified in Schedule I. Clause (b) of sub-Section (3) is applicable to all other establishments which are not covered by clause (a) of sub-Section (3) provided such establishments are notified by a notification issued by the Central Government which is published in the official Gazette. Clause (b) of sub-Section (3) takes within its fold all establishments which are not covered by clause (a). Therefore, a notification under clause (b) can be issued in respect of factories engaged in any industry which is not specified in Schedule I. Hence, the argument that a notification cannot be issued under clause (b) of sub-Section (3) regarding a factory engaged in an industry not covered by Schedule I cannot be accepted. We are dealing with a social welfare legislation described by the Constitution Bench as a measure of social justice. Therefore, to give effect to the legislature's intention, the Court will have to adopt a purposive interpretation. We, therefore, reject the contention that all factories which are not covered by industries in Schedule I are out of the coverage of clause (b).

We may note here that it is not the case of the appellant that her establishment has been exempted under Section 16 of the 1952 Act. Under the notification dated 7th March 1962, there is a category of 'trading and commercial establishments'. Admittedly, the appellant is carrying on the business of assembling/manufacturing umbrellas and selling the same. The respondent has recorded a finding of fact that the business of establishment of the appellant was of assembling umbrellas and selling the same in her own outlet. Thus, the establishment of the appellant is a commercial establishment. It is an establishment predominantly carrying on commercial activity. Therefore, it cannot be denied that the business of the appellant will fall in the category of 'trading and commercial establishments'. In the circumstances, the case of the appellant will be governed by the said notification issued under clause (b) of sub-Section (3) of Section 1. The decision of this Court in the case of *Regional Provident Funds Commissioner v. Shibn Metal Works (Supra)* does not deal with clause (b) of sub-Section (3) of Section 1.

We, therefore, find absolutely no error in the view taken by the learned Single Judge and Division Bench of Kerala High Court. Accordingly, we dismiss the appeals with no order as to costs.

LW 88:12:2023

WEST ACADEMY SENIOR SECONDARY SCHOOL v. DEPUTY LABOUR COMMISSIONER & ORS [P&H]

Civil Writ Petition No. 25382 of 2023

Jagmohan Bansal, J. [Decided on 17/11/2023]

Payment of Gratuity Act,1972-dismissal from service-gratuity denied-no ground for forfeiture pleaded-Controlling and appellate authorities directed the petitioner to pay gratuity- whether correct-Held, Yes.

Brief facts:

The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order of the Appellate Authority(Respondent No.1) upholding the order of the Controlling Authority (Respondent No.2) whereby the petitioner was directed to pay gratuity to respondent No.3.

The petitioner on account of complaints of students initiated an inquiry against respondent, which culminated into her dismissal from service. The respondent requested the petitioner to pay her gratuity. The petitioner did not release gratuity of the respondent. The respondent approached Controlling Authority and came to a conclusion that respondent is entitled to gratuity despite the fact that she was dismissed from service. It was also held that there is no order of forfeiture of gratuity and petitioner has not quantified any loss caused by the respondent, thus, gratuity cannot be withheld. The petitioner preferred an appeal which came to be dismissed.

Decision: Dismissed.

Reason:

The petitioner before the Controlling Authority pleaded that employee-respondent was dismissed from service, thus, she is not entitled to gratuity. There was no argument before the Controlling Authority as well as Appellate Authority that respondent has been dismissed from service and she was dismissed on account of her disorderly conduct, thus, her gratuity is liable to be forfeited and Controlling Authority is supposed to decide question of forfeiture of gratuity. The petitioner withheld gratuity forming an opinion that respondent has been dismissed from service, thus, she is not entitled to gratuity. The said argument of the petitioner has been turned down by the authorities below and now the petitioner has raised a totally new set of arguments. The gratuity was not withheld forming an opinion that there was disorderly conduct on the part of respondent. It is conceded fact that no order with respect to withholding or forfeiture of gratuity was passed while dismissing respondent from service. In the absence of order of forfeiture coupled with a totally different opinion of the petitioner at an initial stage, the petitioner has no authority to withhold gratuity of the respondent.

The petitioner is relying upon Section 7(4) (a) of 1972 Act which is not applicable at all because Section 7(4) (a) enjoins the employer to deposit admitted amount in case of dispute raised by an employee. The other clauses of said sub-section do not enjoin the Controlling Authority, on the application of an employee, to decide question of forfeiture vis-à-vis allegation of disorderly conduct. The petitioner neither approached Controlling Authority nor raised question of disorderly conduct, thus, there was no occasion to decide said question while adjudicating application of the respondent.

This Court while exercising writ jurisdiction cannot act as an appellate authority over the orders passed by authorities constituted under the 1972 Act. It is apt to notice that 1972 Act is a piece of beneficial legislation and warrants liberal interpretation. In the wake of above discussion and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

LW 89:12:2023

IMT INDUSTRIAL ASSOCIATION & ANR v. STATE OF HARYANA & ANR[P&H]

Civil Writ Petition No. 26573 of 2021 with connected petitions

G.S.Sandhawalia & Harpreet Kaur Jeewan,JJ. [Decided on 17/11/ 2023]

The Haryana State Employment of Local Candidates Act, 2020- employment in private sector industries- directing 75% of the employment to Haryana domiciled locals in the posts are not of technical nature- whether constitutionally valid-Held, No.

Brief Facts:

Purely a legal question is involved in this batch of cases regarding the vires of The Haryana State Employment of Local Candidates Act, 2020 (in short 'the 2020 Act') and whether the same is unconstitutional and violative of Part-III of the Constitution of India. The 2020 Act required that 75% of the employment was to be given to the persons having domicile of Haryana where the posts are not of technical nature.

The petitioners lay challenge to 'the 2020 Act' on account of the fact that it provides reservation in private employment and creates an unprecedented intrusion by the State Government into the fundamental rights of the private employers to carry on their business and trade as provided under Article 19 of Constitution of India. The restrictions thus placed upon the rights of the petitioners are alleged not to be reasonable and are manifestly arbitrary, capricious, excessive, and uncalled for and the same being violative of the principles of natural justice, equality, liberty, and fraternity laid down in the Preamble of the Constitution of India and is subject to challenge.

Decision: Allowed.

Reason:

Counsels for the petitioners are right in contending that what is to be seen is the pith and substance of the legislation. The underlying object of the legislation, as has been succinctly put by counsel for the petitioners, is to create an artificial gap and a discrimination qua the citizens of India. The purpose of the legislation itself is stemmed on the fact that there are a large number of migrants who are taking up the jobs of the local candidates which apparently are comparatively lower paid and the amount has been reduced from Rs.50,000/- per month to Rs.30,000/- per month. It is in such circumstances the 75% reservation is being now made. The end effect is, thus, to be noticed by the Court that the powers of the State legislature cannot be to the detriment to the national interest and they cannot be directly encroaching upon the power of the Union.

The structure of the Act as such would be violative of Article 19 of the Constitution of India and Article 19(5) is subject to regarding reasonable restrictions to the extent of right conferred for the interest of the general public which could permit the State to make any law or for the protection of interest of any Scheduled Tribe. Therefore, the Act is

imposing unreasonable restrictions regarding the right to move freely throughout the territory of India or to reside and settle in any part or the territory of India. Similarly, while referring to Article 19(6), it can be said that the right of the State is regarding the provisional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business to restrict the right under Article 19(1)(g) or to carry on any trade, business, industry or service exclusively by the State or its Corporations to the exclusion of other citizens. It can, thus, be said that the Act as such cannot be said to be reasonable in any manner and it was directing the employers to violate the constitutional provisions.

Reliance can be placed upon the judgment in *P.A. Inamdar and others vs. State of Maharashtra and others, (2005) 6 SCC 537* wherein it was held by a 7-Judge Bench of the Apex Court that appropriation of seats in the minority institutions could not be held to be a reasonable restriction within the meaning of Article 19(6) of the Constitution of India. Merely since the State resources are poor and limited, the private employer could not be forced to employ on the basis of the reservation policy in favour of local candidates. Similarly, while placing reliance upon *Pramati Educational and Cultural Trust (Regd.) & Ors v. Union of India & Ors, (2014) 8 SCC 1*, a 5-Judge Bench of the Apex Court, reliance can be made on the observations that the right given under Article 19(5) was only to the extent of protection of interests of Scheduled Tribes. The issue which was being examined was whether the State could force charitable elements of private educational institutions and destroy the inbuilt right under Article 19(1)(g) of the Constitution of India. It can accordingly be pointed out that the power as such which has been given under Article 15(5) of the Constitution of India is confined to the admission of socially and educationally backward class of citizens to private educational institutions and the right of the Court to declare the law as ultra vires under Article 19(1)(g) has been kept open and any constitutional amendment could not destroy the right.

The restrictions imposed upon all types of private employers as defined under Article 2(e) are gross to the extent that a person's right to carry on occupation, trade or business is grossly impaired under Article 19(1)(g) of the Constitution of India. The requirement to register any employee on the designated portal within three months who was being paid less than Rs.30,000/- per month up to 75%, thus, is violative of the fundamental rights protected under the Constitution of India. The control of the State by a designated officer having a right to consider the cases of exemption to reject them are onerous. The requirement of submitting quarterly reports and the power of the Authorized Officer to call for records and to inspect premises for purposes of examining the records, registers and documents by just giving one day prior notice as such are conditions which can be termed as the "Inspector Raj" of the State. The private employer, thus, has been put under the anvil of the State as to whom to employ and the penalties which are liable to be imposed on contravention which have already been noticed which multiply on account of any violations apart from leading to criminal prosecution by filing of a complaint. The bar under Section 20 of not being able to challenge the legal proceedings in any Court against any Authorized Officer or designated officer further ties the hands of the employer. Therefore, the State continues to exercise absolute control over a private employer and as noticed, directing it to do which itself is forbidden for public employment.

In such circumstances, we are of the considered opinion that the restrictions imposed in the Statute as such have far reaching effect and cannot be held to be reasonable in any manner which would warrant no interference. Resultantly, we are of the considered view that they cannot be protected under Articles 19(5) and 19(6) of the Constitution of India, as contended by counsel for the State.

Keeping in view the above four questions being answered against the State, we are of the considered opinion that the writ petitions are liable to be allowed and The Haryana State Employment of Local Candidates Act, 2020 is held to be unconstitutional and violative of Part III of the Constitution of India and is accordingly held ultravires the same and is ineffective from the date it came into force.

LW 90:12:2023

JASPAL SINGH DHILLON v. BHAKHRA BEAS MANAGEMENT BOARD & ORS [P&H]

Civil Writ Petition No.18923 of 2022

Jagmohan Bansal,. [Decided on 17/11/ 2023]

Employee retired- recovery of excess payments from retirement dues- whether correct-Held,No.

Brief facts:

The petitioner through instant petition is seeking setting aside of order whereby respondent has recovered a sum of Rs.2,20,881/- from the retiral benefits of the petitioner. The petitioner joined respondent-BBMB On 22.07.1987 and time to time was promoted and he retired on 30.09.2021 on attaining the age of superannuation. The respondent while releasing retiral benefits of the petitioner deducted a sum of Rs.2,20,881/-. The respondent deducted said amount forming an opinion that from 01.11.2010 to 31.12.2020, an excess payment was made by way of an increment which the petitioner was not entitled.

Decision: allowed.

Reason:

I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

The sole contention of the respondent is that there was undertaking dated 02.12.2009 furnished by the petitioner. The said undertaking needs to be considered in conjunction with option Form filed by the petitioner. The petitioner filed option Form while opting for revised pay scale and at that point of time undertaking was furnished. The said undertaking cannot be linked with increment which was assessed on 18.06.2012 and was extended from July' 2010 to September' 2021. The respondent on account of said undertaking got right, if any, to recover excess payment made on account of revised pay scale. The payment on account of revised pay scale could be made pre as well as post undertaking, thus, respondent at the most would recover excess payment with respect to revised pay scale. The undertaking cannot be linked with excess payment made on account of increment assessed on 18.06.2021.

The facts of the present case are distinguishable from facts in the case of *Jagdev Singh (supra)* whereas judgment of Supreme Court in *Rafiq Masih (supra)* is squarely applicable to the case in hand. Hon'ble Supreme Court in *Rafiq Masih (supra)* in Para 12 has clearly held that no recovery should be made from retired employees or employees who are due to retire within 1 year of the order of recovery. The respondent has effected recovery from the retiral benefits of the petitioner. This Court in *Tara Chand Vs. Secretary to Government of Punjab and others 2013 (4) SCT 251* in similar circumstances has held that excess payment made on account of step up on completion of 16 or 24 years' service cannot be made from the retiral benefits.

In the wake of above discussion and findings, this Court is of the considered opinion that respondent has effected recovery contrary to law laid down by Hon'ble Supreme Court in Rafiq Masih and this Court in Tara Chand. The respondent is liable to refund the already recovered amount. The respondent shall refund the said amount within 2 months from today. The impugned order is hereby quashed and writ petition is allowed in above terms.

General Laws

LW 91:12:2023

VASUDEV GARG & ORS v. EMBASSY COMMERCIAL PROJECTS [Del]

O.M.P.(I) (COMM.) 269/2023 & IA No.20370/2023

Yogesh Khanna, J. [Decided on 31/10/ 2023]

Arbitration and Conciliation Act,1996- section 9- interim relief- seat of arbitration fixed at Mumbai- petition filed in Delhi-whether maintainable-Held,No.

Brief facts:

This petition is filed by the petitioner under Section 9 of the Arbitration and Conciliation Act seeking interim relief from this Court to restrain the respondents from carrying out any construction/development activity based on the illegal Modified Development Plan dated 27.10.2022; unilateral appointment of M/s.Alotech as Co-developer; unilateral amendment of development schedule and budget of Whitefield project and doing anything which shall be detrimental to the interests of both the petitioners and the project.

Decision: Dismissed.

Reason:

Admittedly, there is no pleading in the entire petition qua the seat of arbitration being at New Delhi. The facts show Mumbai is indicated as a place of arbitration in clause 17.1. It does not say Mumbai and Delhi, both shall be the places of arbitration, hence there is no confusion qua the place of arbitration. Further there is no contrary indicator in the agreement that any other place other than Mumbai shall have the jurisdiction in case of arbitration. Interestingly clause 21.3 is made subject to clause 17.1. Thus, even if there is conflict amongst clauses 17.1 and 21.3; then clause 17.1 shall prevail. Clause 17.1 is in line with Section 20(1) of the Arbitration and Conciliation Act, hence there is no chance of any misunderstanding.

The crux is when per clause 17.1 the parties have agreed to conduct arbitration as per SIAC at Mumbai, then their intention to designate Mumbai as a seat of arbitration is evident from clause 17.1; reinforced per clause 21.3. There exist no contrary indication to designate any other seat of arbitration. The cause of action has no relevance in the facts and circumstances and hence only the Courts at Mumbai shall have supervisory jurisdiction.

In M/s. Talwar Auto Garages Private Limited vs. M/s. VE Commercial Vehicles Limited 2023 SCC OnLine Del 4940 it was held only such Courts shall have the jurisdiction under Section 11 of Arbitration and Conciliation Act where the seat of arbitration is located. In this context, if we examine the clauses of the SHA, there is nothing to show the parties intended to confine Mumbai as a place of meetings only, reducing it to a mere "venue". On the other hand, Clause 17.1 read with Clause 21.3 lays down a clear-cut regime, whereby Mumbai emerges as the seat from where the entire arbitration proceedings would be anchored. This aspect is clearly established from the expression "subject to the provisions of Clause 17 (Dispute Resolution)" used in Clause 21.3, which relegates the anchoring of entire arbitration proceedings to the place, as contemplated in Clause 17.1, which is Mumbai. It needs to be noted that once arbitration proceedings stand relegated to Clause 17.1, reference to courts of exclusive jurisdiction is reduced to the adjudication of disputes other than those covered by Clause 17.1, i.e. other than those covered in arbitration agreement.

Therefore, to conclude, clause 21.3, cannot be construed to infer any intention that Delhi also, apart from Mumbai, was meant to be seat of arbitration. It is now a settled law that principles of Section 20 of CPC do not apply to the arbitration proceedings, hence accrual of cause of action, howsoever trivial or significant, would not make Delhi a seat of arbitration and it is for this reason that the draftsman who drafted the arbitration agreement contradistinguished the scope of clause 21.3 from clause 17.1 by excluding arbitration proceedings from the scope of clause 21.3 and restricting the scope of clause 21.3 to those matters which are required to be adjudicated in court only being excepted from arbitration. Furthermore, to say it is clause 21.3 of SHA which provides for "seat" of arbitration, would lead to a situation of dual seats of arbitration, giving courts in both Mumbai and Delhi supervisory jurisdiction, which is clearly contrary to the rationale for providing "seat" of arbitration.

All previous correspondences in view of Clause 22.2 need to be ignored and hence cannot be looked into. *Joshi Technologies International Inc. vs. Union of India and Others (2015) 7 SCC 728* may be seen in this context. (more specifically paras 41 and 42). The petition lacks Delhi jurisdiction and is thus liable to be dismissed.

4

FROM THE GOVERNMENT

- THE LIMITED LIABILITY PARTNERHIP (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023
- SIMPLIFIED NORMS FOR PROCESSING INVESTOR'S SERVICE REQUESTS BY RTAs AND NORMS FOR FURNISHING PAN, KYC DETAILS AND NOMINATION
- MOST IMPORTANT TERMS AND CONDITIONS (MITC)
- PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH REAL ESTATE INVESTMENT TRUSTS (REITs) AND MANNER OF CLAIMING SUCH AMOUNTS BY UNITHOLDERS
- PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH INFRASTRUCTURE INVESTMENT TRUSTS (INVITs) AND MANNER OF CLAIMING SUCH AMOUNTS BY UNITHOLDERS
- PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH ENTITIES HAVING LISTED NON-CONVERTIBLE SECURITIES AND MANNER OF CLAIMING SUCH AMOUNTS BY INVESTORS
- SIMPLIFICATION AND STREAMLINING OF OFFER DOCUMENTS OF MUTUAL FUND SCHEMES
- INTERNATIONAL TRADE SETTLEMENT IN INDIAN RUPEES (INR) – OPENING OF ADDITIONAL CURRENT ACCOUNT FOR EXPORTS PROCEEDS
- REGULATORY MEASURES TOWARDS CONSUMER CREDIT AND BANK CREDIT TO NBFCs
- IMPLEMENTATION OF SECTION 51A OF UAPA,1967: UPDATES TO UNSC'S 1267/1989 ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST: AMENDMENTS IN 05 ENTRIES
- FORMATION OF NEW DISTRICTS IN THE STATE OF RAJASTHAN – ASSIGNMENT OF LEAD BANK RESPONSIBILITY
- GUIDELINES ON IMPORT OF SILVER BY QUALIFIED JEWELLERS AS NOTIFIED BY – THE INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)
- 'FULLY ACCESSIBLE ROUTE' FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES – INCLUSION OF SOVEREIGN GREEN BONDS
- MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

Corporate Laws

01 The Limited Liability Partnerhip (Significant Beneficial Owners) Rules, 2023

[Issued by the Ministry of Corporate Affairs [F. No.17/30/2018-CL-V] dated 09.11.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by section 79 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby makes the following rules namely:-

I. Short title and commencement- (1) These rules may be called the Limited Liability Partnerhip (Significant Beneficial Owners) Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Applicability- The provisions of these rules shall apply to any Limited Liability Partnership.

3. Definitions- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Limited Liability Partnership Act, 2008 (6 of 2009);

(b) "Annexure" means the Annexure to these rules;

(c) "control" shall include the right to appoint majority of the designated partners or to control the management or policy decisions exercisable by a person or perons acting individually or in concert, directly or indirectly, including by virtue of their contribution or management right or limited liability partnership agreements or other agreements or in any other manner;

(d) "fee" means the fees as specified in the Limited Liability Partnership Rules, 2009;

(e) "Form" or "e-form" means a form set forth in the Annexure to these rules;

(f) "majority stake" means:-

(i) holding more than one-half of the equity share capital in the body corporate: or

(ii) holding more than one-half of the contribution in a partnership entity; or

(iii) holding more than one-half of the voting right in t he body corporate; or

(iv) having the right to receievor participate in more than one-half of the distributable dividend or distributable profits or any other distribution by the body corporate including a partnership entity as the case may be;

(g) "notification" means the notification number G.S.R.1 10 (E), dated the 11th February, 2022;

MANOJ PANDEY
Joint Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

02 Simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2023/181 dated 17.11.2023]

1. SEBI, vide circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 dated March 16, 2023 (now rescinded due to issuance of Master Circular for Registrars to an Issue and Share Transfer Agents dated May 17, 2023) had simplified norms for processing investor's service request by RTAs and for furnishing PAN, KYC details and Nomination.

2. Based on representations received from the Registrars' Association of India, feedback from investors, and to mitigate unintended challenges on account of freezing of folios and referring frozen folios to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, it has been decided to do away with the above provisions. Accordingly, para 19.2 of the Master Circular for Registrars to an Issue and Share Transfer Agents dated May 17, 2023 has been amended as follows:

2.1. Reference to the term 'freezing/ frozen' has been deleted.

2.2. Referral of folios by the RTA/listed company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, has been done away with.

3. Stock Exchanges, Depositories, RTAs and listed companies are advised to:

3.1. comply with the conditions laid down in this circular;

3.2. make necessary amendments to the relevant bye-laws, rules and regulations, operational instructions, as the case may be, for the implementation of the above circular; and

3.3. bring the provisions of this circular to the notice of their constituents and also disseminate the same on the website.

3.4. communicate and create awareness amongst stakeholders.

4. This circular shall come into force with immediate effect.

5. This circular is issued in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework → Circulars".

ARADHANA VERMA
General Manager

03 Most Important Terms and Conditions (MITC)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/180 dated 13.11.2023]

1. SEBI has prescribed the following uniform documents for formalizing the broker-client relationship, as per clause 20 of "Master Circular on stock brokers" dated May 17, 2023:

   i. Account opening form

   ii. Rights and obligations

   iii. Risk disclosure documents

   iv. Guidance note

   v. Policies and procedures

   vi. Tariff sheet

   A copy of these documents is required to be provided by the broker to the clients free of charge.

2. Typically, these documents are voluminous and investors may lose focus on critical aspects of the relationship with the broker.

3. In order to bring into focus the critical aspects of the broker-client relationship and for ease of understanding of the clients, it has been decided that brokers shall inform a standard Most Important Terms and Conditions (MITC) which shall be acknowledged by the client.

4. The form, nature of communication, documentation and detailed standards for implementation of MITC shall be published on or before January 01, 2024, by the Brokers' Industry Standards Forum (ISF), under the aegis of stock exchanges, in consultation with SEBI.

5. In the event that the ISF is unable to publish the same, as above, in whole or in part, then SEBI, may, at its discretion, publish standards in respect of the same.

6. In view of the above, additional clause 20.1.6 may be incorporated in the master circular and 20.4 of the master circular stands amended as under.

   "20.1.6. Most Important Terms and Conditions"

   "20.4 ....in the future. The client would also be required to give acknowledgement of Most Important Terms and Conditions (MITC)"

7. For onboarding of new clients, the date of the implementation and compliance by the market participants shall be April 01, 2024.

8. For existing clients, the MITC shall be informed to clients via email or any other suitable mode of communication (which can be preserved) by June 01, 2024.

9. The stock exchanges are directed to:

   a. Bring the provisions of this circular to the notice of stock brokers, and also disseminate the same on their websites;

   b. Make amendments to the relevant bye-laws, rules and regulations for the implementation of the above provisions;

   c. Publish the implementation standards on their websites; and

   d. Communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development report.

10. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 30 of SEBI (Stock Brokers) Regulations, 1992 and Regulation 51 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

ARADHANA VERMA
General Manager

04 Procedural framework for dealing with unclaimed amounts lying with Real Estate Investment Trusts (REITs) and manner of claiming such amounts by unitholders

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/177 dated 08.11.2023]

1. Regulation 18(16)(b) of the SEBI (Real Estate Investment Trusts) Regulations, 2014 ('REIT Regulations'), mandate that not less than ninety percent of Net Distributable Cash Flows (NDCFs) of the REIT shall be distributed to the unitholders.

2. Regulation 18(16)(c) of the REIT Regulations, inter-alia, provides that such distributions to be made by the REIT, shall be declared and made not less than once every six months in every financial year and shall be made not later than fifteen days from the date of such declaration. However, in certain cases it has been observed that the distribution amounts remained unclaimed or unpaid because of various reasons, including failure to update account details by the unitholders.

3. In order to deal with any amount remaining unclaimed or unpaid out of distributions[1], Regulation 18(6)(f) of the REIT Regulations, was inserted, as under:

   "any amount remaining unclaimed or unpaid out of the distributions declared by a REIT in terms of sub-clause (c), shall be transferred to the 'Investor Protection and

Education Fund' constituted by the Board in terms of section 11 of the Act, in such manner as may be specified by the Board."

4. Further, Regulation 18(6)(g) of the REIT Regulations, provides that, *'the unclaimed or unpaid amount of a person that has been transferred to the Investor Protection and Education Fund in terms of sub-clause (f), may be claimed in such manner as may be specified by the Board'.*

5. In order to define the manner of handling the unclaimed amounts lying with the REITs, transfer of such amounts to the IPEF and claim thereof by the unitholders, necessary amendments were made to Regulations 4(1) and 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 (IPEF Regulations).

6. Regulation 5(3)(ii) of the IPEF Regulations, inter-alia, provides that the unclaimed amounts credited to the IPEF shall be utilised for refund to the entities which transferred the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund. Hence, an application for claim of entitled amounts needs to be made by a unitholder to the REIT which shall process the claim and then seek refund from the Board for the said amount.

7. A framework defining the procedure to be followed by an REIT for transfer of unclaimed amounts, initially to an Escrow Account and subsequently, to the IPEF and claim thereof by a unitholder, has been provided as Annex - A to this Circular.

8. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 and Regulation 33 of the REIT Regulations. This circular is issued with the approval of competent authority.

9. The provisions of this Circular shall come into effect from March 1, 2024.

10. Further, for REITs having unclaimed amounts for less than 7 years, as on February 29, 2024, shall start computing interest, as per provisions of Part I of Annex - A, from March 1, 2024. For REITs which shall be holding unclaimed amounts for more than 7 years, as on February 29, 2024, shall transfer the unclaimed amounts of the unitholders to IPEF, in compliance with the provisions of Part II of Annex - A, on or before March 31, 2024.

11. This Circular is available on the SEBI website, www.sebi.gov.in under the category, 'Legal', under 'Circulars'.

RITESH NANDWANI
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

05 Procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/178 dated 08.11.2023]

1. Regulation 18(6)(b) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ('InvIT Regulations'), mandate that not less than ninety percent of Net Distributable Cash Flows (NDCFs) of the InvIT shall be distributed to the unitholders.

2. Regulation 18(6)(c) of the InvIT Regulations, inter-alia, provides that such distributions to be made by the InvIT, shall be declared and made not less than once every six months in every financial year in case of publicly offered InvITs and not less than once every year in case of privately placed InvITs and shall be made not later than fifteen days from the date of such declaration. However, in certain cases it has been observed that the distribution amounts remained unclaimed or unpaid because of various reasons, including failure to update account details by the unitholders.

3. In order to deal with any amount remaining unclaimed or unpaid out of distributions[1], Regulation 18(6)(e) of the InvIT Regulations, was inserted, as under:

"any amount remaining unclaimed or unpaid out of the distributions declared by a InvIT in terms of sub-clause (c), shall be transferred to the 'Investor Protection and Education Fund' constituted by the Board in terms of section 11 of the Act, in such manner as may be specified by the Board."

4. Further, Regulation 18(6)(f) of the InvIT Regulations, provides that, *'the unclaimed or unpaid amount of a person that has been transferred to the Investor Protection and Education Fund in terms of sub-clause (e), may be claimed in such manner as may be specified by the Board'.*

5. In order to define the manner of handling the unclaimed amounts lying with the InvITs, transfer of such amounts to the IPEF and claim thereof by the unitholders, necessary amendments were made to Regulations 4(1) and 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 (IPEF Regulations).

6. Regulation 5(3)(ii) of the IPEF Regulations, inter-alia, provides that the unclaimed amounts credited to the IPEF shall be utilised for refund to the entities which transferred the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund. Hence, an application for claim of entitled amounts needs to be made by a unitholder to the InvIT which shall process the claim and then seek refund from the Board for the said amount.

7. A framework defining the procedure to be followed by an InvIT for transfer of unclaimed amounts, initially to an Escrow Account and subsequently, to the IPEF and claim thereof by a unitholder, has been provided as Annex - A to this Circular.

8. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 and Regulation 33 of the InvIT Regulations. This circular is issued with the approval of competent authority.

9. The provisions of this Circular shall come into effect from March 1, 2024.

10. Further, for InvITs having unclaimed amounts for less than 7 years, as on February 29, 2024, shall start computing interest, as per provisions of Part I of Annex - A, from March 1, 2024. For InvITs which shall be holding unclaimed amounts for more than 7 years, as on February 29, 2024, shall transfer the unclaimed amounts of the unitholders to IPEF, in compliance with the provisions of Part II of Annex - A, on or before March 31, 2024.

11. This Circular is available on the SEBI website, www.sebi.gov.in under the category, 'Legal', under 'Circulars'.

RITESH NANDWANI
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

06 Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/176 dated 08.11.2023]

1. Regulation 61A (2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'), provides that, 'where the interest/ dividend/ redemption amount has not been claimed within thirty days from the due date of interest/ dividend/ redemption payment, a listed entity shall within seven days from the date of expiry of the said period of thirty days, transfer the amount to an Escrow Account…….'.

2. While the said provision mandated transfer of the unclaimed amounts[1], there was a need to standardise the process to be followed by a listed entity for transfer of such amounts to Escrow Account and by the investors for making claims thereof. Hence, a framework has been created for defining the manner of transfer of such unclaimed amounts (referred at paragraph 1 above) by a listed entity to an Escrow Account and claim thereof by an investor. The same is enclosed as Annex – A to this Circular.

3. Further, Regulation 61A (3) of the LODR Regulations, inter-alia, provides that any amount transferred to the Escrow Account in terms of Regulation 61A (2), remaining unclaimed for a period of seven years shall be transferred to:

   3.1. The 'Investor Education and Protection Fund' (IEPF) constituted in terms of section 125 of the Companies Act, 2013 – in case of listed entities which are companies[2]; and

   3.2. The 'Investor Protection and Education Fund' (IPEF) created by the Board in terms of section 11 of the Act – in case of listed entities which are not companies.

4. In order to define the manner of handling the unclaimed amounts lying, in particular, in the Escrow Accounts of the listed entities which are not companies, transfer of such amounts to the IPEF and claim thereof by the investors, necessary amendments were made to Regulations 4(1) and 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 (IPEF Regulations).

5. Regulation 5(3)(ii) of the IPEF Regulations, inter-alia, provides that the unclaimed amounts credited to the IPEF shall be utilised for refund to the listed entities which transferred the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund. Hence, an application for claim of entitled amounts needs to be made by an investor to the listed entity which shall process the claim and then seek refund from the Board for the said amount.

6. A framework defining the procedure to be followed by the listed entities (which are not companies) for transfer of such unclaimed amounts from the Escrow Account to the IPEF and claim thereof by an investor, has been provided as Annex – B to this Circular.

7. Recognized Stock Exchanges, Issuers and Depositories are directed to:

   7.1. Comply with the conditions laid down in this circular;

   7.2. Disseminate the provisions of the circular on their websites;

   7.3. Put in place necessary systems and infrastructure for implementation of this circular; and

   7.4. Communicate and create awareness among investors.

8. Stock Exchanges shall also bring the provisions of this circular to the notice of listed entities/ issuers of listed Non-Convertible Securities and make consequential changes, if any, to their respective bye-laws.

9. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 and Regulation 101 of the LODR Regulations, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

10. The provisions of this Circular shall come into effect from March 1, 2024.

11. Further, listed entities having unclaimed amounts in the Escrow Account for less than 7 years, as on February 29, 2024, shall start computing interest, as per provisions of Annex - A, from March 1, 2024. For listed entities which are not companies and have unclaimed amounts in the Escrow Account for more than 7 years, as on February 29, 2024, shall transfer the unclaimed amounts of the investors to IPEF, in compliance with the provisions of Annex - B, on or before March 31, 2024.

12. This Circular is available on the SEBI website, www.sebi.gov.in, under the category, 'Legal', under 'Circulars'.

PRADEEP RAMAKRISHNAN
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

07 Simplification and streamlining of Offer Documents of Mutual Fund Schemes

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-RAC-2/P/CIR/2023/000175 dated 01.11.2023]

1. In order to enhance ease of preparation of the Scheme Information Document (SID) by mutual funds and increase its readability for investors, SEBI in consultation with AMFI, undertook an exercise to revamp the format of SID.

2. Based on the suggestions of AMFI and the recommendations of the Mutual Fund Advisory Committee, the format of SID was simplified and rationalized.

   The revised format (placed at Annexure 'A') is aimed at streamlining the dissemination of relevant information to investors, rationalizing the preparation of SID and facilitating its periodic updation by mutual funds.

3. Accordingly, the format of SID specified through circular dated May 23, 2008 and incorporated as Clause 1.1.2 of Master Circular dated May 19, 2023, stands modified.

4. Applicability: The revised format for SID, KIM and SAI shall be adopted as under:

   a. Updated format for SID/KIM/SAI to be implemented w.e.f. April 01, 2024.

   b. Draft SIDs to be filed with SEBI on or before March 31, 2024 or SIDs already filed with SEBI (final observations yet to be issued) or SIDs for which the final observations have already been received from SEBI (if launched on or before March 31, 2024), can use the old format of SID, provided that the SIDs are updated as per timeline mentioned at (c) below.

   c. For Existing SIDs – by April 30, 2024 with data as on March 31, 2024.

VISHAKHA MORE
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

08 International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds

[Issued by the Reserve Bank of India vide RBI/2023-2024/86 FED Circular No.08 dated 17.11.2023]

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to A.P. (DIR Series) Circular No.10 dated July 11, 2022, in terms of which an additional arrangement has been put in place for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of the correspondent bank/s of the partner trading country maintained with AD Category-I banks in India.

2. Further, attention of AD Category-I banks is invited to Para 4.1 of circular DOR.CRE.REC.23/21.08.008/2022-23 dated April 19, 2022 on Opening of Current Accounts and CC/OD Accounts by Banks. In terms of this provision and in order to provide greater operational flexibility to the exporters, AD Category-I banks maintaining Special Rupee Vostro Account as per the provisions of the Reserve Bank circular dated July 11, 2022 referred above are permitted to open an additional special current account for its exporter constituent exclusively for settlement of their export transactions.

PUNEET PANCHOLY
Chief General Manager

09 Regulatory measures towards consumer credit and bank credit to NBFCs

[Issued by the Reserve Bank of India vide RBI/2023-24/85 DOR.STR.REC.57/21.06.001/2023-24 dated 16.11.2023]

Please refer to Governor's Statement dated October 6, 2023 flagging the high growth in certain components of consumer credit and advising banks and non-banking financial companies (NBFCs) to strengthen their internal surveillance mechanisms, address the build-up of risks, if any, and institute suitable safeguards, in their own interest. The high growth seen in consumer credit and increasing dependency of NBFCs on bank borrowings were also highlighted by Governor in the interactions with MD/CEOs of major banks and large NBFCs in July and August 2023, respectively.

2. In this context, it has been decided to effect the following measures as under:

A. Consumer credit exposure

(a) Consumer credit exposure of commercial banks:

As per extant instructions applicable to commercial banks[1], consumer credit attracts a risk weight of 100%. On a review, it has been decided to increase the risk weights in respect of consumer credit exposure of commercial banks (outstanding as well as new), including personal loans, but excluding housing loans, education loans, vehicle loans and loans secured by gold and gold jewellery, by 25 percentage points to 125%.

(b) Consumer credit exposure of NBFCs:

In terms of extant norms, NBFCs' loan exposures generally attract a risk weight of 100%[2]. On a review, it has been decided that the consumer credit exposure of NBFCs (outstanding as well as new) categorised as retail loans, excluding housing loans, educational loans, vehicle loans, loans against gold jewellery and microfinance/SHG loans, shall attract a risk weight of 125%.

(c) Credit card receivables:

As per extant instructions, credit card receivables of scheduled commercial banks (SCBs) attract a risk weight of 125%[3] while that of NBFCs attract a risk weight of 100%[4]. On a review, it has been decided to increase the risk weights on such exposures by 25 percentage points to 150% and 125% for SCBs and NBFCs respectively.

B. Bank credit to NBFCs

In terms of extant norms, exposures of SCBs to NBFCs, excluding core investment companies, are risk weighted as per the ratings assigned by accredited external credit assessment institutions (ECAI)[5]. On a review, it has been

decided to increase the risk weights on such exposures of SCBs by 25 percentage points (over and above the risk weight associated with the given external rating) in all cases where the extant risk weight as per external rating of NBFCs is below 100%. For this purpose, loans to HFCs, and loans to NBFCs which are eligible for classification as priority sector in terms of the extant instructions shall be excluded.

C. Strengthening credit standards

(a) The REs shall review their extant sectoral exposure limits for consumer credit and put in place, if not already there, Board approved limits in respect of various sub-segments under consumer credit as may be considered necessary by the Boards as part of prudent risk management. In particular, limits shall be prescribed for all unsecured consumer credit exposures. The limits so fixed shall be strictly adhered to and monitored on an ongoing basis by the Risk Management Committee.

(b) All top-up loans extended by REs against movable assets which are inherently depreciating in nature, such as vehicles, shall be treated as unsecured loans for credit appraisal, prudential limits and exposure purposes.

3. The above instructions have been issued in exercise of the powers conferred by the Sections 21 and 35A of the Banking Regulation Act, 1949; Chapter IIIB of the Reserve Bank of India Act, 1934 and Sections 30A, 32 and 33 of the National Housing Bank Act, 1987.

4. The above instructions, other than paragraph 2C(a), shall come into force with immediate effect. All REs shall endeavour to comply with the provisions at paragraph 2C(a) at the earliest, but in any case shall implement them by no later than February 29, 2024.

VAIBHAV CHATURVEDI
Chief General Manager

10 Implementation of Section 51A of UAPA,1967: Updates to UNSC's 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 05 Entries

[Issued by the Reserve Bank of India vide RBI/2023-2024/84 DOR.AML.REC.56/14.06.001/2023-24 15.11.2023]

Please refer to Section 51 of our Master Direction on Know Your Customer (MD on KYC) dated February 25, 2016 as amended from time to time, in terms of which "Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967 and amendments thereto, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC)."

2. In this connection, Ministry of External Affairs (MEA), Government of India has informed about the UNSC press release SC/15492 dated November 14, 2023 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities enacted the amendments to list entries and narrative summaries specified below with underline and strikethrough, in connection with individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021), and adopted under Chapter VII of the Charter of the United Nations.

A. Individuals

QDi.147 Name: 1: MOHAMED 2: AMIN 3: MOSTAFA 4: na

Name (original script): حمد أمين مصطفى

Title: na Designation: na DOB: 11 Oct. 1975 POB: Kirkuk, Iraq Good quality a.k.a.: na Low quality a.k.a.: na Nationality: Iraq Passport no: na National identification no: na Address: Via della Martinella 132, Parma, Italy (Domicile) Listed on: 12 Nov. 2003 (amended on 9 Sep. 2005, 7 Jun. 2007, 16 May 2011, 25 Oct. 2016, 1 May 2019, 8 Nov. 2022, 14 Nov. 2023) Other information: Under administrative control measure in Italy scheduled to expire which expired on 15 Jan. 2012. Review pursuant to Security Council resolution 1822 (2008) was concluded on 21 Jun. 2010. Review pursuant to Security Council resolution 2253 (2015) was concluded on 21 Feb. 2019. Review pursuant to Security Council resolution 2610 (2021) was concluded on 8 November 2022. INTERPOL-UN Security Council Special Notice web link: www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Individuals

SANTOSH KUMAR PANIGRAHY
Chief General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

11 Formation of new districts in the State of Rajasthan – Assignment of Lead Bank Responsibility

[Issued by the Reserve Bank of India vide RBI/2023-24/82 FIDD.CO.LBS.BC.No.11/02.08.001/2023-24 dated 10.11.2023]

The Government of Rajasthan has notified formation of 19 new districts in the state of Rajasthan vide Gazette Notifications No.9 (18) Raj-1/2022 (1-14) dated August 5, 2023 (effective from August 7, 2023). Accordingly, it has been decided to designate Lead Banks of the new districts as below:

Sr. No.	Newly Created District	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Anupgarh	Punjab National Bank	01W
2	Balotra	State Bank of India	01X
3	Beawar	Bank of Baroda	01Y
4	Kekri	Bank of Baroda	01Z
5	Deeg	Punjab National Bank	02A
6	Didwana-Kuchaman	UCO Bank	02B
7	Jaipur	Punjab National Bank	500

8	Dudu	UCO Bank	02C
9	Jaipur Rural	State Bank of India	02D
10	Gangapur City	Bank of Baroda	02E
11	Jodhpur	Punjab National Bank	530
12	Phalodi	UCO Bank	02F
13	Jodhpur Rural	ICICI Bank	02G
14	Khairthal-Tijara	Punjab National Bank	02H
15	Kotputli-Behror	Punjab National Bank	02I
16	Neem Ka Thana	State Bank of India	02J
17	Salumber	ICICI Bank	02K
18	Sanchore	State Bank of India	02L
19	Shahpura	Bank of Baroda	02M

2. There is no change in the Lead Banks of the other districts in the state of Rajasthan.

NISHA NAMBIAR
Chief General Manager

12 Guidelines on import of silver by Qualified Jewellers as notified by – The International Financial Services Centres Authority (IFSCA)

[Issued by the Reserve Bank of India vide RBI/2023-2024/83 A.P. (DIR Series) Circular No. 07 dated 10.11.2023]

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to A.P. (DIR Series) Circular No.04 dated May 25, 2022, in terms of which AD Category-I banks have been permitted to remit advance payments on behalf of Qualified Jewellers as notified by International Financial Services Centres Authority (IFSCA) for eleven days for import of gold through India International Bullion Exchange IFSC Ltd (IIBX).

2. Further, attention of AD Category-I banks is invited to Notification No.35/2023 dated October 11, 2023 issued by DGFT, in terms of which, in addition to nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies), Qualified Jewellers as notified by International Financial Services Centres Authority (IFSCA) have been permitted to import silver under specific ITC(HS) Codes through IIBX.

3. Accordingly, it has been decided that AD Category-I banks may allow Qualified Jewellers to remit advance payment for eleven days for import of silver through IIBX subject to the conditions as mentioned in A.P. (DIR Series) Circular No.04 dated May 25, 2022.

4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

5. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

PUNEET PANCHOLY
Chief General Manager

13 'Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds

[Issued by the Reserve Bank of India vide RBI/2023-24/81 FMRD.FMID. No.04/14.01.006/2023-24 dated 08.11.2023]

A reference is invited to the Press Release on 'Issuance Calendar for Marketable Dated Securities for October 2023 - March 2024' dated September 26, 2023, issued by the Reserve Bank, notifying, inter alia, the issuance calendar for Sovereign Green Bonds for the fiscal year 2023-24. Attention is also invited to the Fully Accessible Route (FAR) introduced by the Reserve Bank, vide A.P. (DIR Series) Circular No. 25 dated March 30, 2020, wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

2. The Government Securities that are eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD.FMSD. No.25/14.01.006/2019-20 dated March 30, 2020, circular no. FMRD.FMID.No.04/14.01.006/2022-23 dated July 07, 2022 and circular no. FMRD.FMID. No.07/14.01.006/2022-23 dated January 23, 2023.

3. It has now been decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR.

4. The Directions contained in this circular have been issued under Section 45W of Chapter IIID of the Reserve Bank of India Act, 1934 and are without prejudice to permissions/approvals, if any, required under any other law.

5. These Directions shall be applicable with immediate effect.

DIMPLE BHANDIA
Chief General Manager

14 Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices

[Issued by the Reserve Bank of India vide RBI/2023-24/107 DoS. CO.CSITEG/SEC.7/31.01.015/2023-24 dated 07.11.2023]

Please refer to paragraph IV (8) of the Statement on Developmental and Regulatory Policies released with the Bi-monthly Monetary Policy Statement 2021-22 on February 10, 2022, wherein it was announced that draft guidelines, updating and consolidating the instructions relating to Information Technology (IT) Governance and Controls, Business Continuity Management and Information Systems Audit, will be issued by the Reserve Bank of India.

2. Accordingly, a draft Master Direction on the subject was published in October 2022 seeking public comments. Based on feedback received, the final Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023 are enclosed herewith.

T.K.RAJAN
Chief General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

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NEWS FROM THE INSTITUTE

- MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2023
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2023
- LIST OF PEER REVIEWED UNITS
- NEW ADMISSIONS
- OBITUARIES
- CHANGE / UPDATION OF ADDRESS
- UPLOADING OF PHOTOGRAPH AND SIGNATURE

Institute News

MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2023

SL. NO	NAME	MEMB NO	REGION
1	CS MUKESH TREHAN	ACS - 11123	NIRC
2	CS RAMESH SUBRAMANYAM	ACS - 11329	WIRC
3	CS MOHIT MALPANI	ACS - 12983	EIRC
4	CS HIMANSHU CHHABRA	ACS - 14947	NIRC
5	CS VINAY G. NADKARNI	ACS - 15055	WIRC
6	CS DARAYUSH NEVILLE CONTRACTOR	ACS - 15775	WIRC
7	CS K. VIJAYSHYAM ACHARYA	ACS - 16325	SIRC
8	CS G V S SAI ARAVIND	ACS - 16838	SIRC
9	CS NISHA AGARWAL	ACS - 17616	SIRC
10	CS BOLISETTI SRIDHAR RAO	ACS - 17676	SIRC
11	CS MEENU BANSAL	ACS - 20318	NIRC
12	CS PARAMESWARAN K P NAMBOODIRIPAD	ACS - 21277	SIRC
13	CS ANIL NAGENDRA KALEKAR	ACS - 24219	WIRC
14	CS URVASHI JAIN	ACS - 25186	NIRC
15	CS JESSICA JULIANA MENDONCA	ACS - 25316	SIRC
16	CS BHAIRAVI YASHWANT KATKAR	ACS - 31818	WIRC
17	CS RAJESH SHANTARAM SHINDE	ACS - 33149	WIRC
18	CS PAYAL	ACS - 33278	NIRC
19	CS SHRUTI GOEL	ACS - 33739	NIRC
20	CS V HARIHARAN	ACS - 35104	SIRC
21	CS NEERAJ KUMAR	ACS - 37017	NIRC
22	CS KANIKA JAIN	ACS - 37048	NIRC
23	CS JEETAM KUMAR SAINI	ACS - 42969	NIRC
24	CS GARIMA JAIN	ACS - 43645	WIRC
25	CS VISHAKHA ARORA	ACS - 45043	NIRC
26	CS NIRMAL KUMAR GANGWAL	ACS - 4701	WIRC
27	CS RITU MAHAJAN OMHARE	ACS - 47274	NIRC
28	CS MEGHA PATHAK	ACS - 48529	EIRC
29	CS KRITI BANSAL	ACS - 52926	NIRC
30	CS VIBHA BEGWANI	ACS - 54159	EIRC
31	CS AKSHAY SHARMA	ACS - 54339	NIRC
32	CS SURABHI LALITKUMAR MEHTA	ACS - 54591	WIRC
33	CS NEHA SHARMA	ACS - 57012	NIRC
34	CS RUPAL SAMDANI	ACS - 66064	NIRC
35	CS YASH SHAH	ACS - 66292	WIRC
36	CS DHARAMJIT BHUPATSINH MORI	ACS - 66349	WIRC
37	CS KAJAL RAJENDER DUBEY	ACS - 68481	WIRC
38	CS SARAN KUMAR	ACS - 6902	NIRC
39	CS PRADIP KHASTGIR	ACS - 6910	EIRC
40	CS RUCHI SETHI	ACS - 7987	WIRC
41	CS ANKUSH JAIN	FCS - 5904	NIRC
42	CS VINEET KUMAR JAIN	FCS - 7033	NIRC
43	CS SANJAY MISHRA	FCS - 7541	NIRC
44	CS SHIV KUMAR TYAGI	FCS - 8017	NIRC
45	CS SANDEEP KAKKAR	FCS - 9608	NIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2023

SL. NO	NAME	MEMB NO	COP NO	REGION
1	CS ABHA MAYANK VIRA	ACS - 43913	20267	WIRC
2	CS ADITI PRATIK SHAH	ACS - 32209	16238	SIRC
3	CS ANJALI KISHORE BUDHANI	ACS - 65494	24763	WIRC
4	CS ANJU PREMSHANKAR PANDEY	ACS - 62809	26812	WIRC
5	CS ANKITA SHARMA	ACS - 63946	26409	NIRC
6	CS AVANI ANAND PALEJA	ACS - 49364	17909	WIRC
7	CS BIJOYETA CHAKRABARTY	ACS - 29724	25601	EIRC
8	CS DEEPIKA	ACS - 63731	24226	EIRC
9	CS DINESH KUMAR	ACS - 27618	25170	WIRC
10	CS DISHA BHAVIK PATEL	ACS - 46189	16907	WIRC
11	CS DIVYA BANSAL	FCS - 9735	11940	NIRC
12	CS HARPREET SINGH MUCHHAL	ACS - 41052	16217	NIRC
13	CS ISHU SRIVASTAVA	ACS - 68614	25557	NIRC
14	CS JAGRITI MISHRA	ACS - 54879	23329	NIRC
15	CS JINAL ANKIT THAKKER	FCS - 11083	24506	WIRC
16	CS JOFFY GEORGE CHALAKKAL	FCS - 6301	26192	SIRC

17	CS KARAN SACHDEVA	ACS - 69227	25811	NIRC
18	CS KUSHAL MAHESHWARI	ACS - 68878	25897	NIRC
19	CS LAKSHMI VATSALA	FCS - 12762	20808	SIRC
20	CS MAMTA GUPTA	ACS - 28794	15272	NIRC
21	CS MANISHA SHARMA	ACS - 52334	22534	NIRC
22	CS MAYUR PRAKASHKUMAR MODI	ACS - 70441	26443	WIRC
23	CS MONIKA CHATURVEDI	ACS - 68986	25828	NIRC
24	CS NEHA NAGNATH MULE	ACS - 51365	24598	WIRC
25	CS NIMISHA MADAN	ACS - 34097	13015	NIRC
26	CS NIRAJ J JAIN	ACS - 58728	25194	SIRC
27	CS NITIN CHANDRAKANT KULKARNI	ACS - 36713	13651	SIRC
28	CS PALLAVI RONIT PASSWALA	ACS - 60877	25448	WIRC
29	CS PRIYANKA JAIN	ACS - 47237	18843	NIRC
30	CS PURTI SINGHAL	FCS - 12596	19493	NIRC
31	CS RAMESHKUMAR BANDARI	ACS - 24519	24957	SIRC
32	CS RAMIT CHITKARA	FCS - 10590	20167	NIRC
33	CS RASHI BEHAL	ACS - 39876	22878	NIRC
34	CS RAVI KUMAR RAMKUMAR	ACS - 70109	26216	SIRC
35	CS ROHIT SHARMA	FCS - 12661	20581	SIRC
36	CS RUCHITA KAILASH BIRLA	ACS - 42391	24817	WIRC
37	CS SONAL KAMLESH GANDHI	ACS - 37873	23867	WIRC
38	CS SRINIVASA RAO KILARU	ACS - 31160	19947	SIRC
39	CS SUMIT GUPTA	ACS - 29247	10542	NIRC
40	CS SUNEEL KUMAR MAHADASYAM	FCS - 5956	6210	SIRC
41	CS SWETA SONI	ACS - 59720	24642	NIRC
42	CS VANDANA GUPTA	ACS - 34941	13920	NIRC
43	CS VARSHA	ACS - 63315	24379	NIRC
44	CS VISHAL KUMAR GARG	ACS - 34062	21156	SIRC
45	CS ZEHRA MURTAZA GHADIALI	ACS - 41416	21325	WIRC

LIST OF PEER REVIEWED UNITS

The List of Peer Reviewed Units is updated on ICSI Website from time to time and can be accessed at https://tinyurl.com/PRList2023

We request members to visit the list for their reference and records.

Peer Review Secretariat

ICSI

NEW ADMISSIONS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link https://www.icsi.edu/member

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

CS B. S. Doraiswamy (1940-2023), Former President The Institute of Company Secretaries of India (1988)

CS Disola Jose Koodaly (29.08.1991 – 11.10.2023), an Associate Member of the Institute from Thrissur.

CS Pankaj Kantha (01.09.1979 – 30.08.2023), a Fellow Member of the Institute from Delhi.

CS Pradip Chimanlal Shah (19.05.1955 – 02.11.2023), a Fellow Member of the Institute from Mumbai.

CS P N Kajaria (20.10.1957 – 03.10.2023), an Associate Member of the Institute from Mumbai.

CS A M Parthasarathy (21.09.1947 – 28.10.2023), an Associate Member of the Institute from Bhopal.

CS Anil Kantilal Thanavala (30.07.1937 – 09.11.2023), an Associate Member of the Institute from Mumbai.

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

May the departed souls rest in peace.

CHANGE / UPDATION OF ADDRESS

The members are requested to check and update (if required) your professional and residential addresses ONLINE only through Member Login. Please indicate your correspondence address too.

The steps to see your details in the records of the Institute:

1. Go to www.icsi.edu
2. Click on **MEMBER** in the menu
3. Click on **Member Search** on the member home page
4. Enter your membership number and check
5. The address displayed is your Professional address (Residential if Professional is missing)

The steps for online change of address are as under:

1. Go to www.icsi.edu
2. On the Online Services ----select **Member Portal** from dropdown menu
3. Login using your membership number e.g. A1234/F1234
4. Under **My Profile** --- Click on View and update option and check all the details and make the changes required and save
5. To change the mobile number and email id click the side option "**Click Here to update Mobile Number and E-mail Id**"
6. Check the residential address and link the Country-State-District-City and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 (Click Here to change residential address)
   a) Select the Country#
   b) Select the State
   c) Select the City
   d) Submit the Pincode which should be 6 digits without space.
   e) Then click on "Save" button.
7. Select the appropriate radio button for Employment Status and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 click the link on the right (Click Here to change Professional address)
   a) Select the Country#
   b) Select the State
   c) Select the City
   d) Submit the Pincode which should be 6 digits without space.
   e) Then click on "Save" button.
8. Go back to the Dashboard and check if the new address is being displayed.

#in case of Foreign Country and State is not available in options then Select "**Overseas**" – A pop-up will open and you can add the "City, District, State" of that Country alongwith Zipcode

Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date

For any further assistance, we are available to help you at http://support.icsi.edu

UPLOADING OF PHOTOGRAPH AND SIGNATURE

Members are requested to ensure that their latest scanned passport size front-facing colour photograph (in formal wear) and signature in .jpg format (each on light-colored background of not more than 200 kb file size) are uploaded on the online portal of the Institute.

Online Steps for Uploading of photo and signature.

- Use ONLINE SERVICES tab on www.icsi.edu
- Select Member Portal from dropdown
- Login using your membership number e.g. A1234/F1234
- Enter your password
- Under My Profile --- Click on View and Update
- Upload/update the photo and signature as required
- Press Save button

COMPANY SECRETARIES BENEVOLENT FUND

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The Company Secretaries Benevolent Fund (CSBF) provides safety net to the Company Secretaries who are members of the Fund and their family members in distress.

CSBF

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- Subscription/Contribution to the Fund qualifies for deduction under section 80G of the Income Tax Act,1961
- Has a membership base of over 15000

ELIGIBILITY : A member of the Institute of Company Secretaries of India (ICSI) is eligible for the membership of the CSBF.

HOW TO JOIN : By making an online application using the link **https://stimulate.icsi.edu/** alongwith one time subscription of ₹10,000/-.

BENEFITS

- ₹10,00,000 in the event of death of a member under the age of 60 years
- Upto ₹3,00,000 in the event of death of a member above the age of 60 years
- Upto ₹50,000 per child on time (upto two children) for education of minor children of a deceased member upto the age of 60 years.
- Upto ₹75,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

DONATION : The donation to CSBF can be made online at link **www.icsi.in/ ICSIDonation**

CONTACT : For further information / clarification, please write at email id **csbf@icsi.edu** or contact on telephone no. 0120-4522000

For more details please visit https://www.icsi.edu/csbf/home/

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)

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

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

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

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

Documents downloadable from the DigiLocker Platform

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon'ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the Digilocker anytime, anywhere.

How to Access:

- Go to https://digilocker.gov.in and click on Sign Up
- You may download the Digilocker mobile app from mobile store (Android/iOS)

How to Login:

- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your Documents digitally:

Members can download their digital ID Card / ACS / FCS / COP certificate(s) by following the steps given below:

1. Log in to https://www.digilocker.gov.in website
2. Go to Central Government and select Institute of Company Secretaries of India
3. Select the option of ID card / Membership Certificate / Practice Certificate
4. For ID Card, enter your membership number e.g. ACS 12345 / FCS 12345.
5. For membership certificate, Enter your membership and select ACS / FCS from drop down.
6. For COP certificate enter your COP number e.g. 12345 and select COP.
7. Click download / generate.
8. The ID Card / Membership certificate / Practice Certificate can be downloaded every year after making payment of Annual Membership fees.

CHARTERED SECRETARY

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(With Effect from September 2018)

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6 Insertions	₹ 2,64,000	₹ 79,200
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Per Insertion	₹ 25,000	₹ 7,500
4 Insertions	₹ 90,000	₹ 27,000
6 Insertions	₹ 1,32,000	₹ 39,600
12 Insertions	₹ 2,55,000	₹ 76,500

PANEL (QTR PAGE) (COLOURED)		
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For 'Situation Wanted' ads	100
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MECHANICAL DATA		
Full Page - 18X24 cm	Half Page - 9X24 cm or 18X12 cm	Quarter Page - 9X12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor
CHARTERED SECRETARY
Mail to : cs.journal@icsi.edu
Ext. 0120-4082123

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'speak the truth abide by the law'

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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(Under the jurisdiction of Ministry of Corporate Affairs)

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6

MISCELLANEOUS CORNER

- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER

CENTRAL TAX NOTIFICATIONS

NOTIFICATION NO. 53/2023- CENTRAL TAX DATED 2ND NOVEMBER, 2023

This notification seeks to notify a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023.

Source:*https://taxinformation.cbic.gov.in/view-pdf/1009932/ENG/Notifications*

NOTIFICATION NO. 54/2023- CENTRAL TAX DATED 17TH NOVEMBER, 2023

This notification seeks to amend Notification No. 27/2022 dated 26.12.2022 to notify biometric-based Aadhaar authentication for GST registration in the State of Andhra Pradesh.

Source:*https://taxinformation.cbic.gov.in/view-pdf/1009941/ENG/Notifications*

ADVISORY ISSUED BY GSTN

(i) Advisory for the procedures and provisions related to the amnesty for taxpayers who missed the appeal filing deadline for the orders passed on or before March 31, 2023

1. Amnesty for Taxpayers: The GST Council, in its 52nd meeting, recommended granting amnesty to taxpayers who could not file an appeal under section 107 of the CGST (Central Goods and Services Tax) Act, 2017, against the demand order under section 73 or 74 of the CGST Act, 2017, passed on or before March 31, 2023, or whose appeal against the said order was rejected due to not being filed within the specified time frame in sub-section (1) of section 107.

2. In compliance with the above GST Council recommendation, the government has issued Notification No. 53/2023 on November 2, 2023.

3. Taxpayers can now file an appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024, for the order passed by the proper officer on or before March 31, 2023.

   It is further advised that the taxpayers should make payments for entertaining the appeal by the Appellate officer as per the provisions of Notification No. 53/2023.

   The GST Portal allows taxpayers to choose the mode of payment (electronic Credit/Cash ledger), and it is the responsibility of the taxpayer to select the appropriate ledgers and make the correct payments.

   Further, the office of the Appellate Authority shall check the correctness of the payment before entertaining the appeal and any appeal filed without proper payment may be dealt with as per the legal provisions.

4. If a taxpayer has already filed an appeal and wants it to be covered by the benefit of the amnesty scheme would need to make differential payments to comply with Notification No. 53/2023.

   The payment should be made against the demand order using the "Payment towards demand" facility available on the GST portal.

   The navigation step for making this payment is provided: Login >> Services >> Ledgers >> Payment towards Demand.

5. Taxpayers who have previously filed an appeal but it was rejected as time barred in APL-02 by the Appellate authority, then the taxpayer would be able to refile the appeal.

   However, in case, the taxpayers face any issue while re-filing APL-01, a ticket shall be raised on the Grievance redressal portal: https://selfservice.gstsystem.in.

   The taxpayer shall select the Category "Amnesty Scheme" and the sub-category "Amnesty scheme-Issue in appeal filing" while raising a ticket.

6. Furthermore, if the Appellate authority has issued a rejection order in APL-04 due to the appeal application being time-barred, then the taxpayer has to approach the respective Appellate authority office well in advance to comply with the dates in the said notification.

   The Appellate authority after checking the eligibility of the taxpayer for the amnesty scheme will forward the case to GSTN through the State Nodal officer.

7. Also, it is important to note that for the APL 04 issued cases no direct representations will be entertained by GSTN or through the Grievance redressal portal. APL 04-issued cases have to be compulsorily forwarded through the State Nodal officer.

8. Post receiving the case from the State nodal officer, GSTN will enable the taxpayer to file an appeal against the concerned order.

   Source:https://www.gst.gov.in/newsandupdates/read/612

(ii) Difference in Input Tax Credit (ITC) available in GSTR-2B & ITC claimed in the GSTR-R3B

1. GSTN has developed a functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online as directed by the GST Council. This feature is now live on the GST portal.

2. This functionality compares the ITC declared in GSTR-3B/3BQ with the ITC available in GSTR-2B/2BQ for each return period. If the claimed ITC in GSTR 3B exceeds the available ITC in GSTR-2B by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in the form of DRC-01C.

3. Upon receiving an intimation, the taxpayer must file a response using Form DRC-01C Part B. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options.

4. In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF.

Source:https://www.gst.gov.in/newsandupdates/read/614

(iii) ITC Reversal on Account of Rule 37(A)

1. Vide Rule 37A of CGST Rules, 2017 the taxpayers have to reverse the Input Tax Credit (ITC) availed on such invoice or debit note, the details of which have been furnished by their supplier in their GSTR-1/IFF but the return in FORM GSTR-3B for the said period has not been furnished by their supplier till the 30th day of September following the end of financial year in which the Input Tax Credit in respect of such invoice or debit note had been availed.

2. The said amount of ITC is required to be reversed by such taxpayers, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year, as part of this legal obligation.

3. To facilitate the taxpayers, such amount of ITC required to be reversed on account of Rule 37A of CGST Rules for the financial year 2022-23 has been computed from system and has been communicated to the concerned recipient. The email communication to this effect has been sent on the registered email id of the taxpayer.

4. The taxpayers are advised to take note of it and to ensure that such ITC, if availed by them, is reversed as per rule 37A of CGST Rules before 30th of November, 2023 in Table 4(B)(2) of GSTR-3B while filing the concerned GSTR-3B.

Source:https://www.gst.gov.in/newsandupdates/read/613

(iv) Advisory for Pilot Project of Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Gujarat and Puducherry

The recent developments concerning the application process for GST registration. It is advised to keep the following key points in mind during the registration process.

1. Rule 8 of the CGST Rules, 2017 has been amended to provide that an applicant can be identified on the common portal, based on data analysis and risk parameters for Biometric-based Aadhaar Authentication and taking photograph of the applicant along with the verification of the original copy of the documents uploaded with the application.

2. The above-said functionality has been developed by GSTN. It was launched in Puducherry on 30th August 2023 and will be rolled out in Gujarat on 7th November 2023.

3. The said functionality now also provides for the document verification and appointment booking process. After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail,

   (a) A Link for OTP-based Aadhaar Authentication OR

   (b) A link for booking an appointment with a message to visit a GST Suvidha Kendra (GSK) along with the details of the GSK and jurisdiction, for Biometric-based Aadhaar Authentication and document verification (the intimation e-mail)

4. If the applicant receives the link for OTP-based Aadhaar Authentication as mentioned in point 3(a), she/he can proceed with the application as per the existing process.

5. However, if the applicant receives the link as mentioned in point 3(b), she/he will be required to book the appointment to visit the designated GSK, using the link provided in the e-mail.

   Once the applicant gets the confirmation of appointment through e-mail (the appointment confirmation e-mail), she/he will be able to visit the designated GSK as per the chosen schedule.

6. At the time of the visit of GSK, the applicant is required to carry the following details.

   (a) a copy (hard/soft) of the appointment confirmation e-mail

   (b) the details of jurisdiction as mentioned in the intimation e-mail

   (c) Aadhaar Number

   (d) the original documents that were uploaded with the application, as communicated by the intimation e-mail.

7. The biometric authentication and document verification will be done at the GSK, for all the required individuals as per the GST application Form REG-01.

8. The applicant is required to choose an appointment for the biometric verification during the maximum permissible period for the application as indicated in the intimation e-mail. In such cases, ARNs will be generated once the Biometric-based Aadhaar Authentication process and document verification are completed.

9. The feature of booking an appointment to visit a designated GSK is currently available for the applicants of the Gujarat State and it will be extended to the other notified States/UTs shortly.

10. The operation days and hours of GSKs will be as per the guidelines provided by the administration in respective state.

Source:*https://www.gst.gov.in/newsandupdates/read/611*

Disciplinary Mechanism - Frequently Asked Questions

Q.1. What is '*professional or other misconduct*'?

Chapter V of the Company Secretaries Act, 1980 incorporates the provisions regulating the conduct of the members of the ICSI. The expression *"professional and other misconduct"* is defined under Section 22 of the Company Secretaries Act, 1980.

Pursuant to Section 22 of the Company Secretaries Act, 1980, the expression *"professional or other misconduct"* shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under Sub-Section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

There are two Schedules to the Company Secretaries Act, 1980 viz. the First Schedule and the Second Schedule. The First and the Second Schedule contains acts or omissions of professional and other misconduct in relation to Company Secretaries. The first Schedule is divided into four parts and the Second Schedule is divided into three parts.

Q.2. Who is a member of the Institute for the purposes of Misconduct under the Company Secretaries Act, 1980?

"Member" means an associate or fellow member of the Institute and includes a person who was a member of the Institute on the date of the alleged misconduct, although he has ceased to be a member of the Institute at the time of filing the complaint, initiation of the inquiry or thereafter.

Q.3. Which authorities are dealing with the complaints/information of professional or other misconduct?

Director (Discipline): As per Section 21(1) of the Company Secretaries Act, 1980, the Council of the Institute by notification designates an officer of the Institute as Director (Discipline).

Board of Discipline and Disciplinary Committee: As per Section 21A and 21B of the Company Secretaries Act, 1980, the Board of Discipline and Disciplinary Committees are the adjudicating authorities for the information /complaints of professional or other misconduct.

Appellate Authority: Pursuant to Section 22E of the Company Secretaries Act, 1980, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing upon him any of the penalties referred in sub-section (3) of Section 21A & 21B of the Company Secretaries Act, 1980 may prefer an appeal to the Appellate Authority within 90 days from the date on which the order is communicated to him.

Q.4. Who establishes the Disciplinary Directorate?

The Council by notification has established the Disciplinary Directorate under Section 21 of the Company Secretaries Act, 1980, headed by the Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. In order to make investigations under the provisions of the Company Secretaries Act, 1980, the Disciplinary Directorate shall follow such procedure as may be specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

The Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct in each case and shall place the same before the Board of Discipline or the Disciplinary Committee, as the case may be, depending upon the Schedule or provision of the Company Secretaries Act, 1980 to which the case relates, for taking further decision by these authorities.

Q.5. What is the constitution of the Board of Discipline?

The Council constitutes a Board of Discipline under Section 21A of the Company Secretaries Act, 1980, consisting of - (a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer; (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of Sub-Section (1) of Section 16; (c) the Director (Discipline) shall function as the Secretary of the Board.

Where the Director (Discipline) is of *prima facie* opinion that a member is guilty of any *professional or other misconduct* mentioned in the First Schedule, he shall place the matter before the Board of Discipline. Where the Director (Discipline) is of *prima facie* opinion that there is no case, he shall place the matter before the Board of Discipline.

Q.6. What is the constitution of the Disciplinary Committee?

The Council constitutes a Disciplinary Committee under Section 21B of the Company Secretaries Act, 1980, consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance, or accountancy. The Council may constitute more Disciplinary Committees as and when it is considered necessary.

Where the Director (Discipline) is of opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

Q.7. What actions can be taken by the Board of Discipline against a member of the Institute found guilty of professional or other misconduct under the Company Secretaries Act, 1980?

The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it. The Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Board of Discipline is of the opinion that a member is guilty of a *professional or other misconduct* mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely-

(a) Reprimand the member;

(b) Remove the name of the member from the Register up to a period of three months;

(c) Impose such fine as it may think fit which may extend to rupees one lakh.

Q.8. What actions can be taken by the Disciplinary Committee against a member of the Institute who is found guilty of professional or other misconduct under the Company Secretaries Act, 1980?

The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified. Where the Disciplinary Committee is of the opinion that a member is guilty of a *'professional or other misconduct'* mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely -

(a) Reprimand the member;

(b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) Impose such fine as it may think fit, which may extend to rupees five lakhs.

Q.9. What is the constitution of the Appellate Authority?

The Appellate Authority has been established by the Central Government in terms of Section 22A of the Company Secretaries Act, 1980, Section 22A(1) of the Chartered Accountants Act, 1949 and Section 22A of the Cost and Works Accountants Act, 1959.

Section 22A of the Company Secretaries Act, 1980 deals with the Constitution of Appellate Authority. The Appellate Authority constituted under Sub-Section (1) of Section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of the Company Secretaries Act, 1980 subject to the modification that for clause (b) of said Sub-Section (1), the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council, for the Appellate Authority for the purposes of the Company Secretaries Act, 1980.

The Appellate Authority is headed by a Chairperson, who is or has been a judge of a High Court, two former members of the Council of each of the three Institutes (i.e. two former members of the Council of the ICSI with reference to Section 22A of the Company Secretaries Act, 1980) and two nominees of the Central government having knowledge and practical experience in the field of law, economics, business, finance or accountancy.

Q.10. Who can file an appeal and what is the time limit for filing an appeal with the Appellate Authority?

Section 22E of the Company Secretaries Act, 1980 deals with Appeal to Authority. Any member of the ICSI aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in Sub-Section (3) of section 21A and Sub-Section (3) of Section 21B of the Company Secretaries Act, 1980, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Appellate Authority. The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorized by the Council, within ninety days. The Appellate Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

Q.11. What orders can be passed by the Appellate Authority?

The Appellate Authority gives an opportunity of being heard before passing any order. The Appellate Authority may after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under Sub-Section (3) of Section 21A and Sub-Section (3) of Section 21B of the Company Secretaries Act, 1980 and may -

a) Confirm, modify or set aside the order;

b) Impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

c) Remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

d) Pass such other order as the Authority thinks fit.

Q.12.What powers are given to the Appellate Authority, Disciplinary Committee, Board of Discipline, and the Director Discipline under the Company Secretaries Act, 1980?

As per Section 21C of the Company Secretaries Act, 1980, for the purposes of an inquiry under the provisions of the Company Secretaries Act, 1980, the Appellate Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; and (c) receiving evidence on affidavit.

Q.13.What are the amendments to the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007?

The Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides for the procedures to be followed by the Director (Discipline), Board of Discipline and Disciplinary Committee.

The Central Government vide notification dated 10th November, 2020, amended the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, provides for e-filing of complaints, documents, services of notices, letters, summons etc. conducting e-hearing of cases, and payment of fees, cost, fine etc. through electronic mode.

Q.14.What is the procedure for filing a complaint against the member of the Institute?

A complaint against a member of the Institute or a firm registered with the Institute under the Company Secretaries Regulations, 1982 can be filed under Section 21 of the Company Secretaries Act, 1980 in Form I, in triplicate before the Director (Discipline), in person or by post or courier or through electronic mode.

Written information containing allegation or allegations against a member of the Institute, or a firm registered with the Institute under the Regulations, received in person or by post or courier or through electronic mode, shall be treated as information under Section 21 of the Act and shall be dealt in accordance with the provisions of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

On receipt of such information, the sender of the information, including the Central Government, any State Government, or any statutory authority, shall in the first instance, asked whether he or it would like to file a complaint apprising - (a) that relatively longer time is taken for disposal of any information than the complaint; (b) that the person giving information will not have the right to be represented during the investigation or hearing of the case; and (c) that the Institute will be under no obligation to inform the sender the information of the progress made in respect of the information received under sub-rule (1) including the final orders.

Q.15.How the anonymous information is dealt with by the Disciplinary Directorate?

Pursuant to sub rule (3) of Rule 7 of the Rules, any anonymous information received by the Disciplinary Directorate will not be entertained.

Q.16.What is the fee for filing a complaint against a member of the Institute?

Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee of Rs. 2500/- (as per the Company Secretaries Regulations, 1982). The fee shall be paid through electronic mode or in the form of a demand draft in favour of 'The Institute of Company Secretaries of India" payable at New Delhi. The fee once paid shall not be refunded.

Q.17.What is the process of registration of a complaint?

The complaint sent by post or courier or through electronic mode shall be deemed to have been presented to the Director (Discipline) on the day on which it is received in the Disciplinary Directorate or uploaded on portal. Every complaint received by the Directorate shall be acknowledged by electronic mode or through ordinary post together with an acknowledgement number. The Director or an officer or officers authorized by him shall scrutinize the complaints so received. If on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in the rules. If a complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director (Discipline) may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine. However, no additional fee shall be payable if the complaint is resubmitted after rectification of defect. If the complainant fails to rectify the defects within the time allowed under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Director (Discipline) shall form the opinion that there is no *prima facie* case.

If the subject matter of a complaint in the opinion of the Director (Discipline) is substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take further action for clubbing of such cases, as per the provisions of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Q.18.What is the procedure after registration of a complaint?

After registration of complaint received under Section 21 of the Act, the Director (Discipline) or an officer authorized by him, shall within sixty days of the receipt of a complaint, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that Respondent at his professional address.

The Respondent shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director (Discipline), forward a written statement in his defense. On receipt of the written statement, if any, the Director (Discipline) may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director (Discipline), forward his rejoinder on the written statement.

On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director (Discipline) may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate. If no reply is sent by the respondent within the time allowed or by the complainant within the time allowed, the Director (Discipline) shall presume that the respondent or the complainant have nothing further to state and take further action as per the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Q.19.How the request for withdrawal of the complaint is dealt with?

Where a complainant withdraws the complaint, the Director (Discipline) shall place the same before the Board of Discipline or the Disciplinary Committee, which, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint. However, in case the Director (Discipline) has not yet formed his *prima facie* opinion on such a complaint, he shall place the same before the Board of Discipline, and the Board of Discipline may, if it is of the view that the circumstances so warrant, permit the withdrawal.

Q.20.What is the Time limit on entertaining complaint or information?

Rule 12 of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, deals with the time limit on entertaining complaint or information. Where the Director (Discipline) is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, the Director (Discipline) may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of Section 21A of the Company Secretaries Act, 1980. The Board of Discipline may, if it agrees with the opinion of the Director (Discipline) that there is no *prima facie* case, close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

Q.21.What is the *prima facie* opinion of the Director (Discipline)?

The Director (Discipline) shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct or both under the First Schedule or the Second Schedule or both. The Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

Q.22.What is the procedure after the Director (Discipline) formed his *prima facie* opinion?

Where the Director (Discipline) is of the opinion that a member is guilty of professional or other misconduct mentioned in the First Schedule to the Company Secretaries Act, 1980, he shall place the matter before the Board of Discipline which is constituted by the Council of the Institute under Section 21A of the Company Secretaries Act, 1980; and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule to the Company Secretaries Act, 1980 or in both the Schedules, he shall place the matter before the Disciplinary Committee which is constituted by the Council of the Institute under Section 21B of the Company Secretaries Act, 1980.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie*

case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Board of Discipline or the Disciplinary Committee, as the case may be, directed the Director (Discipline) to further investigate the matter, the Director (Discipline) shall further investigate the case and shall place his Further Investigation Report for consideration before the Board of Discipline or Disciplinary Committee, as the case may be.

Where the Board of Discipline or the Disciplinary Committee disagreed with the *prima facie* opinion of the Director (Discipline) that the member is guilty of professional or other misconduct, the case will be closed, and the Order will be passed. Where the Board of Discipline or the Disciplinary Committee agreed with the *prima facie* opinion of the Director (Discipline) that the member is not guilty of professional or other misconduct, the case will be closed, and the Order will be passed.

Q.23.What is the procedure followed by the Board of Discipline and the Disciplinary Committee?

Where the Board of Discipline or the Disciplinary Committee, as the case may be, agreed with the *prima facie* opinion of the Director (Discipline) that the member is *prima facie* guilty of professional or other misconduct, a copy of *prima facie* opinion of the Director (Discipline) and particulars or documents relied upon by the Director, if any, during the course of formulation of *prima facie* opinion, will be sent to parties asking them to submit written statement on the same and rejoinder thereon.

The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it. The Disciplinary Committee shall be guided by the principles of natural justice and shall follow the procedure as laid down, for dealing with all cases before it.

The Presiding Officer shall fix a date, hour and place of hearing and shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it to make oral submissions, if any. On the date of hearing, if the respondent does not appear either in person or through his authorized representative, the Board of Discipline, or the Disciplinary Committee, as the case may be, may proceed *ex-parte* and pass such orders as it may think fit or direct fresh notice to be served. The Board of Discipline or the Disciplinary Committee, as the case may be, may adjourn the hearing at any stage of hearing, as it may think fit.

The Board of Discipline shall consider the written representations, including the written statements, rejoinder and supporting documents, and the oral submission, if any made by the Director, the complainant, and the respondent, and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.

The Disciplinary Committee during the first hearing, shall read out the charges to the respondent along with the summary of *prima facie* opinion arrived at by the Director and ask the respondent whether he pleads guilty to the charge or charges made against him. If the respondent pleads guilty, the Disciplinary Committee shall record the plea and take action to pass its Order. If the respondent does not plead guilty then the Disciplinary Committee shall fix a date for examination of witnesses and production of documents. The Disciplinary Committee may permit the cross-examination of the witness. On the date so fixed, the Disciplinary Committee shall proceed to take all such evidence as may be produced by the Director, including oral examination of witnesses and production of documents. Thereafter, the complainant shall be given an opportunity to present additional evidence, if any. The respondent shall then be called upon for his defense and to produce his evidence. If the respondent applies to the Disciplinary Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the production of any document or any material object, the Disciplinary Committee shall issue such notice unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing. The witnesses summoned at the instance of the complainant, or the respondent shall not be eligible for reimbursement of expenses incurred for attending the hearing. After evidences is presented, the Director and the respondent shall present their arguments before the Disciplinary Committee. If the complainant feels that any vital argument has been left out by the Director, he may present the argument, after convincing the Disciplinary Committee of the same. The Disciplinary Committee shall consider the evidences and arguments produced before it and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct. The Disciplinary Committee may, at any stage of the proceedings, adjourn the hearing.

On arriving at a finding that the respondent is guilty of professional or other misconduct, the Board of Discipline, or the Disciplinary Committee shall give the respondent an opportunity to be heard before passing any order. If the respondent does not appear, it shall presume that he has nothing more to represent before it and shall pass orders. On arriving at a finding that the respondent is not guilty of professional or other misconduct, the Board of Discipline, or the Disciplinary Committee, as the case may be, shall pass orders closing the case. The Board of Discipline or the Disciplinary Committee shall send, free of charge, to the Director, respondent and the complainant, a certified copy of the final order.

Renewable Energy Certificates

A REC (Renewable Energy Certificate) is a type of Energy Attribute Certificate (EAC) that represents the environmental attributes of the generation of a one-megawatt hour (MWh) of energy produced by renewable sources.

Globally, for the countries outside of Europe and North America, International Renewable Energy Certificates (I-RECs) allow companies to credibly document renewable energy consumption. This global standard is a recognised tool to report greenhouse gas emissions reduction in a growing number of countries in Asia, Africa, and Latin America.

I-REC allows a company to-

- Document consumption of renewables and reliably claim GHG emissions reductions.
- Trace the origin of electricity and choose between technologies, such as solar, wind, hydro, geothermal or bioenergy.
- Source renewable electricity outside of Europe and North America.
- Comply with corporate environmental standards, such as the Greenhouse Gas Protocol.
- Follow national regulations on renewable energy and improve your sustainability rating.
- Contribute towards the UN Sustainable Development Goals (SDGs).

In Indian context, pan-India market-based Renewable Energy Certificate (REC) Mechanism was introduced in the year 2010 under the Electricity Act, 2003 and the National Tariff Policy, 2006 to address the mismatch between the availability of resources and the requirement of the obligated entities to fulfil their Renewable Purchase Obligation (RPO).

As of 2022, the Central Electricity Regulatory Commission (CERC) has implemented regulations for the REC mechanism. These regulations supersede the CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010, which earlier governed the pan-India market-based Renewable Energy Certificates mechanism in India.

As per REC Regulation 2022, technology multiplier assigned to RE projects which are commissioned after 05.12.2022 are as under:

Renewable Energy Technologies	Certificate Multiplier
On-shore wind and solar	1
Hydro	1.5
Municipal Solid Waste (MSW) and non-fossil fuel-based cogeneration	2
Biomass and Biofuel	2.5

The eligible entity whose RE source technology is not mentioned in the above table will get 1 REC for 1MWh of electricity generated.

The following entities are eligible for RECs-

a) Renewable energy generating stations,

b) Captive generating stations based on renewable energy sources,

c) Distribution licensees, and

d) Open access consumers.

Revenue for a RE generator under REC scheme includes revenue from sale of electricity component of RE generation and the revenue from the sale of environmental attributes in the form of RECs.

RECs are issued to eligible RE generators, distribution licensee, open access consumer & CGP based on RE. The REC issued shall remain valid until they are redeemed.

(For more such information relating to RECs in India, please refer the Frequently Asked Questions provided by Renewable Energy Certificate Registry of India at: https://www.recregistryindia.nic.in/index.php/publics/faqs)

Having discussed about the onset of RECs in India, assignment of technology multiplier to RE projects and other aspects, it is of paramount significance to know about the power exchanges dealing in RECs, its forms, participants, procedure to participate, trading mechanism and recent developments in trading scenario of RECs in India.

a) ***Power Exchanges dealing in RECs***: The two power exchanges in India dealing with RECs are as under:

i) *Indian Energy Exchange (IEX)*: It is India's premier energy marketplace, providing a nationwide automated trading platform for the physical delivery of electricity, renewables, and certificates. More recently, IEX has pioneered cross border electricity trade expanding its power market beyond India in an endeavour to create an integrated South Asian Power Market. IEX is approved and regulated by the Central Electricity Regulatory Commission and has been operating since 27 June 2008 and is a publicly listed company with NSE and BSE since October 2017.

ii) *Power Exchange India Limited (PXIL)*: It is India's first institutionally promoted power exchange, has been providing innovative and credible solutions since 2008, and has revolutionized the way Indian power markets operate. PXIL's unique combination of local insights and global perspectives has helped its members make better informed business and investment decisions, and has improved the overall efficiency of power markets in India by accurately and seamlessly connecting buyers and sellers.

b) ***Forms of RECs***: There are two forms of RECs- Solar certificates for generation through solar and Non-solar certificates for generation through all renewable sources other than solar.

c) ***Participants of RECs***: The participants of RECs are as under:

i) *Eligible Entity-* Those who generate power from renewable sources approved by Ministry of New and Renewable Energy (MNRE). (*For more details, please refer to http://www.iexindia.com/products/rec/sell_rec.aspx*)

ii) *Obligated Entity*: Those who have obligation to purchase some percentage of their consumption as mentioned in their respective state REC regulations either from renewable power or the renewable energy certificate. . The CERC – REC Regulations, recognise the obligated entities as: distribution utility, open access consumer and captive power consumer. *(For more details, please refer to http://www.iexindia.com/products/rec/buy_rec.aspx)*

iii) *Voluntary Entity-* Those who purchase RECs voluntarily to offset the carbon footprints of their business activities or for CSR activities. *(For details, please refer to http://www.recregistryindia.in/)*

d) ***Procedure to participate***: The Central Electricity Regulatory Commission (CERC) approved the procedures to participate in REC Mechanism in its regulation dated 14th January, 2010. The procedure approved and notified by the regulator broadly involves four parts: procedure for accreditation through State Nodal Agency; Procedure for Registration through Central Agency NLDC; Procedure for Issuance through Central Agency (NLDC) and procedure for trading and redemption through power exchanges.

e) ***Trading mechanism***: The price of RECs is determined by market demand and contained between the 'floor price' (minimum price) and 'forbearance price' (maximum price) specified by the Central Electricity Regulatory Commission (CERC).

REC trading is done through a closed double-sided auction between 13:00 Hrs to 15:00 Hrs on last Wednesday of every month. *(For complete trade cycle visit:http://www.iexindia.com/products/rec/rec_timeline.aspx)*

f) ***Recent Developments in REC Trading***: Recently, the Central Electricity Regulatory Commission (CERC) has granted permission to modify renewable energy certificate (REC) agreements, resulting in alterations to the trading dynamics at both the Indian Energy Exchange and Power Exchange India Limited. This adjustment is intended to align REC contracts with the updated regulations for renewable energy certificates established in 2022.

The commission has instructed the Grid Controller of India to arrange two renewable energy certificate trading sessions every month, specifically on the second and last Wednesday of each month, for the next six months, commencing from October 2023.

The Commission has clarified that energy generated from renewable sources and sold by entities registered under the REC system in traditional power exchange contracts is eligible for REC issuance. While, power sold in the clean energy market segment at power exchanges will not qualify for REC issuance. Furthermore, the Commission opted to retain the existing pricing mechanism, the double-sided uniform price auction, for RECs in the market.

Additionally, the Commission has also approved REC fungibility, permitting obligated entities to meet their renewable purchase obligations by interchangeably utilising RECs from different renewable energy technologies.

REFERENCES:

1. https://www.irecstandard.org/what-are-recs/
2. https://shorturl.at/yABRY
3. https://shorturl.at/oDGLP
4. https://shorturl.at/dPTWX
5. https://www.iexindia.com/Aboutus.aspx?id=Gy9kTd80D98%3d&mid=Gy9kTd80D98%3d
6. https://powerexindia.in/Pages/Discover.html/

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BEYOND GOVERNANCE

Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to cs.journal@icsi.edu latest by 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

(i) Certificate of Appreciation.

(ii) His/Her name will be published in the next issue of the Journal.

(iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/ students are to send the answers of Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.

Chronology of the facts in case of Resolution Professional (of a company "XBRL") .... Petitioner

vs.

DIRECTORATE OF ENFORCEMENT..... Respondent

• This writ petition raises the important question of the impact that a moratorium that comes into effect in terms of Section 14 of the Insolvency and Bankruptcy Code, 2006 would have on the powers of the Enforcement Directorate to enforce an attachment under the provisions of the Prevention of Money Laundering Act, 2002 i.e. once the moratorium had come into effect, is it outside the jurisdiction of the ED to exercise powers under the PMLA?	
19th April 2018	• Company's ("XBRL") bank accounts were freezed by the Enforcement Directorate ("ED") in purported exercise of powers conferred by Section 102 of the Code of Criminal Procedure, 1973. • Meanwhile an application for commencement of Corporate Insolvency Resolution Process ("CIRP") was initiated against the "XBRL", the corporate debtor ("CD"), under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC").
8th May,2018	• Application for initiating CIRP of "XBRL" (the CD) was admitted giving effect to commencement of CIRP of "XBRL", the CD.
4th October 2018	• The Adjudicating Authority (under PMLA) passed an order upholding the freezing of the bank accounts detailed hereinabove and thereafter.
7th October 2019	• The respondent(ED) proceeded to attach 49 bank accounts of "XBRL", in exercise of powers conferred by Section 5 of the Prevention of Money Laundering Act, 2002 ("PMLA"). An order was passed under Section 5 of the PMLA for provisional attachment of certain properties. • A writ petition was filed by the Resolution Professional (RP) of "XBRL", the "CD" in 2019 wherein the orders of freezing bank accounts dt 19th April,2018 and 4th October, 2018,were quashed but the learned Judge, however, refrained from interfering with the order of 07th October 2019 which had been passed under Section 5 of the PMLA and had provisionally attached certain properties. • The order dated 7th Oct,2019 is subject to question in the current petition. • Aggrieved by the provisional attachment order ("PAO") pertaining to the 49 bank accounts of "XBRL", the petitioner filed an application to set aside the same before the National Company Law Tribunal .
17th March 2020	• During the pendency of that challenge before NCLT, the Adjudicating Authority, by its order, confirmed the order of attachment.

21st May 2020	• The corporate debtor is said to have received an income tax refund pertaining to the assessment year 2015-2016.
07th July 2020	• The RP (petitioner) received an e-mail from Axis Bank, with which its bank accounts aforenoted were maintained, to ascertain whether the debit freeze as imposed by ED stood lifted. The petitioner was also called upon to ascertain whether any other attachment orders had come to be passed effecting the assets of "XBRL", the corporate debtor.
08th July 2020	• The ED attached two tunnel boring machines again in exercise of powers conferred under the PMLA. • Aggrieved by the aforesaid action as initiated by the ED, the RP filed an Interlocutory Application before the NCLT seeking directions for the ED being restrained from proceeding further in terms of the order of 08th July 2020 of the Adjudicating Authority and for them being further restrained from taking any further action against the assets of XBRL during the pendency of the proceedings before the NCLT under the IBC.
06th August 2020	• A contempt petition was filed before the Court by the petitioner to resolve the issue of whether income tax refund credited to the Axis Bank Account of CD has been attached or not. • The same was being confirmed by the ED and subsequently, the RP received, vide e-mail, a copy of yet another PAO dated 05th August 2020 in terms of which the income tax refund also stood attached in proceedings under the PMLA. • Thereafter, contempt petition filed by RP came to be dismissed on 13th August 2020 with the RP being accorded the liberty to initiate appropriate steps in challenge to the PAO of 05th August 2020.
11th August 2020	• The Supreme Court while dealing with a civil appeal preferred by another creditor of XBRL, aggrieved by its non-inclusion in the list of operational creditors, stayed further proceedings in the CIRP. That interim order was ultimately vacated on 16th November 2020.
It is thereafter that the instant writ petition came to be preferred before the Hon'ble High Court.	
08th April 2021	• An interim order was passed where the Hon'ble Court directed the ED to create a separate fixed deposit for the amount which had been attached by ED. • The aforesaid fixed deposit was to abide by the final result of the writ petition.
01st January 2022	• The Adjudicating Authority confirmed the PAO dated 08th July 2020.
29th January 2022	• The Adjudicating Authority proceeded to confirm the PAO dated 05th August 2020. • In the meanwhile, and upon the restraint on the CIRP being lifted by the Supreme Court, the NCLT extended the resolution period by 120 days. • The petitioner is stated to have received offers from fourteen Prospective Resolution Applicants. The Court is informed that the aforesaid PRAs are in the process of conducting due diligence of the corporate debtor.

Arguments of ED

- The writ petition only lays a challenge to provisional attachment orders when in fact both of which have subsequently come to be confirmed by the Adjudicating Authority in terms of its orders of 01 January 2022 and 29 January 2022.
- RP has raised objections to the proceedings initiated by ED before the Adjudicating Authority under the PMLA who had proceeded to reject the same on merits. The validity of the PAO No.07/2020 dated 08 July 2020 had also been questioned before the NCLT. In view of the aforesaid, it was submitted that the petitioner could not pursue parallel remedies.
- The NCLT, while discharging its functions under the IBC, would have no jurisdiction to rule on the validity of the orders passed under the PMLA.

Arguments on behalf of RP

- The Enforcement Directorate would have no jurisdiction to interfere or interdict proceedings under the IBC, once a moratorium came into effect. Similarly, NCLT (under the IBC) cannot adjudicate for the matters falling under PMLA. In view of prevailing conundrum between the two statutes and jurisdiction of authorities under them respectively, the Court should render an authoritative pronouncement on the questions which arise for determination.
- Since the subject of resolution of a corporate debtor is governed exclusively by the IBC which has been duly recognised to be a special statute, it must consequently be held that its provisions would have primacy over any other general statute including the PMLA.
- Though both the IBC as well as the PMLA adopt and incorporate non obstante clauses in terms of Sections 238 and 71 respectively, IBC being a later statute, would prevail and override the provisions of the PMLA. The attachment orders as made are thus liable to be tested on the aforesaid lines.
- Since the attachment of properties under Sections 5 or 8 contained in Chapter III of the PMLA are civil proceedings, they would clearly fall within the ambit of the expression "proceedings" as contained in Section 14

(1)(a) of the IBC and thereby, are subject to moratorium under Section 14 of the IBC i.e. the PAOs impugned herein cannot be sustained.

- Section 32A is merely an extension of the protection conferred by Section 14(1)(a) and, therefore, the impugned orders of attachment are rendered wholly unsustainable.

Question

Q1. (i) In view of prevailing conundrum between the jurisdiction of Adjudicating Authority under PMLA and NCLT under IBC, whether it falls in the jurisdiction of Hon'ble High Court to decide upon the issue "once the moratorium, pursuant to Section 14 of the IBC, had come into effect, is it outside the jurisdiction of the ED to exercise powers under the PMLA"?

(ii) Whether "proceeds of crime" as defined under Section 2(1)(u) of PMLA is an operational debt as per the provisions of Section 5(21) of the IBC? Whether ED would fall within the definition of an operational creditor as defined by Section 5(20) of the IBC?

(iii) What would be "trigger events" under the IBC which would constitute an embargo on attachment under the PMLA?

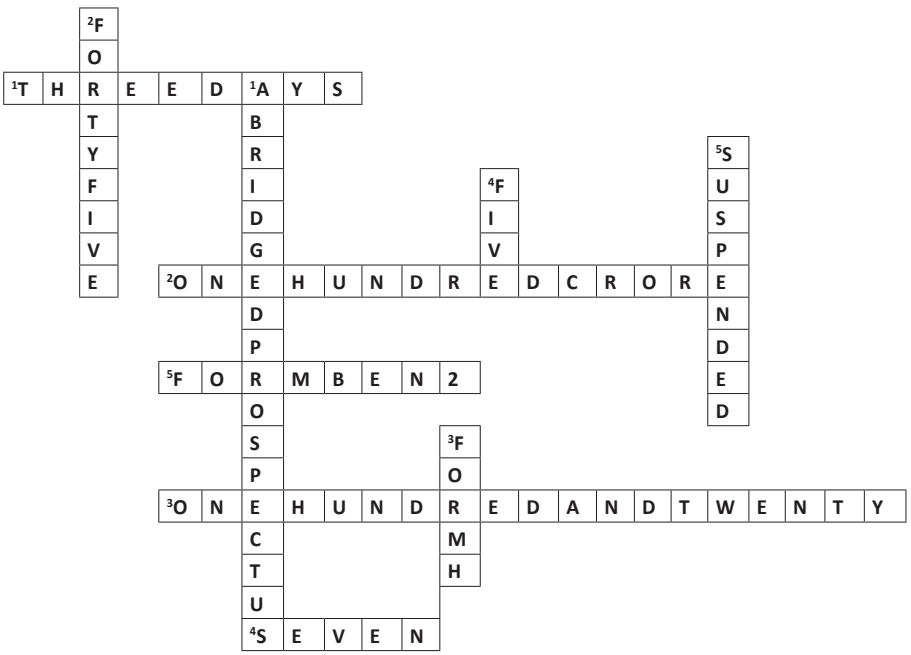
Q2. Whether property attached under PMLA by ED can be claimed by bonafide secured creditors of XBRL, the CD, on ground of having legitimate interest owing to creation of mortgage on such property falling under the "proceeds of crime" under PMLA after the attachment order has been confirmed by the Adjudicating Authority? Will the answer remain same even after such property is confiscated to the Central Government under Section 9 of the PMLA?

Disclaimer: The case study has been framed from the facts and figures available in the public domain with some modifications/assumptions so as to enable members to apply their professional skills to answer the same and hide the identity of the case. Author is not to be held liable for any resemblance of the facts and figures with any case.

Winner of Case Study – November 2023

Part - I	Part - II
CS Shivam Singhal ACS-41948	**CS Isha Goel** ACS-49304

CROSSWORD PUZZLE – NOVEMBER 2023 ANSWERS



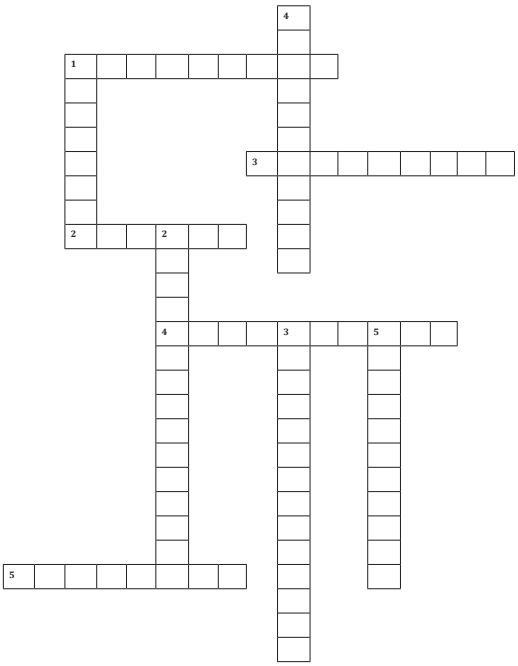
Winners - Crossword November 2023

1ST CS Maharajapuram Srinivasan Vaidyanathan - ACS-11842

2ND CS Sunu Thomas - ACS-62295

3RD CS Ronisha Duggad - ACS-42755

CROSSWORD PUZZLE – COMPANY LAW - DECEMBER 2023



ACROSS

1. Under SEBI (Portfolio Managers) Regulations 2020, The portfolio manager shall preserve the books of account and other records and documents for a minimum period of _____.

2. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Where a corporate debtor has changed its name or registered office address during the period of _____ preceding the insolvency commencement date, the interim resolution professional or resolution professional, as the case may be, shall disclose all the former name(s) and registered office address(es) so changed along with the current name and registered office address in every communication, record, proceeding or any other document.

3. One Person Company and Small Company shall file annual return in _____.

4. Under SEBI LODR 2015, The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within _____from the end of the financial year, certifying that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.

5. Under Companies Act, 2013 An application to the Tribunal to confirm a reduction of share capital of a company shall be in _____.

DOWNWARDS

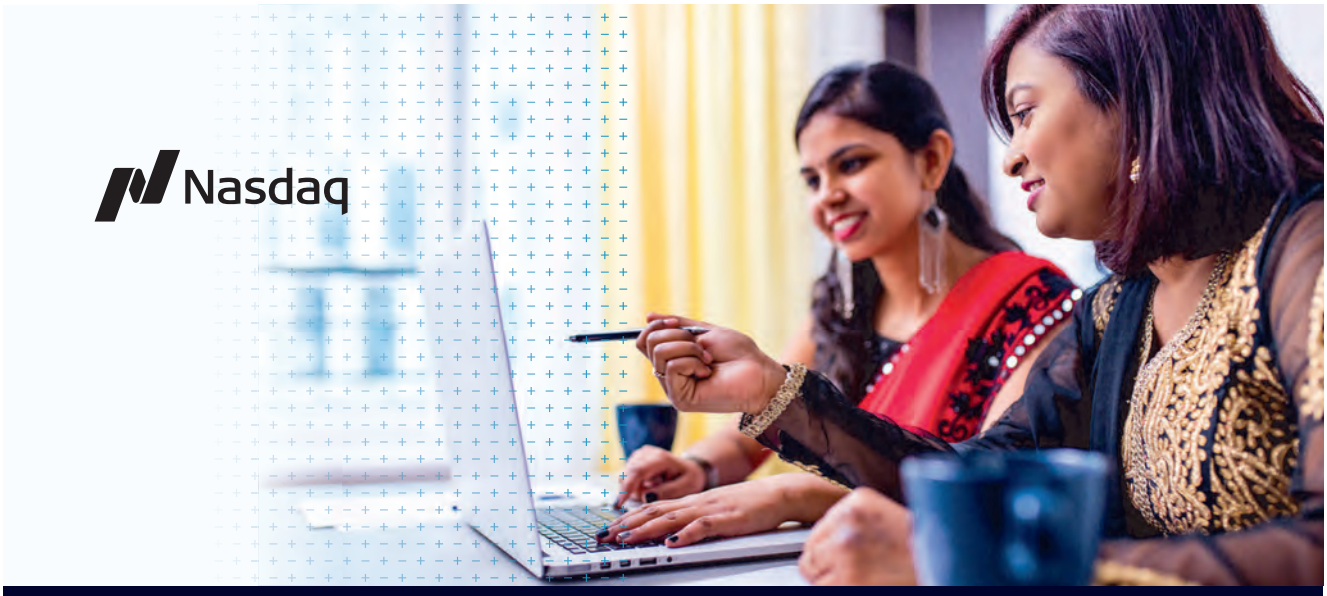
1. Under Companies Act, 2013, The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the _____.

2. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 The Progress Report for the fourth quarter of the financial year shall enclose _____of the liquidator's receipts and payments for the financial year.

3. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in case no/ of creditors in class are between 10-100 is Rs._____.

4. Under SEBI LODR 2015, Any vacancy in the office of the Compliance Officer shall be filled by the listed entity at the earliest and in any case not later than _____from the date of such vacancy.

5. Under LLP Rules 2009, The limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of _____shall be required for changing the name of the limited liability partnership.



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