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CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS

UNION BUDGET 2024

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President, ICSI

CS Dhananjay Shukla
Vice-President, ICSI

CS : A Governance Professional

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भारतीय कम्पनी सचिव संस्थान
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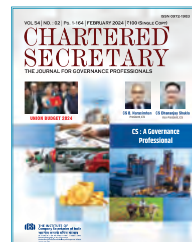

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EDITORIAL

As the year 2024 moves forward through the month of February, the Institute is again gearing up for its innovative and manifold growth under the able leadership of newly elected envois of ICSI -CS B. Narasimhan, President, The ICSI and CS Dhananjay Shukla, Vice-President, The ICSI, to represent and steer the Institute towards its various objectives, roles and responsibilities. These seasoned leaders are all set for spearheading the Institute in the direction of promulgated growth, establishing newfangled benchmarks for Good Corporate Governance and accomplishing the futuristic goals of the profession and the Institute.

While presenting the Union Budget 2024 -25, Smt. Nirmala Sitharaman, the Hon'ble Union Minister for Finance and Corporate Affairs captured the importance of the implementation of various National initiatives and schemes, aiming to reach out to the 'Trinity of Demography, Democracy and Diversity-Sabka Saath, Sabka Vikas, Sabka Vishwas, backed by Sabka Prayas'. I am sure that the multifarious development initiatives announced during the speech reverberated throughout our country's social strata, where as rightly pointed out "we are currently witnessing the huge strides our country is taking towards Developed India @ 2047 (Viksit Bharat@2047) in which development of all forms of Infrastructure – Physical, Digital and Social will reach all far and wide, specifically our youth, women, farmers, OBCs, Scheduled Castes and Scheduled Tribes. Also the GDP forecast on the lines of 'Governance, Development and Performance' impeccably highlight positive stimulus to growth while ensuring that the domestic economy remains buoyant.

The Institute has outperformed itself in the previous years with its agile vision and precision, knowledge and technological advancement. The league of our professionals are now objectively seeking various opportunities to expand their scope to be globally recognised as 'The Governance Professionals'.

This issue of the Journal focusses on the theme **'CS: A Governance Professional'** and aims at bringing together a mix bag of knowledge sharing articles to delve deep into the role and responsibilities, the CS professional play as governance specialists.

The article on **'Exemptions to Private Companies under Section 462 of the Companies Act, 2013 in relation to General Meetings'** highlights how the section empowers the Central Government to either grant total exemption or partial exemption.

The article on **'Concept of "Director" under the Companies Act, 2013-Its ambivalence'** explains definition of a Director.

An insight through the article **'Audit Committee Chairperson to attend the Annual General Meeting of the Company (consequences of non-attendance under the provisions of Companies Act, 2013)'** emphasises on Audit Committee Chairperson to attend the Annual General Meeting (AGM).

The article on **'Implementation of Regulation 37A - SEBI (Listing Obligation and Disclosure Requirements) Regulations 2015'** highlights and explains the scenario where in the event of any sale, lease or otherwise disposal of an undertaking "outside the scheme of arrangement" framework the notice to the shareholders pertaining to passing of a resolution to that effect is often bereft of adequate disclosures.

The article on **'Developing an AML-Compliant Risk Assessment Framework for SEBI Registered Intermediaries'** explores on how the development of AML – Compliant Risk Management is the need of the hour.

The author through the article **'Security in Digital Transformation & Artificial Intelligence'** delves on how Artificial Intelligence can assist to prevent vulnerabilities from being created in the first place, fundamentally altering the security experience.

An invigorating article on **'Privacy Rights in Digital Sphere - The Digital Personal Data Protection Act, 2023'** showcases how India enacted its new privacy law called **"The Digital Personal Data Protection Act, 2023"** in August, 2023, for protection of personal data. It is an attempt to bring a harmonised data privacy regime in India for transparent and ethical use of Personal Data.

An exclusive article on **'Insurance Broking and its Compliances'** highlights the responsibility of the Insurance Broker to ensure in place a proper internal audit system.

The article on **'Artificial Intelligence for Digital Transformation – Genesis, Fictions, Applications and Challenges'** brings forth areas where digital transformation has brought about the integration of digital technologies into various aspects of an organization's operations, processes, and strategies.

A novel explanation through the article on **'B-Corporations: A New Initiative for Sustainability'** explores the emergence of B-Corps (Benefit Corporations) and how it has caused a dramatic shift in the way businesses are being run.

The article on **'Internal Complaint Committee (ICC) and Redressal: A Shield Against Sexual Harassment of Women at Workplace'** on how organizations must have a duly constituted ICC, a robust redressal mechanism, and a zero-tolerance policy.

The article on **'Unlocking Opportunities: Company Secretaries as POSH Trainers'** showcases the Compliance with the mandates of the POSH Act, which involves several crucial aspects, demanding organizations' diligent adherence.

A research study on **'Can Corporate Social Responsibility Funds be an Effective Tool for Solar Energy Adaptation in India? A study towards Sustainable Development'** delves deep into the fact on how (CSR) fund towards addressing sustainable energy and environment can play an important role by the corporates as their responsibility to the human civilization.

An insight into Interim Budget 2024-25 through the article on **'Interim Union Budget 2024-25 – A Roadmap towards Viksit Bharat'** speculates on 'Vision for Viksit Bharat' i.e., *"Prosperous Bharat in harmony with nature, with modern infrastructure, and providing opportunities for all citizens and all regions to reach their potential"* which was deeply ensconced in this year's union budget.

I hope this issue of the Journal will throw significant insight into several critical areas of the profession.

Wishing you Happy Reading!

CS Asish Mohan
(Editor - Chartered Secretary)

CHARTERED SECRETARY GREETS AND CONGRATULATES

CS B. NARASIMHAN AND CS DHANANJAY SHUKLA ON THEIR ELECTION AS PRESIDENT AND VICE-PRESIDENT RESPECTIVELY OF THE INSTITUTE FOR THE YEAR 2024-25

CS B. Narasimhan, President, The ICSI

CS B. Narasimhan is a Post Graduate in Economics and a Fellow Member of The Institute of Company Secretaries of India (ICSI). He has over four decades of experience in Corporate Law and Management, with special expertise in the Capital Market.

Elected for a second term from 2023-2026, CS B. Narasimhan will serve as the President of the Institute for the year 2024, after serving as the Vice-President in the year 2023.

He was elected to the Central Council of the ICSI for the first time in the year 2007 and was re-elected in the year 2011 for another term of 4 years. Prior to his present term, he was elected to the Central Council for the 2019-2022 term as well, where he served as the Chairman of the Secretarial Standards Committee, Chairman of the Financial Services Committee, and member of the Disciplinary Committee for seven years.

His areas of expertise include Corporate and Securities Management, Public Offering of Securities, and all Corporate Actions associated with any Listed Companies including hands-on experience in operations relating to such Corporate Actions.

He has been a member of several committees constituted by SEBI and has also been the Chairman of the Registrar Association of India (popularly known as RAIN) for two terms spread over 5 years. He has also been closely associated with the Stock Exchanges (BSE and NSE), Depositories (NSDL and CDSL), and other Regulatory Bodies.

A speaker at Seminars and Conferences, in India and abroad, CS B. Narasimhan has also contributed to various professional articles.

CS Dhananjay Shukla, Vice-President, The ICSI

CS Dhananjay Shukla, a Commerce and Law graduate, is a Fellow Member of The Institute of Company Secretaries of India. He is a Practising Company Secretary based at Gurgaon and has been practising in the areas of Corporate Law, Securities Law and Taxation.

CS Dhananjay Shukla has been serving the profession in different capacities for last many years. He was elected to the Northern India Regional Council of The Institute of Company Secretaries of India for the term 2011-14 and then re-elected again for the term 2015-18. He served in various capacities during his tenure at the NIRC and served as the Chairman for the Northern Region in the year 2017.

He has been a member of the Secretarial Standards Board (SSB) of the ICSI for the year 2019 & 2020 and presently he is an elected member of the Managing Committee of the CSBF of the ICSI.

In his overall experience of more than 20 years as a Corporate Professional, he worked as Company Secretary in large Corporate Groups before switching to the practice side in the year 2009. He has been instrumental in various Start-Up ventures set up in India by Foreign Promoters.

ELECTION OF ICSI PRESIDENT AND VICE-PRESIDENT FOR THE YEAR 2024-25

1.	CS B. Narasimhan, President, The ICSI and CS Dhananjay Shukla, Vice-President, The ICSI, addressed an Interaction and One day Seminar at Chennai on January 23, 2024, organised by SIRC of ICSI.
2-6.	ICSI Long Service awards for employees.
7.	EIRC 32nd Regional Student Conference held on January 18, 2024 at ICSI CCGRT Kolkata Campus.

8. The ICSI-CCGRT, Mumbai conducted a training program on January 20, 2024 as a resounding success, focusing on Significant Beneficial Ownership and Environmental Social & Corporate Governance graced by CS Devendra V. Deshpande, Former President, The ICSI and CS Minal Bhosale, Company Secretary, CRISIL Ltd.
9. The 16th Residential Corporate Leadership Development Program (CLDP) organized by the ICSI-CCGRT, Mumbai took place from January 09, 2024 to January 24, 2024 with a diverse cohort of 28 participants spanning across the country.
10. 16th CLDP Valedictory Session on January 24, 2024, graced by CS S. N. Ananthasubramanian, Former President, The ICSI.
11. Thane Chapter of WIRC of ICSI jointly with WIRC organized Seminar on the Theme "Corporate & Allied Laws" on January 13, 2024.

75TH REPUBLIC DAY PAN INDIA CELEBRATIONS HELD ON JANUARY 26, 2024

REPUBLIC DAY CELEBRATIONS
ON
26th January
GURUGRAM CHAPTE.
NIRC - ICSI

WEBINAR ON

Shareholders' Democracy and Activism held on 17.01.2024

Speaker:
Mr. Shriram Subramanian
Founder and MD
InGovern Research Services

Moderator:
CS (Dr.) Pooja Rahi
The ICSI

WEBINAR ON

Cyber Security, Data Privacy and IT Laws held on 24.01.2024

Speaker:
Mr. Rathindra Das
Group Head Legal, Company Secretary
& Compliance Officer,
Route Mobile Limited

Moderator:
Mr. Mrinal Madhur
The ICSI

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The Institute of Company Secretaries of India (ICSI) is a statutory body set up under an act of Parliament, the Company Secretaries Act, 1980, to regulate and develop the profession of Company Secretaries in India. The ICSI invites applications for the following posts at its Headquarters at New Delhi/ Noida :-

Name of the Post	Pay Level as per 7th CPC Pay Matrix (Rs.)	Gross Salary per Annum (Rs. in Lakhs)	Max. Age (as on 01.01.2024)	No. of Posts
Information Security Officer	Level 12 (78800-209200)	17.62	50 years	01
IT Security Manager	Level 10 (56100-177500)	12.90	40 years	01

For further details viz. qualification, experience, procedure for submission of application etc., please visit website **www.icsi.edu/career** on and from **31st January, 2024.** Interested candidates may **apply only through electronic mode (Online).** Last date for submission of application (Online) is **20th February, 2024.** Reservation policy will be applicable as adopted by the "ICSI" in its Service Rules. The "ICSI" reserves the right to increase/decrease or even not to fill up any posts as per its requirement.

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Motto
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Mission
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#IntlGovCon

ICSI 3rd International Conference

Theme: Building Resilient & Sustainable Economies

5-6 April 2024 | Orchard Hotel, Singapore

Co-Host: ICSI Overseas Centre, Singapore

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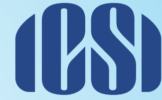


About the Conference

The past decade has seen India emerge as one of the fastest growing economies of the world, demonstrating the rise of the global south on the world map and providing a way forward for the growth and development of the entire South East Asia.

To leverage on the momentum and keep pace with the paradigm shift, the ICSI is organizing its **3rd International Conference** in the Lion City, **Singapore,** on the **5th and 6th of April 2024,** in association with **ICSI Overseas Centre, Singapore.**

In alignment with the Mission and the Vision of the ICSI and in continuum of the endeavour of facilitating exchange of knowledge, the ICSI 3rd International Conference will be a conflux of the progress so far in the Corporate Governance landscape and the road ahead.

It would help stakeholders upgrade their performance in accordance with Global Sustainable Development Goals (SDGs) and drive their behaviour towards shaping a sustainable culture in their respective organizations.

The theme of this year's Conference, **Building Resilient & Sustainable Economies,** has been carefully curated to provide an opportunity of probing into the Corporate Governance trends of 2024, impacted by a series of unconventional developments in the year 2023.

Further, the Conference would bring in Thought Leaders, Professionals, and Practitioners from around the world to hold discussions and deliberations on topics spanning global aspects.

We are excited about the perspectives that the experts and the eminent speakers will bring on board, at the Conference, and we hope that the exchange of ideas will lead to innovative solutions for the challenges that our world faces today.

Join us for an enriching, comprehensive and collaborative learning experience at the Conference in the beautiful city of Singapore!

Programme Highlights

Two-Days Capacity Building Programme

Opportunity to explore New Horizons

Networking with Global Leaders

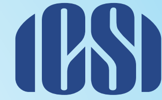
CS B Narasimhan President, The ICSI	CS Dhananjay Shukla Vice President, The ICSI	CS NPS Chawla Council Member & Chairman, International Affairs Committee, The ICSI	CS Asish Mohan Secretary, The ICSI	CS Nitish Chandan Chairman, ICSI Overseas Centre, Singapore

Engaging Sessions with varied dimensions on the following

Tentative Programme Schedule

Day & Date	Time (Singapore Time)	Particulars
Day 1 Friday 5 April 2024	1130 - 1230 hrs	Registration & Networking Tea
	1230 - 1330 hrs	Opening Plenary
	1330 - 1430 hrs	Networking Lunch
	1430 - 1515 hrs	Plenary II Sustainability Reporting – A Challenge or An Opportunity
	1515 - 1630 hrs	Plenary III Shifting Board Oversight from Operations to Risk and Strategy
	1630 - 1700 hrs	Tea
	End of Day - 1	

Day & Date	Time (Singapore Time)	Particulars
Day 2 Saturday 6 April 2024	1000 - 1100 hrs	Plenary IV Unleashing the Power of AI in Compliance
	1100 - 1145 hrs	Plenary V A pragmatic approach to Insider Trading
	1145 - 1215 hrs	Tea Break
	1215 - 1330 hrs	Plenary VI Confluence of ESG into Value Creation
	1330 - 1430 hrs	Networking Lunch
	1430 - 1530 hrs	Plenary VII The acceptance and receptivity of DE & I
	1530 - 1630 hrs	Plenary VIII Combating Money Laundering
	1630 - 1700 hrs	Tea
	End of Day - 2	



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

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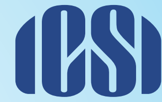

GLIMPSES

1st International Conference of ICSI Overseas Centre

31 March 2022 | Dubai, UAE

2nd International Conference of ICSI Overseas Centre

11-12 May 2023 | London, UK

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Facilitating Knowledge Sharing and Capacity Building

Expanding Horizons and Professional Opportunities

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Vice President, The ICSI

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Secretary, The ICSI

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"What would life be if we had no courage to attempt anything?"
– Vincent Van Gogh

Dear Professional Colleagues,

Life, as we live it, has its own unique ways of amazing us. If one finds the future is uncertain, it is this uncertainty that fills it with endless opportunities and possibilities. 45 years as a professional and 14 years as a Council Member, and yet as I step into the Office as the 50th President, there is a light flutter of butterflies in my stomach much like a five-year-old, making his way into first day at school.

I believe it is more about the designation, since it not only begets the love, adulation and respect of 70,000 members and two lakh students but more so their smallest and biggest of expectations. And with them is the more than 5 decades old yet 55-year young legacy of this institution, as has been created by the founding fathers, and all the Presidents, Secretaries and Teams, regardless of their age and experience.

Each person while having assumed the Office has put in their heart and soul and their best of efforts with the best of intentions and interests of the stakeholders in sight. Each one of them has endeavoured and aspired to bring novelty in action, launch countless initiatives – all for the betterment of the professionals and the profession and have effectively and efficiently steered the ship of this institution. It is for their foresighted captaincy, that the Institute has treaded into newer waters and found newer avenues of growth. I find this moment perfectly opportune to place my highest regards of appreciation for all those who have shaped the profession and this Institution as it stands today.

As I begin my pen friendship with each one of you, through the pages of this journal, the intent is to foster a lifelong bond, where we strive together to achieve the vision of our Institute "to be a global leader in promoting good corporate governance".

75TH REPUBLIC DAY: CELEBRATING THE CONSTITUTION

The foundations of good governance lie in adequate compliance and diligent adherence to the laws of the land. There can be no greater way than beginning one's journey by unfurling the national flag high. Just a week later of settling into the office of the President, the Institute celebrated the 75th Republic Day in full grandeur and fervour of patriotism, citizenship and oneness with the nation. At an institutional level, if the ICSI has taken pride in playing its role to perfection in the Indian growth story and more importantly in the Indian legislative scenario; at an individual level, it was beyond surreal to open the ties of the Indian flag and salute the forefathers who laid the Indian Constitutional framework – the lengthiest written Constitution in the entire world. Days like this are an apt reminder and reiteration of the expected roles and responsibilities from us as Governance Professionals.

My heartiest congratulations to all the fellow citizens… May we all ensure compliance with the law in true letter and spirit…!!!

UNION BUDGET 2024-25: 'सर्वांगीण सर्वस्पर्शी समावेशी' बजट

When the goal is to be a 'Viksit Bharat' by 2047, it is essential that the budget for the year ahead is all-round, all-pervasive and all-inclusive; and the focus is on social justice as a governance model. The mantra of 'Sabka Saath, Sabka Vikas' has found a new meaning with 'Sabka Saath, Sabka Vikas, and Sabka Vishwas' and the newest addition of 'Sabka Prayas' and will definitely be bringing us closer to our goal of making an 'Atmanirbhar Bharat'. The Indian caste System has found a new meaning with the categorization of 'Garib' (Poor), 'Mahilayen' (Women), 'Yuva' (Youth) and 'Annadata' (Farmer) and the prioritization of their needs, their aspirations, and their welfare will be a game changer in the Indian story of progress. With acronymed schemes like PM ScHools for Rising India (PM SHRI), the idea of nurturing Indian youth into holistic and well-rounded individuals by delivering quality teaching is a noble thought.

It is indeed heartening to see that the term GDP (Gross Domestic Product) has gained far greater impetus in the form of 'Governance, Development and Performance'. If the approach is towards transparent, accountable, people-centric and prompt trust-based administration with 'minimum

government, maximum governance' approach; the role of Company Secretaries as Governance Professionals is bound to stand enhanced.

It is indeed commendable on the part of the Ministry of Finance headed by Smt. Nirmala Sitharaman, for presenting a budget which touches upon each segment of the economy and each strata of the society. To quote the Hon'ble Minister of Finance and Corporate Affairs, "The trinity of demography, democracy and diversity backed by 'Sabka Prayas' has the potential to fulfill aspirations of every Indian."

If the Prime Minister has furthered the slogan to "Jai Jawan Jai Kisan Jai Vigyan and Jai Anusandhan", emphasizing innovation as the foundation of development, the ICSI fully intends to partner in the same through its Centres for Corporate Governance, Research & Training (CCGRTs).

THE TIMES AHEAD: GROWTH, OPPORTUNITIES, EXPANSION

|| तत्परिवर्तनं भव ||

Be the change.

Being a septuagenarian myself, I have always been proud of being capable of keeping up with the latest trends and staying updated at all times and occasions. And it is quite heartening to know the thought and approach of each President and to see each new initiative of the Institute of Company Secretaries of India serving its dedicated purpose. If the years gone by have witnessed us pursuing self-governance with equal vehemence as we would be pursuing governance in corporate arena, our emphasis has been continually on building capacities of professionals in-house as well as expanding our presence globally.

If the ICSI has promoted dedicated Section 8 companies for Social Auditors and ADR Centre, we fully intend to put these entities to their expected use. As I write this message, the ICSI has represented to the SEBI to gain the approval for functioning as a Self-Regulatory Organisation for empaneling social auditors, developing of uniform standard and guiding them into pursuing social impact assessment.

I feel extremely delighted to share that by the time I sit to pen my next message, the ICSI International ADR Centre would have inaugurated its first Centre in the ICSI Headquarters premises at Noida. A first among many others, I believe the ADR Centre is surely going to be a game changer in the positioning of the Institution as a partner in the judiciary processes and that of Company Secretaries as competent representational professionals in the corporate dynamics of the nation.

अल्पानामपि वस्तूनां संहतिः कार्यसाधिका ।
तृणैर्गुणत्वमापन्नैर् बध्यन्ते मत्तदन्तिनः ।।

(The Greatest task can be done by arranging the small things in unity. A thick rope gains strength because of innumerous small threads which have been bonded together. Together bonded they can hold even a mighty elephant.)

I am equally looking forward to meeting, greeting and deliberating the future course of action with all the key role players both at the Secretariat as well as across the length and breadth of this nation through the CCGRTs, Regional Offices and Chapters at the 6th edition of the ICSI Leadership Summit. It is for our combined strength that we can achieve insurmountable heights !!!

SINGAPORE : A MELTING POT OF CULTURES

Two years ago, when we had first tabled the concept of hosting an International Conference jointly with one of our ICSI Overseas Centres, little did we know that we were creating a legacy. The warmth received in both the nations – UAE and UK in the first and second Conference held at Dubai and London has added much greater confidence in our thought and vigour in our step.

Having rolled out the 3rd International Conference to be hosted jointly with ICSI Overseas Centre in the heart of Singapore, makes this our second conference in the Asian sub-continent.

"Building Resilient & Sustainable Economies" – the theme of this year's Conference to be held on April 05-06, 2024; aims to bring to table deliberations on the altering global economic dynamics all under the light of ESG and Sustainability.

I would urge all our members to join us for some "Singapore days and sunny rays" but more importantly to be a part of the journey as we raise some pertinent questions and seek global governance solutions.

REGULATORY AMENDMENTS : WINDS OF CHANGE

"To improve is to change; to be perfect is to change often."

It goes without saying that the Regulatory Authorities while ensuring dedicated compliance, have always been considerate of the issues and challenges being faced by the stakeholders. And with that their focused attention has been on strengthening the building blocks of governance – the legislations, Acts, Rules and Regulations.

With the goal of promoting ease of doing business held close to heart, the Regulatory Authorities have been found to be constantly moulding the laws in place for easier compliance and better governance. The past few weeks have witnessed both the Ministry of Corporate Affairs as well as the Securities and Exchange Board of India on their toes for giving the regulatory framework a 180-degree change.

Where on one hand, the MCA is in the process of amending the Rules, the SEBI is working towards rewording the Regulations; and I feel honoured to share that the ICSI has been brought on board by both these Authorities for sharing their views, opinions, comments and suggestions.

I am hopeful that the year 2024 shall prove to be a landmark year in transforming the face of Indian governance scenario matching perfectly with the dynamics of the corporate world.

It is during the month of February that we bow before Maa Saraswati, seeking knowledge, wisdom and her eternal blessings. As we begin this journey together, I bow before the Goddess on behalf of all the members and students, to guide our way through:

सरस्वती महाभागे विद्ये कमललोचने ।
विद्यारूपे विशालाक्षी विद्यां देहि नमोस्तुते ।।

Yours Sincerely

CS B. Narasimhan
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF JANUARY, 2024

1ST NATIONAL CONVENTION OF INSOLVENCY PROFESSIONALS & REGISTERED VALUERS

The Institute of Company Secretaries of India (ICSI) jointly with ICSI Institute of Insolvency Professionals (ICSI IIP) and ICSI Registered Valuers Organization (ICSI RVO) organized the **1st National Convention of Insolvency Professionals & Registered Valuers** on January 13, 2024 at Scope Auditorium, New Delhi. The convention, themed "Insolvency, Bankruptcy and Valuation: Achievements, Challenges and Expectations," provided a platform for insightful discussions on navigating the complexities of the Indian insolvency landscape and charting a path for a more robust and efficient ecosystem.

The Convention received esteemed presence of eminent speakers: Hon'ble Mr. Ashok Kumar Bhardwaj, NCLT Judicial Member, Hon'ble, Dr. P.S.N Prasad, NCLT Judicial Member, CS Manish Gupta, then President, ICSI, CS B. Narsimhan, then Vice-President, ICSI, Dr. Navrang Saini, Chairman, ICSI Registered Valuers Organisation, Mr. P. K. Malhotra, Chairman, ICSI Institute of Insolvency Professionals, Dr. Ashok Kumar Mishra, Former NCLAT (T) Member, Mr. N.K. Bhola, Former NCLT (T) Member, Shri AS Chandhiok, Former ASG & Sr. Adv., CS Virender Ganda, Past President, ICSI & Sr. Adv., CS Ranjeet Pandey, Past President, ICSI, Shri Gopal Krishna Agarwal, Independent Director, ICSI IIP, Mr. JK Gover, Managing Director, Ducturus, CS Rajiv Choubey, Group General Counsel-DBL & DCBL, CS G.S Sarin, IP and PCS, Mr. Anil Goel, Founder & Chairman, AAA Insolvency Professionals LLP, Dr. Risham Garg, Associate Professor of Law NLU(D), CS (Dr.) Ajay Garg, Corporate Lawyer and Registered Valuer, Dr. Rajiv Singh, Director, RS Valuation Services, CS Nitin Somani, Founder, Sundae Capital, CS Chander Sawhney, Founder & CEO, Transique Corporate Advisors, CS Kulbhushan Parashar, Director, Corporate Capital Ventures. The convention featured interactive panel discussions on critical topics, including: Quandaries Present in the IBC, Fate of Pre-Packaged Insolvency, Insolvency against Personal Guarantors, and The Art of Valuation in Insolvency Cases.

GLOBAL FOOTPRINT : INTERNATIONAL WEBINAR

Date	**January 11, 2024**
Topic	**CS Overseas Opportunities in UAE**
ICSI Leadership	**CS NPS Chawla**, Chairman International Affairs Committee and Council Member, The ICSI **CS Rupanjana De**, Council Member, The ICSI
Panelists	**CS R Lakshmanan**, Senior Partner, MCA Management Consultants, UAE **CS Raghvendra Verma,** Chief Legal, Compliance & Risk Officer and CS, ISON Xperiences Group, UAE **Mr. Narasimha Das**, Partner, Crowe UAE **CS Kavita Gujarathi,** Risk and Compliance Manager, MBK Auditing, UAE
Link	https://www.youtube.com/watch?v=0JJU00tqLcA

ICSI CONVOCATIONS

- The second bi-annual Northern Region Convocation for FY 2023-2024 was held on January 02, 2024, at Sirifort Auditorium, New Delhi. Membership certificates were awarded to 35 Fellow members and 354 Associate members. 4 PMQ awardees were also felicitated on the occasion.
- The second bi-annual Southern Region Convocation for FY 2023–24 was held on January 10, 2023, at Sardar Vallabhbhai Patel International School of Textiles and Management, Coimbatore, Tamil Nadu. Membership certificates were awarded to 7 Fellow members and 92 Associate members.
- The second Region Convocation for FY 2023-2024 was held on January 14, 2024, at ICSI CCGRT, Kolkata. Membership certificates were awarded to 15 Fellow members and 95 Associate members. 1 PMQ awardee was also felicitated on the occasion.

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:

Topic	Faculty	Date	Links
NCLT – Appearance & Court Crafts	CS Nesar Ahmad, Former President, The ICSI	January 03, 2024	www.youtube.com/watch?v=NNBysUkTwk8&t=483s
Statutory Requirement of Valuation of Securities	CA Tarun Mahajan, Regd. Valuer, CFA(USA), CVA(USA), FCA	January 10, 2024	www.youtube.com/watch?v= kDO0VJ5p61I&t =240s

Shareholders' Democracy and Activism	Mr. Shriram Subramanian Founder and MD InGovern Research Services	January 17, 2024	www.youtube.com/watch?v= lyOFpCIANuA&t=408s
Cyber Security, Data Privacy and IT Laws	Mr. Rathindra Das Group Head Legal, CS & Compliance Officer, Route Mobile Limited	January 24, 2024	www.youtube.com/watch?v= q58uDXraiIM&t=171s

ICSI FELICITATED WINNERS OF 2ND GURU SHRESTHA AWARDS-2023

ICSI in its endeavour to acknowledge the immense contribution of educators in education conducted 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 nominations received were evaluated through a multi-layered evaluation process through an expert group and eminent jury comprising top academicians of the country. The Jury Meeting of ICSI GuruShrestha Awards-2023 was held on December 24, 2023. The winners of ICSI Gurushreshtha awards were felicitated on January 12, 2024 during Yuvotsav-2024.

ICSI PUBLICATIONS RELEASED AT THE 23RD ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE

- **CHARTER OF BOARD OF DIRECTORS**

  The Board is responsible for governance oversight, key decisions making, setting up the company's strategic goals, explore growth opportunities and to protect the interest of shareholders of the company and other stakeholders. Importance of the functions discharged by the Board, has laid the foundation for articulating the Charter of Board of Directors by the ICSI comprising legal, regulatory, as well as desirable good practices to be followed by the Board while discharging its responsibilities. The Charter of Board of Directors was released at the ICSI Corporate Governance (CG) Awards presentation ceremony held on 5th January, 2024 at New Delhi.

- **CHARTER OF NOMINATION AND REMUNERATION COMMITTEE**

  The Nomination and Remuneration Committee (NRC) is responsible to find suitable candidates who are qualified to become Directors and who may be appointed in senior management. It also specifies the manner for effective performance evaluation of the Board, its committees and individual Directors. The much important role of NRC is in deciding the remuneration of senior executives. Importance of the functions discharged by the NRC has laid the foundation for articulating the Charter of NRC by the ICSI comprising legal, regulatory, as well as desirable good practices to be followed by the NRC while discharging various tasks assigned to it.

- **GUIDANCE NOTE ON ANNUAL SECRETARIAL COMPLIANCE REPORT (REVISED EDITION)**

  Regulation 24A of SEBI (LODR) Regulations mandates Annual Secretarial Compliance Report for listed entities. The Guidance Note on Annual Secretarial Compliance Report was issued by the ICSI in the year 2019 with the objective to provide guidance to Company Secretaries in Practice on verification of annual compliances of the listed entity and reporting thereon. Since then, the SEBI has come out with numerous amendments in the various regulations falling under the purview of the Annual Secretarial Compliance Report. In order to provide updated guidance on the matter, revised edition of the Guidance Note on Annual Secretarial Compliance has been released.

- **COMPANY LAW: EXPLORING PROCEDURAL DIMENSIONS**

  In view of increasing emphasis on adherence to compliance norms coupled with the fact that significant amendments that have taken place in the Companies Act, 2013 since its inception, a comprehensive knowledge pertaining to the procedural aspects of Company Law has become essential. For the purpose, this practical oriented publication has been brought out.

- **MSME READY RECKONER**

  As enterprises operating on the model of excellence in a particular area, it is inevitable that MSMEs require guidance and handholding on all other fronts especially governance. It is to serve this purpose, the ICSI has formed the MSME & Startup Board and rolled out the initiative MSME & Startup Catalyst wherein Company Secretaries may serve as advisors to these MSMEs guiding their way through legislative requirements. In furtherance of its commitment, the ICSI with the intent of aiding both MSMEs and Company Secretaries alike, has launched a publication titled MSME - Ready Reckoner. The publication touches upon some of the most significant areas concerning the MSMEs and seeks to add to the government's agenda of promoting ease of doing business.

PMQ, CERTIFICATE AND CRASH COURSES

The Institute in its continuous endeavour to equip the members with necessary knowledge and skills commenced courses on diverse topics including Crash Course on Social Audit (Social Impact Assessment), Certificate

Course on CSR Professionals and Certificate Course on Business Responsibility & Sustainability Reporting (BRSR) and Environment, Social and Governance (ESG) during this month, as per the following details:

Course	Date of commencement	Participants
Crash Course on Social Audit (Social Impact Assessment)	January 15, 2024	238
Certificate Course on CSR Professionals- Batch 10	January 23, 2024	266
Certificate Course on BRSR and ESG- Batch 2	January 24, 2024	139

Project Report Presentation by the candidates of the three PMQ courses on Corporate Governance, Internal Audit and Arbitration was held during the current month through online mode.

PEER REVIEW OF PRACTICE UNITS

During the month, more than 80 Peer Reviews were completed. Certificate has been issued and the updated list of Peer Reviewed Units is available at ICSI Website and can be accessed at the weblink: http://tinyurl.com/Peer-reviewed-units

E-LEARNING FACILITY

ICSI Learning Management System (LMS) has been offering E-Learning services to the students and members to upgrade their professional skills with the ease of anywhere anytime learning. In the current month 2898 users have been onboarded for LMS facilitation for Online Pre-Examination Test, Online Classroom Coaching video content, ODOP, E-EDP, E-CLDP, Knowledge on Demand, Certificate Courses, Crash courses. All together more than 179000 active users are being benefitted with various self-paced learning courses on LMS.

VIEWS/REPRESENTATIONS/SUGGESTIONS SUBMITTED

Date	Purpose	Authority
January 03, 2024	Framework for Social Impact Assessment Standards and request to consider recognition to ICSI Institute of Social Auditors as SRO.	SEBI
January 18, 2024	Request to consider the qualification of Company Secretary at par with other professional qualifications for the purpose of various posts of Specialist Officers in Banks.	IBA
January 18, 2024	Request to recognize Company Secretary in Practice to conduct Compliance Audit of various intermediaries under various regulations issued by the SEBI.	SEBI

JOINT PROGRAMME WITH IIM BANGALORE

ICSI joined as an Academic Partner in the International Conference on the Changing Landscape of Corporate Governance & Sustainability: Walking the Talk hosted by the IIM Bangalore on January 12-13, 2024. CS Dwarkanath Chennur, Council Member, The ICSI was the Guest Speaker at the Conference. The Conference was attended by CEOs, Board members, senior executives, academic leaders, policymakers, and practitioners. ICSI as a brand building exercise provided copies of its publication Handbook on Business Responsibility and Sustainability as part of the Conference kit for all delegates.

ICSI (GUIDELINES FOR ATTIRE AND CONDUCT OF COMPANY SECRETARIES), 2020 AMENDED

The aforesaid Guidelines have been revised consequent to the issuance of ICSI (Management and Development of Company Secretaries in Practice) Guidelines, 2023. These Guidelines specifically define the dress code to be adhered to by the Company Secretary in Practice and also by Company Secretaries in employment. Guidelines also provide guidance on the etiquettes to be adhered to while attending physical or virtual hearings. The same are available at https://www.icsi.edu/media/webmodules/Guidelines_AttireandConduct_CS2020.pdf

ICSI (CPE) GUIDELINES, 2019 AMENDED

The Institute has amended ICSI (Continuous Professional Education) Guidelines, 2019, with a view to review award of CPE credits to overseas members and CPE Credits for joint programmes organized with other bodies. The amended guidelines effective from January 18, 2024 are available at https://www.icsi.edu/media/webmodules/Revised_CPE-Gls.pdf

ICSI-ACADEMIC COLLABORATIONS

The ICSI signed MoUs with the following academic institutions during the month:

Punyashlok Ahilyadevi Holkar Solapur University	Kolhapur	January 01, 2024
D Y Patil Agriculture and Technical University	Kolhapur	January 18, 2024

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.	Brahmaputra Valley Fertilizer Corporation Limited	Dibrugarh	AM/ DM / Manager
2.	Central Registration Centre	Manesar	CRC Executive
3.	DME Development Limited	Delhi	Deputy Manager
4.	Exim Bank	Mumbai	Compliance Officer
5.	International Financial Services Centres Authority (IFSCA)	Gujarat	CGM (Risk Management)
6.	Kerala Fibre Optic Network Limited (KFON)	Trivandrum	Company Secretary
7.	Ministry of Corporate Affairs	Kolkata	Young Professional
8.	National Bank for Financing Infrastructure and Development	Mumbai	Company Secretary
9.	NewSpace India Limited (NSIL)	Ahmedabad, Bengaluru	Executive Secretary
10.	Office of Official Liquidator, HC, Bombay	Mumbai	Drafting Counsel
11.	REC Limited	Delhi	Multiple Positions
12.	Aceware Fintech Services Private Limited	Chennai	Company Secretary
13.	Altruist Fostering Services	Mumbai	Company Secretary
14.	Audi Delhi South	New Delhi	Company Secretary
15.	Autoline Industries Limited	Pune	Asst. CS
16.	Banganga Paper Mills Limited	Nashik	CS & Compliance Officer
17.	Banka Bioloo Limited	Hyderabad	CS & Compliance Officer
18.	BGSE Financials Limited	Bengaluru	CS & Compliance Officer
19.	Bhoruka Park Private Limited	Bengaluru	CS & Legal Officer
20.	C3 Multi Speciality Hospital Limited	Indore	Company Secretary
21.	CCL Flowers Private Limited	Bengaluru	Company Secretary
22.	Century Textiles and Industries Limited	Mumbai	Asst. CS
23.	Clean Solar Power (Tumkur) Pvt. Ltd.	New Delhi	Assistant Manager
24.	Clean Wind Power (Piploda) Pvt. Ltd.	New Delhi	Assistant Manager
25.	Coal Mines Associated Traders Pvt. Ltd.	Kolkata	Company Secretary
26.	Contagious Online Media Network Pvt. Ltd.	Mumbai	Assistant Manager
27.	Electronics Mart India Limited	Hyderabad	Asst. CS
28.	Equippp Social Impact Technologies Ltd.	Hyderabad	Company Secretary
29.	Finshore Management Services Limited	Kolkata	Company Secretary
30.	Gokul Agri International Limited	Ahmedabad	Company Secretary
31.	Gosree Finance Limited	Cochin	Company Secretary
32.	HCL Technologies Limited	Noida	Company Secretary
33.	Honda R&D (India) Private Limited	Manesar	Asst. General Counsel
34.	Hydrise Foods Private Limited	Noida	Company Secretary
35.	Indic EMS Electronics Private Limited	Bengaluru	Company Secretary
36.	ISMT Limited	Pune	Executive - CS
37.	KCL Infra Projects Limited	Indore	Company Secretary
38.	Kinetic Engineering Limited	Pune	Asst. CS
39.	Kotak Mahindra Asset Management Co Ltd.	Mumbai	Compliance Officer
40.	Lux Industries Limited	Kolkata	Secretarial Executive
41.	Maitri Enterprises Limited	Ahmedabad	CS & Compliance Officer

42.	Manohar Filaments Private Limited	Delhi	Multiple Positions
43.	MNM Stock Broking Private Limited	Ahmedabad	Company Secretary
44.	Mount Intra Finance Private Limited	Kolkata	Company Secretary
45.	MPJ Jewellers (GB) Private Limited	Kolkata	Company Secretary
46.	Nagpur Power and Industries Limited	Mumbai	Company Secretary
47.	OCFO Enterprises Private Limited	Bengaluru	Company Secretary
48.	Orange City Housing Finance Pvt. Ltd.	Mumbai	Company Secretary
49.	Orchid Pharma Ltd	Gurgaon	Asst. CS
50.	Oswal Pumps Limited	Karnal	Company Secretary
51.	Parashmani Medical Centre Pvt. Ltd.	Durgapur	Company Secretary
52.	Parmax Pharma Limited	Rajkot	CS & Compliance Officer
53.	Pune (Purandar) International Airport Ltd.	Mumbai	Company Secretary
54.	Radiant Cash Management Services Ltd.	Chennai	Company Secretary
55.	S J Logistics (India) Limited	Thane	Company Secretary
56.	SGX Minerals Private Limited	Mumbai	Company Secretary
57.	Shah Metacorp Limited	Ahmedabad	Asst. CS
58.	SPS Steels Rolling Mills Limited	Kolkata	Company Secretary
59.	Suzuki Motor Gujarat Private Limited	Ahmedabad	Assistant Manager
60.	The Associated Journals Limited	New Delhi	Asst. CS
61.	TM Solutions Private Limited	Kolkata	Exec. Legal & Compliance
62.	UTI AMC Limited	Mumbai	Company Secretary
63.	Vishal Fabrics Limited	Ahmedabad	Company Secretary
64.	Vital Chemtech Limited	Ahmedabad	CS & Compliance Officer
65.	Wealth Cafe Business Advisors Pvt. Ltd.	Mumbai	Compliance Manager
66.	Zensar Technologies Limited	Pune	Asst. CS

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

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on January 29, 2024)

Registered Users			Total no. of Vacancies
Members	Students	Corporates	Jobs/ Trainings
18,591	25,387	5,874	11,252

ICSI-SECTION 8 COMPANIES

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- **BOOK RELEASES:**
  - **Insolvency and Bankruptcy Code, 8th Edition and Insolvency and Bankruptcy (Rules and Regulations), 8th Edition:** The Bare Act and its Regulations updated till November 2023 in a pocket book format.
  - **IBC Digest:** A Compendium of Research Outcomes: This publication is a collection of Research Articles submitted by our members for this editorial. This publication will bring to its readers both retrospective and prospective viewpoints relating to Insolvency and Bankruptcy realm. With over 10 Research Articles, this collection is a first of its kind publication for ICSI IIP.
  - **Comprehensive Guide for Limited Insolvency Examination, 1st Edition:** This book serves as a guide for how to ace the exam that makes a professional an Insolvency Professional and open up a sea of opportunities for themselves. This is based on the latest syllabus as made applicable by IBBI.
  - **Voluntary Liquidation: A Handbook, 2nd Edition:** A handbook that serves as an end-to-end guide for all aspects related to Voluntary Liquidation under IBC.

All the publications are available for sale at the ICSI IIP website https://icsiiip.in/publications.php and Amazon marketplace.

- **CERTIFICATE OF APPRECIATION:**

  ICSI IIP felicitated selected members with a “Certificate of Appreciation” in the 1st National Convention of IPs and RVs organized jointly by the ICSI with ICSI IIP and ICSI RVO on January 13, 2024 at SCOPE Auditorium, New Delhi.Since the inception of the Code, the Insolvency professionals are working round the clock to save the ailing corporates and bringing back distressed monies in the ecosystem. To facilitate and encourage them, ICSI IIP awarded a “Certificate of Appreciation” to its members who have done excellently well and resolved the most corporate debtors under the Code. The certificate was awarded to those professional members of ICSI IIP who have resolved 3 or more corporate debtors as on 30th September, 2023.

- **WORKSHOPS**

Date	Subject	Speaker(s)	YouTube link
January 06, 2024	Knowledge Session on PUFE Transactions under IBC	IP, CFA and CAIIB Raghuram Manchi IP and CS Prakul Thadi	https://www.youtube.com/watch?v=tnO1oip53ts
January 19, 2024	Enhancing Multifaceted Skills required under IBC - IP as a Financial Expert	IP and CA Avil Jerome Menezes	https://www.youtube.com/watch?v=PmjmE-BEOaY
January 24, 2024	Enhancing Multifaceted Skills required under IBC - IP as a Lawyer	Advocate Sumant Batra	https://www.youtube.com/watch?v=YPboVA9U6Sg

- **WEBINAR**

Date	Subject	Speaker(s)	YouTube link
January 05, 2024	Anatomy of IBC Case Laws - 12	IP, CS and CMA Siva Rama Prasad Puvvala	https://www.youtube.com/watch?v=6avIbyh5WHk

ICSI REGISTERED VALUERS ORGANISATION

Date	Activity	Topics / Title
January 16-22, 2024	50 Hours Online Course	Valuation of Securities/ Financial Assets

INSTITUTE OF GOVERNANCE PROFESSIONALS OF INDIA

- **LOGO OF INSTITUTE OF GOVERNANCE PROFESSIONALS OF INDIA UNVEILED**

  With the intent to exhibit and embody the broader objectives of the Company and to epitomize the purpose for which it has been established, the ICSI has changed the name of its Section 8 company ICSI-GRKF (ICSI Governance Research and Knowledge Foundation) to Institute of Governance Professionals of India. The Company intends to take forward its purpose to generate, spread and impart knowledge, directly or in association with person(s) having similar objects or engaged in similar activities by way of Research, Publications, Training and Education. The areas of focus of these activities would include Corporate Laws, Governance, Management, Business Sustainability and CSR, Capital and Financial Markets, Economic Laws and Policies, Information and Control Systems and Allied Disciplines. To create brand image & visibility, a dedicated logo and masthead for the entity has also been created which was released at the Presentation Ceremony of ICSI National Awards for Excellence in Corporate Governance, 2023 held on January 05, 2024 at New Delhi.

ICSI-CCGRTs

ICSI-CCGRT HYDERABAD

- *CORP CON-2024 - 1st Research National Conference on ‘Developments and Trends in Corporate Laws and Governance’*

  ICSI CCGRT, Hyderabad organised CORP CON-2024 -1st Research National Conference on ‘Developments and Trends in Corporate Laws and Governance’ jointly with Centre for Corporate and Competition Laws [CCCL], NALSAR University of Law, Hyderabad at NALSAR University campus during January 05-07, 2024. CORP CON – 2024 was inaugurated by Prof. (Dr.) Harpreet Kaur, Vice Chancellor, National Law University, Jodhpur, Prof. Srikrishna Deva Rao, Vice Chancellor of NALSAR University of Law, Hyderabad, Shri Jaipuriar Praveen, CEO, Continental Coffee Limited, Hyderabad and CS Venkata Ramana R, Council Member, ICSI & Program Director.

  The 3 days Conference was focussed on various topics *viz.* ADR Mechanism, IBC, Corporate and Securities Laws, Labour Laws, Banking, FEMA & Insurance Laws and Corporate Governance. Research papers were submitted by 60 Research Scholars on various

related themes and sub-themes and around 35 research scholars were made the presentations during the technical sessions/panel sessions.

Shri Ramalingam Sudhakar, Hon'ble President, National Company Law Tribunal, New Delhi was the Chief Guest for Valedictory Session. CS Manish Gupta, CS B Narasimhan, CS Venkata Ramana R, and CS Pawan G Chandak represented ICSI at the Valedictory Session.

- *12th Corporate Leadership Development Program [CLDP]:*

  ICSI CCGRT, Hyderabad organised its 12th batch of Residential CLDP during January 10-25, 2024. The program was attended by 16 participants from parts of the Country. CS Chivukula Vasudev, CFO, Ramky Infrastructure Ltd. addressed the participants during Inaugural Session as Chief Guest. During the 15 days residential CLDP, participants were also taken to MCA Bhawan, Hyderabad. Hon'ble Judicial Member Shri V R Badrinath addressed the participants followed by witnessing live proceedings at NCLT Court sessions in Hyderabad Bench. The participants were also taken to Official Liquidator office and CS U K Shah, Official Liquidator, Hyderabad addressed the participants. The Valedictory Session was presided over by CS Maharani T S, Company Secretary and Compliance Officer, GATI Ltd. as Chief Guest.

ICSI-CCGRT MUMBAI

- *16th Residential Corporate Leadership Development Program (CLDP)*

  The 16th Residential Corporate Leadership Development Program (CLDP) took place from January 09, 2024 to January 24, 2024 with 28 participants spanning across the country. CS Nehal Shah, Senior Director, Head Compliance Legal & Secretarial at Care Rating Ltd., graced the inaugural session as the Chief Guest. The valedictory ceremony was presided over by CS S.N. Ananthsubramanian who offered his heartfelt congratulations and celebrated the achievements of all participants who successfully concluded the CLDP program.

- *One-Day Orientation Program*

  One-day Orientation Program (ODOP) was conducted on January 17, 2024 in two sessions, attracting the participation of over 75 students from diverse regions within the state. The primary objective was to illuminate the diverse roles and responsibilities integral to this career, uncover the expansive opportunities it presents, and offer valuable insights into the journey toward achieving the esteemed qualification of a Company Secretary.

- *Workshop on Dynamics of Board Behaviour on January 05, 2024*

  The ICSI-CCGRT, Mumbai, organised a workshop on the Dynamics of Board Behaviour on January 05, 2024, featuring distinguished speakers CS Sudhakar Saraswatula, Former Vice-President of Reliance Industries Ltd., and CS K. Venkataraman, Practising Company Secretary. The event drew participation from over 50 professionals. The workshop provided a platform for deepening understanding and fostering best practices in board dynamics, reinforcing the crucial role of Company Secretaries in steering boards toward excellence.

- *Training Program on SBO & ESG on January 20, 2024*

  The ICSI-CCGRT, Mumbai conducted a training program on January 20, 2024 as a resounding success, focusing on Significant Beneficial Ownership and Environmental Social & Corporate Governance. Esteemed speakers, CS Devendra V. Deshpande, Practicing Company Secretary and Past President-ICSI, and CS Minal Bhosale, Company Secretary, CRISIL Ltd., shared their expertise with over 60 participants from across the state.

INITIATIVES FOR EMPLOYEES

- *Webinar on "Lifestyle Modification to Prevent Chronic diseases" by Dr. Reddy's Foundation*

  A webinar was organized on 24th January, 2024 on the occasion of Chronic Health awareness month on the topic "Lifestyle Modification to Prevent Chronic diseases" by Dr. Reddy's Foundation for the benefit of ICSI employees and pensioners. all employees/ veterans participated in the webinar presented by Dr. Go. Bharani.

- *Service Award Function on 26th January, 2024*

  On the occasion of 75th Republic Day, a Service Award Function was organized, alongside Republic Day Celebrations, to recognize the employees who have rendered 15, 20, 25, 30 & 35 years for their relentless and dedicated service to the Institute. In the function, 5 employees received the Award from the President CS B. Narasimhan, under different categories of awards, which was aired live across locations.

- *Birth Day celebration of Employees*

  Birth days of employees for the month of January 2024 was celebrated on 25th January at HQ Lodi Road and Noida.

INITIATIVES FOR STUDENTS

CENTRALIZED FREE ONLINE CLASSES FOR EXECUTIVE AND PROFESSIONAL PROGRAMME

ICSI introduced 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 the students. The classes are being conducted for the 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.

DEDICATED HELPLINE NUMBER FOR STUDENT QUERIES

The ICSI has introduced a dedicated helpline number to handle queries related to Student Registration, Post Registration, Class Room Teaching and Enrolment. Students can contact at 0120-4082170 (From Monday to Friday 9.30 A.M. to 5.30 P.M.).

YUVOTSAV-2024 WAS ORGANISED ON JANUARY 11-12, 2024

Yuvotsav-2024, National Conference of Student Company Secretaries was organised on January 11-12, 2024 in Delhi/NCR. Students participated in various competitions in through their Regional/Chapter Offices. They were required to register online by remitting the requisite fee for the same. Around 23 competitions were organised during Yuvotsav-2024. Legal Puzzle, Elocution Competition, Debate Competition, Fashion show were some of the competitions which were organised during Yuvotsav-2024. All interested students were requested to contact their respective regional/Chapter office to participate.

The You tube link of Yuvotsav-2024 is: https://www.youtube.com/watch?v=5FGi_T9MIbA

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 for the same).*

SUCCESSFULLY CONDUCTED EXECUTIVE & PROFESSIONAL PROGRAMME UNDER OLD & NEW SYLLABUS DECEMBER 2023 EXAMINATION

First Executive Programme Examination under New Syllabus 2022 and Executive & Professional programme Examination under syllabus 2017 for December 2023 which was scheduled from 21st December to 30th December 2023 conducted smoothly with zero error. Admit Card released on scheduled date - December 12, 2023 for Executive & Professional for December 2023 Session of Examination.

COMPULSORY SWITCHOVER TO NEW TRAINING STRUCTURE EXTENDED UPTO MARCH 31, 2024

The Institute has decided to provide one last opportunity to its students to complete the requirement of short-term training under earlier/modified training structure till 31st March, 2024. The Compulsory Switchover to New Training Structure shall now be applicable w.e.f. 1st April, 2024.

LAUNCH OF NEW TRAINING GUIDELINES 2024 IN YUVOTSAV- 2024

The Institute has launched its Student Training Guidelines 2024 during Yuvotsav-2024 (National Conference of Student Company Secretaries) organized by ICSI on 11th - 12th January 2024. The link for these Guidelines are available on the website of the Institute at: ICSIStudentTainingGuidelines15012024.pdf

EXTENSION OF CONDUCTING 15 DAYS CLDP ON NON-RESIDENTIAL BASIS UPTO MARCH 31, 2025

The Institute has decided to extend conducting of 15 days class room mode Corporate Leadership Development Programme (CLDP) on non- residential basis by Regional Offices, Diamond and Platinum grade Chapter for a period up to March 31, 2025. However, CCGRTs will continue to conduct CLDPs in residential mode only.

TOTAL YEARS OF EXPERIENCE AS CS TO BE CONSIDERED FOR REGISTRATION OF PCS FOR IMPARTING LONG-TERM TRAINING

The registration of PCS for the purpose of imparting long -term training shall now be considered by including the total years of experience as a CS (both in employment and in practice).

ICSI SAMADHAN DIWAS

ICSI successfully conducted the 39th Samadhan Diwas, on Wednesday, January 10, 2024. Samadhan Diwas is a unique initiative of the ICSI wherein "on-the-spot" resolution is provided on issues/grievances of trainees and trainers.

The purpose of the Samadhan Diwas is to facilitate the stakeholders to resolve their queries on the spot. In the Samadhan Diwas students get opportunity to present their cases and directly interact with the ICSI officials.

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.

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

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 was held on January 06, 2024. Last date for registration for CSEET was December 15, 2023.

- ***Centralized free online Classes of CSEET***

  ICSI introduced free online Centralized classes for the students of CSEET from December 16, 2023 onwards. These Classes are being conducted free of cost for the students.

- ***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 **January, 2024**. 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/

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. 28 such Transcripts were issued in this line in the month of December 2023 under review. Likewise, on request of the employer/PSU/government authorities and other Education verifier agencies, 8 Education Verification requests of CS students were processed in the month of January 2024.

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 organised and conducted following Career Fairs during the month in addition to the other programmes being conducted by RC/Chapter offices across the country:

School Name	Date	Venue
Delhi Public School	January 08, 2024	Palm Beach Rd, near NRI Complex, Phase 2, Sector - 52, Nerul, Navi Mumbai, Maharashtra 400706
The Shri Ram School, Moulsari	January 12, 2024	V-37, Moulsari Ave, DLF Phase 3, Sector 24, Gurugram, Haryana 122002
The Shri Ram School Aravali	January 12, 2024	Hamilton Court Complex, Phase IV, DLF City Gurugram – 122002

Articles P - 37

Interim Union Budget 2024-25 – A Roadmap towards Viksit Bharat

38

CS Asish Mohan

The Vision for *Viksit Bharat* i.e., *"Prosperous Bharat in harmony with nature, with modern infrastructure, and providing opportunities for all citizens and all regions to reach their potential"* was deeply ensconced in this year's union budget. The Interim Budget unveiled plans for economic growth, inclusivity, and social welfare. It also instills confidence in continuity by strategically focusing on empowering the youth, poor, women, and farmers - the four pillars of a developed India. The Interim Budget has addressed the aspirations of youth and women and given importance to science, innovation, and technology.

Exemptions To Private Companies Under Section 462 of The Companies Act, 2013 in Relation To General Meetings

46

CS (Dr.) K R Chandratre, FCS

The section empowers the Central Government to either grant total exemption or partial exemption. When the Exemption Notification states that the section shall not apply, it means that the exemption is a total exemption. A partial exemption means that any provision of the Act shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

Concept of "Director" under the Companies Act, 2013–Its Ambivalence

52

CS Ramaswami Kalidas, FCS

Section 2(13) of the 1956 Act defined a Director inclusively thus: *"Director includes any person occupying the position of a director by whatever name called".* Being an inclusive definition , the definition is extensive and the scope of the definition can be widened to bring within its fold words and expressions which are beyond what has been used in the definition, The term "includes" automatically widens the contours of the definition to consider not only things as they signify according to their natural import but also things which the definition considers that it shall include. An "inclusive" definition does not also exclude the ordinary meaning of the term.

Audit Committee Chairperson to Attend the Annual General Meeting of the Company *(consequences of non-attendance under the provisions of Companies Act, 2013)*

57

CS R Balakrishnan, FCS

The annual general meeting (AGM) is a yearly gathering between the shareholders of a company and its board of directors and only at this time the directors and shareholders will meet once in a year. At this meeting the audited financial statements are placed before the shareholders for their adoption/approval. Audit Committee (where applicable) reviews the financial statements of the company and recommends the same for the Board's approval. The primary purpose of the audit committee is to monitor and provide effective supervision of the company's financial reporting processes in order to ensure timely, accurate and proper disclosures and the transparency, integrity and quality of financial reporting. When the audited financial statements are presented at the AGM for the approval/adoption by the shareholders, the shareholders could ask any questions, clarifications etc., at this meeting before approving the financial statements.

Implementation of Regulation 37A - SEBI *(Listing Obligation and Disclosure Requirements)* Regulations 2015

63

CS Vallabh Joshi, ACS

In case any sale, lease or otherwise disposal of an undertaking is being undertaken "outside the scheme of arrangement" framework, it is observed that the notice to the shareholders pertaining to passing of a resolution to that effect is often bereft of adequate disclosures.

Developing an AML–Compliant Risk Assessment Framework for SEBI Registered Intermediaries

67

CS Shaily Gupta, ACS

The term "money laundering" originates from the concept of cleansing illicit funds, much like one might launder dirty clothing to make them appear clean and untainted. However, the history of this term bears a fascinating connection to the notorious American mafia figure, Al Capone. Capone, a key figure in organized crime during the Prohibition era, ingeniously established laundry businesses across the United State.

Security in Digital Transformation & Artificial Intelligence

71

How Company Secretaries play a crucial role in supporting security initiatives during digital transformation efforts?

CS Ankit Kesharwani, ACS

When used correctly, AI can assist prevent vulnerabilities from being created in the first place, fundamentally altering the security experience. AI gives context for potential vulnerabilities and recommends secure programming from the start. These capabilities allow developers to design more secure code in real time, fulfilling the true promise of "shift left." This is revolutionary. Traditionally, "shift left" meant receiving security input after putting your idea into code but before deploying it to production.

Privacy Rights in Digital Sphere

75

The Digital Personal Data Protection Act, 2023

CS Poorvee Ramanbhai Patel, ACS

India enacted its new privacy law called "The Digital Personal Data Protection Act, 2023" for protection of personal data in August, 2023. It is an attempt to bring a harmonised data privacy regime in India for transparent and ethical use of Personal Data. It has been framed in such a manner that it legislates processing of digital personal data in a manner that recognizes both the right of individuals to safeguard their personal data and the need to process such personal data for lawful purposes.

Insurance Broking and Its Compliances

81

CS Gopi Chitaliya, ACS

It is the responsibility of the Insurance Broker to ensure in place a proper internal audit system and that it is adequate for the business. In case of Reinsurance and Composite Brokers the Insurance Brokers must mandatorily have industrial audit systems.

Artificial Intelligence for Digital Transformation- Genesis, Fictions, Applications and Challenges

85

CS (Dr.) Krishnat H. Chougale, ACS

Digital transformation refers to the integration of digital technologies into various aspects of an organization's operations, processes, and strategies. It represents a fundamental shift in how businesses and other entities leverage technology to enhance their overall performance, deliver value to customers, and stay competitive in a rapidly evolving landscape. This transformation often involves reimagining existing processes, adopting new technologies, and fostering a culture of innovation.

B-Corporations: A New Initiative For Sustainability

91

Prof. Gopal Singh, Dr. Anurodh Godha

The emergence of B-Corps, short for "Benefit Corporations," has caused a dramatic shift in the way businesses are being run. B-Corps are businesses that prioritise sustainability, social responsibility, and financial success; while conventional business firms often prioritise financial success over social and environmental well-being, B-Corps employ their resources to tackle these pressing issues. Certified B-Corps have satisfied the rigorous standards for social and environmental performance, transparency, and legal accountability.

Internal Complaint Committee (ICC) and Redressal: A Shield Against Sexual Harassment of Women at Workplace

98

CS Mohua Singh, ACS

Organizations must have a duly constituted ICC, a robust redressal mechanism, and a zero-tolerance policy. Sensitization and awareness programs must be regularly organized to educate employees about direct and indirect forms of harassment, address gender stereotypes, and build a respectful workplace.

Unlocking Opportunities: Company Secretaries as POSH Trainers

104

CS Neha Seth, FCS

Compliance with the mandates of the POSH Act involves several crucial aspects, demanding organizations' diligent adherence. Key among these is the formulation of a comprehensive POSH policy, a responsibility that can be shouldered by either an external consultant or an in-house HR professional possessing the requisite knowledge. Similarly, the imperative task of conducting the POSH employee awareness program falls on the shoulders of POSH trainers or HR personnel proficient in the subject matter. While internal trainers or e-modules may suffice, ensuring comprehensive coverage of all five types of sexual harassment, the effectiveness of physical training is recommended.

Research Corner P-111

Can Corporate Social Responsibility Funds be an Effective Tool for Solar Energy Adaptation in India? A Study Towards Sustainable Development

112

Nimai Sundar Manna

Today climate change is the major issue for civilization and as such environmental concerns are significant. Sustainable development is the way to fulfil the needs of the present generation but not at the cost of the future generation's need. As the country gears up to become leader in renewable energy, the financing is still one of the biggest challenges in achieving the desired output. The price of per unit solar electricity dropped from INR 20 to INR 2 in last 20years whereas thermal power cost increased from INR 2 to INR 8 with a burden of emission of 1 kg of CO_2 per unit (Approx.). Considering the crisis, the CSR fund of the corporates could be more effectively utilized in adopting solar energy in buildings and other sectors of the society for hastening sustainable development in a liveable environment for the generations to come.Buildings worldwide consume approximately 47% of primary energy source, making it a single largest energy consumption sector where cooling energy demand will rise about 2.2 times in 2027, Space cooling in building sector will continue to dominate in India with about 57% share of entire cooling energy demand. With this situation it's high time to use CSR fund for solar energy adaptation in India.

Legal World P-121

- **LMJ 02:02:2024** Legal heirs of the deceased director would be amenable to section 630 of the Act.[SC]
- **LW 09:02:2024** The contention that the "amount" to be set-off is not part of the corporate debtor's assets in the present facts is misconceived and must be rejected.[SC]
- **LW 10:02:2024** As we are taking a different view and ratio from India Resurgence ARC Private Limited (supra) on interpretation of Section 30(2)(b)(ii) of the IBC, we feel that it would be appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench.[SC]
- **LW 11:02:2024** The contracts are not covered by the relevant provisions of the Sales Tax Act and of the VAT Act, as the contracts do not provide for the transfer of the right to use the goods made available to the person who is allowed to use the same.[SC]
- **LW 12:02:2024** Section 107 of the Act specifically provides for the limitation and in the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. [ALL]
- **LW 13:02:2024** The date of issuance of the policy would be the relevant date for all the purposes and not the date of proposal or the date of issuance of the receipt.[SC]
- **LW 14:02:2024** There is absolutely no ambiguity that both the Tripartite Agreements dated 31.03.2007 and 25.07.2008 contain an arbitration clause, which forms the basis of all subsequent agreements.[SC]
- **LW 15:02:2024** The right to choose a movie for exhibition lies with OP and this freedom cannot be curtailed by compelling it to exhibit the movie of the Informant unless and until it causes any harm to competition.[CCI]
- **LW 16:02:2024** The Commission is of the prima facie view that there is no competition concern arising in the present matter.[CCI]

From The Government P-131

- Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024
- Notice Inviting Comments on The Review of Rules Prescribed Under The Companies Act, 2013 and Limited Liability Partnership Act, 2008
- Inviting comments of all stakeholders on draft amended Recruitment Rules for recruitment of Indian Corporate Law Service (ICLS) in different offices of the Ministry of Corporate Affairs - reg
- Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations
- Streamlining of Regulatory Reporting by Designated Depository Participants (DDPs) and Custodians
- Extension of timeline for verification of market rumours by listed entities
- Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism
- Guidelines for AIFs with respect to holding their investments in dematerialised form and appointment of custodian
- Ease of doing business- Changes in reporting
- Ease of Doing Investments by Investors- Facility of voluntary freezing/ blocking of Trading Accounts by Clients
- Foreign investment in Alternative Investment Funds (AIFs)
- Framework for Short Selling
- Formation of new districts in the State of Madhya Pradesh – Assignment of Lead Bank Responsibility
- Second Schedule to the Reserve Bank of India Act, 1934 – Norms for inclusion
- Master Circular- Exposure Norms and Statutory / Other Restrictions - UCBs
- Guidelines on Appointment / Re-appointment of Statutory Auditors of State Co-operative Banks and Central Co-operative Banks
- Credit/Investment Concentration Norms – Credit Risk Transfer
- Implementation of Section 51A of UAPA,1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 14 Entries
- Implementation of Section 51A of UAPA, 1967 Updates to UNSC's 1267 / 1989 ISIL (Da'esh) & Al-Qaida Sanctions List Amendments in 07 Entries
- Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)
- Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk

Other Highlights P-145

- NEWS FROM THE INSTITUTE
- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER

Call For ARTICLES

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

Regulatory Scenario - Balancing EODB & Governance

Promoting Ease of Doing business has not only been the prime agenda but a driving factor across Ministries and Regulatory Authorities as well as the Central Government in their decision making. One of the most significant impacts of such goal has been witnessed during the process of amending the existing laws and writing the new ones. That said, in no manner can the vision of promoting good governance be sidelined.

Even though the past few years have been of reduced number of compliances, the intent has been towards minimum government and maximum governance. As the erstwhile Companies Act, 1956 made way for the Companies Act, 2013 various new SEBI Regulations took the place of similar older ones. The same suit is being followed across all aspects of legislation where Labour laws, Indian Penal Code - Code of Civil Procedure and Code of Criminal Procedure are making way for newer legislations – suited more to the altering dynamics of the modern world. Newer legislations for Data Privacy are being put in place to safeguard against the challenges of technology. All these will be having a noticeable impact on the role of Governance Professionals and the governance scenario in totality.

In view of the same and more, we are pleased to inform you that the March 2024 issue of Chartered Secretary Journal will be devoted to the theme **"Regulatory Scenario – Balancing EODB and Governance"** covering *inter alia* the following aspects:

- **Companies Act, 2013: A journey of 10 years**
- **Company Law : The altering dynamics through EODB lens**
- **SEBI Regulations : The EODB Perspective**
- **EODB & Governance : Balancing the Balance**
- **New Legislations : Challenging the Status Quo**
- **EODB : India as a Global Benchmark**
- **Altering legislative Dynamics : Role of Governance Professionals.**

And many more…

Members and other readers desirous of contributing articles may send the same latest by **Thursday, February 22nd, 2024** at **cs.journal@icsi.edu** for **March 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

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1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
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- INTERIM UNION BUDGET 2024-25 – A ROADMAP TOWARDS VIKSIT BHARAT
- EXEMPTIONS TO PRIVATE COMPANIES UNDER SECTION 462 OF THE COMPANIES ACT, 2013 IN RELATION TO GENERAL MEETINGS
- CONCEPT OF "DIRECTOR" UNDER THE COMPANIES ACT, 2013 – ITS AMBIVALENCE
- AUDIT COMMITTEE CHAIRPERSON TO ATTEND THE ANNUAL GENERAL MEETING OF THE COMPANY *(CONSEQUENCES OF NON-ATTENDANCE UNDER THE PROVISIONS OF COMPANIES ACT, 2013)*
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- UNLOCKING OPPORTUNITIES: COMPANY SECRETARIES AS POSH TRAINERS

ARTICLE

Interim Union Budget 2024-25 – A Roadmap towards Viksit Bharat

The Vision for Viksit Bharat i.e., "Prosperous Bharat in harmony with nature, with modern infrastructure, and providing opportunities for all citizens and all regions to reach their potential" was deeply ensconced in this year's union budget. The Interim Budget unveiled plans for economic growth, inclusivity, and social welfare. It also instills confidence in continuity by strategically focusing on empowering the youth, poor, women, and farmers – the four pillars of a developed India. The Interim Budget has addressed the aspirations of youth and women and given importance to science, innovation, and technology.

CS Asish Mohan
Secretary, ICSI
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INTRODUCTION

The budget speech of Hon'ble Finance Minister, Nirmala Sitharaman highlighted the profound positive metamorphosis witnessed by the Indian economy in last ten years. It mentioned about vanquishing of challenges with the mantra of *'Sabka Saath, Sabka Vikas, and Sabka Vishwas'*. In other words, the Interim Budget 2024-25 mentioned the milestones achieved by the Government in the last 10 years on its journey to make *Bharat* the foremost nation in every sector during the *Amrit Kaal*.

The Vision for *Viksit Bharat* i.e., *"Prosperous Bharat in harmony with nature, with modern infrastructure, and providing opportunities for all citizens and all regions to reach their potential"* was deeply ensconced in this year's union budget. The Interim Budget unveiled plans for economic growth, inclusivity, and social welfare. It also instils confidence in continuity by strategically focusing on empowering the youth, poor, women, and farmers – the four pillars of a developed India.

The Interim Budget has addressed the aspirations of youth and women and given importance to science, innovation, and technology. This budget shows the government's forward thinking strategy and attention to every sector, including infrastructure, social sector, agriculture and the blue ocean economy. It is a testament to India's commitment towards green growth.

It is heartening to note that the Interim Budget has focused on a more comprehensive 'GDP', i.e., 'Governance, Development and Performance' besides delivering on high growth in terms of Gross Domestic Product. Further, Government's transparent, accountable, people-centric and prompt trust-based administration with 'citizen-first' and 'minimum government, maximum governance' approach was emphasised. This budget is aligned to make the country prosperous in harmony with nature, modern infrastructure and opportunities for all.

The ensuing paragraphs discusses about the crucial initiatives / economic policies proposed in the Interim Budget aimed to foster and sustain growth, facilitate inclusive and sustainable development, improve productivity, create opportunities for all, help them enhance their capabilities, and contribute to generation of resources to power investments and fulfil aspirations. An endeavour has also been made to throw light on the next generation reforms guided by the principle 'Reform, Perform, and Transform'.

In light of the aforesaid facts, this article has reconnoitred on the following facets–Environmental Initiatives, Social Initiatives, Agriculture Sector, Infrastructure Sector, Tourism Sector, Corporate Sector, Financial Developments and Global Context.

ENVIRONMENTAL INITIATIVES

In view of the Government's commitment to attain 'net-zero' by 2070, the following noteworthy initiatives have been announced which *inter-alia* covers:

a) Rooftop solarisation;

b) Electric Vehicle Ecosystem;

c) Green Energy;

d) Bio-manufacturing and bio-foundry ;and

e) Blue Economy 2.0

a) **Rooftop solarisation-** Taking cue from Prime Minister Narendra Modi's assurance that one crore households will be electrified via rooftop solar installations, Union Finance Minister in Interim Budget 2024-25, reiterated that commitment. Rooftop solarization initiative will enable one crore households to obtain up to 300 units free electricity every month. This move can lead to savings of upto

₹ 15,000 to ₹18,000 annually per household by providing free solar electricity and allowing them to sell surplus electricity to the distribution companies. The initiative of installing rooftop solar projects for 1 crore households will lead to reduction of CO2 emissions by 35 million tonnes per annum. It is a great move toward promoting green energy. Solar power not only ensures household electricity access but also aligns seamlessly with our enduring commitment to environmental sustainability.

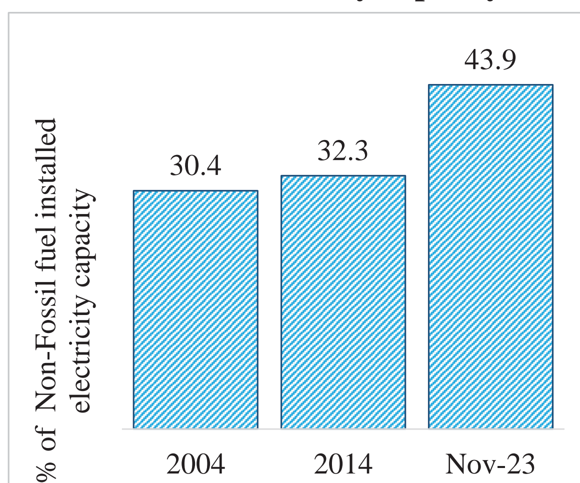
b) **Strengthening e-vehicle ecosystem by supporting manufacturing and charging-** Focus on expanding Electric Vehicle manufacturing as well as strengthening the supporting charging infrastructure which will create entrepreneurship opportunities for a large number of vendors for supply and installation. It will also boost employment opportunities for the youth with technical skills in manufacturing, installation and maintenance. In this regard, the automobile industry has welcomed the announcement of government expanding and strengthening the electric vehicle (EV) ecosystem by supporting manufacturing and charging infrastructure. The industry experts also said that the announcement on strengthening the electric vehicle milieu will provide impetus to the development and adoption of EVs in India.

c) **Green Energy**- A basket of measures towards meeting India's commitment to reach net zero emissions by 2070 covers the following:

- *Viability gap funding for wind energy -* Introducing Viability Gap Funding for offshore wind projects holds potential to open up large opportunities for the wind sector, as India marches aggressively towards its 2030 renewable energy and 2070 net-zero targets. This will aid in lowering power generation costs to ensure power offtake from these projects, as well as instil confidence among wind players towards investing in offshore technologies.
- *Setting up of coal gasification and liquefaction capacity -* To set up Coal gasification and liquefaction capacity of 100 MT by 2030 to help in reducing imports of natural gas, methanol, and ammonia. Increasing coal gasification and liquefaction capacity will reduce India's reliance on imports of critical items such as natural gas, methanol, ammonia and other essential products, curb emissions and give a fillip to end user sectors.
- *Phased mandatory blending of CNG, PNG and compressed biogas-* To mandate the phased mandatory blending of compressed biogas (CBG) in compressed natural gas (CNG) for transport and piped natural gas (PNG) for domestic purposes, which will promote production and consumption of CBG in the country.
- *Financial assistance for procurement of biomass aggregation machinery-* To provide financial assistance for procurement of biomass aggregation machinery to support collection.

d) **Bio-manufacturing and bio-foundry-** In a stride towards green growth, the Interim Budget 2024 has announced a new scheme of bio-manufacturing and bio-foundry. Launching of bio-manufacturing scheme will act as a catalyst in providing environment friendly alternatives like biodegradable polymers, bio-plastics, bio-pharmaceuticals and bio-agri-inputs. The mentioned sustainability initiative has been taken positively by the doyens of industry. Eulogizing the mentioned scheme, Nilaya Varma, Co-Founder of Primus Partners stated that the budget's focus on phased mandatory blending of compressed biogas in CNG for transport and PNG, enabling bio-manufacturing and bio-foundry displays India's strong commitment to driving its international initiative of Global Biofuels Alliance.

Per cent increase in Non-Fossil Fuel installed electricity capacity



Source: *https://www.indiabudget.gov.in/doc/bh1.pdf*

On this significant approach the doyens of industry mentioned that the thrust towards bio-based economy has been stepped up with the announcement of new schemes on bio-foundry, bio-manufacturing, financial support for biomass aggregation machinery and mandates for CBG blending. Further, it is stated that this should result in debottlenecking some of the constraints such as biomass availability as well as provide new use cases for this sector to grow, for example bio-based substitutes in industries such a polymers, pharmaceuticals etc. It will not only provide income and growth opportunities to the farmers, but will also offer avenues for decarbonisation to industries, including promoting regenerative principles in manufacturing.

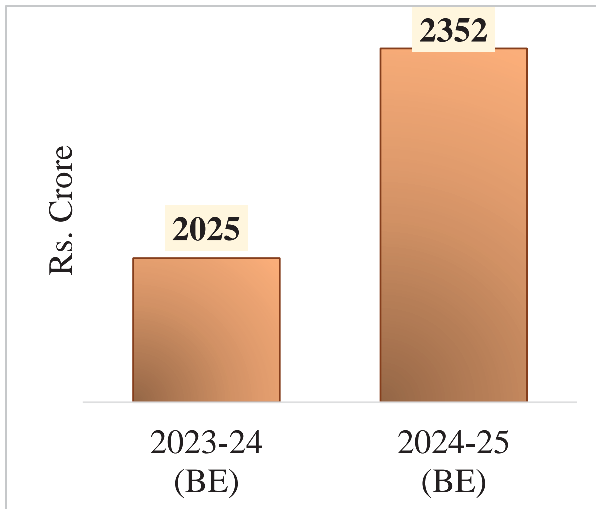
e) **Blue Economy 2.0**- The 'Blue Economy', which harnesses the potential of oceans, seas, and coastal areas, has emerged as a key area of focus in discussions surrounding sustainable development.

> Blue Economy is the "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem.
>
> -World Bank

Stressing upon the concept of Blue Economy, Finance Minister unveiled plans for the launch of 'Blue Economy 2.0', aimed at promoting climate-resilient activities and sustainable development in coastal areas. The scheme will focus on restoration and adaptation measures, as well as the expansion of coastal aquaculture and mariculture, adopting an integrated and multi-sectoral approach. By fostering climate-resilient activities, the Blue Economy 2.0 scheme aims to build resilience against the impacts of climate change while fostering sustainable growth in coastal regions.

A draft policy framework on India's Blue Economy was first released in July 2022. According to PIB, the policy document contained "key recommendations on National Accounting Framework for Blue Economy and Ocean Governance, Coastal Marine Spatial Planning and Tourism Priority, Marine Fisheries, Aquaculture and Fish Processing. Manufacturing, Emerging Industries, Trade, Technology, Services and Skill Development, Logistics, Infrastructure and Shipping, Coastal and Deep-Sea Mining and Offshore Energy and Security, Strategic Dimensions and International Engagement."

Increased allocation for Blue Revolution



Source: *https://www.indiabudget.gov.in/doc/bh1.pdf*

It is heartening to note that during the third Global Maritime India Summit held in October 2023, Hon'ble Prime Minister, Shri Narendra Modi laid the foundation stone for projects worth over ₹ 23,000 crore for the Indian maritime blue economy. He also dedicated over 300 Memorandums of Understanding (MoUs) worth over ₹ 7 trillion for partnerships in the maritime sector.

The projects are aligned with the Centre's aim to build a "Viksit Bharat (developed nation)" by the year 2047, the 100th anniversary of the country's independence. These developments are in line with India's Deep Ocean Mission, launched in October 2021 by the Ministry of Earth Sciences, to bolster India's maritime infrastructure. The stress on Blue Economy will exert a positive impact on the India's maritime sector.

SOCIAL INITIATIVES

The Interim Budget encompassed the developmental approach of the Government that is all-round, all-pervasive and all-inclusive (gdmªJrU, gd©ñneu Am¡a gd©g_mdoer), covering all castes and people at all levels, signifying a giant leap towards social inclusiveness. Notable initiatives like 'housing for all', 'har ghar jal', electricity for all, cooking gas for all, bank accounts and financial services for all are metaphor of humane and inclusive approach to development. Moreover, the development philosophy of the government encompassed all elements of inclusivity, namely,

- social inclusivity through coverage of all strata of the society, and
- geographical inclusivity through development of all regions of the country.

At this juncture, it will be of paramount interest to delve into some major social initiatives.

1. The pursuit of *'Sabka Saath'* approach is manifested in assisting 25 crore people to get freedom from multi-dimensional poverty in the last 10 years.
2. Direct benefit transfer of ₹ 34 lakh crore using PM-Jan Dhan accounts, resulting in savings of ₹ 2.7 lakh crore for the Government.
3. Financial succour to 78 lakh street vendors. From that, 2.3 lakh have received credit for the third time.
4. The Skill India Mission, an initiative dedicated to fostering skills development and economic empowerment, has trained 1.4 crore youth, upskilled and reskilled 54 lakh youth, and established 3000 new ITIs. Moreover, new institutions of higher learning, namely 7 IITs, 16 IIITs, 7 IIMs, 15 AIIMS and 390 universities have also been set up, providing a fillip to engineering, medicine and management education.
5. Fulfilling entrepreneurial aspirations of youth under PM Mudra Yojana by sanctioning 43 crore loans aggregating to ₹ 22.5 lakh crore.
6. Focusing on upliftment of vulnerable tribal groups through PM-JANMAN Yojana. PM-Vishwakarma Yojana providing end-to-end support to artisans and craftspeople engaged in 18 trades.
7. Government's schemes for empowerment of Divyangs and Transgender persons reflects Government's resolution to leave no one behind.

AGRICULTURE SECTOR

In the Interim Budget 2024-25, Hon'ble Finance Minister stated that for the welfare of farmers, Electronic National Agriculture Market has integrated 1361 mandis, and

is providing services to 1.8 crore farmers with trading volume of ₹ 3 lakh crore.

Further, for value addition in agricultural sector and boosting farmers' income, the following initiatives are taken:

- Government will promote private and public investment in post-harvest activities including aggregation, modern storage, efficient supply chains, primary and secondary processing and marketing and branding.
- Application of Nano-DAP (Di-ammonium Phosphate) to be expanded in all agro-climatic zones.
- Atmanirbhar Oilseeds Abhiyaan-Strategy to be formulated to achieve atmanirbharta for oilseeds such as mustard, groundnut, sesame, soybean, and sunflower.
- Comprehensive programme for dairy development to be formulated. The programme will be built on the success of existing schemes such as Rashtriya Gokul Mission, National Livestock Mission, and Infrastructure Development Funds for dairy processing and animal husbandry.
- Implementation of Pradhan Mantri Matsaya Sampada Yojana to be stepped up to enhance aquaculture productivity, double exports and generate more employment opportunities.
- Five Integrated Aquaparks to be set up.

The positive steps announced for agriculture sector has been extolled by the corporate sector. Commending government's endeavours in this regard, industry experts are of the following views (excerpts):

Appreciated the government for unveiling the visionary 'Atmanirbhar Oil Seeds Abhiyan', which focuses on key oilseeds like mustard, groundnut, sesame, soyabean, and sunflower. This initiative encompasses crucial dimensions such as research for high-yielding varieties, the widespread adoption of modern farming techniques, establishment of market linkages, procurement, value addition, and crop insurance. Further, commending the comprehensive programme to support dairy and fisheries farmers, said that the mentioned initiative exhibits holistic commitment to enhance the overall agricultural sector and ensuring well-being of the farming communities.

Budget continues to support growth and productivity in agriculture through interventions in crop insurance, encouraging use of nano fertilizers, promoting self-sufficiency in oilseed production and increasing investments in micro food processing.

The government has continued its support to farmers under the crop insurance facility and intends to further strengthen the same. This will ensure penetration and awareness around insurance in rural India thereby providing a boost to the insurance industry.

> The 'Blue Economy', which harnesses the potential of oceans, seas, and coastal areas, has emerged as a key area of focus in discussions surrounding sustainable development. Stressing upon the concept of Blue Economy, Finance Minister unveiled plans for the launch of 'Blue Economy 2.0', aimed at promoting climate-resilient activities and sustainable development in coastal areas.

Allocation of ₹ 20 lakh crore for targeted agricultural credit and the launch of the Agriculture Accelerator Fund were highly praised.

Exuberance in seed industry on witnessing the emphasis being given on oilseeds and the imperative to make the sector self-reliant in this Interim Budget.

Thrust on digital infrastructure and infusion of technology is imperative to not only sustain the momentum but also to take the agriculture growth story to its logical conclusion.

INFRASTRUCTURE SECTOR

As nations strive to strengthen their economic backbone, investments in infrastructure play a pivotal role in driving growth, fostering connectivity, and enhancing overall quality of life. In line with the vision *"Prosperous Bharat in harmony with nature, modern infrastructure and opportunities for all"* the recent budget announcement by the Ministry of Finance has garnered considerable attention, especially concerning its allocations and priorities for the infrastructure sector.

It is worth mentioning that multipronged economic management over the past ten years has complemented people-centric inclusive development which is evident from building of all kinds of infrastructure in record time-physical, digital or social, thereby all parts of the country becoming active participants in economic growth.

The government has spent a whopping ₹ 23 lakh crore on infrastructure spending over the last three years (FY22-FY24). The infrastructure focus is apparent when one looks at the capital spending to GDP ratio which has almost doubled from 1.6 per cent of GDP in 2018-19 to 3.2 per cent of GDP in 2023-24. Of this, the major push has come in building roads, highways, and railways with almost 40 per cent of total capital spending this year allocated to these sectors. The thrust on infrastructure sector continues in future also with the outlay for the next year (FY2024-25) being stepped up by 11.1 percent to eleven lakh, eleven thousand, one hundred and eleven crore rupees (₹ 11,11,111 crore) which tantamount to 3.4 percent of the GDP.

The sector wise announcements made related to Infrastructure in Interim Budget 2024-2025 are as under:

a) Railway Sector

Implementation of three major economic railway corridor programmes:

i. Energy, mineral and cement corridors,

ii. Port connectivity corridors and

iii. High traffic density corridors.

The aforesaid projects have been identified under the PM Gati Shakti for enabling multi-modal connectivity. These projects are expected to improve logistics efficiency and reduce cost. As an initiative to provide higher quality services in terms of safety, convenience and comfort of passengers, forty thousand normal rail bogies will be converted to the Vande Bharat standards. To meet with the pace of urban transformation, Metro and NaMo Bharat are being considered as catalyst for the required urban transformation. In this regard, expansion of the mentioned systems will be supported in large cities focusing on transit-oriented development.

b) Aviation Sector:

The Government has increased allocation to infrastructure especially in Tier 2 and 3 cities under the UDAN Scheme. The aviation sector has been galvanized in the past ten years. Number of airports has doubled to 149. Expansion of existing airports and development of new airports will continue expeditiously.

c) Road Infrastructure:

The allocation for the Ministry of Road Transport and Highways has marginally increased to ₹2.78 lakh crore from ₹ 2.7 lakh crore.

d) Tourist centres:

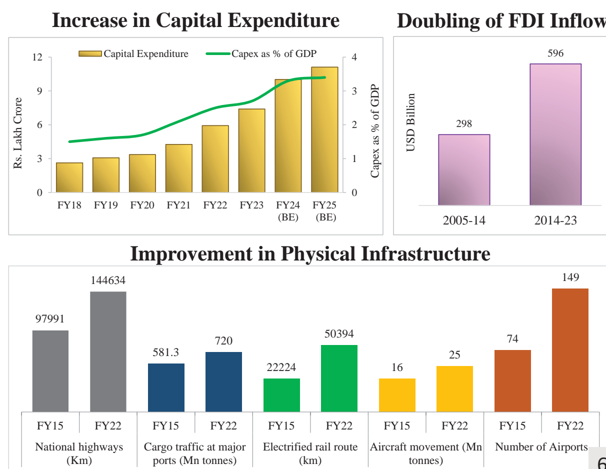
It is announced to undertake infrastructure and port connectivity projects in India's islands, including Lakshadweep, to cater to the growing interest in domestic tourism. The Finance Minister emphasized that these projects, encompassing port connectivity, tourism infrastructure, and amenities, aim to boost employment opportunities.

Further, states will be encouraged to take up comprehensive development of iconic tourist centres, branding and marketing them at global scale. In this regard, a framework for rating of the centres based on quality of facilities and services will be established.

The initiatives announced in the Interim Budget have received an overwhelming response from the corporate arena. Excerpts of the honchos of the corporate sector on Interim Budget's approach towards infrastructure sector is provided below-

- Government's commitment of expanding existing airports and developing new ones, particularly in Andaman and Nicobar Islands were phrased and it was opined that it is a mammoth leap in airline routes and order for aircraft by Indian carriers. Government's pledge to enhance port connectivity and tourism infrastructure for islands such as Andaman and Nicobar can be seen as a promising measure towards unlocking of true tourism potential.
- Allocation of ₹ 11.11 lakh crores to infrastructure sector for infrastructure development stands as a cornerstone for accomplishing the India @2047 Vision.
- Government's enormous spending on infrastructure can be considered as one of the main drivers of economic growth of India.
- Interim Budget's thrust on tourism with a multipronged approach will play a pivotal role in creating a multiplier effect across aviation, tourism and allied sectors, thereby strengthening growth and employment generation. Announcements pertaining to airport development and expansion which is already marked by doubling of airports to 149 in the last decade coupled with government's plan to bolster air connectivity by adding 517 new routes across Tier 2-3 cities, carrying 1.3 crore passengers via the UDAN scheme, will play a vital role with vibrant hub and spoke air corridors to foster accessibility and affordability for regional India.
- The announcement on creating and enhancing tourist centres and a ranking framework based on support infra creation will bring hospitality-related development in sharp focus while creating the need and opportunity for associated real estate development (holiday homes, second homes, commercial and social infrastructure) in such locations. The same holds true for improving island tourism.

The prodigious growth in capex, infrastructure sector and FDI is provided in the exhibit below-



Source: *https://www.indiabudget.gov.in/doc/bh1.pdf*

As mentioned, that infrastructure is fulcrum of economic growth, it is of immense academic and research interests to explore the existing as well as forecasted trend of capital expenditure, as it results into Gross Domestic Capital Formation, an integral element of infrastructure. The existing capital expenditure trend is provided in the table below-

Years	Effective Capital Expenditure (₹ in Lakh Crore)
2017	4.5
2018	4.5
2019	5.0
2020	5.2
2021	6.4
2022	8.4
2023	10.5
2024*	12.7
2025**	15.0

**Revised Estimates*

*** Budget Estimates*

Note: *Effective Capital Expenditure figures comprise of Grant in Aid for creation of capital assets and Capital Expenditure*

Source: *India Budget, Ministry of Finance*

Since the target is to become '*Viksit Bharat*' by 2047, it engenders the need to undertake prognosis of effective capital expenditure till 2047. The forecasted effective capital expenditure is provided below-

Years	Forecasted Effective Capital Expenditure (₹ in Lakh Crore)
2026	14.75555556
2027	16.67191358
2028	18.58535665
2029	20.48767052
2030	22.16445526
2031	23.6791718
2032	25.16450219
2033	26.67838177
2034	28.31527709
2035	30.21759408
2036	31.7810875
2037	33.33651751
2038	34.90881509
2039	36.53191076
2040	38.18697113
2041	39.84315597
2042	41.48029065
2043	43.0843939
2044	44.66810198
2045	46.30618412
2046	47.94582786
2047	49.57904773

TECHNOLOGY AND INNOVATION

Technology has been largely emphasised in the Interim Budget, as the Finance Minister proposed to create a corpus of ₹ 1 lakh crore to strengthen private investment in sunrise technologies. The salient feature of the mentioned corpus is that it will be established with a 50 year interest free loan and will offer long-term financing or refinancing with long tenors and low or nil interest rates, thereby ushering in the golden era for tech-savvy enterprises. Further, to provide stimulus to deep-tech technologies for defence purposes and expediting 'Atmanirbharta', a new scheme has been proposed.

Deep tech includes a spectrum of cutting-edge technologies like artificial intelligence, machine learning, blockchain and biotechnology, among others. So it may be inferred that thrust on technology will assist India in enhancing the pace of digital transformation.

The significant initiatives announced in the sphere of technology and innovation have been welcomed by the industry. Corporate sector recognizes the role of private sector investment in research and development in achieving breakthrough innovations.

Allocation of ₹ 1 trillion and focus on developing deep-tech in the defence sector will encourage private companies to innovate and contribute to 'Atmanirbharta'.

FINANCIAL DEVELOPMENTS

Treading on the path of fiscal consolidation, as announced by the Finance Minister in her Budget Speech for 2021-22, to reduce fiscal deficit below 4.5 percent by 2025-26, the fiscal deficit in 2024-25 is estimated to be 5.1 per cent of GDP.

- For 2024-25, budgeted estimates of total receipts other than borrowings and the total expenditure are estimated at ₹ 30.80 and ₹ 47.66 lakh crore respectively. The tax receipts are estimated at ₹ 26.02 lakh crore.
- The scheme of fifty-year interest free loan for capital expenditure to states will be continued in 2024 with total outlay of ₹1.3 lakh crore.
- The gross and net market borrowings through dated securities during 2024-25 are estimated at ₹ 14.13 and ₹ 11.75 lakh crore respectively, both of which are less than that in 2023-24.
- Proactive inflation management resulting in a decline in headline inflation to 5.5 percent in FY24 from 6.7 percent in FY23.

TOURISM SECTOR

Interim Budget 2024-25 laid emphasis on comprehensive development of tourist centers for achieving the vision of '*Viksit Bharat'* by 2047. States will be encouraged to take up comprehensive development of iconic tourist centres, branding and marketing them at global scale and long-term interest free loans will be provided to States for financing such development on matching basis. *This will create country as an attractive destination for business and conference tourism. It helps in generating tourism revenue in India and creating numerous job opportunities.*

The Finance Minister highlighted the fact that India's middle class also now aspires to travel & explore; and tourism, including spiritual tourism, has tremendous opportunities for local entrepreneurship.

In continuation to this, she said that to address the emerging fervour for domestic tourism, projects for port connectivity, tourism infrastructure, and amenities will be taken up on the islands, including Lakshadweep and this will help in generating employment.

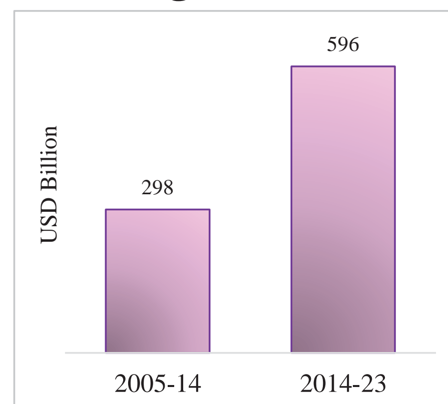
CORPORATE SECTOR

The Finance Minister stressed upon the India-Middle East-Europe Economic Corridor as a strategic and economic game changer for India which was recently announced by the Hon'ble Prime Minister.

India, US, UAE, Saudi Arabia, France, Germany, Italy and the European Union signed a Memorandum of Understanding (MoU) to establish the India-Middle East-Europe Economic Corridor, at the G20 Summit which took place in India on 9-10 September, 2023. The India-Middle East-Europe economic corridor will consist of two separate corridors. The East corridor will connect India to West Asia/Middle East and the Northern corridor will connect West Asia/Middle East to Europe. By linking Asia, West Asia, the Middle East and Europe through enhanced connectivity and economic integration, the corridor aims to give a boost to economic development in the regions.

Further, for encouraging sustained foreign investment, the Hon'ble Finance Minister stated that the Government is negotiating bilateral investment treaties with our foreign partners, in the spirit of 'First Develop India'. The decade of 2014-23 has been called the golden era for FDI inflows, as the inflow during this period was twice the figure during 2005-14, amounting to USD 596 billion.

Doubling of FDI Inflow



Source: *https://www.indiabudget.gov.in/doc/bh1.pdf*

Maintaining current tax rates for direct taxes and extending tax benefits to startups, sovereign funds, pension funds and some IFSC units till March 2025 will provide a much-needed sense of stability for businesses and investors.

WAY FORWARD

India stands at a pivotal moment in its history, poised for transformative growth and development. With the goliath goal of becoming a $5 trillion economy, the Interim Budget 2024 has put India on the trajectory of mammoth change, as outlined in the visionary Viksit Bharat@2047 initiative. Strong emphasis has been laid on holistic development by focusing on four major stakeholders- Poor, Women, Youth and Farmer. Further, this Interim Budget has also focused on environmental, social inclusiveness, infrastructure, technology and other vital facets, thereby paving the way for making India a developed nation.

This Interim Budget is futuristic and growth oriented. It is a well balanced budget wherein the fiscal deficit has been kept low along with a focus on growth and welfare measures. This careful balancing act of the government has the potential to keep India on the long-term growth trajectory, creating an optimistic outlook for the nation's economy. Thus, the interim budget exhibits continuity and stability, emphasising fiscal prudence, infrastructure development, clean energy adoption, and inclusive growth. It lays the foundation for a future-oriented path towards economic prosperity.

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ARTICLE

Exemptions To Private Companies Under Section 462 of The Companies Act, 2013 in Relation To General Meetings

Section 462 of the Companies Act, 2013 empowers the Central Government to dispense with, and exempt any class of companies from, applicability of any provision of the Act. Sub-section (1) of Section 462 reads as follows:

"(1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification."

This section empowers the Central Government to either grant total exemption or partial exemption.

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INTRODUCTION

SECTION 462 OF COMPANIES ACT, 2013

Section 462 of the Companies Act, 2013 empowers the Central Government to dispense with, and exempt any class of companies from, applicability of any provision of the Act. Sub-section (1) of Section 462 reads as follows:

> "(1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification."

This section empowers the Central Government to either grant total exemption or partial exemption. When the Exemption Notification states that the section shall not apply, it means that the exemption is a total exemption. A partial exemption means that any provision of the Act shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

THE EXEMPTION NOTIFICATION IN RELATION TO GENERAL MEETINGS OF PRIVATE COMPANIES

In exercise of the powers conferred by Section 462, the Central Government has issued several notifications, one of them being for granting exemptions to private companies (which are not subsidiaries of public companies).

This Exemption Notification, insofar it is in relation to exemptions to such private companies concerning calling, holding and conducting of general meetings reads as follows:

Notification No. GSR 464(E), dated 05-06-2015

> "1. In exercise of the powers conferred by clauses (a) and (b) of sub-section (l) of Section 462 and in pursuance of sub-section (2) of said section of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations, as specified in column (3) of the said Table, to a private company, namely:—

Serial Number	Chapter / Section Number of the Companies Act, 2013	Exceptions/ Modifications/ Adaptations
(1)	(2)	(3)
7.	Chapter VII, sections 101 to 107 and section 109.	Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.

2. The private companies, while complying with such exceptions, modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected.

   [1][2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under Section 137 of the said Act or annual return under Section 92 of the said Act with the Registrar.]

3. A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of Section 462 of the Companies Act, 2013."

Exempted sections

It will be seen that private companies have been exempted from the following sections:

- Section 101: Notice of a meeting;
- Section 102: Statement to be annexed to notice;
- Section 103: Quorum for meetings;
- Section 104: Chairman of meetings;
- Section 105: Proxies;
- Section 106: Restriction on voting rights;
- Section 107: Voting by show of hands;
- Section 109: Demand for poll.

PURPOSE OF THE EXEMPTION NOTIFICATION

In the Companies Act, 1956, several provisions specifically provided that a particular section shall not apply to a private company except a private company which is a subsidiary company of a public company. No such exclusionary provisions are found in the Companies Act, 2013. It was, therefore, felt that private companies need to be exempted in respect of certain provisions of the Act. The Exemption Notification serves the purpose of granting such exemptions.

The purpose of the Exemption Notification is -

- Firstly, to exempt private companies from the provisions of Sections 101 to 107 and Section 109, concerning general meetings, except those provisions which are given an overriding effect by these sections; and
- Secondly, to exempt private companies from the provisions of Sections 101 to 107 and Section 109, concerning General Meetings and give a liberty to private companies to have in their articles their own set of regulations applicable to its General Meetings.

1. *14. Ins. by Notification No. G.S.R. 583(E) dated 13-06-2017.*

MEANING AND EFFECT OF THE EXPRESSIONS "UNLESS OTHERWISE SPECIFIED IN RESPECTIVE SECTION" AND "UNLESS ARTICLES OF THE COMPANY PROVIDE OTHERWISE"

What the 7th entry in the aforesaid Exemption Notification effectively provides is that Sections 101 to 107 and section 109 in Chapter VII of the Companies Act, 2013 shall apply to a private company, unless otherwise specified in respective sections or the articles of association of the private company provide otherwise.

The expressions have been separated by the disjunctive 'or'. In ordinary usage, 'and' is conjunctive (that connects words, phrases and clauses in a sentence) and 'or' is disjunctive (that separates words, phrases and clauses in a sentence). Thus 'and' connects two or more items and makes a cumulative group of them whereas 'or' separates two or more items and makes them alternative to one another. The word 'or' is grammatically a conjunction (serving to connect two words, phrases or sentences), in legal documents it really acts as a disjunctive (serving or tending to disjoin; separating; dividing; distinguishing). In *Central Council for Research in Ayurvedic Sciences v Bikartan Das* AIR 2023 SC 4011, the Supreme Court held: It is a well-established principle of statutory interpretation that the word "or" is normally disjunctive and the word "and" is normally conjunctive.

Since the two parts are separated by the disjunctive 'or', apparently, therefore, in a given case, either of the two may have application. Consequently, a provision (in Sections 101 to 107 and Section 109) shall not apply to a private company either because any of those sections says so, or because the articles of the company provide otherwise than what is provided in those sections.

INTERPRETATION OF 'UNLESS' AND 'OTHERWISE'

The word 'unless' in literal sense means except, but, save, if not. It is used to say what will happen, be done, or be true if something else does not happen, is not done, or is not true. The word 'otherwise' in literal sense means in another or different manner; differently.

The expressions "unless otherwise specified" and "unless otherwise provide" are qualifying phrases used in statutory drafting". They indicate that the statutory provision is subject to provisions of another statutory provision or a document (such as articles of association).[2]

Thus, Sections 101 to 107 and Section 109 shall apply to a private company unless any of those sections specifies that it shall not apply to it; or unless the articles of association of a private company provide that they (or any of them) shall not apply to it.

Conversely, when read with what is stated in the second column of the abovementioned table,

2. *State of Orissa v Titaghur Paper Mills Co Ltd (1985) Supp SCC 280: AIR 1985 SC 1293.*

namely "Chapter VII, sections 101 to 107 and section 109",

- The effect of the expression "unless otherwise specified in the respective sections", is that Sections 101 to 107 and Section 109 shall not apply to a private company if any of those sections specifies that it shall not apply to a private company; and
- The effect of the expression "unless the articles of the company otherwise provide" is that if the articles of association of a private company provide something different than what is provided in sections 101 to 107 and Section 109, then what is provided in the articles will apply.

SECTION 170 OF THE COMPANIES ACT, 1956

The language of the 7th entry of the aforesaid Exemption Notification, is similar to that occurred in Section 170(1)(ii) of the Companies Act, 1956, according to which the provisions of sections 171 to 186 did not apply with respect to calling, holding and conducting of general meetings of private companies.

Section 170(1) read as follows:

"170. Sections 171 to 186 to apply to meetings

(1) The provisions of Sections 171 to 186—

(i) Shall, notwithstanding anything to the contrary in the articles of the company, apply with respect to general meetings of a public company, and of a private company which is a subsidiary of a public company; and

(ii) Shall, unless otherwise specified therein or unless the articles of the company otherwise provide, apply with respect to general meetings of a private company which is not a subsidiary of a public company."

It will be noticed that according to clause (ii) of Section 170, the provisions of Sections 171 to 186 did not apply with respect to general meetings of a private company (other than a subsidiary of a public company), unless otherwise specified therein or unless the articles of the company otherwise provided. The Exemption Notification seeks to achieve similar object.

EFFECT OF SECTION 6 OF COMPANIES ACT, 2013

Section 6 of the Companies Act, 2013 (corresponding to Section 9 of the Companies Act, 1956), seeks to give an overriding effect the provisions of the Act as against those in the memorandum or articles of association or any agreement or any resolution. The section reads as follows:

"6. Act to over-ride memorandum, articles, etc.

Save as otherwise expressly provided in this Act—

(*a*) The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(*b*) Any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."

The expression 'save as otherwise provided in this Act' is called a saving clause and in a statute, it seeks to create an exception of a special item out of the general things mentioned in the statute and to save or protect what is provided in any other provision of the statute on the same subject. Thus, the expression 'Save as otherwise provided in this Act' seeks to keep applicability of any other provision on the same subject unaffected besides the provision in which these words are used or create an exception in respect of any provision on the same subject, like in the case of section 6 of the Companies Act, 2013 (section 9 of the Companies Act, 1956).

The expression "Save as otherwise expressly provided in this Act" means except those provisions of the Act which provide otherwise than what Section 6 provides.

The effect of this Section is that, so far as a company incorporated under the Companies Act is concerned, in the case of a conflict between any provision of the Act and of the memorandum of association, articles of association, any agreement executed by the company or any resolution passed by the company, the provision of the Companies Act shall prevail and have overriding effect against the provisions of memorandum, articles, an agreement executed by a company, a resolution passed at a general meeting of a company, a resolution passed at a Board meeting. A provision of the Act, however, shall not have an overriding effect if the Act expressly provides to this effect. Consequently, the conflicting provision contained in the memorandum, articles, agreement or resolution shall be repugnant to the provision of the Act and void to the extent it is repugnant.

That is why in the Calcutta High Court case,[3] the submission that by virtue of Section 9 of the 1956 Act (corresponding to section 6 of the Companies Act, 2013), any provision made in the articles of association of a company, which is contrary to any provision of the Companies Act shall be void, had not been unaccepted by the court with regard to Section 170 of the 1956 Act, for the reason that due to the openings words of Section 9,

3. *Joginder Singh Palta v Time Travels P Ltd (1984) 56 Comp Cas 103 (Cal).*

"save as otherwise expressly provided in the act", a private company was entitled to frame its articles of association by making other provisions and/or specifying otherwise.

In one case, the articles of the company had provided that, "The provisions contained in Sections 171 to 186 of the Companies Act, 1956 shall not apply to the company". The court held that by virtue of Section 170, the company was entitled to frame its articles of association by making provisions otherwise than what is provided in Sections 171 to 186 and the articles of the company in question, in various provisions of its articles did contain provisions regarding general meetings. The opening words of Section 9 are: "*Save as otherwise provided in this Act*". Thus, in this case, Section 9 of the Act had no application in view of the opening words occurring as Section 170 was an express provision.[4]

INTERPRETATION AND EFFECT OF "UNLESS OTHERWISE SPECIFIED IN RESPECTIVE SECTIONS"

As noted earlier, what the 7th entry in the aforesaid Exemption Notification provides, inter alia, is that Sections 101 to 107 and Section 109 in Chapter VII of the Companies Act, 2013 shall apply to a private company, unless otherwise specified in any of the respective sections or unless the articles of association provide otherwise.

Thus, Sections 101 to 107 and Section 109 shall apply to a private company unless any of those Sections specifies that it shall not apply to it. The Sections 101 to 107 and section 109 shall apply to a private company unless any of those Sections specifies that it shall not apply to private companies. However, none of those Sections specifies that it shall not apply to private companies. Consequently, private companies are at liberty to make provisions in their articles of association in a manner other than those contained in Sections 101 to 107 and Section 109.

INTERPRETATION AND EFFECT OF "UNLESS THE ARTICLES OF THE COMPANY PROVIDE OTHERWISE"

The practical effect of the expression "unless the articles of the company provide otherwise" is that a private company can exclude applicability of Sections 101 to 107 and Section 109 and, instead, have its own provisions in the articles concerning calling, holding and conducting of general meetings.

As a result of the words "*Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise*" in the Exemption Notification-

- Those provisions of Sections 101 to 107 and Section 109 which specifically exclude applicability to a class of companies or provide that they shall apply unless the Articles set out an alternative provision.
- Articles of Association of a private company may provide that the requirements under Sections 101 to 107 and section 109 of the Companies Act, 2013 in respect of general meetings, shall either not apply to it or may apply to it with modifications or the Articles may set out alternative provisions (different than those in Sections 101 to 107 and Section 109).

It will be seen that private companies have been exempted from the following sections:

- Section 101: Notice of a meeting;
- Section 102: Statement to be annexed to notice;
- Section 103: Quorum for meetings;
- Section 104: Chairman of meetings;
- Section 105: Proxies;
- Section 106: Restriction on voting rights;
- Section 107: Voting by show of hands;
- Section 109: Demand for poll.

If nothing is specified in the Articles as above, then the provisions of these sections shall apply to private companies.

However, in order to exclude the applicability of those sections, the articles must in the first instance clearly state that the provision in any of the said sections shall not apply and, thereafter state the provision (different than the provision in those sections) which shall apply.

But in some cases, just a statement that the provision shall not apply is enough. For example, in the case of Section 102 (explanatory Statement to be annexed to notice of a meeting) a statement that Section 102 shall not apply to the company, is enough to exclude the applicability of Section 102.

Even a general provision in the articles that "The provisions contained in Sections 101 to 107 and Section 109 shall not apply to the Company" is enough; but in such a case, merely stating so will not be enough; the articles must set out alternative provisions.

In *K Meenakshi Amma* v *Shree Rama Vilas Press and Publications Pvt Ltd,*[5] the articles of a private company contained the following provision:

> "8. Fourteen days' notice at least, specifying the place, the day and the hour of the general meeting and, in case of special business, the general nature of such business, shall be given to the members in the manner hereinafter mentioned or in such other manner as may be prescribed by the company in general meeting, but accidental omission to give such notice to, or non-receipt of such notice by, any member shall not invalidate the proceedings of the general meeting.

[4] *Joginder Singh Palta v Time Travels P Ltd (1984) 56 Comp Cas 103 (Cal).*

[5] *(1992) 73 Comp Cas 275: (1995) 3 Comp LJ 267 (Ker).*

A general meeting may, with the consent of all the members, be called on a shorter notice and, in such manner as the members think fit."

The court held: "The company is a private limited company. It is not a subsidiary of a public company. Under sub-section 1(*ii*) of Section 170 of the Companies Act, the provisions of Sections 171 to 186 shall, unless otherwise specified therein or unless the articles of the company otherwise provide, apply with respect to general meetings of a private company which is not a subsidiary of a public company. Article 8 of the articles provides for the period of notice required as well as the matters to be specified in the notice. It is also provided in article 8 that, in case of special business, "the general nature of such business shall be given to the members in the manner hereinafter mentioned or in such manner as may be prescribed by the company in general meeting". Therefore, there is a specific provision in that article regarding the notice of a general meeting where a special business is to be transacted. Since there is such a provision, Section 173, among other sections mentioned in Section 170, will not apply to this company."

In one Calcutta High Court case, it was argued that if any provision in the articles is contrary to any provision of the Companies Act, it will be void. The articles of the company had provided that, "The provisions contained in Sections 171 to 186 of the Companies Act, 1956 shall not apply to the company". The court accepted the argument that the company should have made some provisions in a different manner and in some other way so far Sections 171 to 186 are concerned, but held that the articles in various provisions did contain provisions regarding general meetings. By virtue of Section 170, the company was entitled to frame its articles of association by making provisions in the articles of the company otherwise than what is provided in Sections 171 to 186.[6] The court said:

"Pursuant to such provision (of Section 170(1)(ii)) this particular company in its articles of association under article 40 provides in the manner following: "The provisions contained under sub-section 171 to 186 of the Act shall not apply to the company."

Under those circumstance as per the articles of association of the company there need not be and explanatory statement as provided under Cection 173, the Companies Act, 1956, for the purpose of convening a meeting by a shareholders by giving any special notice annexing therewith any explanatory statement. [the submission] is that the expression "unless otherwise specified" in cl. (ii) of sub-section (1) of Section 170 does not mean omission of the provisions of the Companies Act inasmuch as under article 40 it does not make any other provision but only excludes the application of certain sections of the Companies Act. In that respect he craved reference to black's Law Dictionary. So far as the word "otherwise" is concerned, he submitted that the company should have made some provisions in a different manner and in some other way so far as sub-section 171 to 186 were concerned, From the various provisions made in the articles of association of the defendant company it would appear that from articles 40, 41, 42, 44, 45, 46, 47, 48 and 49, various provisions have been made so far as general meetings were concerned, the submission is that by virtue of Section 9 any provision made in the articles of association which is contrary to the provisions

6. *Joginder Singh Palta v Time Travels P Ltd (1984) 56 Comp Cas 103 (Cal).*

of the Companies Act shall be void. That submission of is also unacceptable inasmuch as the openings words of Section 9 provides “save as otherwise expressly provided in the act”. Under the circumstances, by virtue of Section 170, the company was entitled to frame its articles of association by making other provisions and/or specifying otherwise.

MODEL EXCLUSIONARY CLAUSE IN ARTICLES

In order to exclude the applicability of the provisions of Sections 101 to 107 and Section 109, in terms of the 7th entry in the Exemption Notification, articles of association of a private company (not being a subsidiary of a public company) must, in the first place, expressly provide for the exclusion. The articles may contain the following provision under the heading “GENERAL MEETINGS”:

> The provisions contained in Sections 101 to 107 and Section 109 of the Act shall not apply to the company. The provisions set out herein below shall apply with respect to general meetings of the company.

An alternative provision is as follows:

> The provisions contained in Sections 101 to 107 and Section 109 of the Act shall not apply to the company, except to the extent specified in these Articles. The provisions set out herein below shall apply with respect to general meetings of the company.

Another alternative provision reads as follows:

> The provisions contained in Section 101 to 107 and Section 109 shall not apply to the Company in so far as they are inconsistent with the Regulations herein contained.”

Thereafter, the articles must contain the regulations concerning calling, holding and conducting general meetings of the company, which may be those in Sections 101 to 107 and Section 109 with such modifications and exclusions as the company may desire to have governing calling, holding and conducting general meetings of the company. To what extent and in what manner modifications and exclusions may go, there is no limit. A company is at liberty to have any provision, modified to any extent and in any manner. There is nothing in the Act limiting the company’s liberty in this regard. Generalization in this regard is impossible; it may differ from company to company and depend on needs of the company and agreement between members of the company.

It should, however, be remembered that a mere exclusion of the applicability of Sections 101 to 107 and Section 109 is not enough; the articles must contain provisions that would apply to the calling, holding and conducting general meetings of the company.

However, in relation to some of the provisions in the set of Sections 101 to 107 and Section 109, a mere exclusion is sufficient. Such exclusion will dispense with these provisions to be applicable to the company. For example, in respect the following provisions, a mere exclusion is sufficient and there is no need to have an alternative provision in the articles:

- Section 102 (Explanatory Statement to be annexed to notice);
- Section 105 (Proxies);
- Section 106 (Restriction on voting rights);
- Section 107 (Voting by show hands).

In other cases, a mere inclusion of the exclusionary clause will not suffice; there must be some provision in the articles, one way or another; either what the statutory provisions contain or any other provision; such as the following provisions:

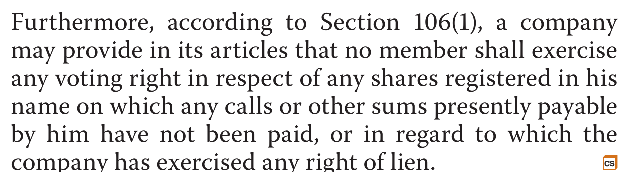
- Section 101- Notice of meeting
- Section 103- Quorum for meetings
- Section 104- Chairman of meetings
- Section 109- Demand for poll

Of course, needless to reiterate, in respect all the provisions in Sections 101 to 107 and Section 109, a private company can include modified provision in its articles of association

SPECIFIC PROVISIONS PROVIDING FOR EXCLUSIONS OR MODIFICATIONS

Apart from the general provision contained in the Exemption Notification, some of the Sections in the set of Sections 101 to 107 and Section 109 contain special provisions, enabling a company to exclude their applicability and thus provide in the articles otherwise than what is provided in those sections. Some of these sections refer to public companies as well as private companies while some refer to private companies. A private company can take benefit of these exclusions or exemptions. These provisions are:

- Section 103- Quorum for meetings: Articles a company may provide for a larger number of members to constitute a quorum.
- Section 104- Chairman of meetings: Articles of a company may provide otherwise than, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.
- Section 105(1), Second Proviso- Proxies: Articles of a company may provide otherwise than, this sub-section shall not apply in the case of a company not having a share capital.



Furthermore, according to Section 106(1), a company may provide in its articles that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

Concept of "Director" under the Companies Act, 2013–Its Ambivalence

Definition of Director under the Act is restrictive Section 2(34)of the Act provides that a "Director" "means" a Director appointed to the Board of a company." As the definition is a "means" definition, it is Prima facie restrictive and exhaustive as held in (Vanguard Fire &General Insurance Co.Ltd , Madras v Fraser&Ross (AIR 1960 SC 975 at PP975), Kasilingam v PSG College of Technology (1995)(2) Scale 387 and in a host of other citations. When the word "means" is used in the definition as in this case, it is a hard and fast definition and its amplitude is not extendable to consider words that are not part of the definition. No meaning other than what is provided in the definition can be assigned to the definition. From the above definition, it follows that the Statute contemplates that whomsoever who is appointed as Director to the Board of the company shall alone be construed as a Director.

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INTRODUCTION

There has been a subtle but material change in the definition of the term "Director" under the Companies Act, 2013(hereinafter "The Act") as compared to the definition in the Predecessor Act of 1956.

DEFINITION OF DIRECTOR UNDER THE ACT IS RESTRICTIVE

Section 2(34)of the Act provides that a "Director" means " a Director appointed to the Board of a company."

As the definition is a "means" definition , it is *Prima facie* restrictive and exhaustive as held in *(Vanguard Fire &General Insurance Co.Ltd , Madras v Fraser&Ross (AIR 1960 SC 975 at PP975), Kasilingam v P.S,G,College of Technology (1995)(2)Scale 387* and in a host of other citations.

When the word "means" is used in the definition as in this case, it is a hard and fast definition and its amplitude is not extendable to consider words that are not part of the definition. No meaning other than what is provided in the definition can be assigned to the definition.

From the above definition, it follows that the Statute contemplates that whomsoever is appointed as Director to the Board of the company shall alone be construed as a Director. The definition therefore considers *prima facie* only those individuals who have been appointed as Directors to the company Boards and recognizes the existence of only those that have been appointed *de jure* to the Board and not those that are in fact operating behind the scene in obscurity , holding the reins of authority without officially donning the mantle of a Director. The restrictiveness in the definition has obviously been triggered off due to the exuberance in certain corporate circles to anoint as Director persons in higher echelons of the corporate ladder say as Executive Directors, Director-Marketing without officially appointing them as Directors on the Board.

Persons who are designated with the above nomenclatures could be considered *de facto* Directors since it could be said that they are holding out as Directors without being endowed with any appointment to such position. A *de facto* Director is one who assumes to act as a Director and claims and purports to be a Director despite never being validly appointed to the position. To prove that a person acted as *de facto* Director it is necessary to prove that the incumbent undertook in relation to the company such functions which could be appropriately discharged only by a Director.

It is pertinent to note that the Department of Company Affairs through its circulars dated December 2, 1963 (Reference Company News and Notes) and Circular No.2/82 dated 20.1.1983 has discouraged the use of the nomenclature of the designation in respect of those who are not actually part of the Board. The Department has held out that the above practice needs to be discouraged particularly in the case of Listed Companies as the investing public is likely to be misled into assuming that persons so designated form a part of the Board.

DEFINITION OF DIRECTOR UNDER THE 1956 ACT

Section 2(13) of the 1956 Act defined a Director inclusively thus:

"Director includes any person occupying the position of a Director by whatever name called".

Being an inclusive definition , the definition is extensive and the scope of the definition can be widened to bring within its fold words and expressions which are beyond what has been used in the definition. The term "includes" automatically widens the contours of the definition to consider not only things as they signify according to their natural import but also things which the definition considers that it shall include. An "inclusive" definition does not also exclude the ordinary meaning of the term.

Reference in this connection may be made to the following citations:

1)Dilworth v Commissioner of Stamps (1899)AC 99 at Page 105)(PC)

2)State of Bombay v Hospital Mazdoor Sabha (AIR 1960) (SC 610 at Page 614).

The definition in the old Act also conjures up someone who is occupying the position of Director regardless of the nomenclature used to describe him. It is not the name by which the person is described which is material but the position he occupies and the functions and duties he discharges which are relevant in determining whether a person is a Director.

In *Forest of Dean Coal Mining Co, In re.(1878)(10 Ch.D450*) it was observed that :

"function is everything. Name matters nothing. So long as a person is duly appointed by the company to control the company's business and authorized by the articles to contract in the company's name and on its behalf , he functions as a Director."

Thus the definition considers not only a *de jure* Director but also a *de facto* Director who wields authority as Director without actually being appointed to the Board.

The present Act confines the expression as discussed only to those who have been appointed as Directors to the Board of the company.

DEFINITION IN THE OLD ACT USES THE EXPRESSION "PERSON" THE FALLOUT THEREOF

It is also important to note that under the former Act a Director was referred to as a "person".

The term "person" was not defined in the Act and one had to therefore necessarily fall back on the definition provided to the term in Clause (42) under Section 2 of the General Clauses Act , 1897 which carries the following *definition "Person shall include any company or association or body of individuals , whether incorporated or not".*

The definition carries a very wide import and would include a juristic person such as an idol or the Gurugranth Shab installed in a public temple (*Shiromani Gurudwara Prabandhak Committee, Amritsar v Shri Som Nath Dass (AIR 2000 SC 1421*)or a company*(Union Bank of India v Khader International Construction (AIR 2001 SC 2277) (2001)..*

The term "person" shall also include a local authority and as held in *Applin v Race Relations Board (1974)2 All Er 73 at Page 92 and 93)* and a contrary intention cannot be inferred simply by virtue of the fact that the legislature after using the word "person" uses the pronoun "him".

DEFINITION OF "PERSON" HAS TO BE CONTROLLED IN A PARTICULAR ACT CONTEXTUALLY

Notwithstanding the wide amplitude to the term "person" as provided above, the Supreme Court had cautioned in its decision in *Dulichand v CIT(AIR 1956 SC 354)*that in any particular Statute the meaning of the word "person" may get controlled by the context.

Under the Companies Act if the term "person" were used in the widest sense , corporate entities could also come within the scope of the definition of "Director". In as much as the Companies Act provides for vicarious liability in respect of certain individuals for non- compliances of the Statute , the scope of the expression "Director" has to be restricted necessarily only to cover individuals. The Apex Court has held for this reason that the expression "Director" can be used only to describe natural persons-individuals.*(Oriental Metal Processing (P)Ltd v Kashinath Thakur(AIR SC 573)(1961).*

Therefore notwithstanding the use of the expression "person" in the former Act to describe a Director, its meaning has to be restricted to cover only individuals.

CHANGE IN DEFINITION OF DIRECTOR IN THE PRESENT ACT SHOULD NOT LEAD TO PRESUMPTUOUS CONCLUSION THAT ITS APPLICABILITY IS RESTRICTED ONLY TO THE DEFINITION IN THE ACT

It is pertinent to note that the restrictiveness in the definition of the term "Director" in the present Act should not be misconstrued such as to lead to a premature conclusion that, for all intents and purposes of the Act, the Director would be one who has been appointed as such to the Board. This is on account of the inter play of certain other provisions in the Act which tend to make the connotation of the term elastic.

DIRECTOR IS AN "OFFICER" UNDER SECTION 2(59)

The definition of "Officer" in the above clause is inclusive and includes any Director, manager or Key Managerial Person or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act.

The term officer would thus cover, apart from Directors, the Manager as defined under Section 2(53), a Key Managerial Personnel as defined in Section 2(51) or any person in accordance with whose directions or instructions the Board or any one or more Directors of the company are accustomed to act.

The term "officer" as can be seen from the above has a wide import to include persons who are regularly employed as part of their business or occupation in conducting the affairs of a company. The Secretary, Accountant and cashiers are all "officers" as held in *Official Liquidator, Golcha Properties P Ltd v P.C,Dhadda (1980)(50 Com Cases 175(Raj.).*

The term has been held to include Assistant Secretaries, Branch Managers etc, in *Suryanarayana (M)v Vijaya Commercial Bank Ltd (1959) (29Com Cases 114).*The term also includes an Agent of the company whether acting under a power of attorney or not .It could also include an Advisor of the company as held in *Satyanath T.S. v J.Thomas &Co.(1985)(57 Com Cases 648)(Cal.).*

USE OF CONJUNCTION "OR" IN THE DEFINITION EXTENDS THE CONNOTATION TO COVER MULTITUDE OF PERSONS

It is pertinent to note that the conjunction "or" has been used consistently in the definition of "officer " above thus making the clauses contained in the same mutually exclusive.

The significance in the usage of the word "or" in a Statute is worth mentioning .The word "or" is grammatically a conjunction which in legal documents actually acts as a disjunctive expression serving or tending to disjoin , separating, dividing , distinguishing between two words as opposed to the word "and" which generally carries a cumulative sense , requiring the fulfilment of all the conditions that it joins together.

Considering the above , the term "officer" covers Directors, the Manager , the KMPs or any person on whose directions or instructions the Board or any one or more of the Directors are accustomed to act. (Emphasis supplied).

It may be noted that the definition of Officer as above is substantially a mirror image of the definition in the

Director is an "officer " under Section 2(59)- The definition of "Officer" in the above clause is inclusive and includes any Director, manager or Key Managerial Person or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act.

previous Act under Section 2(30) except for the inclusion of KMPs in the present Act which was conspicuous by its absence in the previous Act. The KMP is an innovation under the new Act intended to cover within its ambit, persons in the senior Management of the company who can be made responsible for specific functions and hence act as a catalyst in furthering the cause of corporate governance.

Definition of Officer under old Act was amended by the Companies Amendment Act, 1965 to include "any person in accordance with whose directions or instruction the Board of Directors or any one or more of the Directors is or accustomed to act" based on recommendations of Daphtary-Shastri Committee

The introduction of the above words in the definition of "officer " by the Companies Amendment Act, 1965 has brought in its wake a deeming provision ostensibly to ensure that certain persons who were actually holding the reigns of authority in companies behind the scene whilst staying away from the glare that the office of the Director gives rise to, could be brought to book for any wrong doings or aberrations by a company.

The amendment to the Section was made in the light of the recommendations contained in the Report of the Commission of Inquiry on the administration of Dalmia-Jain Companies. It is worthwhile reproducing the relevant portion of the recommendations of the Daphtary-Shastri Committee :

1,"The position of Directors in relation to the shareholder has been likened to that of a trustee in relation to the beneficiary. Directors are generally under an obligation to see that the company's assets are in a proper state of investment and monies of the company are spent only for purposes which are reasonably incidental to and within the reasonable scope of carrying on the business of the company. They should, therefore take active and immediate steps to prevent any misappropriation or breach of trust on the part of their co-Directors. It goes without saying that a Director has positive duties to perform in order to safeguard the interests of the shareholders .A Director

who is a mere puppet in the hands of another remaining in the background cannot effectively take any action in this regard.

The report of the Commission of Inquiry discloses a very sorry state of affairs in this regard to the companies which were under investigation. Paid employees and young and inexperienced relatives were all on the Board of Directors, whereas a person who was not on the Board wielded authority over them, staying in the background and retaining effective control over the assets and liabilities of the company. These persons, when it came to fixing responsibility, pleaded helplessness and pointed to the person who controlled their actions and called themselves variously as Nominee Directors or benamidar Directors or dummy Directors, remaining on the board only to carry out the directions of that other person. Some of these persons were not even aware of the full implication of what they were directed to do and they were mere stooges for the malpractices of the mastermind behind them.(Emphasis provided).

No legislative measure can provide complete safeguard against such clandestine wielding of control over companies. The Companies Act has attempted to cast Directors responsibilities on persons who conceal their identities behind dummies but retain full control over the affairs by including within the meaning of Director "a person in accordance with whose directions or instructions the Board of Directors is accustomed to act" in Sections 102, 303 , 304 , 307 , 308 , 369 , 370 , 538 etc, The state of affairs in the companies under investigation shows that this provision is not enough. A provision requiring each and every Director to file a declaration through the company with the registrar in all cases where he holds the shares on behalf of another, to disclose thereby the person for whose benefit he holds them might provide some safeguard. A further drastic step may also be considered and that is to impose a duty on every Director to disclose by a declaration the person whose directions he is obliged to carry out and by whom his voting is likely to be controlled , if that other person is not on the board of Directors.

***The concept of deemed Directors must therefore be enlarged so as to include "persons in accordance with whose directions or instructions the Board of Directors or any one or some of them is or are accustomed to act" in order that the provisions may be effective and a corresponding amendment should be made in the definition of "Officer" in Section 2(30)"(Para 24 of the Report).** (Emphasis supplied).*

*1,*Relevant Extract from the Report of the Daphtaray Shastri Committee Report

The introduction of the specific words as stated above in the definition of "officer " has given rise to the concept of "deemed Director". An individual appointed as Director to the Board is *ipso facto* an officer of the company as held in *Pravin Sankalchand Shah v D.B.Dalal (Official Liquidator)(1967) 37 Com Cases 317(Bom.).*

IMPORT OF THE WORDS "IN ACCORDANCE WITH WHOSE DIRECTIONS THE BOARD IS ACCUSTOMED TO ACT"-CONCEPT OF DEEMED OR SHADOW DIRECTOR

Where the Board of Directors or any one or more Directors of the company are accustomed to act as per the directions or instructions of a person, the person wielding authority behind the scene often in a clandestine manner is a deemed Director and hence would be an officer under the Act.

It is pertinent to note that the expression "accustomed to act" has been borrowed in the Indian law from Section 125(4) of the English Act of 1948 That the Board was accustomed to act in accordance with the directions of another is an aspect which has to be proved circumstantially. It is not always necessary that there should be formal directions as regards the action to be taken by the Board/Directors in relation to any issue.

Where it could be demonstrated that the person was wielding authority and exercised strategic control over the company and also defined the context in which the company should operate the concept of deemed Director would apply. If official instructions flow from the person behind the scenes as to the decisions to be taken by the board it would be a "no brainer" to conclude that the Board was accustomed to act as per his directions. For drawing the conclusion that a person had acted as a shadow Director, it was observed that it should be demonstrated that there was complete control over the affairs of the company *(PFTZM Ltd re,(1995)2BCLC 354).*

Shadow Directors who operate behind the cloak of obscurity shall be treated on par with the Directors of the company in respect of any defaults committed by the company. Fiduciary duties shall also apply to such persons.

Being an Officer of the company due to the extension given as explained above to the concept, a shadow Director would be liable for wrongly acting and dominating the Board and hence prosecuted as held in *Secretary of State for Trade and Industry v Deverall (2000)(2 All ER 365).*A similar decision was provided by the Bombay HC in *Maharashtra Power Corporation Ltd v Dabhol Power Company Ltd (120 Comp Case 506)(2004).*

OFFICER WHO IS IN DEFAULT INCLUDES A SHADOW DIRECTOR

Under clause (v) of Section 2(60) any person in accordance with whose directions or instructions the Board is accustomed to act being a deemed or shadow Director would be liable like any other Director. However, he would not be considered as shadow Director and consequently not held responsible if such directions or instructions have been given to the Board in a professional capacity,

CAN THE HOLDING COMPANY BE CONSIDERED AS A SHADOW DIRECTOR OF A SUBSIDIARY

Often times it is seen that in the context of a conglomerate, decisions in relating to the subsidiary's business affairs are invariably taken by the holding company. The Holding company sometimes has the authority to appoint or remove the majority of Directors in the subsidiary by mutual arrangement. In many cases the Holding company has the final say in so far as declaration of dividend , capital expenditure to be incurred etc, in relation to the Subsidiary.

The important question that arises is whether under the above circumstances the Holding company can be considered as the Shadow Director. This question was examined by the Court in *Hydrodam (Corby) Limited .Re.(1994)2 BCLC 180)(Ch D).*The Court held the view that merely because the holding company was controlling the affairs of the subsidiary , it could not be said that its Directors were shadow Directors in the Subsidiary.

CONCEPT OF SHADOW DIRECTOR IS ONLY INTENDED TO WIDEN THE CANVAS FOR HOLDING PERSONS RESPONSIBLE AS "OFFICERS" UNDER SECTION 2(59)

It is important to note that although a person who is not part of the Board in reality but masquerades as a shadow Director and hence responsible as an officer in default under the deeming provision contained in Section 2(60), does not have to ensure compliances on the lines applicable to persons appointed to such office such as filing of consent, declaration of his interest. He is not considered as being part of the Board. The same goes for someone who holds out as a de facto Director, Having said this, notwithstanding the above, fiduciary duties would apply to the shadow Director as held in *Yukong Line Ltd v Rendsburg Investments Corporation of Liberia (1WLR 294).*

CONCLUSION

From the above discussion we can say that save and except for the restrictiveness associated with the definition of the term under Section 2(34) of the present Act, the Statute is *pari materia* the same where it comes to fixation of responsibilities as Directors on those persons who do not form part of the Board but yet call the shots. The difference in the definition in the term Director under the new Act and the old Act is a sheer matter of semantics , given the extension given to the term Director under Section 2(59) and Section 2(60) which makes one wonder as to whether the change in the definition under Section 2(34) was at all justified. The restrictiveness in Section 2(34) wears thin finally and gets completely obliterated when we look at the deeming provisions in Sections 2(59) and 2(60).

ARTICLE

Audit Committee Chairperson to Attend the Annual General Meeting of the Company
(Consequences of non-attendance under the provisions of Companies Act, 2013)

The audit committee chairperson is mandatorily required to attend the AGM of the company according to the provision of sub-section (7) of Section 178 for all public companies, whether listed or unlisted, and also according to the provisions of the Regulation 18(d) of the SEBI (LODR) Regulations 2015, which applies to all listed entities as the audit committee examines the financial statements and the auditor's report thereon. Non-attendance of Audit Committee chairperson at the AGM would be non-compliance under Section 178 of the Companies Act, 2013 and would attract penal action by regulators under sub-section (8) of Section 178 of the Act.

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INTRODUCTION

The audit committee chairperson is mandatorily required to attend the AGM of the company according to the provision of sub-section (7) of Section 178 for all public Companies, whether listed or unlisted, and also according to the provisions of the Regulation 18(d) of the SEBI (LODR) Regulations 2015**,** which applies to all listed entities as the audit committee examines the financial statements and the auditor's report thereon. Non-attendance of Audit Committee chairperson at the AGM would be non-compliance under Section 178 of the Companies Act, 2013 and would attract penal action by regulators under sub-section (8) of Section 178 of the Act.

AUDIT COMMITTEE – A BRIEF

As per the provisions of Section 177 of the Companies Act, 2013 read with Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014 all listed companies and other unlisted public companies with paid up capital of Rs.10 Crores or more, or having a turnover of Rs.100 Crores or more and having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more are required to constitute an Audit Committee by its Board of Directors.

Listed companies are not only governed by Section 177 of the Companies Act, 2013, but also governed by Regulation 18 of SEBI (Listing Obligations and Disclosure Requirement) Regulations of 2015 (LODR Regulations) relating to Audit Committee.

Private companies are not required to constitute Audit Committee as per the provisions of the Companies Act, 2013. However, there is an exception to this for private companies who are registered as Non Banking Financial Companies (NBFCs) with Reserve Bank of India about which we discuss in the next para.

AUDIT COMMITTEE IN A PRIVATE COMPANY

Although the Companies Act, 2013 exempts private companies from constituting an Audit Committee, the Reserve Bank of India (RBI) vide its circular has made it mandatory for all deposit taking NBFCs and systematically important NBFCs, irrespective of whether they are public or private, to constitute an Audit Committee in order to ensure that an information systems, audit of the internal systems and processes is conducted to assess operational risks faced by the company. Accordingly, as per RBI's circular, private companies registered as NBFC with RBI, having assets of Rs. 50 crore and above are required to constitute an Audit Committee.

PRIMARY PURPOSE OF AUDIT COMMITTEE

The primary purpose of the Audit Committee is to monitor and provide effective supervision of the company's financial reporting processes in order to ensure timely, accurate and proper disclosures and the transparency, integrity and quality of financial reporting.

RESPONSIBILITIES OF AUDIT COMMITTEE

The importance of the Audit Committee is the chairperson leadership. The chairperson of the Audit Committee sets up the committee's tone, work style. Agenda of the Audit Committee is very vital to the committee's effectiveness.

The most effective Audit Committee chairs are fully engaged with:-

- Recognizing the agenda items that may require their attention at all times, and quite often beyond regularly scheduled meetings.
- Understand the culture of the organization.
- Setting clear expectations for committee members.
- Understanding and hold to account, both management and auditors since all the Audit Committee members are financially literate and at least one member shall have accounting or related financial management expertise as per the regulations; and
- Ensuring that the right resources are being employed to support quality financial reporting with adequate disclosures.

The Audit Committee shall act in accordance with the terms of reference specified in writing by the Board and carryout the functions such as amongst others:

(i) Making recommendation for appointment, remuneration and terms of appointment of auditors of the company.

(ii) Assess annually the auditor's qualifications, expertise and resources and the effectiveness of the audit process which shall include a report from the statutory auditor on their own internal quality procedures.

(iii) Review the overall effectiveness and adequacy of the external audit functions and processes including performance of the statutory auditors in terms of value addition.

(iv) Monitor the auditor's compliance with relevant ethical and professional guidelines including the rotation of audit partners wherever called for.

(v) Implement and regularly review the policy on the rendering of the non-audit services by the statutory auditors.

(vi) Discuss with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

(vii) Examination of the financial statement and the auditors' report thereon.

(viii) Review the auditor's management letter and management's response.

(ix) Assess annually the statutory auditor's independence and objectivity taking into account relevant professional and regulatory requirements and the relationship with the auditor as a whole, including the provision of any non-audit services.

(x) Evaluation of internal financial controls and risk management systems amongst other functions.

(xi) Formulate the scope, functioning, periodicity and methodology for conducting the internal audit, in consultation with the internal auditors.

(xii) Discuss with the internal auditor of any significant findings and follow-up thereon.

(xiii) Review the effectiveness and adequacy of the Internal audit functions and processes including the performance of the internal auditors.

(xiv) Evaluate the internal financial controls and risk management systems.

(xv) Review, with the management, the annual financial statements and auditor's report thereon before submission to the Board for approval, with particular reference to:

- Matters required to be included in the Director's responsibility statement to be included in the Board's report in terms of clause (c) of sub-section 3 of Section 134 of the Companies Act, 2013;
- Changes, if any, in accounting policies and practices and reasons for the same;
- Major accounting entries involving estimates based on the exercise of judgment by management;
- Significant adjustments made in the financial statements arising out of audit findings;
- Compliance with listing and other legal requirements relating to financial statements;
- Disclosure of any related party transactions;
- Modified Opinion(s) in the draft audit report;
- The going concern assumption; and
- Compliance with accounting standards.

(xvi) Approve related party transactions, or any subsequent modification of the transactions of the Company with the related parties.

(xvii) Review at each meeting the statement of related party transactions as defined in Accounting Standard 18 on the related party transactions and the statement of contingent liabilities including those relating to income and commercial taxation.

(xviii) Review where necessary:-

- The methods used to account for significant or unusual transactions where different approaches are possible;
- Whether the company has followed appropriate accounting standards and made appropriate estimates and judgments, taking into account the view of the statutory auditor;
- The clarity of disclosure in the company's financial reports and the context in which statements are made;
- All material information presented with the financial statements, such as the notes to the accounts and
- The CEO / CFO Certification.

For listed entities, Regulation 18 (3) of SEBI (LODR) Regulations, 2015 in its Schedule II Part C elaborately mentions the role of the Audit Committee and review of information by Audit Committee providing the list of items.

AUDIT COMMITTEE CHAIRPERSON TO ATTEND AGM

The Audit Committee chairperson is mandatorily required to attend the AGM of the company in order to answer the queries of shareholders relating to financial statements, since the Audit Committee is examining the financial statement of the company and the auditors' report thereon. In this respect, the following provisions may be noted.

PROVISIONS UNDER THE COMPANIES ACT, 2013

As per sub-section (7) of Section 178 of the Companies Act, 2013, the chairperson of the Audit Committee shall have to attend the AGM of the company.

PROVISIONS UNDER THE LODR REGULATIONS

As per the provisions of Regulation 18(d) of SEBI (LODR) Regulations, 2015, the chairperson of the audit committee shall be an Independent Director and he shall be present at AGM to answer shareholder queries.

> Although the Companies Act, 2013 exempts private companies from constituting an Audit Committee, the Reserve Bank of India (RBI) vide its circular has made it mandatory for all deposit taking NBFCs and systematically important NBFCs, irrespective of whether they are public or private, to constitute an Audit Committee in order to ensure that an information systems, audit of the internal systems and processes is conducted to assess operational risks faced by the company. Accordingly, as per RBI's circular, private companies registered as NBFC with RBI, having assets of Rs. 50 crore and above are required to constitute an Audit Committee.

PROVISIONS UNDER SECRETARIAL STANDARD ON AGM

The Secretarial Standard – 2 on General Meetings under its heading 4. Presence of Directors and duties, spells out under 4.1.1 that the chairperson of the Audit Committee, or any other member authorized by the chairperson of the Audit Committee to attend on his behalf, shall attend the General Meeting which is in line with Section 178(7) of the Companies Act, 2013.

IN CASE AUDIT COMMITTEE CHAIRPERSON IS UNABLE TO ATTEND AGM

A question arises at this point of time that, when the chairperson of the Audit Committee chairperson is unable to attend the Annual General Meetings of the company, can he authorize, any other member to attend and represent him on his behalf. The answer to this question is passively "Yes", after going through the provisions under the Companies Act, 2013 read with secretarial standard.

Sub-section (7) of Section 178 of the Companies Act, 2013, further spells out that, in case the Audit Committee chairperson is unable to attend the AGM, in his absence, he, can authorize any other member to attend the AGM on his behalf and answer the queries of shareholders.

ATTENDANCE OF CHAIRPERSON OF THE AUDIT COMMITTEE AT AGM

From the foregoing paragraphs:-

a) It is clear that the chairperson of the Audit Committee shall have to be present at the AGMs of the company.

b) This is a mandatory requirement as per the provisions of sub-section (7) of Section 178 for all the public companies whether listed or unlisted and also as per the provisions of Regulation 18(d) of the SEBI (LODR) Regulations, 2015 which is applicable for all listed entities.

c) The NBFC private companies which are required to constitute an Audit Committee as governed by the RBI circular is also required to comply with the provisions of the Companies Act, 2013, relating to the Audit Committee.

In conclusion, one can say that the presence of Audit Committee chairperson or any other member duly authorized by him, if he is unable to attend the AGM is a mandatory requirement.

IN CASE OF DEFAULT COMMITTED BY THE COMPANY

If the company contravenes the requirement of sub-section (7) of Section 178 and non-compliance happens i.e. the chairperson of the Audit Committee or his duly authorized representative did not attend the AGM of the company, then, the company and its Directors are deemed to have violated the requirements of Section 178 of the Companies Act, 2013.

PENAL PROVISIONS AS PER THE COMPANIES ACT 2013 IN CASE OF DEFAULT

As per sub-section (8) of Section 178 of the Companies Act, 2013, the penal provision is that for any contravention of this section, the company shall be punishable with fine which is not less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

CONSEQUENCES WHEN DEFAULT COMMITTED

As per sub-section (5) of Section 206 of the Companies Act, 2013, the Central Government carry out the inspection of the books of accounts and upon going through the minutes of Audit Committee meetings and also the minutes of AGM, relating to a particular financial year by appointing an inspection officer and if it is noticed by the inspecting officer that the violation of Section 178 of the Companies Act, 2013, had taken place, then the inspecting officer would recommend taking the penal action against the company and its defaulting officer for the violation. Even if the inspection is not taking place, the Registrar of Companies (RoC) could go through the documents submitted (i.e. financial statements along with the board report) by the company via e-filing and information also could be gathered where required by the RoC by calling for, further information from the company in order to ascertain the facts.

WHAT FOLLOWS NEXT?

What follows next is the issue of show cause notice to the company and its defaulting officers, calling upon them to show cause within a specified time limit (say 10 days or so) from the date of issue of show cause notice as to why legal action under Section 178(8) of the Companies Act, 2013 should not be taken against them, failing which the necessary penal action will be initiated.

The regulator would also draw the attention of the company and its defaulting officers that as per Section 441 of the Companies Act, 2013 where under offence in question can be compounded by appropriate authority namely Regional Director/National Company Law Tribunal.

OPTION AVAILABLE TO THE COMPANY

The company may not be in a position to defend themselves in case of non-attendance of the chairperson of the Audit Committee or in his absence, his authorized representative of another member in which case there is no other option for the company than going for compounding of offences to get over the non-compliance/ violation as per the provisions of Section 441 of the Companies Act, 2013.

COMPOUNDING APPLICATION FILING AND ITS PROCESSING

As we are all aware that in the process of filing the compounding of offences, the company not only spends its enormous amount of time coupled with money in getting the matter resolved finally, involving, right from the stage of e-filing of compounding application,lodging the physical copies of the application with the concerned RoC followed by attending the hearing / hearings as and when called upon and finally getting the order and ensure paying the compounding fees etc.to get the matter resolved once and for all.

REPORTING BY COMPANIES COVERED UNDER SECRETARIAL AUDIT

The public companies (listed and unlisted both) are required to annex Secretarial Audit Report [pursuant to Section 204(1) of the Companies Act, 2013 and Rule No.9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014].

Further as per Regulation 24A of SEBI (LODR) Regulations, 2014, the Secretarial Audit is mandatory for listed entities and their material unlisted subsidiaries incorporated in India and shall annex the secretarial audit report given by the practicing Company Secretary with the annual report of the company.

With effect from financial year commencing on or after 1st April 2020 as per the new Rule 9(C) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the regulators have prescribed for secretarial audit for every company having outstanding loans or borrowing from banks or public financial institutions of one hundred crore or more.

With this amendment, the secretarial audit is also required to be conducted for both public and private company having loans or borrowing from banks or public financial institutions of rupees hundred crore or more.

The secretarial auditor based on his/her verification of the company's books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the company, its officers, agents and authorized representatives during the conduct of secretarial audit, he/she is required to report that in his/her opinion, that the company has, during the audit period covering the financial year complied with the statutory provisions as per the acts listed down in the report stating that the company has a compliance-mechanism in place to the extent required. The secretarial auditor is required to state that the provisions of the Companies Act, 2013 and the rules made there under amongst other acts/laws applicable specifically to the Company are complied with or otherwise.

While reporting, the secretarial auditor would report that during the period under review the company has complied with the provisions of the Companies Act, 2013, Rules, Regulations, Guidelines, Standards, etc. except to the extent as mentioned below. (The non-compliance list would be provided by the auditor wherever non-compliance exists)

DISCLOSURE BY COMPANIES IN ITS BOARD'S REPORT

In the board report, under the headings "Directors Responsibility Statement" the Board members have to make a statement that they have devised proper systems to ensure compliance with the provisions of all applicable laws and that these are adequate and are operating effectively – at this place, they may have to make a mention of the non-compliance (if any).

DISCLOSURE OF ANNUAL RETURN

The annual return which forms part of Board report is required to be placed on the website of the company, if any, and web-link of such annual return shall be disclosed in the Board's report pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration) Rules, 2014 as per amended Companies (Management and Administration) Amendment Rules, 2020 notified vide notification no. G.S.R. 538(E) dated 28th August, 2020.

All the companies, public companies – listed or unlisted or private companies are required to report in its extract of annual return annexed to the board report the details of compounding of offences under the headings "Penalties / Punishment / Compounding of offences pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration) Rules, 2014.

The Annual report format for reporting the penalties / punishments/ compounding offences are as under:

EXTRACT OF ANNUAL RETURN

As at the financial year ended ...DD / MM / YY..........[Pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration) Rules, 2014]

VII. PENALTIES / PUNISHMENT/ COMPOUNDING OF OFFENCES:

Type	Section of the Companies Act	Brief Description	Details of Penalty, Punishment, Compounding fees imposed	Authority RD/ NCLT COURT	Appeals made if any (give details)
A Company Penalty Punishment Compounding					
B Directors Penalty Punishment Compounding					
B Other officers in default Penalty Punishment Compounding					

COMPANY'S REPUTATION/IMAGE IN THE MARKET PLACE

All the stakeholders of the company, readers, investors, and analyst – all the people who are the recipient of the annual report would know the non-compliance committed by the company and the compounding fees details, which would obviously affect the reputation of the company and its image in the market place.

CONCLUSION

Sub-section (5)(f) of Section 134 of the Companies Act, 2013, (under the heading Directors Responsibility Statement) states that all companies are required to have a proper system to ensure compliance with the provisions of all applicable laws to the company and the board of Directors shall have to review periodically, including the steps taken by the company to rectify instances of non-compliances.

The Companies Act, 2013 has considerably enhanced the role and responsibilities of Company Secretaries in employment and being a key managerial person is responsible to ensure the effective and efficient administration of the company and ensure the absolute compliance by doing the things right at the first time.

Section 205 of the Companies Act, 2013, spells out specifically the functions of a Company Secretary for the first time in the Companies Act, 2013 itself and it says that the Company Secretary needs to report to the board about the compliance with the provisions of the Companies Act amongst others. Therefore, the company secretary has to put in place a sound corporate compliance management system in place and with his proactive approach and intelligence, make the organization to achieve good corporate compliance at all times.

The conclusion is that the Company Secretary of the company has to ensure in making the company in which he is serving as a "good governed company" achieving total and absolute compliance as required under the governing laws by doing right things all the times. Better to practice the value of doing the things "first time right".

Implementation of Regulation 37A - SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 inserted regulation 37A with effect from June 15, 2023. Regulation 37A provides for compliances to be done by a listed company while carrying out sale, lease, or disposal of an undertaking outside scheme of arrangement. Section 180(1)(a) of Companies Act, 2013 also provides for restrictions on the powers of board pertaining to sell, lease, or otherwise dispose off the whole or substantially the whole of undertaking. This article highlights critical issues in implementing provisions of section 180(1)(a) read with regulation 37A.

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INTRODUCTION

The Securities and Exchange Board of India ('SEBI') amended the Securities and Exchange Board of India Listing Obligations and Disclosure Requirements regulations 2015 ('SEBI LODR') through notification dated June 15, 2023. SEBI vide this amendment inserted regulation 37A providing for sale, lease, or disposal of an undertaking outside Scheme of Arrangement. This provision became effective from July 14, 2023. Regulation 37A of SEBI LODR corresponds with Section 180(1)(a) of the Companies Act, 2013 ('the Act'). In this write-up we would delve deep into understanding the critical issues in complying with additional requirements prescribed by Regulation 37A.

BACKGROUND

Sale, lease or otherwise disposal of the whole or substantially the whole of undertaking of the company or where the listed company owns more than one undertaking, of the whole or substantially the whole of any such undertakings may happen through scheme of arrangement or outside scheme of arrangement framework.

SEBI vide its 'Master Circular on Scheme of Arrangement by Listed Company' dated November 23, 2021 ['Master Circular'] has stated that in case any listed entity undertakes such sale, lease or otherwise disposal of an undertaking, through a scheme of arrangement route, it is required to enumerate and explain to the shareholders the rationale, need, and impact of such sale, lease, or disposal. Further, such listed entity is also required to submit a valuation report from a registered valuer and the registered merchant bankers have to provide a fairness opinion on the valuation done by the valuer. In case any sale, lease or otherwise disposal of an undertaking is being undertaken "outside the scheme of arrangement" framework, it is observed that the notice to the shareholders pertaining to passing of a resolution to that effect is often bereft of adequate disclosures.

It was thus seen that there is an inconsistency in the approval process as such a proposal requires approval by way of only special resolution if undertaken "outside the scheme of arrangement" framework, as against the requirement of seeking majority of minority approval in case a sale, lease or otherwise disposal of an undertaking is being proposed through a scheme of arrangement.

In order to strengthen the framework for sale, lease or disposal of an undertaking executed outside the scheme of arrangement framework to safeguard the interest of minority shareholders and to align with the requirement SEBI floated consultation paper titled "Strengthening Corporate Governance at Listed Entities by Empowering Shareholders – Amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations 2015".

SEBI had made following proposals through this consultation paper:

a. Introducing provisions in SEBI LODR for sale, lease or disposal of whole or substantially the whole of the undertaking of the listed company or where the company owns more than one undertaking, of the whole or substantially the whole of any one or more of such undertakings;

b. Mandating disclosure of the objects and commercial rationale for such sale, lease or disposal;

c. Such sale, lease or disposal of whole or substantially the whole of the undertaking, of the listed company or where the listed company owns more than one undertaking, of the whole or substantially the whole of any of one or more such undertakings can be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it. This shall be in addition to the requirement to pass a Special Resolution as provided in the Act.

In response to this consultation paper concerns were raised to SEBI that such sale, lease or disposal of an undertaking is already governed under Section 180 of the Act and additional requirement of obtaining majority of minority approval would add to the compliance burden on the listed company. Also, if the transaction of sale of undertaking is with unrelated party, then in such case, such requirement would add no value to compliance. Some key suggestions made to SEBI included exemption from passing shareholder resolution in case of transfer of undertaking to wholly owned subsidiary of the listed company and sale of undertaking due to covenant covered under an agreement with financial institution.

SEBI accepted the suggestion of granting exemption from shareholder resolution in case of transfer of undertaking to wholly owned subsidiary on the condition that, if the wholly owned subsidiary wishes to sell the undertaking to any other party in future, the listed company will have to obtain shareholder approval along with majority of minority approval. Further SEBI also added that if the listed company wishes to sell its stake in such a wholly owned subsidiary, then also it will have to obtain shareholder approval. In case of sale of undertaking due to agreement with lender, such sale can be exempt from shareholder approval only if the lender is registered with RBI or debenture trustee is registered with SEBI.

NOTIFICATION OF AMENDMENT OF REGULATION 37A OF SEBI LODR

Regulation 37A of SEBI LODR requires the listed company to obtain shareholder approval by passing a special resolution for sale, lease or disposal of whole or substantially the whole of undertaking outside the scheme of arrangement. Resolution under regulation 37A is deemed to have been passed only if the votes cast by public shareholders in favor of resolution are more than the votes cast by public shareholders against the resolution. The regulation prohibits the public shareholders who are directly or indirectly party to the sale of an undertaking from voting on the resolution. Further as recommended by the industry participant's, the regulation also provides exemption from passing shareholder resolution in case of transfer of undertaking to wholly owned subsidiary or sale of undertaking pursuant to agreement with lenders, but such exemptions are subject to conditions provided in the regulation. The most important part is that the regulation through an explanation, clarifies that, the undertaking shall have same meaning as provided under Section 180 of the Act.

> In order to strengthen the framework for sale, lease or disposal of an undertaking executed outside the scheme of arrangement framework to safeguard the interest of minority shareholders and to align with the requirement , SEBI floated consultation paper titled "Strengthening Corporate Governance at Listed Entities by Empowering Shareholders – Amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations 2015".

CHALLENGES IN IMPLEMENTATION OF REGULATION 37A OF SEBI LODR

We would now discuss certain challenges in implementation of Regulation 37A of SEBI LODR:

a) Whether it is mandatory to disclose name of the party buying the undertaking?

Second proviso of Regulation 37A (1) says that no public shareholder shall not vote on resolution for sale, lease or otherwise disposal of the whole or substantially the whole of undertaking if public shareholder is party to the that transaction directly or indirectly.

This proviso has been inserted to ensure that votes cast by public shareholders parties to the transaction directly or indirectly are not considered.

Challenges may be faced by scrutinizers in giving effect to this proviso. If we peruse provisions under Section 180 of the Act and regulation 37A of SEBI LODR, it does not mandate disclosure of name of the party involved in sale, lease or disposal of whole or substantially the whole of undertaking. So, if name of the party is not disclosed it would be difficult for public shareholders to understand whether they are related to the transaction directly or indirectly? Moreover, even if such members vote on resolution, then how will the scrutinizer be able to identify that public shareholders who have casted their votes are related to the party to the transaction?

b) Solution

(i) It is not necessary to mention name of the party with whom transaction would be proposed to be undertaken: To understand the solution to this let us first understand various provisions wherein similar nature of resolutions are passed and whether it is mandatory to mention name of transacting parties. Following table depicts same:

Sl. No	Purpose of resolution	Section	Whether name of transacting party required to be mentioned?
1	Sell, lease or otherwise dispose off undertaking.	Section 180(1)(a)	It is not expressly provided that name of transacting party to whom sale, lease or otherwise disposal is required to be done shall be mentioned.
2	Increase in limits of loans, investments, guarantees and securities to be given.	Section 186(3)	It is not expressly mentioned to mention name of parties to whom Loan, Investment, Guarantee or Security needs to be given.
3	Raising of funds by way of non-convertible debentures.	Section 71	It is not expressly mentioned to give the names of persons to whom debentures are allotted.
4	Raising of funds by way of preferential allotment or private placement.	Section 62(1) (c) R/W section 42	Section 42(2) expressly says that allotment under private placement has to be made to selective group of persons called as identified persons. Therefore, name of allottee has to be mentioned.
5	Related Party Transactions.	Section 188 R/W rule 15 of Companies Meeting of board and its powers rules 2014	Rule 15(1) clearly says that agenda of board meeting should provide name of related party and relation with him. Therefore, giving name of related party is mandatory.

On perusal of above provision, it can be seen that disclosures of name(s) of party with whom transaction would be undertaken in the resolution is not always mandatory. For some resolutions it has been provided to mention the name of the transacting party. Regulation 37A of SEBI LODR nowhere prescribes to mention name(s) of party(ies) with whom transaction is proposed to be undertaken. It has been held by Lord Blackburn that, "We ought, in general, in construing an Act of Parliament, to assume that the legislature knows the existing state of the law"[1] Thus if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provisions was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provisions the legislature also intended the condition to be applied at some other place in the provisions the legislature also intended the conditions to be applied at some other place in that provision.[2] SEBI is deemed to be aware of existing provisions under the Companies Act, 2013. As Regulation 37A does not expressly provide for disclosure of the name of party it can be inferred that it would not be necessary to provide the name of the party with whom transaction is proposed to be undertaken. But it needs to be highlighted here that proxy advisory firms have been raising concerns over resolutions proposing sale, lease or disposing of an undertaking wherein powers have been given to the Board of Directors of companies for identification and finalizing buyer or lessee and name of party with whom such transaction would be undertaken is never disclosed to shareholders. So, it is up to the discretion of the Board of Directors and shareholders of listed companies whether name of party with whom proposed transaction of sale, lease, or disposal of undertaking is being undertaken should be mentioned or not. This would require extensive engagement with shareholders of the listed companies by the investor relations team.

(ii) Listed companies may mention name of the party with whom transaction is proposed to be undertaken voluntarily: Now if it is not necessary to mention name of the party with whom transaction is proposed to be undertaken then question arises is how can effect be given to second proviso of sub-regulation (1) to Regulation 37A? Second proviso of sub-regulation (1) to Regulation 37A states that no public shareholder who is directly or indirectly party to sale, shall vote on the resolution. If the name of the party is not mandatorily required to be mentioned, then how can effect be given to this provision. Hon'ble Supreme Court has held that, 'The performance of an impossible duty must be excused in accordance with the maxim, lex non cogit ad impossibila.[3] Further Hon'ble Supreme Court has stated that law does not contemplate something which cannot be done.[4] So, it can be inferred that if the Board of Directors of a company have approved the name of the party with whom transaction is proposed to be undertaken and accordingly it would be mentioned in the resolution then it would be possible to give effect to second proviso to sub-regulation (1) of Regulation 37A. This will help the public shareholders to decide on whether they are eligible to vote and accordingly abstain from voting.

c) Is approval taken under Section 180 of the Act for sale, lease or otherwise dispose off undertaking still valid or does approval needs to be taken again under Regulation 37A?

Companies are required to pass special resolution for sale, lease or otherwise dispose off whole or substantially the whole of undertaking under Section 180 of the Act. Section 180 of the Act does not prescribe any timeline within which the resolution has to be given effect. Hence, there arises a question that, if any company had passed resolution for sale, lease or otherwise dispose off whole or substantially the whole of undertaking before notification of Regulation 37A (i.e., before July 14, 2023) and has not acted upon that resolution, then whether the special resolution passed is still valid or a fresh special resolution under Regulation 37A needs to be passed?

1. *Young vs Mayor of Lamington [1888] 8 AC 517 at 52*
2. *Oriental Insurance company ltd vs Hansrajbhai V Kodala [2001] 105 Comp Cas 743 (SC); 001 AIR SCW 1602; AIR 2001 SC 1832*
3. *Cochin State Power and Light Corporation Ltd vs State of Kerala AIR 1965 SC 1688*
4. *Standard Chartered Bank vs Directorate of Enforcement 2005 SC 2622*

d) Solution

a. Contracts for sale, lease, or disposal of undertaking where Regulation 37A would apply: As per Coke Maxim, "A new law ought to be prospective, not retrospective in its operation" Applying this maxim it can be inferred that provisions relating to Regulation 37A would apply prospectively and not retrospectively. So, provisions of Regulation 37A would apply for sale, lease, or disposal of undertaking or substantially the whole of undertaking post July 14, 2023. Further Regulation 37A is completely silent about the retrospective applicability. It is cardinal principle of construction that every statue is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect.[5]

   However, while giving prospective effect to regulation 37A, there is one important point worth noting. Clause b of Regulation 37A sub-regulation 1 states that the Board of Directors should inform the shareholders through explanatory statement attached to notice of the meeting, about the object and commercial rationale for selling the undertaking and about the proposed use of the proceeds from sale of such undertaking. Now if any company has more than one undertaking and it proposes to sell any one of them, then in such a case, it will be difficult to provide exact commercial rationale for sale of undertaking without specifying which of the multiple undertakings is proposed to be sold. Also, it would be difficult to specify the proposed use of proceedings from sale of undertaking as the amount of proceeds would vary depending upon the undertaking being sold. Therefore, from the point of view of good governance, it is advisable to specify the details of the undertaking being sold in case of the existence of more than one undertaking with the company. The only exception being the sale of the undertaking to a wholly owned subsidiary.

b. Contracts for sale, lease or disposal of undertaking where Regulation 37A would not apply: Where listed company has passed a resolution at a general meeting or through postal ballot for sale, lease or disposal of whole or substantially the whole of undertaking prior to July 14, 2023 and has entered into a contract for sale or lease or disposal of whole or substantially the whole of undertaking or Board of Directors have in exercise of powers conferred on them by members for identification of party for sale, lease or disposal or otherwise disposal of undertaking have identified the party then in that case provisions of Reg 37A need not be complied with. Hon'ble Supreme Court has held that, "Statues prescribing formalities for effecting transfers are not applicable to transfers made prior to their enforcement[6] and similarly statues dispensing with formalities which were earlier necessary for making transfers have not the effect of validating transfers which were lacking in these formalities, and which were made prior to such statues"[7]. So, it means that enforcement of decisions relating to transfers are already taken or are taking place then in that case provisions of Regulation 37A would not apply.

e) What can be the ranking in which approvals needs to be taken for sale, lease, or disposal of whole or substantially the whole of undertaking transferred by listed company to wholly subsidiary company?

As per first proviso to Regulation 37A (2) of SEBI LODR prior to sale, lease, or disposal of whole or substantially the whole of undertaking by wholly owned subsidiary whether in whole or in part to any other entity listed entity shall comply with requirements specified in Regulation 37A (1). In such circumstances, questions arise as to whose approval needs to be taken first?

Firstly, wholly owned subsidiary needs to pass a resolution under Section 180(1)(a) of the Act giving powers to Board of Directors for sell, lease, or disposal or otherwise disposal of whole or substantially the whole of undertaking.

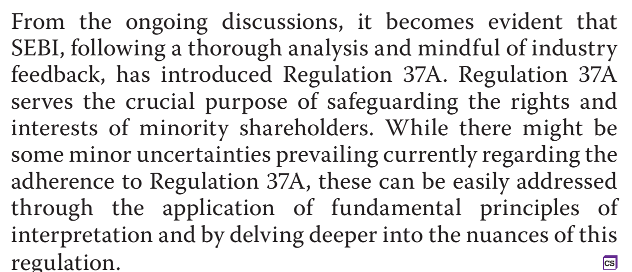
Further the Board of Directors of wholly owned subsidiary needs to approve the sale, lease, or disposal of the whole or substantially the whole of undertaking.

Then the matter will be placed before the Board of Directors of the listed company for their approval.

Once the Board of Directors of the listed company approves the transaction, they will recommend the transaction to the members of the listed company.

If the members of listed company approve the proposal of transaction for sale, lease, or disposal of undertaking or the whole of undertaking by wholly owned subsidiary then wholly owned subsidiary would be able to call general meeting for approving sale, lease or disposal of the whole or substantially the whole of undertaking, wherein listed company being sole shareholder would be able to approve the transaction for sale, lease, disposal of whole or substantially the whole of undertaking. In case the members of listed company do not approve the resolution then wholly owned subsidiary would not be able sale, lease or dispose of the whole or substantially the whole of undertaking.

CONCLUSION



From the ongoing discussions, it becomes evident that SEBI, following a thorough analysis and mindful of industry feedback, has introduced Regulation 37A. Regulation 37A serves the crucial purpose of safeguarding the rights and interests of minority shareholders. While there might be some minor uncertainties prevailing currently regarding the adherence to Regulation 37A, these can be easily addressed through the application of fundamental principles of interpretation and by delving deeper into the nuances of this regulation.

5. *Keshavan vs State of Bombay AIR 1951 SC 124.*

6. *Hassanji & Sons vs State of Madhya Pradesh AIR 1965 SC 470, p.472 (para 9): 1963 Supp (3) SCR 235, (mineral Concession Rules 1949 are not retrospective).*

7. *Mata Ram Prasad vs Nageshwari Sahai AIR 1925 PC 272, p. 278*

ARTICLE

Developing an AML-Compliant Risk Assessment Framework for SEBI Registered Intermediaries

In a world where financial systems are increasingly interconnected, the scourge of money laundering poses a significant threat to global economies. According to an IMF study, the magnitude of money laundered worldwide is estimated to range from 2% to 5% of the global GDP, potentially equating to a staggering $2 trillion. To put this into perspective, at its highest estimate of 5%, money laundering represents the fifth-largest economy globally, surpassing the GDP of India. Even at the lower estimate of 3%, it would still rank as the tenth-largest economy, eclipsing the combined GDP of the bottom 150 nations.

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INTRODUCTION

In a world where financial systems are increasingly interconnected, the scourge of money laundering poses a significant threat to global economies. According to an IMF study, the magnitude of money laundered worldwide is estimated to range from 2% to 5% of the global GDP, potentially equating to a staggering $2 trillion. To put this into perspective, at its highest estimate of 5%, money laundering represents the fifth-largest economy globally, surpassing the GDP of India. Even at the lower estimate of 3%, it would still rank as the tenth-largest economy, eclipsing the combined GDP of the bottom 150 nations.

To combat this pervasive issue effectively, it is crucial to comprehend the concepts of money laundering, reporting entities including registered intermediaries in the financial ecosystem.

MONEY LAUNDERING

The term "money laundering" originates from the concept of cleansing illicit funds, much like one might launder dirty clothing to make them appear clean and untainted. However, the history of this term bears a fascinating connection to the notorious American mafia figure, Al Capone. Capone, a key figure in organized crime during the Prohibition era, ingeniously established laundry businesses across the United States. These laundromats operated as cash businesses, allowing him to convert illicit earnings into legitimate income. Thus, the term "money laundering" was coined.

According to the Prevention of Money Laundering Act (PMLA) 2002, "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

Here, 'Proceeds of crime' means "any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property, or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad."

Money laundering typically involves three distinct stages:

1. **Placement:** The initial phase involves the physical disposal or placement of the proceeds of crime into the financial system or retail economy. Common typologies or methods in this stage include structuring cash deposits, loan repayments, cash smuggling, gambling, high-value item purchases (e.g., foreign exchange, gold, diamonds), commingling laundered cash with legitimate businesses (e.g., restaurants, entertainment), and down payments for real estate acquisitions.

2. **Layering:** The objective of this stage is to obscure the source of funds by executing a series of financial transactions that create layers of complexity, thus concealing the audit trail and providing anonymity. Electronic funds transfers have made this stage considerably easier. Common methodologies at this stage encompass account transfers within and across institutions, wire transfers to foreign jurisdictions, the use of shell companies, conversion of cash into monetary instruments, and investments in stocks and real estate.

3. **Integration:** The final stage involves integrating ill-gotten funds with legitimate assets, thereby giving them the appearance of legitimacy and incorporating them into the net worth. Activities at this stage often appear as routine business and personal transactions. Common methodologies include the purchase of investment and luxury assets (e.g., property, artwork, jewellery, high-end automobiles), investments in legitimate businesses, and capital market activities.

REPORTING ENTITIES

To combat money laundering effectively, the PMLA imposes obligations on specific reporting entities, which include:

- Banking companies,
- Financial institutions,
- Intermediaries of the securities market,
- Persons engaged in designated business or professions.

These entities are required to verify the identity of clients, furnish information, and maintain records.

As defined in Section 2(n) of the PMLA, an "intermediary" includes various entities registered under the Securities and Exchange Board of India Act, 1992 (Additionally, it encompasses entities recognized or registered under the Forward Contracts (Regulation) Act, 1952, intermediaries registered by the Pension Fund Regulatory and Development Authority, and recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956.

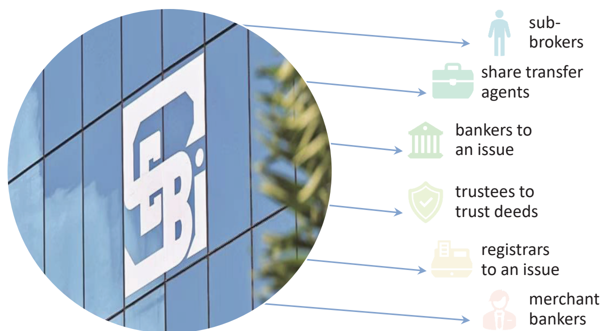

Figure 1- Intermediaries registered under the Securities and Exchange Board of India Act, 1992; Author's Presentation

The role of registered intermediaries in the securities market is crucial but also susceptible to money laundering risks. Various factors contribute to this vulnerability. The factors are enlisted in the Figure 2 below. It is essential for reporting entities, especially registered intermediaries, to be vigilant and proactive in mitigating these risks to maintain the integrity of the financial system.

Figure 2- Susceptibility of securities markets to money laundering risks; Author's presentation

NEED FOR RISK BASED CLIENT DUE DILIGENCE

The Securities Board of India underscores the importance of adopting a risk-based approach in its guidelines. These guidelines mandate registered intermediaries to conduct a thorough risk assessment. The aim is to identify and implement effective measures to counter money laundering and terrorist financing risks. This process involves evaluating various factors, including client profiles, the countries or regions involved, transaction characteristics, and payment methods used.

- Documentation- Moreover, this risk assessment should take into account all relevant risk factors before determining the overall risk level and the most suitable mitigation strategies. It's essential to document this assessment, regularly update it, and make it accessible to competent authorities and self-regulating bodies as needed. The requirement for proper documentation underscores the significance of this exercise in the financial sector.
- Defining risk thresholds- The risk-based approach in managing AML/CFT (Anti-Money Laundering/ Counter Financing of Terrorism) categorizes clients as either higher or lower risk based on specific circumstances. Risk- assessments by registered intermediaries should carefully consider relevant risk factors when determining the overall risk level and the most suitable mitigation approaches.
- Risk attuned due-diligence- For clients falling into higher risk categories, enhanced due diligence measures should be adopted. Conversely, lower risk categories may warrant a simplified client due diligence process. A risk-based approach offers a pragmatic way to accomplish more with fewer

constraints, whether due to budget limitations or the availability of qualified personnel and technology resources.

CATEGORIES OF POTENTIAL RISKS FOR REGISTERED INTERMEDIARIES

1. **Distribution/Channel Risks:** These risks involve doing business with entities suspected of criminal activities, located in risky countries, serving risky customers, having a history of not following the rules, appearing negatively in the media, lacking proper anti-money laundering (AML) training, or having weak controls. Dealing with such entities can expose businesses to money laundering and terrorism financing risks.
2. **Country/Geographic Risks:** These risks arise from dealing with jurisdictions that provide funding for terrorism, host designated terrorist organizations, exhibit high levels of organized crime and corruption, are subject to sanctions or embargoes, or have weak governance, law enforcement, and regulatory regimes. Operating in or with entities from such regions increases the likelihood of AML and terrorism financing risks.
3. **Product/Service/Transaction Risks:** These risks involve products, services, or transactions that offer anonymity, have extensive geographical reach, possess unusual complexity or structure, lack an obvious economic purpose, allow unrestricted value transfer (especially to high-risk areas), employ new technologies or payment methods, are prone to fraud and market abuse, involve the purchase of securities using physical cash, resemble bank-like products, include unrelated third parties, receive funding from high-risk jurisdictions, or deal with penny and illiquid stocks. Such elements can introduce vulnerabilities and potential AML risks.
4. **Customer/Investor Risks:** These risks stem from clients who have been sanctioned for AML/FT non-compliance, are considered Politically Exposed Persons (PEPs)[1] or have close associates with political prominence, derive income or wealth from high-risk jurisdictions, reside in high-risk areas, act on behalf of third parties with non-transparent motives, evade or provide misleading information, are linked to adverse media coverage, generate a high number of Suspicious Transaction Reports (STRs), maintain complex and rapidly changing legal structures, have exposure to sanctions, or possess non-transparent ownership structures. Dealing with such clients can elevate AML and terrorism financing risks.

DESIGNING A COMPLIANCE FRAMEWORK

In managing Anti-Money Laundering (AML) and Counter Financing of Terrorism (CFT) risks, developing internal policies and procedures backed by a robust compliance framework is essential. This includes:

> As defined in Section 2(n) of the PMLA, an "intermediary" includes various entities registered under the Securities and Exchange Board of India Act, 1992 (Additionally, it encompasses entities recognized or registered under the Forward Contracts (Regulation) Act, 1952, intermediaries registered by the Pension Fund Regulatory and Development Authority, and recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956.

- **Understanding the Rules:** Identifying and interpreting relevant AML and CFT rules and regulations to ensure a clear understanding of compliance requirements.
- **Using Technology:** Investing in advanced technology solutions to enhance compliance capabilities.
- **Rule Adherence:** Strictly following the regulations applicable to the entity's operations.
- **Measures and Procedures:** Developing measures and procedures to prevent money laundering and terrorist financing.
- **Customized Policies:** Tailoring policies to consider the specific nature of the business, client profiles, and organizational structure.
- **Senior Management Involvement:** Ensuring full commitment from senior management in establishing appropriate policies and procedures.
- **Regular Review:** Continuously reviewing policies and procedures with the assistance of an independent party.
- **Client Acceptance Policies:** Implementing policies for client acceptance and due diligence, including proper identification requirements.
- **Effective Communication:** Clearly communicating compliance policies to all levels of management and relevant staff.
- **Statutory and Regulatory Compliance:** Ensuring strict compliance with relevant statutory and regulatory requirements.
- **Internal Oversight:** The internal audit or compliance functions play a crucial role in ensuring ongoing compliance.
- **Board Approval:** These policies and procedures require approval from the Board, highlighting their importance.

1. *In financial regulation, a politically exposed person is one who has been entrusted with a prominent public function. A PEP generally presents a higher risk for potential involvement in bribery and corruption by virtue of their position and the influence they may hold.*

ENSURING ONGOING AML TRAINING FOR EMPLOYEES

Regular staff training is vital for ensuring everyone understands and follows Anti-Money Laundering (AML), Counter Financing of Terrorism (CFT), and Know Your Customer (KYC) requirements. These training programs should cover topics like money laundering and terrorist financing techniques, global standards, and updates in these fields. To keep track of employee training, organizations should maintain records that show when and how training was provided, who attended, and how often. Different training methods, like certified courses, in-house sessions, online modules, and awareness sessions, can be used. Keys areas to be included in the training are explained in Figure 3 below. Lastly, any changes in AML/CFT laws or company policies related to these matters must be communicated to the relevant employees promptly.

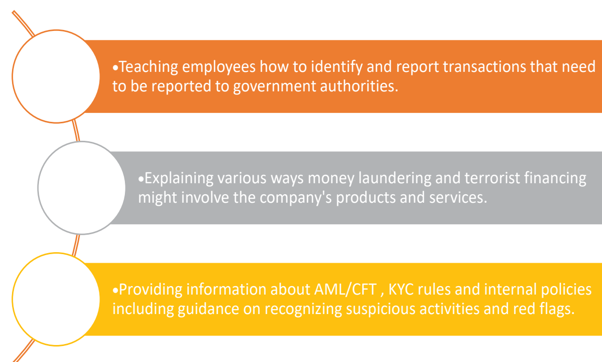

Figure 3; Key areas to include in AML and KYC training; Author's Presentation

ESTABLISHING AN INDEPENDENT AUDIT FUNCTION

An independent AML audit is like a check-up for a company's Anti-Money Laundering (AML) plan. It's not about money, but about making sure the company has a proper AML program and is actually following it. During an AML audit, the following things are usually examined:

- Reviewing the company's AML compliance program document.
- Testing if the AML Policy and Procedures are being put into action.
- Checking how well the Customer Identification Procedure (CIP) is working.
- Examining transactions to see if there are any issues.
- Investigating whether the company is following OFAC (Office of Foreign Assets Control) regulations.
- Looking at reports related to financial crimes, like Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs).
- Evaluating the effectiveness of AML training.
- Checking the automated monitoring methods and management information systems.
- Reviewing previous audit reports to see if recommended changes were made effectively.

WHO CAN CONDUCT THE AML AUDIT

An AML audit can be done by company employees who are not involved in areas where money laundering concerns might happen or by an external, independent third party. This means that the audit cannot be done by the company's AML compliance officer or their team. Smaller businesses often choose independent third parties because they may lack the expertise or resources to do it internally.

CONCLUSION

In the world of professionals like Company Secretaries (CS), a realm of immense opportunity beckons. CS experts play a pivotal role in shaping internal policies, constructing resilient compliance frameworks, conducting vital independent audits, and imparting essential training. By pioneering streamlined mechanisms for reporting suspicious transactions and harnessing the power of technology, we have the potential to revolutionize how we combat financial crime.

These efforts not only fortify our financial institutions but also empower authorities like the FIU-IND (Financial Intelligence Unit of India)[2] to carry out their vital functions with greater efficiency. Our dedication to understanding and implementing AML provisions is not just theoretical; it translates into tangible results. It can significantly reduce economic losses and protect the well-being of our nation's economy.

So, as CS professionals, let's recognize the real impact we can create. Let's seize this opportunity to drive positive change, to safeguard the financial integrity of our nation, and to ensure a brighter future for all. The path ahead is tangible, and our actions today resonate for generations to come.

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[2] *Financial Intelligence Unit – India is an organisation under the Department of Revenue, Government of India which collects financial intelligence about offences under the Prevention of Money Laundering Act, 2002.*

ARTICLE

Security in Digital Transformation & Artificial Intelligence

How Company Secretaries play a crucial role in supporting security initiatives during digital transformation efforts?

The use of modern digital technologies and processes are being introduced on a large scale globally to empower organizations to operate more efficiently, intelligently and rapidly. While AI is helping developers code faster and more productively, some leaders are afraid that it could cause extra security and risk management issues.

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INTRODUCTION

Secure digital transformation is a necessary disruption in which a person or a company can fundamentally change how organizations deliver value to their customers. Particularly, it is viewed as the use of modern digital technologies and processes to empower organizations to operate more efficiently, intelligently and rapidly. While AI is helping developers code faster and more productively, some leaders are afraid that it could cause extra security and risk management issues. However, the cybersecurity sector is not new to developing technologies, and we must continue to embrace every tool at our disposal to secure the software ecosystem.

When used correctly, AI can assist prevent vulnerabilities from being created in the first place, fundamentally altering the security experience. AI gives context for potential vulnerabilities and recommends secure programming from the start. These capabilities allow developers to design more secure code in real time, fulfilling the true promise of "shift left." This is revolutionary. Traditionally, "shift left" meant receiving security input after putting your idea into code but before deploying it to production. However, with AI, security is actually built in, not added on. When engineers are putting their ideas into code and have an AI pair programmer assisting them every step of the way, there is no better place to "shift left." It's an exciting new era when generative AI will be on the front line of cybersecurity. And here are some following ways in which Digital Transformation and Artificial Intelligence (AI) have significantly impacted secretarial practice, transforming traditional roles and workflows. Here's how:

1. **Automation of Routine Tasks:** Artificial intelligence-powered systems can automate repetitive operations like appointment scheduling, email management, and document organization. This automation frees up secretaries' time to focus on more strategic tasks.
2. **Enhanced Communication:** AI chatbots and virtual assistants can handle basic inquiries, sparing secretaries from repetitive work and allowing them to concentrate on more complicated communication tasks.
3. **Document Management:** AI-powered document management systems can help to organize, store, and retrieve documents more efficiently. These systems can categorize, tag, and search papers, making it easier for secretaries to find relevant information fast.
4. **Data Analysis:** AI systems can process massive amounts of data to identify insights and trends. Secretaries can utilize this information to make more informed decisions and support strategic planning.
5. **Improved Efficiency:** Digital tools and artificial intelligence systems can help to optimize workflows and increase the productivity of secretarial activities. For example, AI-powered scheduling systems can optimize meeting schedules based on participant availability, reducing conflicts and delays.
6. **Personalization:** AI can assist personalize interactions with clients and stakeholders by understanding their preferences and behavior. Secretaries can use AI data to personalize communications and services to individual needs, resulting in increased client satisfaction.
7. **Risk Management:** AI can help discover possible hazards and compliance issues by analysing data trends and finding abnormalities. Secretaries can utilize this information to proactively manage risks and ensure regulatory compliance.

8. **Training and Development:** AI-powered learning platforms can offer individualized training and development opportunities for secretaries, allowing them to master new skills and keep current on industry trends.

9. **Remote Work Enablement:** Company Secretaries may function effectively from any location thanks to virtual cooperation made possible by digital technologies and AI-powered communication systems. This flexibility improves both productivity and work-life balance.

Overall, digital transformation and artificial intelligence (AI) have transformed Company Secretarial practice, allowing Company Secretaries to operate more effectively, improve communication, and better assist their employers. Embracing these tools can help Company Secretaries adapt to the changing demands of the modern workplace and add more value to their employers.

Artificial intelligence can assist improve cybersecurity by recognizing and responding to possible threats in real time. Company Secretaries have an important role in adopting and maintaining cybersecurity measures to secure sensitive data.

Some teams are already seeing significant productivity gains from AI, but other executives are concerned about security threats and want to know how to develop appropriate standards for AI technologies. How can you achieve good security outcomes while allowing your software developers to perform their best (and most secure) AI-powered work?

While artificial intelligence is a novel technology, it shares many similarities with older tools. You can start with the same security and risk frameworks for evaluating an AI tool as you would for any other tool you want to add to your stack, and then tweak them as needed. Request data flow diagrams, external testing results, and further details on the tool's security and maturity.

Several trends have made digital transformation feasible—and vitally necessary. The first is, undoubtedly, the cloud. Applications are migrating from the data center on the enterprise's trusted network to multiple clouds. Microsoft 365 and Workday are just two of the most popular software-as-a-service programs, which relieve IT of app management while offering capabilities that help organizations become smarter and more collaborative. Many firms are also migrating their private apps to cloud services like Azure, AWS, GCP, and others, which reduces IT complexity because the cloud providers maintain all infrastructure.

Enterprise employees now work from anywhere on a variety of devices. The days of employees working in cubicles on PCs connected to the local network via Ethernet are long gone. They are now connecting to applications over public Wi-Fi or their home networks, and they are using their own devices (BYOD), such as laptops, cellphones, and tablets. This trend will not slow with the introduction of 5G networks. If employees can

access apps and data over 5G at speeds of up to 10 Gbps, why would they connect to an office network that runs at a fraction of that speed?

THE BENEFITS OF SECURE DIGITAL TRANSFORMATION

Organizations typically start a transformation journey with the goal of becoming more competitive by moving faster and more wisely. However, transformation has numerous positive effects that make such results possible. They include increased productivity due to the removal of slow backhauls across data centers and latency-causing security restrictions. Transformation lowers costs and simplifies IT by eliminating infrastructure and point products while also lowering reliance on expensive private networks. It also decreases corporate risk by providing security against sophisticated threats like ransomware and DDoS, as well as preventing data loss and compliance violations.

Organizations must identify and manage the risks associated with every new tool given by an external vendor. Procurement, legal, privacy, and security teams should thoroughly assess new products or services, paying special attention to what data will be utilized, how it will be used, and how the data will be protected by the external vendor.

The journey often begins with the migration of apps from on-premises to cloud delivery. However, with the majority of user traffic now migrating to the cloud and open internet, the network must evolve to support direct-to-internet connections. And these connections necessitate security transformation, which involves transferring security controls from centralized gateways and regional hubs to the cloud, where policies can be implemented consistently regardless of where users connect.

Artificial intelligence has long been regarded as the 'Holy Grail'. Almost every facet of contemporary business could undergo a radical transformation if intelligent systems that can apply insights to solve difficult problems and learn from past actions are developed. And AI for cybersecurity is no exception.

Businesses may detect and react to risks more quickly and effectively by utilizing the latest developments in machine learning and natural language processing. AI is a capability that can improve other products; it sharpens the focus of prevention, detection, and response products while also providing prediction choices. The end effect is faster threat response and better cleanup.

One significant advantage of AI for security is that it requires less human intervention than many other security measures. AI makes sense to integrate with other products for critical use cases. As the models mature and users gain confidence in the technology (as with automation), it is possible to begin knitting together separate jobs in an organized sequence.

Modern security solutions are most successful for certain use cases, such as detecting and neutralizing phishing, spam, and opportunistic malware on endpoints with high confidence. As it does so, AI must be able to learn from these encounters by accumulating observations and drawing logical inferences in order to increase its capabilities over time.AI security is the next step in cyber defense, but is it essential? This can be a challenging question to answer conclusively. It is clear that continual developments in malicious programming and other threats are making traditional cybersecurity much more challenging. Currently, roughly 60% of enterprises believe they would be unable to spot important threats without artificial intelligence capabilities. (Source: Capgemini.)

The rate of digital change is accelerating worldwide. Unfortunately, the number of skilled, experienced cybersecurity specialists is not keeping up. Artificial intelligence has the potential to close a talent gap that currently exists, with millions of cybersecurity jobs vacant. It is also a scalable approach to apply AI for security tools, which supplement employee operations. AI also frees up valuable resources by speeding up the process of identifying and prioritizing threats. Workers can now focus on more complicated activities while automating smaller, more repetitive chores.

AI allows businesses to counter threat escalation

Hunting for dangers takes a long time; single alarm investigations can take days to complete. AI-powered security technologies are capable of triaging events, which reduces the time required for incident response. While some firms have been sluggish to adopt new digital security breakthroughs, it's evident that threat actors aren't. "Three months ago, threat actors have become more sophisticated and difficult to detect, posing a threat to even the most well-informed targets," according to Microsoft (source: Microsoft). AI for security provides enterprises with the technology required to outperform this trend.

Threat actors stay relevant by constantly upgrading and refining their tactics, strategies, and procedures. AI supplies cybersecurity systems with current and relevant information of industry-specific and global risks, allowing teams to make key decisions regarding priorities based on the attack techniques that could be utilized against an organization.AI systems offer quick incident reaction times, context for responding to security alarms, and root-cause analysis to identify vulnerabilities and determine how to stop them from happening again.

> It's an exciting new era when generative AI will be on the front line of cybersecurity. And here are some following ways in which Digital Transformation and Artificial Intelligence (AI) have significantly impacted secretarial practice, transforming traditional roles and workflows.

Therefore, Security is of Paramount importance in digital transformation at the organizational level due to following several key reasons:

1. ***Protection of Sensitive Data:*** In the digital age, organizations store vast amounts of sensitive information, including customer data, financial records, and intellectual property. Security measures are essential to safeguard this data from unauthorized access, breaches and theft.
2. ***Maintaining Customer Trust:*** Data breaches and security incidents can jeopardize customer confidence and reputation. Organizations must emphasize security to ensure customers that their data is secure and to preserve brand trust.
3. ***Compliance Requirements:*** Many industries are subject to strict regulations governing data protection and privacy. Compliance with these regulations is crucial for avoiding fines, legal penalties, and reputational damage.
4. ***Supporting Remote Work:*** The change to remote work arrangements, hastened by digital transformation, presents new security problems, including safeguarding remote access, protecting endpoints, and assuring the security of communication and collaboration technologies. Strong security mechanisms are required to support remote work securely.
5. ***Preserving Brand Reputation:*** A security breach can have serious ramifications for an organization's brand reputation, resulting in the loss of customers, partners, and investors. Prioritizing security in digital transformation projects helps maintain brand reputation and confidence in the market.
6. ***Securing Digital Assets:*** Cloud computing, IoT devices, and other digital technologies are being adopted to broaden the attack surface and create new security threats. Organizations must put in place comprehensive security measures to successfully protect their digital assets.

7. ***Ensuring Business Continuity:*** Cyberattacks and security breaches can interrupt business, resulting in downtime, financial loss, and reputational damage. Implementing strong security measures contributes to business continuity by reducing the effect of security incidents while ensuring operational resilience.

8. ***Enabling Innovation:*** Robust security protocols foster creativity by establishing trust in the organization's capacity to safeguard digital assets and minimize hazards. Prioritizing security allows firms to foster an innovative culture while limiting the possible negative consequences of security events.

9. ***Mitigating Cyber Threats:*** With the sophistication of cyber threats increasing, firms are constantly vulnerable to assaults such as malware, phishing, ransomware, and insider threats. Strong security measures are required to identify, prevent, and respond to these threats efficiently.

10. ***Protecting Intellectual Property:*** Digital transformation frequently entails digitizing and storing intellectual property, trade secrets, and proprietary information. Strong security measures are required to prevent unauthorized access or theft of this valuable intellectual property.

Company secretaries play a crucial role in supporting security initiatives during digital transformation efforts. Here's how they can contribute:

1. **Policy Development:** Company secretaries can work with senior management and IT teams to develop comprehensive security policies and procedures aligned with industry best practices and regulatory requirements. These policies should cover areas such as data protection, access control, incident response, and employee training.

2. **Compliance Management:** Company secretaries are in charge of ensuring that the firm follows all applicable cybersecurity and data privacy laws, rules, and standards. They can oversee compliance initiatives, perform audits, and monitor changes in regulatory requirements to assure continuous compliance.

3. **Risk Assessment and Management:** Company secretaries can work with risk management teams to evaluate the cybersecurity risks associated with digital transformation programs. They can recognize potential threats, vulnerabilities, and impact scenarios and devise risk mitigation methods to successfully handle these risks.

4. **Board Reporting and Governance:** Company secretaries improve communication between the board of directors and management on cybersecurity issues. To support informed decision-making and supervision, they can regularly update the board on security initiatives, risk assessments, incident reports, and compliance status.

5. **Contract Management:** Company secretaries frequently participate in contract negotiation and management activities. They can make certain that contracts with vendors, suppliers, and service providers include adequate security elements, such as data protection clauses, confidentiality agreements, and compliance obligations.

6. **Training and Awareness:** Company secretaries can help manage cybersecurity training and awareness campaigns for employees at all levels of the firm. These programs should educate personnel about cybersecurity dangers, best practices, and their roles and responsibilities in security.

7. **Incident Response Planning:** Company secretaries can participate in the development and implementation of incident response plans to address security breaches and cyberattacks effectively. They can ensure that roles and responsibilities are clearly defined, communication protocols are established, and procedures are tested regularly through tabletop exercises and simulations.

8. **Vendor Management:** Company Secretaries can monitor the vendor management process to ensure that third-party vendors and suppliers adhere to the organization's security standards. They can undertake due diligence evaluations, examine security procedures, and monitor vendor performance to reduce the risks associated with outsourcing.

9. **Continuous Improvement:** Company Secretaries can advocate for continuous improvement in cybersecurity practices and processes across the organization. They can facilitate regular reviews and assessments of security controls, benchmark performance against industry standards, and identify opportunities for enhancement.

10. **Crisis Communication:** In the event of a security problem or data leak, business secretaries can help manage crisis communication efforts. They can coordinate internal and external communication, interact with regulatory authorities and stakeholders, and reduce reputational harm through open and timely communication.

Company Secretaries can help ensure that digital transformation operations are done securely, thereby protecting the organization's assets, reputation, and stakeholders' interests.

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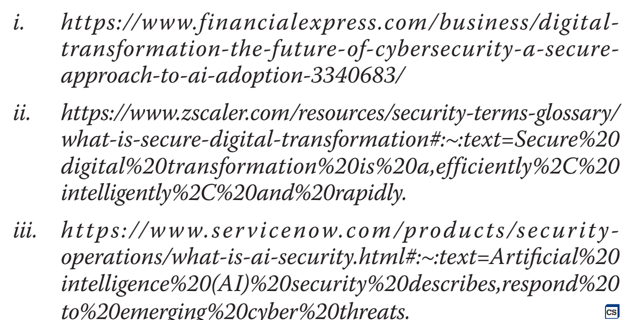

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Privacy Rights in Digital Sphere

The Digital Personal Data Protection Act, 2023

In the era of Digitalization, Data Protection & its Privacy is very crucial as now a days it is more likely to misuse of sensitive personal data for fraudulent activities and hacking. Hence, legislative framework, process, guideline, and penal provisions must be in place to reduce risk and happening of frauds.

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INTRODUCTION

Recently the world had celebrated Data Privacy Day on 28th January 2024. The main aim of the celebration is to raise awareness, promote privacy and best data protection practices. It is mostly celebrating in the United States, Canada, Nigeria, Israel and 47 European countries. This year the theme of the celebration was 'take control of your data'. The list doesn't include India as people still give less emphasize on Data Protection & Data Privacy in our country. However, in the era of Digitalization, Data Protection & its Privacy is very crucial as now a days it is more likely to misuse of sensitive personal data for fraudulent activities and hacking. Hence, legislative framework, process, guideline, and penal provisions must be in place to reduce risk and happening of frauds.

Eyeing towards world's requirement and standardization, our regulatory authorities are also on the line to regulate and give emphasis on this crucial topic to match footsteps with world's economies.

In this line, India enacts its new privacy law called "**The Digital Personal Data Protection Act, 2023**" for protection of personal data in August, 2023. It is an attempt to bring a harmonised data privacy regime in India for transparent and ethical use of Personal Data. It has been framed in such a manner that it legislates processing of digital personal data in a manner that recognizes both the right of individuals to safeguard their personal data and the need to process such personal data for lawful purposes. It is a global standard cyber law for India's Digital Economy with following salient features:

- **PROTECTIVE** as it protects Right to Privacy of Indian Citizens.
- **BROAD COVERAGE** as it covers Indian as well as overseas territories.
- **INCLUSIVE** as it covers personal data of individuals including Child and Disable Person.
- **ILLUSTRATIVE** as it illustrate certain concepts for better understanding.
- **PROCEDURAL** as it provides various dos and don'ts at numerous levels.
- **SHE/HER** first-time central law in India uses she/her pronouns while referring to individuals.

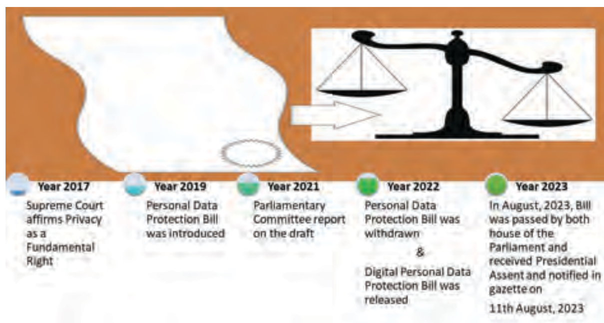
JOURNEY

The main purpose of enactment of Act is to provide legal framework to protect one of the fundamental right of citizens of India. On 24th August, 2017, the Supreme Court of India gave the Right to Privacy verdict in the case of Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors., where the Supreme Court held that the Right to Privacy is a fundamental right protected under Article 21 and Part III of the Indian Constitution.

After verdict, the Government had set up a data protection framework which started taking steps towards the creation of the data protection legislation and constitution of committee of experts to deliberate on a data protection framework for India under the chairmanship of Justice B.N. Srikrishna.

Initially, in the year 2018, the Personal Data Protection Bill, 2018 draft was released by the committee on which the Ministry of Electronics and Information Technology has sought feedback on the Draft Personal Data Protection Bill. The Bill was approved by the cabinet ministry of India in December, 2019 and it was tabled in Lok Sabha on 11th December 2019. It was then referred by the Joint Parliamentary Committee. The Personal Data Protection Bill was withdrawn in August, 2022 as it considered a "comprehensive legal framework" to regulate the online space, including bringing separate laws on data privacy, the overall Internet ecosystem, cybersecurity, telecom regulations, and harnessing non-personal data to boost innovation in the country.

On 18th November 2022, the Ministry of Electronics and Information Technology came up with the draft legislation of the data protection framework for public consultation. Bill passed by Lok Sabha on 7th August, 2023 and by Upper House i.e. Rajya Sabha on 9th August 2023. On 11th August 2023, Draupadi Murmu, President of India has given assent to the Bill which made it the Digital Personal Data Protection Act, 2023.



LEGAL FRAMEWORK

For implementation of the latest regulations in the business, the legal framework of the Act must be enlightened to the corporates. As an agent between Law Maker and Law Implementer, it is a legal duty of Company Secretary to ensure that proper framework Data Protection must be formed in the organization. Let us understand it categorically.

1. **KEY NOMENCLATURE**

The following are definitions of key words which are essential to understand the newly emerge Act, its applicability and coverage.

Section-2 (h) defines Data:

"data" means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means;

Section-2 (i) defines Data Fiduciary:

"Data Fiduciary" means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data;

Section 2(j) defines Data Principal:

"Data Principal" means the individual to whom the personal data relates and where such individual is-

(i) a child, includes the parents or lawful guardian of such a child;

(ii) a person with disability, includes her lawful guardian, acting on her behalf

Section 2 (k) defines Data Processor:

"Data Processor" means any person who processes personal data on behalf of a Data Fiduciary;

2. **APPLICABILITY & EXEMPTION- TERRITORIAL & MATERIAL SCOPE**

Section-3 of the Digital Personal Data Protection Act, 2023 deals with the territorial coverage under the Act. The Act has broad and inclusive coverage as it covers not only territory of India but also overseas territories where data processes which are related to Data Principals within the territory of India. Further, it covers personal data of all Data Principals which includes all individuals including Child and its Parents or guardian, persons with disability and lawful guardian acting on her behalf.

The Act apply-

(a) To the processing of digital personal data within the territory of India where the personal data is collected (i) in digital form; or (ii) in non-digital form and digitised subsequently.

(b) To processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India.

However, the Act is not apply in following cases.

(i) When personal data processed by an individual for any personal or domestic purpose; and

(ii) Personal data that is made or caused to be made publicly available by the Data Principal to whom such personal data relates; or any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

3. **OBLIGATION ON USE OF PERSONAL DATA**

Section-4 of the Act determines Grounds for processing personal data. It is the obligation of the

data user i.e. Data Fiduciary that it must be used only for the purpose for which data is provided by Data Principle.

Further, the Act also provides that it must be used only for a lawful purpose and for certain legitimate uses which are as follow.

(a) For the specified purpose for which the Data Principal has voluntarily provided her personal data to the Data Fiduciary, and in respect of which she has not indicated to the Data Fiduciary that she does not consent to the use of her personal data.

(b) For the State and any of its instrumentalities to provide or issue to the Data Principal such subsidy, benefit, service, certificate, licence or permit as may be prescribed, where–

(i) She has previously consented to the processing of her personal data by the State or any of its instrumentalities for any subsidy, benefit, service, certificate, licence or permit; or

(ii) Such personal data is available in digital form in, or in non-digital form and digitised subsequently from, any database, register, book or other document which is maintained by the State or any of its instrumentalities and is notified by the Central Government, subject to standards followed for processing being in accordance with the policy issued by the Central Government or any law for the time being in force for governance of personal data.

4. **CONSENT**

Section-6 of the Act talks about consent. It provides that

(1) The consent given by the Data Principal shall be free, specific, informed, unconditional and unambiguous with a clear affirmative action, and shall signify an agreement to the processing of her personal data for the specified purpose and be limited to such personal data as is necessary for such specified purpose.

(2) Any part of consent referred in sub-Section (1) which constitutes an infringement of the provisions of this Act or the rules made thereunder or any other law for the time being in force shall be invalid to the extent of such infringement.

(3) Every request for consent under the provisions of this Act or the rules made thereunder shall be presented to the Data Principal in a clear and plain language, giving her the option to access such request in English or any language specified in the Eighth Schedule to the Constitution and providing the contact details of a Data Protection Officer, where applicable, or of any other person authorised by the Data Fiduciary to respond to any communication from the Data Principal for the purpose of exercise of her rights under the provisions of this Act.

> The Ministry of Electronics and Information Technology came up with the draft legislation of the data protection framework for public consultation. Bill was passed by Lok Sabha on 7th August, 2023 and by Upper House i.e. Rajya Sabha on 9th August 2023. On 11th August 2023, Draupadi Murmu, President of India, gave consent to the Bill which made it the Digital Personal Data Protection Act, 2023.

(4) Where consent given by the Data Principal is the basis of processing of personal data, such Data Principal shall have the right to withdraw her consent at any time, with the ease of doing so being comparable to the ease with which such consent was given.

(5) The consequences of the withdrawal referred to in sub-Section (4) shall be borne by the Data Principal, and such withdrawal shall not affect the legality of processing of the personal data based on consent before its withdrawal.

(6) If a Data Principal withdraws her consent to the processing of personal data under sub-Section (5), the Data Fiduciary shall, within a reasonable time, cease and cause its Data Processors to cease processing the personal data of such Data Principal unless such processing without her consent is required or authorised under the provisions of this Act or the rules made thereunder or any other law for the time being in force in India.

(7) The Data Principal may give, manage, review or withdraw her consent to the Data Fiduciary through a Consent Manager.

(8) The Consent Manager shall be accountable to the Data Principal and shall act on her behalf in such manner and subject to such obligations as may be prescribed.

(9) Every Consent Manager shall be registered with the Board in such manner and subject to such technical, operational, financial and other conditions as may be prescribed.

(10) Where a consent given by the Data Principal is the basis of processing of personal data and a question arises in this regard in a proceeding, the Data Fiduciary shall be obliged to prove that a notice was given by her to the Data Principal and consent was given by such Data Principal to the Data Fiduciary in accordance with the provisions of this Act and the rules made thereunder.

5. **PRIVACY NOTICE**

Section-5 of the Act provides that every request made to a Data Principal under Section 6 for consent shall be accompanied or preceded by a notice given by the Data Fiduciary to the Data Principal, informing her,-

(i) The personal data and the purpose for which the same is proposed to be processed;

(ii) The manner in which she may exercise her rights right to withdraw her consent at any time and Right of grievance redressal.

(iii) The manner in which the Data Principal may make a complaint to the Board, in such manner and as may be prescribed.

6. **PERSONAL DATA OF CHILDREN**

While processing personal data of Children, Data Fiduciary must be considering following matters.

- Data Fiduciary shall not undertake such processing of personal data that is likely to cause any detrimental effect on the well-being of a child.
- A Data Fiduciary shall not undertake tracking or behavioral monitoring of children or targeted advertising directed at children.

7. **RIGHTS & DUTIES OF DATA PRINCIPAL**

Section-11 gives right to Data Principals to obtain from the Data Fiduciary to whom she has previously given consent for processing of personal data, upon making to it a request. Data Principal may ask following information:

- A summary of personal data which is being processed by such Data Fiduciary and the processing activities undertaken by that Data Fiduciary with respect to such personal data;
- The identities of all other Data Fiduciaries and Data Processors with whom the personal data has been shared by such Data Fiduciary, along with a description of the personal data so shared; and
- Any other information related to the personal data of such Data Principal and its processing, as may be prescribed.

Section-12 provides that A Data Principal shall have the right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent in accordance with any requirement or procedure under any law for the time being in force.

Section-13 provides that A Data Principal shall have the right to have readily available means of grievance redressal provided by a Data Fiduciary or Consent Manager in respect of any act or omission of such Data Fiduciary or Consent Manager regarding the performance of its obligations in relation to the personal data of such Data Principal or the exercise of her rights under the provisions of this Act and the rules made thereunder.

Section-14 provides that A Data Principal shall have the right to nominate, in such manner as may be prescribed, any other individual, who shall, in the event of death or incapacity of the Data Principal, exercise the rights of the Data Principal in accordance with the provisions of this Act and the rules made thereunder.

Section-15 of the Act categories duties of A Data Principal, namely-

(a) Comply with the provisions of all applicable laws for the time being in force while exercising rights under the provisions of this Act;

(b) To ensure not to impersonate another person while providing her personal data for a specified purpose;

(c) To ensure not to suppress any material information while providing her personal data for any document, unique identifier, proof of identity or proof of address issued by the State or any of its instrumentalities;

(d) To ensure not to register a false or frivolous grievance or complaint with a Data Fiduciary or the Board; and

(e) To furnish only such information as is verifiably authentic, while exercising the right to correction or erasure under the provisions of this Act or the rules made thereunder.

8. **CROSS BORDER DATA TRANSFER**

The Central Government may, by notification, restrict the transfer of personal data by a Data Fiduciary for processing to such country or territory outside India as may be so notified.

9. **EXEMPTIONS**

Section-17 of the Act provides that in certain circumstances, the provisions of the Act shall not apply. Which are as follows:

(a) The processing of personal data is necessary for enforcing any legal right or claim;

(b) The processing of personal data by any court or tribunal or any other body in India which

is entrusted by law with the performance of any judicial or quasi-judicial or regulatory or supervisory function, where such processing is necessary for the performance of such function;

(c) Personal data is processed in the interest of prevention, detection, investigation or prosecution of any offence or contravention of any law for the time being in force in India;

(d) Personal data of Data Principals not within the territory of India is processed pursuant to any contract entered into with any person outside the territory of India by any person based in India;

(e) The processing is necessary for a scheme of compromise or arrangement or merger or amalgamation of two or more companies or a reconstruction by way of demerger or otherwise of a company, or transfer of undertaking of one or more company to another company, or involving division of one or more companies, approved by a court or tribunal or other authority competent to do so by any law for the time being in force; and

(f) The processing is for the purpose of ascertaining the financial information and assets and liabilities of any person who has defaulted in payment due on account of a loan or advance taken from a financial institution, subject to such processing being in accordance with the provisions regarding disclosure of information or data in any other law for the time being in force.

10. **POWER TO BLOCK ACCESS OF DATA**

Under Section-37 of the Act, Central Government may advise to block access by the public to any information generated, transmitted, received, stored or hosted, in any computer resource that enables such Data Fiduciary to carry on any activity relating to offering of goods or services to Data Principals within the territory of India.

11. **PENAL PROVISIONS**

Breach of legal requirements under the Act may attract massive penalties on corporates. Corporates now on toes to fulfil legal obligations and acts ethically.

Sr. No.	Breach of provisions of this Act or rules made thereunder	Penalty
1	Breach in observing the obligation of Data Fiduciary to take reasonable security safeguards to prevent personal data breach under sub-Section (5) of Section 8.	May extend to Rs. 250 Crore
2	Breach in observing the obligation to give the Board or affected Data Principal notice of a personal data breach under sub-Section (6) of Section 8.	May extend to Rs. 100 Crore
3	Breach in observance of additional obligations in relation to children under Section 9.	May extend to Rs. 100 Crore
4	Breach in observance of additional obligations of Significant Data Fiduciary under Section 10.	May extend to Rs. 150 Crore
5	Breach in observance of the duties under Section 15.	May extend to Rs. 10,000/-
6	Breach of any term of voluntary undertaking accepted by the Board under Section 32.	Up to the extent applicable for the breach in respect of which the proceedings under Section 28 were instituted.
7	Breach of any other provision of this Act or the rules made thereunder.	May extend to Rs. 50 Crore

GOVERNING BODY

For the purposes of this Act, the Central Government shall be established a Board to be called the Data Protection Board of India. The Board shall have perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. The headquarters of the Board shall be at such place as the Central Government may notify.

The Board shall consist of and appointed Chairperson and members as the Central Government may notify. The Chairperson and other Members shall be a person of ability, integrity and standing who possesses special knowledge or practical experience in the fields of data governance, administration or implementation of laws related to social or consumer protection, dispute resolution, information and communication technology, digital economy, law, regulation or techno-regulation, or in any other field which in the opinion of the Central Government may be useful to the Board, and at least one among them shall be an expert in the field of law.

The composition, procedures, directories are also provided under the Act for functioning of the Board. The Central Government shall notify and compose the Board soon.

OPPORTUNITY OR OBLIGATION

Now the question arises that will this create one more obligation on corporates or is it an opportunity for adopting trusted framework to meet world Class business culture?

Of course, it is an additional compliance burden on data governance on the companies who are dealing with the personal data. Indian Corporates now mandatorily equips itself with latest requirements for data processing/

storing/mining/governing. Earlier, it was a procedural requirement to take consent for gathering personal data but now it is a legal and legislative requirement on corporates to comply with provisions of the Digital Personal Data Protection Act, 2023 while processing personal data.

However, looking on the opportunity side, corporates should now show their readiness with fulfilling legal requirements for processing personal data. They should adopt requisite in day-to-day business affairs, update their websites, Privacy Policy, Disclosures, Forms, etc. It will create positive impact on Stakeholders of the Company as these steps will direct company towards trust and reliability.

"Indian companies have been operating unchecked for a long time. They have been mining data without having any security or privacy obligations" says Mishi Choudhary, founder of Software Freedom Law Center.

Hence, this Act will obliged such corporates to think for data protections and privacy.

"While larger corporations may already have compliance measures in place, small and medium businesses nationwide may face unique challenges in meeting these requirements," says Dr. Sanjay Katkar, Jt. Managing Director, Quick Heal and SEQRITE.

However, it is always an opportunity for startups and small businesses to setup ethical, shielded, and reliable business structure for its stakeholders. There will also be a work opportunity for Data or Cyber Security Management Companies to empower businesses to navigate data protection regulations effectively.

IMPACT AND IMPLEMENTATION

In digital Era, Corporate must be organized and structured themselves with all latest legislations and framework which are prescribed. It is essential to update business models with latest government norms and legislation. Corporates must be aware of and comply with at least sectoral requirements applicable to them.

Now, Corporate needs to assess and build Data Privacy, identify Personal Data and need to take necessary steps to build framework, Policy, Grievance Mechanism also Evaluate and implement privacy technologies etc. for Personal Data Protection which they are processing Personal Data for business purposes.

The Act is applicable to almost all corporates as they use personal data in day-to-day affairs. However, the law impacted mainly Fintech, BFSI Sector, Tech Companies, HR Services, Healthcare, Internet Companies, etc. They must be ready to build mechanisms for data protection to stay out of massive penalties. Now, loopholes and liberal approach towards Data Protection and Privacy will be costlier affair for corporates.

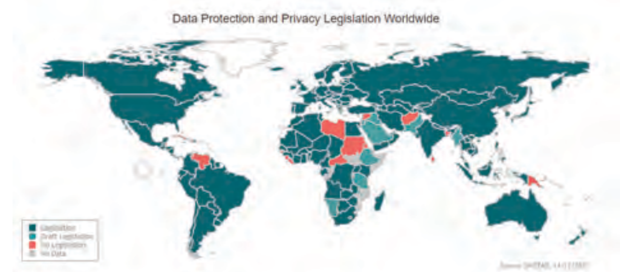
GLOBAL SCENARIO

The report of United Nations Conference on Trade and Development (UNCTAD) indicated following words on Data Protection and Privacy Legislation Worldwide in December, 2021:

"As more and more social and economic activities have place online, the importance of privacy and data protection is increasingly recognized.

Of equal concern is the collection, use and sharing of personal information to third parties without notice or consent of consumers. 137 out of 194 countries had put in place legislation to secure the protection of data and privacy.

Africa and Asia show different level of adoption with 61 and 57 percent of countries having adopted such legislations. The share in the least developed countries in only 48 percent."



CONCLUSION

To build high tech developed economy, it is essential to have shield for ethical procedures and confidential ensurance in the system. No doubt that the Digital Personal Data Protection Act, 2023 is landmark legislation and robust means to safeguard essentials and purpose of gathering of Personal Data in digital era. Seamless implication of the Act will contribute greatly to achieve target of $7 trillion economy.

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iii. *https://www.india-briefing.com/news/indias-digital-personal-data-protection-act-2023-key-provisions-29021.html.*

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Insurance Broking and its Compliances

Insurance Brokers Association of India ("IBAI") is the sole representative body of licensed Insurance Brokers recognised by the Insurance Regulatory and Development Authority of India (IRDAI). The Insurance Brokers shall have the word 'Insurance Broker'/ 'Insurance Brokers'/ 'Insurance Broking' in the name to reflect their line of activity and to enable the public to differentiate Insurance Brokers registered with the Authority from other non-registered Insurance related entities.

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INTRODUCTION

An Insurance Broker acts as a middlemen between Insurance Companies and people who are in search of purchasing insurance policies. They are experts who help people in buying the suitable insurance policies as per their needs and requirements. The Insurance Brokers also suggest and guide people about the nitty-gritties of the policies which are beyond the understanding of the layman.

Insurance Brokers are regulated by Insurance Regulatory and Development Authority of India ("IRDAI/Authority") and provides advice-giving services to their clients on the matters related to Insurance.

Insurance Brokers Association of India ("IBAI") is the sole representative body of licensed Insurance Brokers recognised by the Insurance Regulatory and Development Authority of India (IRDAI).

The Insurance Brokers shall have the word 'Insurance Broker'/ 'Insurance Brokers'/ 'Insurance Broking' in the name to reflect their line of activity and to enable the public to differentiate Insurance Brokers registered with the Authority from other non-registered Insurance related entities.

CATEGORIES OF INSURANCE BROKERS

There are five categories of Insurance Broker which are:

(i) Direct Broker (Life),

(ii) Direct Broker (General),

(iii) Direct Broker (Life & General),

(iv) Reinsurance Broker and

(v) Composite Broker.

NUMBER OF INSURANCE BROKERS

As per Annual Report published by IRDAI for the Financial Year 2022-23, the number of registered Brokers is 708 as on March 31, 2022. Out of this, the valid brokers stood at 562 and remaining 146 are not in force as on March 31, 2022. The 562 valid brokers comprise of 494 Direct Brokers, 63 Composite Brokers and five Reinsurance Brokers.

Total 76 new Certificate of Registrations (CoR) were issued during the period from April 01, 2021 to March 31, 2022 out of which 74 were Direct Insurance Brokers, one Composite Insurance Broker and one Reinsurance Broker. During the period, 166 Insurance Broker registrations were renewed.

INSURANCE BROKING COMPLIANCES

1. Capital Requirement for Insurance Brokers

Respective Insurance Broker is required to have a minimum paid-up capital of:

i. In Case Of Direct Broker- Rs. 75 Lakhs;

ii. In Case Of Reinsurance Broker- Rs. 4 Crore;

iii. In Case Of Composite Broker- Rs. 5 Crore.

2. Net-Worth Requirements for Insurance Brokers

The net-worth of an Insurance Broker shall at no time during the period of certificate of registration fall below:

i. Rupees Fifty Lakh for Direct Broker;

ii. 50% of the minimum capital requirements or contribution or equivalent specified under Regulation 19(1) for Reinsurance / Composite Broker.

3. Deposit Requirements for Insurance Brokers

Every Insurance Broker shall before the commencement of their business, deposit and keep deposited with any scheduled bank a sum equivalent to:

i. Rupees ten lakhs for Direct Broker;

ii. 10% of the minimum capital/ contribution specified under Regulation 19(1) for Reinsurance / Composite Broker in fixed deposit, which shall not be released to them without the prior written permission of the Authority.

4. Compliances of Various Laws

The Insurance Broker shall comply with IRDAI (Insurance Brokers) Regulations, 2018, Insurance Regulatory and Development Authority Act, 1999, Companies Act, 2013 or applicable act as per its constitution and, Circulars, Guidelines and any other instructions issued thereunder from time to time by the Authority.

5. Maintenance of Professional Indemnity (PI) Insurance

Category of insurance broker	Limit of indemnity
Direct Broker	Two times remuneration received at the end of every financial year subject to a minimum limit of rupees one crore and at least Rs 50 crore, if twice the remuneration limit is equal to or more than Rs 50 crore.
Reinsurance Broker	Two times remuneration received at the end of every financial year subject to a minimum limit of rupees four crore and at least Rs 75 crore, if twice the remuneration limit is equal to or more than Rs 75 crore.
Composite Broker	Two times remuneration received at the end of every financial year subject to a minimum limit of rupees five crore and at least Rs 100 crore, if twice the remuneration limit is equal to or more than Rs 100 crore.

Under Professional Indemnity Insurance it is to be noted that the un-insured excess in respect of each claim shall not exceed five percent of the capital employed by the insurance broker in the business and the AOA: AOY limit shall be 1:1.

Further, the retroactive date shall begin from the date of grant of license/ certificate of registration.

6. Filing of Returns With IRDAI

i. Every Insurance Broker shall on or before 15th of April / July/ October / January each year furnish to the Authority quarterly return.

ii. Every Insurance Broker shall before 31st October and 30th April each year furnish to the Authority the certificates duly certified by the Auditor along with half yearly return. (Certificate under No 1-A,1-B,I-C,1-E, 1-F)

iii. Insurance Brokers shall file periodical returns, without fail within the time specified, as per the formats/ returns prescribed under Authority's Business Analytical Project. Any failure to comply with this regulation without sufficient reason beyond 15 days shall attract penal action as specified under these regulations.

iv. Any false or wrong certification or concealment of facts in the certificates submitted to Authority shall attract penal action as specified under these regulations.

7. Appointment of Compliance Officer

i. In case of Reinsurance and Composite Brokers it is mandatory that the Insurance Broker shall have internal audit systems and designate a Compliance Officer who is an employee of the insurance broker.

ii. It is mandatory for an Insurance Broker who in a financial year earns more than rupees five crore remuneration (including reward) to have a designated Compliance Officer who will be responsible for the internal controls and systems.

Company Secretary can also act as Compliance Officer of Insurance Broking Company,

8. Reinsurance / Composite Brokers Sharing of Brokerage With A Foreign Broker for The Placement of Risks

The Reinsurance/Composite Brokers registered with the Authority shall not share more than 50% of the remuneration with the foreign Insurance Broker for the services obtained from them.

9. Remuneration and Reward to be Received By an Insurance Broker from an Insurer

i. For Direct Insurance Business:

The payment of remuneration and/or reward to an Insurance Broker by an Insurer shall be governed by the below three regulations notified by IRDAI vide Notification dated March 26, 2023:

a. IRDAI (Payment of Commission) regulation, 2023;

b. IRDAI (Expenses of Management [EOM] of Insurers transacting general or health insurance business) Regulations, 2023; and

c. IRDAI (Expenses of Management [EOM] of Insurers transacting life insurance business) Regulations, 2023 which has come into force with effect from April 1, 2023.

ii. For Reinsurance business–

As per market practices prevalent from time to time.

The settlement of accounts by Insurers in respect of remuneration of Insurance Brokers shall be done on a monthly basis and it must be ensured that there is no cross settlement of outstanding balances.

10. Risk Management Services: Insurance Broker Compliance

i. Insurance Brokers can charge client fees in lieu of its service to the client for Risk Management Service or other identical services which is not a percentage of premium or claim amount, as per the regulations and the Broker may undertake the activity for commercial risks only upon a written confirmation from the client.

ii. The Insurance Brokers are not permitted to receive remuneration and reward under IRDAI Regulations 2016 and fees for the same Risk Management Services.

11. Claim Consultancy

Insurance Brokers may undertake claims consultancy only for commercial lines of General Insurance Business, subject to certain conditions:

i. For claims not exceeding Rs.10 crore the Insurance Broker may undertake claims consultancy provided such claim does not emanate from a policy, which has been placed by the same Insurance Broker.

ii. Insurance Broker shall inform the Authority within 30 days of acceptance of such claims consultancy by providing details.

iii. For claims exceeding Rs. 10 crores the Insurance Broker may undertake claims consultancy with the prior approval of the Authority.

12. Board Approved Policies

The Insurance Brokers shall have the following policies:

i. Outsourcing Policy,

ii. Conflict Management Policy,

iii. Policy for Comparison and Distribution of Insurance Products,

iv. Grievance Redressal Policy,

v. Cyber Security Policy,

vi. Corporate Social Responsibility Policy if applicable,

vii. Business Continuity Policy,

viii. Anti-Money Laundering Policy,

The Insurance Brokers are not permitted to receive remuneration and reward under IRDAI Regulations 2016 and fees for the same Risk Management Services.

ix. Anti-Bribery and Anti-Corruption Policy,

x. Prevention of Sexual Harassment Policy,

xi. Any other policy to comply with provision of law.

13. Code of Conduct for Insurance Brokers

i. Every Insurance Broker shall abide by the Code of Conduct as specified in Schedule I –Form H of Broker Regulations.

ii. In case of a Composite Broker or a Reinsurance broker, he shall abide by the additional Code of Conduct specified in Schedule I – Form I of these regulations.

14. Internal Control and System

It is the responsibility of the Insurance Broker to ensure in place a proper internal audit system and that it is adequate for the business. In case of Reinsurance and Composite Brokers the Insurance Brokers must mandatorily have industrial audit systems.

15. Segregation of Insurance Money

i. The provisions of Section 64VB of the Act shall continue to determine the question of assumption of risk by an Insurer.

ii. In the case of reinsurance contracts, a fiduciary account need to be maintained to hold Reinsurance money. In these circumstances the money collected by the registered insurance broker shall be dealt with in the manner specified in Schedule II – Form U of Broker regulations.

16. Insurance Broker Compliance With Respect to Maintenance of Books of Account, Records, etc.

The Insurance Broker is required to maintain the following for each financial year:

i. A balance sheet or statement of affairs at the culmination of each accounting period and Profit and loss account.

ii. A statement on cash or fund flow- direct method.

iii. Any additional statement on the business of broking as per the need of the authority.

17. Ceiling on Business from Single Client

The business of the Insurance Broker shall be carried in such a manner that, not more than 50 percent of the remuneration shall emanate from any one client in a financial year.

18. Aggregate Holdings of Equity Shares or Contribution or Equivalent In The Insurance Broker By The Indian Promoter, Investor, Indian Investor And Foreign Investor As The Case May Be

Foreign Investors, including portfolio investors, shall not exceed such percent of limits as prescribed by Central Government.

19. Outsourcing of Activities By Insurance Broker

i. An Insurance Broker can outsource the activities as given in Schedule II - Form X of Broker Regulation based on a Board approved policy.

ii. IRDAI do not allow core activities to be outsourced.

20. Validity of Certificate of Registration

A Certificate of Registration once issued shall be valid for a period of three years from the date of issue, unless the same is suspended or cancelled.

21. Disclosures to the Authority

An Insurance Broker shall disclose to the Authority on their own any material change which has a bearing on their certificate of registration within 30 days of such change.

22. Co-Broking Agreement

i. Two or more registered insurance brokers can jointly handle the broking of insurance requirements of any client with the written consent of the client.

ii. Such a situation the registered insurance brokers shall enter into Terms of Business Agreement for providing insurance broking services to the specified client and the Agreement shall include, amongst other things, the manner defining the duties and responsibilities of each registered insurance broker, the manner of sharing of remuneration or fee among themselves, the reason for providing insurance broking services jointly IRDAI do not allow core activities to be outsourced.

23. Apointment of Principal Officer and Broker Qualified Person

i. "Principal Officer" means - an officer in an executive role designated as such for the purpose of performing the duties and responsibilities as specified in Broker regulations to carry out

the functions of an Insurance Broker and who shall be the Chief Executive Officer or a Whole time Director or Managing Director, Managing Partner or a Managing Trustee or such individual appointed / engaged exclusively to carry out the functions of an insurance broker.

ii. "Broker Qualified Person" means an individual who is an employee or Director of the Insurance Broker engaged in solicitation and procurement of Insurance Business and who has undergone training and passed the examination specified for them.

CONCLUSION

As per the Insurance Regulatory and Development Authority of India (IRDAI), India will be the sixth-largest insurance market within a decade, leapfrogging Germany, Canada, Italy and South Korea. Insurance market in India is expected to reach US$ 222 billion by 2026.

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ARTICLE

Artificial Intelligence for Digital Transformation-Genesis, Fictions, Applications and Challenges

AI involves the development of computer systems that can perform tasks that typically require human intelligence. These tasks include learning, reasoning, problem-solving, perception, language understanding, and decision-making. AI technologies, such as machine learning and natural language processing, play a crucial role in driving digital transformation by automating processes, extracting insights from data, and enabling intelligent decision-making. The synergy between digital transformation and AI is powerful, as AI technologies often serve as the driving force behind the automation, optimization, and intelligence required for successful digital transformations in organizations across various industries.

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INTRODUCTION

Artificial Intelligence (AI) has emerged as a transformative force that is reshaping the way businesses operate and interact in the digital age. Digital transformation, the integration of digital technologies into all aspects of a business, is crucial for staying competitive and relevant in today's rapidly evolving landscape. AI, as a key enabler of digital transformation, plays a pivotal role in driving innovation, enhancing efficiency, and unlocking new possibilities across various industries.

Digital transformation refers to the integration of digital technologies into all aspects of an organization, fundamentally changing how it operates and delivers value to its customers. It involves the use of digital tools, technologies, and processes to streamline operations, enhance customer experiences, and drive innovation. The goal of digital transformation is to leverage technology to create a more agile, efficient, and competitive organization.

AI involves the development of computer systems that can perform tasks that typically require human intelligence. These tasks include learning, reasoning, problem-solving, perception, language understanding, and decision-making. AI technologies, such as machine learning and natural language processing, play a crucial role in driving digital transformation by automating processes, extracting insights from data, and enabling intelligent decision-making.

The synergy between digital transformation and AI is powerful, as AI technologies often serve as the driving force behind the automation, optimization, and intelligence required for successful digital transformations in organizations across various industries. Together, they empower organizations to stay competitive, innovate, and meet the evolving needs of the digital age.

KEY COMPONENTS OF DIGITAL TRANSFORMATION INCLUDES

- **Technology Adoption:** Embracing emerging technologies such as cloud computing, the Internet of Things (IoT), big data analytics, and mobile applications to improve processes and decision-making.
- **Data-driven Decision Making:** Harnessing the power of data to gain insights, make informed decisions, and personalize customer experiences.
- **Customer-Centric Approach:** Focusing on understanding and meeting customer needs through digital channels, personalized interactions, and enhanced user experiences.
- **Agile Culture:** Cultivating a culture of innovation, adaptability, and collaboration to respond quickly to market changes and customer demands.
- **Automation:** Implementing process automation to streamline workflows, reduce manual tasks, and enhance operational efficiency.

KEY ASPECTS OF AI IN THE CONTEXT OF DIGITAL TRANSFORMATION INCLUDES

- **Machine Learning:** Enabling systems to learn from data and improve performance without explicit programming. This is crucial for tasks such as predictive analytics and pattern recognition.

- **Natural Language Processing (NLP):** Allowing machines to understand, interpret, and generate human-like language, facilitating communication between humans and machines.
- **Automation and Robotics:** Implementing AI-powered automation to perform repetitive tasks, increasing efficiency and reducing errors.
- **Cognitive Computing:** Developing systems that can simulate human thought processes, enabling more advanced problem-solving and decision-making capabilities.
- **Data Analytics:** Leveraging AI algorithms to analyze large datasets, extract meaningful insights, and support data-driven decision-making.

DIGITAL TRANSFORMATION: A PARADIGM SHIFT

Source: *Compiled by Researcher*

Digital transformation refers to the integration of digital technologies into various aspects of an organization's operations, processes, and strategies. It represents a fundamental shift in how businesses and other entities leverage technology to enhance their overall performance, deliver value to customers, and stay competitive in a rapidly evolving landscape. This transformation often involves reimagining existing processes, adopting new technologies, and fostering a culture of innovation.

Technological Integration:

Emergence of New Technologies: Digital transformation involves adopting emerging technologies such as artificial intelligence, machine learning, the Internet of Things (IoT), blockchain, and cloud computing.

Integration of Data and Analytics: Organizations leverage data analytics to gain insights, make informed decisions, and improve operational efficiency.

Customer-Centric Approach:

Enhanced Customer Experience: Digital transformation aims to provide a seamless and personalized experience for customers through digital channels.

Data-Driven Decision-Making: Organizations use customer data to understand preferences and behaviors, enabling targeted marketing and improved customer satisfaction.

Agile and Innovative Culture:

Adaptability and Flexibility: Digital transformation requires a shift towards an agile and adaptable organizational culture that embraces change and innovation.

Continuous Improvement: The focus is on continuous improvement through rapid iteration and learning from both successes and failures.

Process Optimization:

Automation and Efficiency: Digital transformation often involves automating manual processes to increase efficiency and reduce operational costs.

Streamlining Workflows: Organizations redesign workflows to eliminate bottlenecks and optimize processes for better performance.

Data Security and Privacy:

- *Cybersecurity Measures:* With increased digitalization, there is a heightened emphasis on cybersecurity measures to protect sensitive data from potential threats.
- *Compliance and Regulation:* Organizations must navigate and comply with various data protection regulations to ensure the ethical and legal use of data.

Collaboration and Connectivity:

- *Digital Collaboration Tools:* Adoption of digital tools and platforms that facilitate collaboration among employees, partners, and customers.
- *Global Connectivity:* Digital transformation enables organizations to operate on a global scale, connecting with stakeholders around the world.

Strategic Decision-Making:

- *Data-Driven Decision-Making:* Organizations leverage data analytics and business intelligence for strategic planning and decision-making.
- *Real-time Insights:* Access to real-time data allows for quicker responses to market changes and customer demands.

Ecosystem Partnerships:

- **Collaboration with Tech Ecosystem:** Organizations often form partnerships and collaborations with other entities in the technology ecosystem to access complementary expertise and resources.

Digital transformation is not just about adopting new technologies; it represents a comprehensive shift in how organizations operate, innovate, and deliver value. It involves a holistic approach that encompasses technology, culture, processes, and customer-centricity to stay relevant and competitive in the digital age.

ARTIFICIAL INTELLIGENCE: THE COGNITIVE POWERHOUSE

Source: *Compiled by Researcher*

Artificial intelligence involves creating computer systems that can understand natural language, recognize patterns, and make decisions. AI technologies like machine learning and deep learning have transformed all industries. AI's ability to process massive amounts of data quickly, find hidden patterns, and predict has made it an invaluable asset in Digital Transformation.

Processing Power:

AI systems possess immense computational capabilities, allowing them to process and analyze vast amounts of data at speeds far surpassing human capabilities. This enables quick decision-making and problem-solving.

Learning and Adaptation:

Machine Learning (ML), a subset of AI, enables systems to learn from data and experiences, adapting their behavior over time. This learning process allows AI to continually improve and optimize its performance without explicit programming.

Pattern Recognition:

AI excels at recognizing complex patterns and trends within datasets that may be too intricate or extensive for humans to analyze effectively. This capability is particularly valuable in fields such as finance, healthcare, and cybersecurity.

Natural Language Processing (NLP):

NLP allows AI systems to understand, interpret, and generate human-like language. This is evident in virtual assistants, chatbots, and language translation services, enhancing communication and accessibility.

Computer Vision:

AI-driven computer vision enables machines to interpret and make decisions based on visual data. This technology is utilized in facial recognition, autonomous vehicles, medical imaging, and various other applications.

Automation and Robotics:

AI enables the automation of routine and repetitive tasks, freeing up human resources for more complex and creative endeavors. In manufacturing, logistics, and other industries, robots and AI-driven systems work together to increase efficiency.

Personalization:

AI algorithms analyze user preferences and behaviors to provide personalized experiences. This is evident in recommendation systems for streaming services, e-commerce platforms, and targeted advertising.

Problem Solving:

AI excels at solving complex problems by simulating different scenarios and optimizing solutions. This is particularly valuable in fields such as finance, logistics, and scientific research.

Decision Support:

AI systems provide valuable insights and recommendations to aid decision-making processes. This is seen in business analytics, healthcare diagnostics, and strategic planning.

Continuous Innovation:

The cognitive powerhouse of AI lies in its ability to continuously innovate. Researchers and developers are constantly pushing the boundaries of AI capabilities, leading to advancements in areas such as deep learning, reinforcement learning, and generative models.

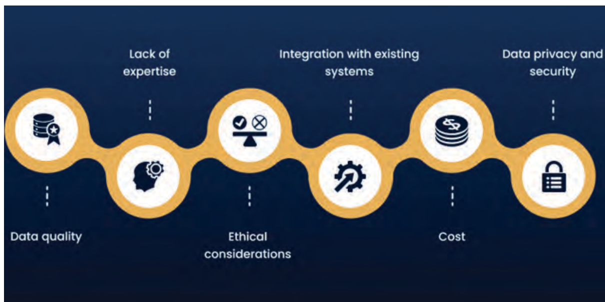
While AI's cognitive prowess brings about numerous benefits, it also raises ethical considerations, including concerns about bias, transparency, and accountability. As AI continues to evolve, striking a balance between harnessing its power for positive impact and addressing potential challenges becomes crucial.

WHY AI IS IMPORTANT TO DIGITAL TRANSFORMATION?

AI drives innovation and efficiency in modern businesses, enabling digital transformation. AI is helping organizations transform in the digital age. AI's ability to automate repetitive tasks, analyze massive amounts of data for insights, and make data-driven decisions transforms digital businesses. Personalized customer experiences, trend prediction, and complex process optimization are essential to a successful digital transformation. AI also helps companies innovate and gain a competitive edge by developing cutting-edge apps and services. AI empowers organizations to adapt, grow, and thrive in the digital age.

Source: *Compiled by Researcher*

HOW AI WORKS WITH THE CLOUD TO EMPOWER DIGITAL TRANSFORMATION?



Source: *Compiled by Researcher*

When combined, AI and the cloud empower digital transformation. AI and the cloud drive this process:

Scalability and Flexibility: The cloud supports AI applications. AI tasks like deep learning model training require massive computing resources, which organizations can access on demand. This scalability allows AI solutions to grow with a digital transformation strategy.

Data Storage, Management, and Accessibility: The cloud makes data accessible. Data is essential to AI, and the cloud is a central repository for diverse datasets. This accessibility lets AI algorithms access and analyze data in real-time, making data-driven decision-making essential to digital transformation.

Cost-Efficiency: Pay-as-you-go cloud services let companies avoid large infrastructure investments. Cloud-based AI training and deployment saves money on hardware and infrastructure.

Global Reach: Cloud providers have global data centers. This global reach allows AI-powered applications to be deployed closer to end-users, reducing latency and ensuring a seamless experience for customers and employees worldwide.

AI-as-a-Service: Cloud providers offer AI as platforms with pre-built AI models and tools for natural language processing and computer vision. This makes AI adoption easier for organizations without in-house expertise.

Security and Compliance: Leading cloud providers invest heavily in security and compliance certifications to ensure AI-powered cloud applications meet industry standards and regulations. This is especially important for compliance-intensive industries like healthcare and finance.

CHALLENGES OF AI IN DIGITAL TRANSFORMATION

Data Privacy and Security:

Challenge: AI systems rely on vast amounts of data, raising concerns about privacy and security breaches.

Mitigation: Implement robust data encryption, compliance with regulations (e.g., GDPR), and ethical data usage practices.

Skill Gap:

Challenge: There is a shortage of skilled professionals capable of developing and managing AI systems.

Mitigation: Invest in training and upskilling programs, collaborate with educational institutions, and leverage external expertise.

Ethical Considerations:

Challenge: AI decisions may have ethical implications, such as bias in algorithms or unintended consequences.

Mitigation: Establish ethical guidelines, conduct regular audits of AI systems, and promote transparency in decision-making processes.

Integration with Existing Systems:

Challenge: Integrating AI with legacy systems can be complex and may require significant adjustments.

Mitigation: Develop a well-thought-out integration strategy, gradually phasing in AI components while ensuring compatibility.

Regulatory Compliance:

Challenge: Compliance with existing and evolving regulations poses a challenge, especially in highly regulated industries.

Mitigation: Stay informed about regulatory changes, engage with regulatory bodies, and design AI systems with compliance in mind.

Costs and ROI Concerns:

Challenge: Implementing AI technologies can be expensive, and organizations may struggle to demonstrate a clear return on investment (ROI).

Mitigation: Conduct thorough cost-benefit analyses, start with smaller pilot projects, and focus on long-term strategic gains.

Explainability and Transparency:

Challenge: AI models, especially deep learning models, are often viewed as "black boxes" with limited explainability.

Mitigation: Prioritize the use of interpretable AI models, document model decisions, and provide transparency in AI-driven processes.

Resistance to Change:

Challenge: Employees and stakeholders may resist the cultural and operational changes associated with AI implementation.

Mitigation: Implement change management strategies, communicate the benefits of AI, and involve employees in the transformation process.

Addressing these challenges is essential for successful AI-driven digital transformation. Organizations that navigate these issues effectively can unlock the full potential of AI in reshaping their operations and achieving strategic goals.

NOW IT'S ABOUT THE FUTURE OF AI IN DIGITAL TRANSFORMATION

The future of AI in digital transformation is destined for great change and integration. AI will become even more important in transforming businesses and customer interactions. AI's massive data processing will enable hyper-personalization, which will redefine customer experiences.

> AI systems possess immense computational capabilities, allowing them to process and analyze vast amounts of data at speeds far surpassing human capabilities. This enables quick decision-making and problem-solving.

Source: *Compiled by Researcher*

Real-time decision-making supported by AI analytics will become the norm as AI-driven automation streamlines operations.

AI will disrupt healthcare, manufacturing, and finance with personalized medicine and predictive maintenance. AI ethics and regulation will be crucial. AI and quantum technology promise groundbreaking solutions to complex problems as quantum computing advances. Innovative AI in digital transformation will drive efficiency, sustainability, and competitiveness in a changing digital landscape. Companies that embrace AI's potential will thrive in this transformative era.

AI-Driven Automation: AI will automate routine and manual tasks across industries, helping companies optimize operations. This will boost efficiency and save money, freeing up workers for strategic and creative tasks.

Hyper-Personalization: AI will power highly personalized customer experiences. Companies will use AI to analyze massive amounts of data and customize products, services, and marketing campaigns to boost customer satisfaction and loyalty.

AI-Enhanced Decision-Making: AI will improve its ability to process and analyze large datasets, allowing organizations to make real-time, informed decisions. This improves strategy creation and execution.

Edge Computing and AI: Deploying AI algorithms directly on devices or at the network edge will become more important. This will improve real-time decision-making, latency, and autonomous vehicle and IoT support.

AI Ethics and Regulation: AI adoption will increase ethics and regulation. Organizations must make AI systems fair, transparent, and accountable, and governments may regulate AI use.

SO... WHAT IMPLICATIONS DOES AI BRING TO THE WORKPLACE?........

Imagine arriving at your office desk and a machine listing your tasks and meetings for the day. This fourth industrial revolution, led by Digital Transformation, is taking us there.

AI, automation, and machine learning break barriers in all industries, but businesses must embrace them and realize their benefits. As AI becomes more integrated into work processes, its benefits will become clearer. Companies can free up human capital to work on more interesting projects by automating tasks. Smarter and AI-compatible business processes will let humans focus on more challenging and creative tasks. AI processes can reduce repetitive work for highly qualified workers, who are the backbone of any organization. AI giants like Google, Microsoft, Facebook, and Amazon are investing $100 million in AI development. Google launched Duplex, a virtual assistant that can help you with daily tasks, to promote its upcoming release.

CONCLUSION

In conclusion, AI and the cloud enable digital transformation by providing computational power, data accessibility, scalability, and cost-efficiency. It allows organizations to fully utilize AI to create innovative solutions, improve decision-making, and provide seamless customer experiences, all essential to digital transformation. AI will become more integrated into business and society as it matures, opening new opportunities and solving complex problems. Organizations must stay agile, invest in AI research and development, prioritize ethics, and adapt to a rapidly changing technological landscape to fully leverage AI in digital transformation.

AI and digital transformation are pivotal in shaping the future of industries and societies. The responsible development of AI, coupled with a strategic and well-executed digital transformation, can lead to enhanced efficiency, innovation, and improved experiences for individuals and businesses. However, it's essential to address challenges and ethical considerations to ensure these technologies benefit humanity as a whole.

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ARTICLE

B-Corporations: A New Initiative For Sustainability

B-Corps seek to strike a fine balance between profit and purpose by addressing pressing social and environmental issues, marking a significant departure from conventional business corporations' focusing exclusively on financial results. Being the change we all wish to see in the world, valuing people and the community, and minimising harm while maximising gains are all tenets of the B-Corps movement. B-Corps genuinely represent Triple P Pyramid.

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INTRODUCTION

The goal of sustainability and inclusion is of vital importance for the entire world. Company's impact on its all stakeholders known as B Impact Assessment (BIA) struggling with climate change, environmental degradation, and growing socio-economic disparities. The United Nations developed 17 Sustainable Development Goals (SDGs) few years back to deal with these problems. For achieving the goals of inclusion and sustainability, any economic policy must prioritise social justice with rapid economic growth. Sustainable growth requires focussed attention to the "triple bottom line" of financial viability, environmental conservation, social justice and equity, and human capital development.

High growth rates that cause severe damage to the environment and widen economic gaps are unsustainable over the long term. Social and economic well-being are inextricably linked, as shown by the premise that poverty anywhere is a threat to prosperity everywhere. Therefore, the priority is now on achieving sustainable growth that safeguards the demands of future generations while still meeting the needs of the current generation.

The emergence of B-Corps, short for "Benefit Corporations," has caused a dramatic shift in the way businesses are being run. B-Corps are businesses that prioritise sustainability, social responsibility, and financial success; while conventional business firms often prioritise financial success over social and environmental well-being, B-Corps employ their resources to tackle these pressing issues. Certified B-Corps have satisfied the rigorous standards for social and environmental performance, transparency, and legal accountability. They have made it clear that they are focused on benefiting all stakeholders, not just shareholders.

B-Corps recognise the interdependence of all living things and the needs of future generations, place a premium on the value of people and community, and work to minimise harm while achieving gain. B-Corps seek to transform corporations into responsible and positive forces for society by abandoning resource-intensive and exploitative practices.

B-Corp certification is a rigorous third-party certification process that evaluates an organization's impact on all stakeholders, including governance, employees, the community, customers, and the environment. Becoming B-Certified is voluntary but demonstrates commitment to excellence in areas such as social responsibility, environmental consciousness, and transparency. B-Corps must recertify every three years in order to preserve their status.

B-Corps have many benefits, including better brand recognition, larger market share, higher exports and a more trustworthy image among consumers. B-Corps also help to protect the rights of their employees, customers, and local communities while simultaneously reducing environmental damage. The concept of a "B-Corp" represents the philosophy of corporate social responsibility in letter and spirit as it also addresses the issues of social costs & public goods.

More than 6,000 certified B-Corps now operate in over 80 countries and in a wide range of economic sectors, demonstrating the growing & widespread interest in this concept. The number of inclusive and environmentally

conscious B-Corps in India is also growing gradually. Businesses like eKutir, Caspian Impact Investment Adviser Pvt. Ltd., and SAGE Sustainability are just a few examples.

THE NEED FOR SUSTAINABLE & INCLUSIVE GROWTH

Sustainability and inclusivity are two of today's most currency concepts. We have no choice but to consider and take prompt action for the sustainable & inclusive growth in the light of climate change, environmental degradation, constantly increasing levels of carbon emission, and pollution of all types (water, soil, and air). The United Nations Organisation (UNO) has established 17 sustainable development goals (SDGs) that relate to sustainable and equitable growth in various ways. It is common knowledge that the goals of any economic strategy include both rapid growth and economic stability, as well as rapid growth with social justice. The ultimate goal of any society is to achieve a pace of growth that is sustainable over the long term and to distribute the benefits of the growth fairly among its all members. We need to consider the triple bottom line (Planet, People, and Profit) if we want to obtain & preserve sustainably. That is to say, the progress shouldn't come at the expense of people and the planet. For this, we must not just take into account the financial profitability but also the social profitability it can bring in. In this context, "social profitability" refers to the practice of protecting & promoting the interests of all corporate stakeholders instead of stockholders alone.

The four components of sustainability are :

(i) Economic viability;

(ii) Environmental protection;

(iii) Social justice & equity; and

(iv) Development of human capital.

High environmental deterioration (which leads to climate change crisis) and vast socio-economic inequities are incompatible with long-term high growth rates. The spread of poverty in any region threatens economic growth everywhere. Long-term economic growth is impossible without safeguarding both natural capital (resources and environment) and human capital. Thus, in modern times, a sustainable growth rate is prioritised over a rapid one. Economic growth must be sustainable in the long run, protecting not just the interests of the current generation, but also of future generations to come. The goal of sustainability is to find out the sweet spot between economic and social profitability, taking into account the full social cost of expansion rather than just its economic costs (both explicit and implicit costs).

Objectives

1. To examine the critical importance of sustainability and inclusiveness in contemporary economic and social contexts.
2. To explore the interplay between economic growth, environmental protection, social justice, and human capital development for a more equitable and sustainable future.

Significance

The significance of this study lies in its exploration of the urgent need for sustainable and inclusive growth in the face of pressing global challenges such as climate change, environmental degradation, and socioeconomic disparities. This research intends to provide useful insights for politicians and businesses in their efforts to promote a more equitable and environmentally responsible future by emphasising the significance of finding & striking a trade-off between economic profitability and social well-being.

Methodology

The methodology employed in this study encompasses diverse literature reveiw, including case studies, quantitative analysis, qualitative research, and exploratory investigations. These studies provide for a thorough investigation of the B Corp certification's many facets and its effects on sustainability, society, environmental performance, and commercial success. These studies offer insightful knowledge about the efficacy, constraints, and implications of B Corp certification in various organisational and geographic contexts through a combination of data gathering and analytic methodologies.

CONCEPT OF B-CORPORATIONS (B-CORPS)

Businesses are now seen less as the source of social and environmental problems and more as the catalyst agents of change that might ameliorate them. This revised viewpoint recognises that profit maximisation is not the only legitimate objective of business. There is a pressing call for businesses to provide social and environmental benefits in addition to financial ones, striking a balance between profit and purpose. B-Corps, in contrast to conventional firms whose primary motivation is financial prosperity, prioritise the "triple bottom line" strategy, which considers the impact on the people, planet and profit. This is a departure from the common belief that businesses exist just to maximise profit in contrast to social good. The concept of "B-Corps," aim to maximise profits while simultaneously is ground-breaking.

Certified B-Corps are businesses that have demonstrated their commitment to the highest levels of verified social and environmental performance, public transparency, and legal accountability. To prove their commitment for improving social and environmental performances and using business as a force for good to society, they must pass a rigorous certification process. This is consistent with the emerging global view of business as a generator of societal well-being. B-Corporations are for-profit businesses with a social environmental concerns in addition to financial returns for shareholders. They represent a paradigm shift in corporate practices, wherein companies increasingly invest in social and environmental good together with their own growth.

Philosophy of B-Corps

B-Corps are organisations committed to conducting business in a manner that is both more socially and environmentally responsible. The following guiding principles are the core of the B-Corp philosophy:

1. **Being the Change:** B-Corps uphold the Gandhian tenet that they must set the best possible example by being the catalyst of change they want to see in the world. It indicates that enterprises should actively try to improve the world around them rather than focusing just on maximising profit in this context.
2. **People and Place Matter:** According to B-Corps, companies should take into account both the welfare of their employees and the communities in which they conduct business. The significance of treating co-workers, clients, and the community with respect and consideration is emphasised by this idea.
3. **Do No Harm, Benefit All:** B-Corps aim to reduce any unfavourable effects that their operations might have on the community and the environment. They simultaneously work to make a difference by developing goods and putting forth strategies that advance the social and environmental well-being. This rule emphasises the notion that companies may be a force for good to all concerns.
4. **Interdependence and Responsibility:** B-Corps understand that we are all interconnected and that our actions have an impact not only on the present generation but also on future generations. This emphasises the notion that organisations should function with a long-term view, taking the requirements of both the present and the future generations into consideration.

The fundamental tenet of the B-Corps ideology is a break from the conventional profit-driven corporate paradigm and to operate them with new philosophy. B-Corps are devoted to weighing the effects of their decisions on all stakeholders rather than just the interests of their shareholders. The emphasis on sustainability and inclusivity in this context signifies a fundamental shift in the approach of business.

B-Corps seek to substitute ethical, constructive, and socially useful corporate practices with resource-intensive and exploitative ones. Profitability and the welfare of individuals, groups, and the environment are also priorities for them. By following these guiding principles, B-Corps strive to create an inclusive and sustainable model of economic growth, connecting their interests with the more general objectives of improving the world for all.

B-Certification

A company's influence on all stakeholders is assessed using the B-Corp accreditation, a voluntary third-party certification that emphasises both social, environmental responsibility and profit. A more thorough explanation of the B-Corp certification procedure is provided below:

1. **Voluntary Certification:** Obtaining B-Corp certification is not mandatory. Instead, they voluntarily decide to have B-Certification from B-Lab, an impartial third party assesses their practices and make the findings of the evaluation public.
2. **B-Impact Assessment (BIA):** The B Impact Assessment, sometimes known as the BIA, is the crux of the certification procedure. Questions are included in this examination in the following five categories: governance, employees, community, customers, and environment. There are 150 questions in each of these categories, and an organisation must provide honest and open responses to all questions.
3. **Minimum Score Requirement:** To become a B-Corp, a business must receive at least 80 points on the BIA. The company's dedication to upholding specific social and environmental criteria is reflected in this score.
4. **Open and Transparent Reporting:** Businesses are required to offer thorough and truthful responses to the BIA's questions. B-Lab has the right to ask for clarification, if they feel that any response is inadequate or confusing. In order to confirm the company's assertions, B-Lab may also go directly to the company's locations.
5. **Accountability to Stakeholders:** One of the essential components of B-Corp certification is the firm's resolve to alter its corporate governance structure in order to become more accountable to all stakeholders, not just shareholders.
6. **Public Availability:** After a company is certified, its B-Corps page on the B-Lab website makes the certification publicly available. Consumers and other stakeholders can make educated decisions about which companies correspond with their values, thanks to this transparency.
7. **Re-certification Every Three Years:** B-Corps are required to recertify every three years. By doing this, the business is guaranteed to uphold the high criteria of social and environmental performance established by B-Lab.
8. **Holistic Evaluation:** Being certified as a B-Corp involves more than just social and environmental concerns. It adopts a comprehensive strategy by including teams and departments from across the organisation. This thorough assessment involves a study of any potential public complaints and probable site visits, as well as documentation of the business strategy, operations, corporate structure, and work processes of the company.
9. **Business Value Society and Environment:** B-Corp accreditation is a way for companies to show that they value society and the environment as a fundamental component of their business model. This dedication may have a number of advantages, including bringing in more clients who favour socially conscious

businesses, luring in and keeping engaged employees who share these ideals, and even enhancing overall business performance and growth.

In nut-shell, the B-Corp certification process is rigorous and goes beyond conventional profit-driven company strategies. Companies are encouraged to put the needs of all stakeholders first and to show that they are committed to social and environmental responsibility. It represents a company's commitment to acting as a force for good in the world with an emphasis on openness, responsibility, and long-term sustainability.

BENEFITS OF B-CORPS

Beyond financial gains, B-Corps have provided benefits to all stakeholders including the society and the environment. The following are some of the main advantages of B-Corps:

1. **Enhanced Brand Value:** A company's commitment to social and environmental responsibility is demonstrated by B-Corp certification. This dedication raises the company's and its goods brand value. Customers are informed that the business is committed to changing the world for the better and they will be getting eco-friendly products.

2. **Increased Market Share:** B-Corp certification might draw in a committed clientele, increasing market share. Customers are more likely to select goods and services from businesses they believe to be socially conscious and responsible.

3. **Global Reach and Exports:** Companies can broaden their reach and venture into global markets with the goodwill of a B-Corp certification. In international markets where ethical business practices are highly respected, a dedication to sustainability and social responsibility can be an effective selling factor.

4. **Improved Reputation and Goodwill:** B-Corps in general have a good public image and reputation. This goodwill not only influences clients but also a larger neighbourhood. It may result in closer linkages with neighbourhood communities and an improvement in public opinion.

5. **Ecological Impact:** B-Corps make an effort to lessen their adverse environmental impact. This results in less pollution and resource use, improving the sustainability of the planet.

6. **Workers Well-Being:** B-Corps put their employees' welfare first. This may result in a staff that is more motivated and dedicated, besides being improved rates of employee's satisfaction and their retention. Employee happiness can have a favourable effect on creativity and productivity of the organisation.

7. **Community Benefits:** B-Corps frequently take an active role in their local community, lending assistance to their projects and having a beneficial social influence. This may involve fostering a sense of community involvement supporting charity activities, and creating jobs.

> B-Corps recognise the interdependence of all living things and the needs of future generations, place a premium on the value of people and community, and work to minimise harm while achieving gain. B-Corps seek to transform corporations into responsible and positive forces for society by abandoning resource-intensive and exploitative practices.

8. **Legal Commitment to Stakeholders:** B-Corps are obligated by law to take into account the interests of all parties, not only shareholders. This commitment makes the corporation more accountable to a wider variety of stakeholders by ensuring that it works with a wider social and environmental perspective.

9. **Real Corporate Social Responsibility (CSR):** True corporate social responsibility is embodied in a genuine way in B-Corps concept. Instead of just paying lip services to these values, they approach social and environmental issues from a holistic perspective.

10. **Attracting Talent:** B-Corps frequently have an easier time luring top talent who are driven by an organization's dedication to creating a positive impact. This may result in a workforce that is more competent and motivated.

In conclusion, B-Corps work to be the change agent by putting society, the environment, and all other stakeholders first instead of financial shareholders only. Their dedication to these values can have a variety of advantages, from a stronger brand to a greater good influence on the world. It takes a comprehensive socially responsible approach to business and deals with some of the most serious issues that our global society is currently facing.

PRESENT POSITION OF B-CORPS

Since its introduction in 2007, the idea of B-Corps has acquired pace and recognition on a global scale. The number of accredited B-Corps has been continuously rising as per latest reference of December 2022, demonstrating a growing commitment to social and environmental responsibility among enterprises worldwide. Here is an overview of where B-Corps stand right now:

- **Global Presence:** B-Corps are present in more than 80 countries, with over 6,000 accredited B-Corps. These businesses operate in a variety of sectors, including technology, banking, and the fashion and food industries.

- **Prominent Examples:** Many well-known companies have achieved B-Corp certification. These include well-known brands including King Arthur Flour, Patagonia, Eileen Fisher, Warby Parker, and Ben & Jerry's. For others trying to combine commercial success with social and environmental responsibility, these businesses offer as models.

- **Expansion and Growth:** The number of B-Corps receiving certification is consistently rising. As their reputation and capacity to have a positive impact on the society, more businesses are realising the importance of B-Corp accreditation.

- **Global Reach:** B-Corps are active across the globe and have a significant impact on social and environmental responsibility. This broad reach aids in tackling a variety of regional and international problems.

- **Challenges in acceptance:** Although B-Corps are becoming more and more well-known globally, their acceptance in some nations may be slower. India has a very small number of certified B-Corps till date, but there is much room for expansion as more businesses realise to value social and environmental responsibility.

- **Diverse Industries:** The fact that B-Corps operate in a variety of sectors shows that the idea is not restricted to just one industry. These accredited businesses are found in a variety of industries, including agriculture, technology, finance, and more, proving that organisations from different backgrounds can commit to ethical business practices.

- **Indian B-Corps:** There are a small number of Corporation in India those who got B-Corp certification. Among them some prominent B-Corps are eKutir, Caspian Impact Investment Adviser, SAGE Sustainability, India Village Tech Solution, Lioness Tele, Naandi Community Water Services, and MXV Consulting. These businesses are tackling various social and environmental issues and supporting India's sustainable and inclusive growth drive.

In conclusion, hundreds of businesses from different sectors and geographical areas have joined the B-Corp movement, pledging to pursue a wider social and environmental mission in addition to their financial goals. While the idea is gaining popularity in nations like India, there is room for expansion and the inclusion of additional companies into the B-Corp community as they come to understand the advantages of integrating social and environmental responsibility into their operations.

REVIEW OF LITERATURE

Wiek, A., B. Ness, and B. Carvalho (2022): As part of their research into whether or not B Corp certification may aid SMEs in incorporating sustainability, the authors conducted an in-depth case study of a craft brewery in southern Sweden. According to its findings, the B Impact Assessment improved the company's goals, processes, and resources. However, little impact was seen in the areas of social responsibility and the adoption of a sustainable corporate form because of regulatory limits and the time needed for significant organisational transformation. The authors suggest that in order to make B Corp accreditation more effective, businesses should pay more attention to impact business models and better adapt to different social and geographical situations.

Liute, A., and M. R. De Giacomo (2022): This research employs the triple bottom line approach to assess the ecological efficiency of B Corp businesses in the UK. The

research looks at whether or not the discretion given to B Corps to choose which impact areas to prioritise actually improves environmental performance and reduces greenwashing. There are 68 different environmentally conscious business types represented here from the UK. The data indicate that companies operating in these sectors excel more in social than environmental matrix . The need for harmony across all five pillars is highlighted by the fact that focusing on just one social effect area usually results in subpar environmental performance. The study highlights the importance of attaining high standards of environmental performance and aligning environmental claims with genuine performance in order to prevent "greenwashing."

Kelly, T. F., Chen, X. (2015): This study examines the growth and performance of B-Corps over a six-year period. Income and employee productivity growth rates of B-Corps are analysed and compared to those of publicly traded and privately held corporations that are not B-Corps. According to the study, B-Corps' revenue growth rates were significantly higher than those of publicly traded companies operating in the same sector. There was no noticeable distinction between the revenue growth rates of B-Corps and private enterprises that were not B-Corps. However, when comparing the rates of increase in employee productivity, B-Corps lagged behind their competitors. The research also looks into how the qualitative CSR rankings of B-Corps correlate with differences in their financial and productivity performance.

Morgan, G., S. Bulgacov, and M. Villela (2021): The researchers in this study set out to determine whether or not B Corp accreditation improved company's performance for four Brazilian SMEs. The results demonstrate that despite receiving high certification marks, these companies did not take any proactive measures to improve their impact assessment scores in the future. Their primary motivation for certification was not to change internal processes to improve impact assessment scores or to address challenging corporate governance challenges, but rather to boost their external reputation with investors, clients, and consumers. The study's findings provide new insight into the evolution of B Corps and the discussion of corporate governance and stakeholder engagement in hybrid companies.

W. Stubbs (2017): The B Corps, which use market techniques to address social and environmental issues, are the focus of this paper's examination of the idea of sustainable business. The research, conducted through interviews with 14 B Corps, found that these organisations use financial success to further their social missions. The B Corp concept is useful because it provides a sense of shared purpose and public recognition as a means of effecting change. B Corporations (B Corps) are for-profit businesses that put a premium on doing good for society rather than making a quick buck.

A. Fernandez-Laviada, E. Diez-Busto, L. Sanchez-Ruiz, & E. Diez-Busto (2021): Analysing the existing research on the B Corporation paradigm. This research provides a comprehensive review of the papers written about the B Corp movement. Fifty papers were located in the data bases Scopus and Web of Science up until the year 2020. The findings point to the field being relatively new and promising. Certification incentives for businesses and the subsequent economic and social effects are common themes in the reviewed literature. Sustainability is the authoritative magazine on the topic because it has published five articles to date. Future focus topics include developing case studies on the certification process itself, creating social impact measurement tools, and investigating the contribution of B Corp businesses to the SDGs.

Hanbury Strategy (2020) and Deloitte (2020): They draw attention to the growing pressure on companies to disclose and enhance their environmental and social performance, which is being fueled by waning faith in capitalism and the beneficial effects of business. Corporations have a responsibility to address societal issues, institutional shortcomings, environmental degradation, and market flaws all at once. Leaders try to stand out in the competitive business world, while also developing altruistic principles and establishing their credibility.

According to Shields & Shelleman (2017) and Mazzi (2020), there are numerous benefits of improving a company's environmental and social performance. Advantages like reduced borrowing costs and higher earnings are just the beginning. Branding improvements, a competitive edge, and higher customer loyalty are all commercial benefits for businesses. Risk mitigation, enhanced community collaboration, and supply chain participation are further legal and public relations gains. These benefits also include better staff retention and recruitment.

According to a 2017 survey by KPMG, more than two-thirds of the world's 4,900 top companies are now disclosing their nonfinancial performance. There has been an upward trend in reporting on corporations' social and environmental impact. In terms of reporting frameworks, the **Global Reporting Initiative (GRI)** is still the most popular option. There is a need for more work to be done on sector-specificity, data accuracy, and company comparison, since **Sethi et al. (2017) and Mattera et al. (2016)** warn that current frameworks, including GRI, do not adequately evaluate the quality and accuracy of reported information. **Moneva, Archel, and Correa (2006)** call the behaviour of companies emphasising only one of the sustainability pillars a "weak approach to sustainability." Minimum disclosure criteria were proposed by Mattera et al. (2016) for sectors with a high environmental effect.

Third-party labels and certifications have gained appeal as a means of overcoming the limitations of reporting frameworks, as stated by Grimes et al. (2018). As of September 2021, the Ecolabel Index includes 455 ecolabels, and Moroz et al. (2018) report that more than 500 NGOs are engaged in evaluating and certifying firms for their socially responsible practices. Investors and consumers alike benefit from these certifications since they allow for the accurate assessment of investment risk. However, there are issues with these labels, such as customer confusion

due to their availability, competition promoting a "race to the bottom," inadequate procedures for assessing claims, and a lack of integrative strategies targeted at particular products, supply chains, or industries.

CONCLUSION

In the world of business, the advent of certified B-Corps marks a significant turning point. It promotes a fundamental reevaluation of business ideals that accords equal weight to purpose and profit. This idea upends the conventional view of corporations as merely economic actors and encourages them to act as catalysts for societal and environmental change. It demands a bigger and more sincere commitment, redefining the field of corporate social responsibility (CSR).

There are various actions that should be made to develop the B-Corp movement. It is crucial to promote adoption of it. Governments, business associations, and advocacy organisations can offer B-Corps incentives and official recognition, encouraging companies to align their goals with those of social and environmental responsibilities. The market for green goods and services can be stimulated by increasing consumer knowledge about the importance of supporting B-Corps, and consumers can make better decisions - thanks to B-Corps' open communication about their commitment. To support the B-Corps concept and provide legal safeguards for small businesses, a favourable legal environment is required. To ensure that this revolutionary idea succeeds and has a positive impact on businesses, society, and the environment, it is crucial to promote industry collaboration, standardise measures, broaden the reach of B-Corps globally, and promote a culture of continual development.

In conclusion, B-Corps are changing how businesses are perceived, urging them to be both economically successful and purpose-driven. Governments, consumers, and businesses must collaborate to promote, legitimise, and disseminate the B-Corp concept globally in order to realise their full potential. A more sustainable, inclusive, and socially responsible global economy will be made possible by this, benefiting not only businesses but also the entire society and the environment.

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ARTICLE

Internal Complaint Committee (ICC) and Redressal: A Shield Against Sexual Harassment of Women at Workplace

The Vishaka Case and the subsequent enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 marked a significant step toward creating of safe and respectful work environment for women in the workplace. Sexual Harassment is not just a legal issue but also a psychological and social issue. As a greater number of women are entering the workforce, sexual harassment has also increased. Several incidents go unreported because of fear of retaliation, victim blaming, and lack of confidence in the employer or ICC.

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"You can tell the condition of a nation by looking at the status of its women."

Pt. Jawaharlal Nehru

INTRODUCTION

The landmark case Vishaka & Ors. v/s State of Rajasthan, the Supreme Court of India recognized the vulnerability of working women and addressed the crucial issue of sexual harassment in the workplace. For the first time, the Court drew upon an international human rights law instrument – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to pass a set of guidelines popularly known as the Vishaka Guidelines.

These guidelines were a groundbreaking step towards protecting women's fundamental rights at work. The court stated that sexual harassment not only exposes women to physical danger but also constitutes a violation of their rights to "Gender Equality" and "Right to life and liberty" enshrined in the Indian Constitution. The Constitution of India, through Articles 14 and 15, enshrines the principles of equality and non-discrimination among all citizens, regardless of factors such as religion, race, caste, sex, or place of birth. Furthermore, Article 21 pertains to the right to life and personal liberty. The right to life encompasses human dignity and qualities that make life meaningful and worth living. Yet, this fundamental right is tarnished by the strain of gender discrimination. The state must eliminate gender-based discrimination and create conditions conducive for women to realize their rights. The court in the Vishaka case established that sexual harassment at the workplace is a violation of women's fundamental rights under Articles 14,19 and 21. The Vishaka guidelines laid the foundation for the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013* (hereinafter referred to as "Act"). This Act came into effect on 9th December 2013.

Ten years ago, the landscape shifted with the introduction of the groundbreaking Act. While acknowledging its significance, continued discussions are imperative. The evolving landscape demands ongoing scrutiny of the Act's impact emphasizing the importance of addressing emerging challenges and cultivating workplaces that prioritize safety and respect for all. This comprehensive legislation established clear procedures for filing complaints, set up dedicated ICCs and instituted a robust redressal mechanism. It also mandated awareness programs, aiming to build a more informed and vigilant workforce.

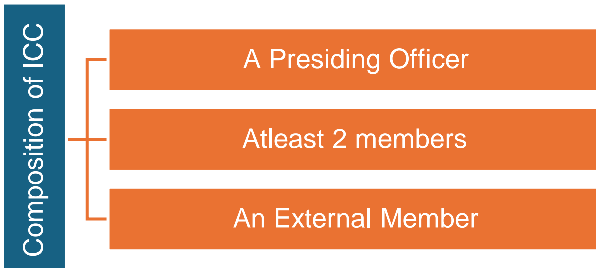
INTERNAL COMPLAINT COMMITTEE (ICC)

The Act applies to all organizations with more than 10 (Ten) employees. It mandates the establishment of the ICC. According to the Act, every employer of a workplace shall, by an order in writing, constitute a committee to be known as the "Internal Complaint Committee" (Sec 4(1)). If the offices or branches of the organization are located at different places, the Act requires an employer to set up an ICC at each office or branch of an organization employing 10 or more employees. It is important to note that section 4(1) states that every employer *by an order in writing* shall constitute an ICC. This underscores the necessity for a documented process in constituting the ICC. At this

point, it is crucial to emphasize that issuing an order in writing is imperative whenever there is a change in the ICC. This change may be due to the resignation, removal, or expiry of the tenure of a member of ICC.

COMPOSITION OF ICC

Although the Act specifies a minimum requirement of 4 (Four) members for the ICC, it does not prescribe a maximum limit. Organizations are granted flexibility in determining the appropriate number of members needed to effectively address and manage concerns related to sexual harassment. However, at least half of the ICC members shall be women.



Presiding Officer

The Presiding Officer of the ICC must be a woman. This woman should be employed at a senior level in the workplace. The Act does not define "senior level". Instead, it places the responsibility on the organization to establish this definition. The definition of "senior level" should be tailored to the organization's specific context. The Presiding officer should be someone who possesses the following qualities:

- Employed at a senior level within the workplace.
- Occupy a position of respect and authority.
- Possesses the experience and judgment necessary to handle sensitive matters.
- Impartial and fair in handling complaints.
- Can dedicate sufficient time to ICC duties and inquiries.

In case a senior-level woman employee is not available, the employer shall nominate the Presiding Officer from other offices or administrative units of the workplace. If these other offices or administrative units of the workplace do not have a senior-level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization.

Members of ICC.

The Act states that not less than 2 (two) Members from amongst employees *preferably* committed to the cause of women or who have had experience in social work or have legal knowledge. The Act does not prescribe specific qualifications or experiences for appointing members from among employees. The use of the term "preferably" allows flexibility for employers. While not obligatory, practical considerations suggest that these members should ideally exhibit the following qualities:

- A capability to engage in open and constructive conversations about matters concerning sexuality and gender.
- Possesses the experience in social work or legal knowledge and judgment necessary to handle sensitive matters.
- Impartial and fair in handling complaints.
- Can dedicate sufficient time to ICC duties and inquiries.

External Member

An external member must not be an employee of the organization. This individual should be from non-government organizations or associations committed to the cause of women, or any other person who is familiar with issues relating to sexual harassment. Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rule, 2013. In *Ruchika Singh Chhabra vs M/S. Air France India And Anr.*, the Court observed that "the objective behind the requirement of a member from non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment in the Workplace Harassment Prohibition Act is to prevent the possibility of any undue pressure or influence from senior levels as was laid down by the Supreme Court in the case of Vishaka (supra). The Parliamentary objective of providing an NGO member is to keep in ICC, an independent and impartial person in a position to command respect and compliance from influential management. One of the cardinal principles of natural justice is: "Nemo debet esse judex in propria causa" (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. The basic object of the Parliament is to provide security to the woman. It is imperative that a woman who is alleging sexual harassment feels safe during the proceedings of the ICC and has faith that the proceedings are unbiased and fair."

The external member should be someone who possesses the following qualities:

- Committed to the cause of women or familiar with issues relating to sexual harassment.
- Function as an independent person free from the undue influence or pressure of the senior level.
- Impartial and fair in handling complaints.
- Able to command respect and compliance from management of the Company.
- A person who can build trust and fairness in the effectiveness of the ICC.

To prevent institutional bias and ensure fairness, the Supreme Court, *in Punjab Sindh Bank vs. Durgesh Kunwar*, ruled that the External Member of the ICC must be a fully independent figure. The Court found that assigning the Bank's legal counsel to this role constituted an institutional bias, compromising the Committee's impartiality and rendering it ineffective.

The External Member shall be paid fees or allowances for holding the proceedings of the Internal Committee by the employer. The External Member shall be entitled to a fee of Rupees two hundred per day for holding the proceedings of ICC and to the reimbursement to travel costs incurred in traveling by train in three-tier air condition or air-conditioned bus and rickshaw or taxi, or the actual amount spent by him on travel, whichever is less. The organizations can pay more than the minimum recommended fee to their external members.

If the employer fails to form an ICC, a monetary penalty of up to Rs. 50,000/- may be imposed. In case of repetition of failure to constitute an ICC, the punishment will be doubled and/ or revocation of the business license.

TENURE OF ICC MEMBERS

The members of ICC including the presiding officer shall not occupy the office for more than three years from the date of nomination.

However, the presiding officer and any member of the ICC can be replaced or removed if:

- Found guilty of disclosure of any of the following confidential information.
  - The contents of the complaint made under Section 9 of the Act.
  - The identity and addresses of the woman, respondent, and witnesses.
  - Details relating to conciliation and inquiry proceedings.
  - Recommendation of the ICC.
  - Actions taken by employer.
- Convicted for an offense or an inquiry into an offense under any law is pending against the member.
- Found guilty in any disciplinary proceedings.
- Abused position as to render members continuance in office prejudicial to the public interest.

DUTIES OF ICC

The general duties of an ICC are listed below:

- Ensure proper implementation of anti-sexual harassment policy within the organization.
- Conduct awareness programs and publicize the policy to ensure broad awareness and understanding among employees.
- Establish a secure and accessible complaint mechanism for victims of sexual harassment.

> Sexual harassment complaint needs to be made by the aggrieved woman or other specific individuals as recognized under Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013. A Complaint should be submitted within three months from the occurrence of the incident or the latest incident in the case of a series of events.

- Initiation of inquiry at the earliest upon receiving a complaint.
- Adjudicate and redress complaints fairly and judiciously.
- Facilitate and encourage amicable resolution of the matter through conciliation, if requested and opted by the Complainant.
- If required, provide interim relief to the Complainant to safeguard her well-being during the inquiry.
- Adhere to the principles of natural justice at all stages of the proceedings.
- Assist in filing complaints with the police if the Complainant chooses to proceed with legal action.
- Compile and submit the detailed annual report to the employer. If an organization has more than one ICC, each ICC must submit a separate annual report. The annual report is forwarded to the district officer by the employer.
- Conduct meetings to address complaints from aggrieved women employees, settle grievances, and ensure reasonable compensation for misconduct or sexual harassment.
- Maintain confidentiality about the identity of the parties, contents of the complaint, information of conciliation and inquiry proceedings, and recommendation of ICC as provided under Section 16 of the Act.

POWER OF ICC

While inquiring into sexual harassment complaints at the workplace, the ICC has the same powers as vested in a civil court under the code of civil procedure, 1908 on trying a suit.

- Summoning and enforcing the attendance of any person and examining person on oath,
- Requiring the discovery and production of documents, and
- Any other matter which may be prescribed.

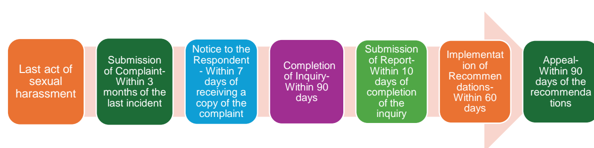
REDRESSAL

A. ***The Complaint***

There is no specific format for filing a sexual harassment complaint. However, the complaint must contain the following details:

The Complainant shall file 6 (six) copies of the complaint along with supporting documents and names and addresses of witnesses. Further sexual harassment complaint needs to be made by the aggrieved woman or other specific individuals as recognized under Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013. A Complaint should be submitted within three months from the occurrence of the incident or the latest incident in the case of a series of events. The ICC has the authority to extend the time limit for filing a complaint by an additional three months if it is determined that circumstances beyond the complainant's control prevented her from filing a complaint within the initial three-month period.

B. ***Timeline of Complaint***



C. ***Redressal Mechanism***

Step – 1

a) The ICC upon receipt of the complaint must check the following to understand whether the case comes under the jurisdiction of the ICC:

- Whether the Complaint has all the essential information.
- Whether the complaint has been filed within the time limit.
- Whether the allegation made in the complaint is sexual harassment or not.
- Whether the incident mentioned in the complaint has occurred in the workplace (including the extended workplace) or not.
- If required, any additional information to have a clearer understanding of the allegation.

b) ICC will conduct a meeting with the complainant.

Step - 2

c) The ICC begins by scheduling a meeting with the Complainant. The meeting is scheduled to:

- Acknowledge the receipt of the complaint.
- Introduce the complainant to ICC members and create a comfortable environment so that the complainant can speak without fear.
- Get more details of the complaint, if required.
- Inform about the options available to the Complainant.

d) Proceed as per the option chosen by the Complainant.

Step - 3

e) The Complainant has the option to proceed with either conciliation or inquiry.

- ***Option 1 - Conciliation***

i. Conciliation is covered under Section 10 of the Act.

ii. After the complainant has consented to conciliation, the IC needs to explore ways to address the complaint.

- *Conciliation includes:*
- counseling,
- educating,
- orienting, or
- warning the respondent to immediately stop the unwelcome behavior.

iii. Guidelines for Conciliation

- The choice of conciliation rests with the Complainant.
- ICC will not advise the Complainant to resolve the dispute directly with the Respondent.
- ICC shall mediate the entire conciliation process.
- The Complainant can share her terms and conditions for conciliation with the ICC. ICC

can then share the terms and conditions with the Respondent.

- Terms and Conditions of conciliation must be agreed by both Parties. Respondent can agree or disagree or negotiate the terms and conditions. The ICC cannot force the Respondent to accept the terms and conditions of conciliation.
- The Act does not allow any monetary settlement in conciliation proceedings. Apology by one Party in conciliation doesn't mean admission of guilt so no monetary compensation can be awarded.
- Once the terms and conditions have been agreed by the parties, the ICC shall prepare a settlement document. This document will be signed by ICC and the parties. One copy of the signed document will be given to both parties.

Note: In case of settlement through conciliation, no further inquiry shall be conducted by the ICC. Therefore, actions in steps 4 and 5 listed below are not required, if the matter is settled through conciliation.

- ***Option 2 – Inquiry***

i. Inquiry is conducted in the following situations:

- The Complainant doesn't opt for conciliation.
- The Conciliation process is unsuccessful because the parties fail to achieve a consensus on mutually acceptable terms and conditions of settlement.
- Failure to uphold the settlement terms and conditions agreed in the conciliation.

ii. In the Inquiry process, the ICC shall:

- Send one copy of the complaint to the Respondent within 7 days of receipt of the complaint.
- Inform the respondent to submit a written reply to the complaint along with supporting documents and the names and addresses of witnesses within 10 working days of receipt of the complaint.
- Compile the list of documents received.
- Hold separate meetings with both Parties.

Meeting with Complainant –

- In the meeting, the ICC will inform the Complainant of:
  - Interim measures during the pendency of the inquiry as provided under Section 12 of the Act.
  - The timeline and process of redressal.
  - Right to appeal.
- Record the Complainant's statements in writing and get the statements acknowledged by obtaining the complainant's signature on them.

- ICC will inquire into the allegation by posing open-ended questions to get more information.
- During the inquiry ICC shall always keep in mind the matter's sensitivity.

Meeting with Respondent -

- After meeting with the Complainant, the ICC will schedule a meeting with the respondent to:
  - Introduce the respondent to ICC.
  - Understand what the respondent has to say about the complaint.
  - Inform the respondent of timelines and process of redressal.
  - Inform the respondent of the right to appeal.
- Record the statements of the Respondent in writing and get the statements acknowledged by obtaining the Respondent's signature on them.

iii. ICC shall also examine the witnesses, record their statements in writing, and obtain the signatures of witnesses. The ICC will notify both Parties that these will be shared with the opposing party.

iv. Any document received by ICC from one party shall be shared with the other party including witnesses' statements. Furthermore, any documents received by ICC from the witnesses will be shared with both parties. During cross-examination, the ICC shall coordinate the meetings so that parties can resolve issues without argument. Cross-examination can be done orally or in writing.

v. During the entire inquiry proceeding, the ICC must follow the principles of natural justice and maintain confidentiality of the inquiry proceedings.

vi. In conducting the inquiry, a minimum of three members of the ICC including the presiding officer shall be present.

Step – 4

f) After completion of the inquiry, the ICC shall prepare an Interim Report. The Report must have with clear finding of whether the complaint is upheld, not upheld, inconclusive, or false. Before concluding the findings, the ICC shall communicate its findings to both parties. This communication includes providing an opportunity for both parties to present their final representations before finalizing the final report.

Step – 5

g) The last step is to prepare the Final Inquiry Report. The Inquiry Report must include the following:

- The findings of the inquiry report should be specific along with reasons.
- In the report, the ICC shall recommend the actions to be taken by the Employer as per the findings of the inquiry. A copy of the report will be submitted to the Complainant and Respondent.
- Except in cases where service rule exists, If the ICC concludes that the allegation against the Respondent has been proved, it shall recommend to the employer to take any of the following actions against the Respondent:
    - written apology,
    - reprimand,
    - withholding promotion or rise in salary,
    - termination of service, or
    - undergoing counselling sessions.
- ICC may recommend monetary compensation to be paid to the complainant. In determining the compensation to be paid to the Complainant, the ICC shall have regard to:
    - The mental trauma, pain, and emotional distress caused to the aggrieved women.
    - The loss of career opportunities due to sexual harassment.
    - Victim's medical cost for physical or psychiatric treatment.
    - The income and financial status of the respondent.
    - Feasibility of such payment in a lump sum or instalments.
- In case of a malicious complaint, ICC may recommend action against the Complainant.

h) An inquiry must be completed within 90 days and a final report submitted to the Employer within 10 days thereafter.

i) The Employer shall act on the recommendation of the ICC within 60 days of receiving the inquiry report.

APPEAL

Any individual dissatisfied with the conclusions or suggestions of the Complaints Committee or the failure to implement the recommendations may file an appeal to the appellate authority notified under Section 2(a) Industrial Employment (Standing Order) Act, 1946. An appeal may be filed within 90 days of the date of recommendation.

CONCLUSION

The Vishaka Case and the subsequent enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 marked a significant step toward creating of safe and respectful work environment for women in the workplace. Sexual Harassment is not just a legal issue but also a psychological and social issue. As a greater number of women are entering the workforce, sexual harassment has also increased. Several incidents go unreported because of fear of retaliation, victim blaming, and lack of confidence in the employer or ICC. Therefore, organizations must have a duly constituted ICC, a robust redressal mechanism, and a zero-tolerance policy. Sensitization and awareness programs must be regularly organized to educate employees about direct and indirect forms of harassment, address gender stereotypes, and build a respectful workplace. The progress made in the last ten years by the Act is commendable but the journey towards creating a safe and equitable work environment is far from over. Continuous and collective efforts are needed to create an inclusive workspace, free from the curse of sexual harassment.

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iii. *Ruchika Singh Chhabra vs M/S. Air France India and Another on 30 May 2018.*

iv. *Punjab And Sind Bank vs Durgesh Kuwar on 25 February 2020.*

v. *Rights of Indian Women by Vipul Srivastava.*

ARTICLE

Unlocking Opportunities: Company Secretaries as POSH Trainers

The urgent need to safeguard and champion the rights and interests of women in every workplace. In the contemporary corporate world, fostering a safe and respectful environment is not just a legal obligation but a moral imperative. The Prevention of Sexual Harassment (POSH) Act stands as a powerful instrument in ensuring workplaces are free from harassment, and at its core lies the crucial role of POSH trainers. Among the array of professionals capable of undertaking this responsibility, Company Secretaries emerge as ideal candidates due to their unique skill set and expertise.

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INTRODUCTION

As the sacred gates of Ram Mandir open in Ayodhya, symbolizing a new era and a commitment to righteousness, a parallel call to emulate Hanuman's protective spirit resonates in our corporate landscape. This echoes the urgent need to safeguard and champion the rights and interests of women in every workplace. In the contemporary corporate world, fostering a safe and respectful environment is not just a legal obligation but a moral imperative.

The Prevention of Sexual Harassment (POSH) Act stands as a powerful instrument in ensuring workplaces are free from harassment, and at its core lies the crucial role of POSH trainers. Among the array of professionals capable of undertaking this responsibility, Company Secretaries emerge as ideal candidates due to their unique skill set and expertise.

Compliance with the mandates of the POSH Act involves several crucial aspects, demanding organizations' diligent adherence. Key among these is the formulation of a comprehensive POSH policy, a responsibility that can be shouldered by either an external consultant or an in-house HR professional possessing the requisite knowledge. Similarly, the imperative task of conducting the POSH employee awareness program falls on the shoulders of POSH trainers or HR personnel proficient in the subject matter.

While internal trainers or e-modules may suffice, ensuring comprehensive coverage of all five types of sexual harassment, the effectiveness of physical training is recommended. Given the sensitive nature of the topic, it becomes imperative to reach all employees, from top management to domestic workers, in a language that resonates with them.

The annual IC capacity-building workshop, a critical component of POSH compliance, should be skillfully facilitated by a hired POSH trainer. On the other hand, external consultants are entrusted with conducting quarterly IC review meetings and handling POSH case inquiries due to the sensitivity of the matters involved. It is essential to note that individuals not integrated into the Internal Committee (IC) team are precluded from managing such cases.

Furthermore, the IC team shoulders the responsibility of submitting the annual POSH report on the company letterhead to the Nodal officer, navigating through procedures that may vary across states.

The multifaceted role of a POSH external consultant encompasses formulating or reviewing the POSH policy, conducting case inquiries, quarterly reviews, and providing support in annual report submissions. Simultaneously, a POSH trainer plays an instrumental role in overseeing employee awareness and IC capacity-building training, ensuring comprehensive compliance with POSH regulations. As we draw inspiration from the protective spirit of Hanuman and the symbolism of Ram Mandir, let us reinforce our commitment to creating workplaces that are not just legally compliant but morally sound and respectful.

HISTORY AND APPLICABILITY

In an era where workplaces are evolving to be more inclusive, the imperative of ensuring a respectful and secure environment is undeniable. The inception of the Prevention of Sexual Harassment (POSH) Act in 2013 signifies India's commitment to combatting workplace

sexual harassment. Originating from the tragic incident of Bhanwari Devi's assault in 1992, the Act emerged following a landmark case, Vishakha and Others v State of Rajasthan, where the Supreme Court laid down guidelines known as the "Vishakha Guidelines" in 1997. These guidelines acted as a de facto law until the formal legislation was enacted.

I aim to shed light on the critical dimensions of the POSH Act to establish a safe and conducive environment for all employees. Exploring its fundamental aspects, implications for the corporate sector, and the indispensable need for awareness and adherence to this law in modern enterprises is crucial.

The POSH Act is a robust framework designed to address and redress sexual harassment grievances in the workplace, fostering an environment conducive to all genders. It mandates the constitution of an Internal Complaints Committee (ICC) in organizations with 10 or more employees, serving as an in-house redressal forum. The ICC, comprising at least four members, with one-half being women, conducts investigations into sexual harassment complaints, ensuring prompt and fair resolutions.

Adhering to the POSH Act transcends legal compliance; it is about fostering a workplace where employees can work without fear. The Act prescribes stringent measures against perpetrators and outlines rights and remedies available to aggrieved individuals.

Compliance with the POSH Act necessitates a proactive approach. It covers not only employees but also customers, clients, and other individuals interacting with the organization. Establishing a harassment-free workplace is the collective responsibility of every individual within the organization.

Non-compliance with the Act can result in penalties, emphasizing the legal obligation for organizations to create a harmonious workplace culture.

Ensuring compliance involves forming an ICC, conducting regular training, establishing transparent reporting mechanisms, ensuring prompt complaint redressal, documenting proceedings, and engaging legal experts for consultation. Collaboration with external consultants and NGOs further enhances the organizational culture concerning sexual harassment prevention.

POSH Act embodies legal compliance, moral obligation, and corporate responsibility. It is about cultivating a work environment resonating with respect, equality, and justice—the hallmarks of a progressive corporate entity. While the journey towards a harassment-free workplace is challenging, the POSH Act serves as a guiding legal framework, propelling us toward a culture that rejects discrimination and celebrates diversity.

ANOTHER LANDMARK JUDGEMENT IN MAY 2023

The recent landmark judgment by the Hon'ble Supreme Court of India regarding the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) is indeed noteworthy. The POSH Act, a comprehensive legislation, places the onus on employers to guarantee the safety of all employees, with a special emphasis on the protection of women in the workplace. It underscores the significance of proactively preventing and addressing sexual harassment, calling for regular awareness and sensitization programs to inform employees about their rights and foster a secure working environment.

The specific case in question, Aureliano Fernandes Vs. State of Goa and Others, presented a scenario where the Appellant faced termination from Goa University based on findings of sexual harassment by the internal committee under the POSH Act. The Hon'ble Supreme Court, upon reviewing the case, quashed the termination order, citing flaws in the inquiry that infringed upon principles of natural justice. The Court directed a fresh inquiry, emphasizing the need for the Appellant to have sufficient time for preparation and defense.

Furthermore, the Hon'ble Supreme Court issued crucial directives to the Union of India, State Governments, and Union Territories for the effective implementation of the POSH Act. These directives encompass the establishment of Internal Committees (ICs) or Local Committees (LCs) in compliance with the POSH Act, ensuring transparency in their composition, and providing accessible information on their constitution and functioning. The Court stressed the importance of familiarizing committee members with their duties and conducting regular orientation programs, workshops, and awareness sessions to enhance their skills and educate women employees about the Act's provisions.

The judgment and directives from the Honorable Supreme Court signify a substantial advancement in the battle against workplace sexual harassment. It demonstrates the Court's commitment to enforcing the POSH Act effectively and safeguarding the rights of women in the workplace. The clear emphasis on education, transparency, and fair inquiry procedures underscores the Court's dedication to fostering a workplace environment free from harassment and discrimination.

CONSEQUENCES FOR EMPLOYER NON-COMPLIANCE WITH POSH ACT

Failure to adhere to the provisions of the Prevention of Sexual Harassment (POSH) Act can lead to severe consequences for employers. Monetary penalties, amounting to a maximum of INR 50,000, may be imposed for various violations, including:

Non-constitution of IC Committee

Employers failing to establish the Internal Complaints (IC) committee as mandated by the POSH Act.

Non-action on Committee Recommendations

Employers neglecting or refusing to act upon the recommendations provided by the IC committee in response to complaints.

Failure to File Annual Report

Employers omitting to file the annual report with the District Officer as required by the POSH Act.

Contravention of Act or Rules

Employers contravening, attempting to contravene, or aiding in the contravention of the provisions outlined in the Act or its associated Rules.

In addition to monetary penalties, the courts may also impose exemplary damages on the employer. Such consequences extend beyond financial implications and can significantly tarnish the company's reputation. Moreover, the aftermath of non-compliance contributes to fostering a hostile work environment, adversely affecting both employee morale and organizational culture. Therefore, adherence to the POSH Act is not only a legal obligation but a crucial element in maintaining a positive workplace atmosphere and upholding the company's standing in the broader community.

WHO ARE POSH TRAINERS?

A POSH trainer is an individual responsible for conducting workshops, training sessions, and awareness programs on the Prevention of Sexual Harassment at the workplace. These trainers play a vital role in educating employees about the provisions of the POSH Act, promoting a safe and inclusive work culture, and addressing issues related to harassment.

> In an era where workplaces are evolving to be more inclusive, the imperative of ensuring a respectful and secure environment is undeniable. The inception of the Prevention of Sexual Harassment (POSH) Act in 2013 signifies India's commitment to combatting workplace sexual harassment. Originating from the tragic incident of Bhanwari Devi's assault in 1992, the Act emerged following a landmark case, Vishakha and Others v State of Rajasthan, where the Supreme Court laid down guidelines known as the "Vishakha Guidelines" in 1997. These guidelines acted as a de facto law until the formal legislation was enacted.

WHY COMPANY SECRETARIES AS POSH TRAINERS?

Legal Expertise

Company Secretaries possess a deep understanding of corporate laws and compliance. The POSH Act involves legal intricacies, and having professionals well-versed in corporate legislation ensures accurate interpretation and application of the law.

Ethical Governance

Governance and ethical conduct are integral to the role of Company Secretaries. Their expertise in promoting ethical practices aligns seamlessly with the objectives of the POSH Act, emphasizing the importance of a safe and ethical work environment.

Confidentiality

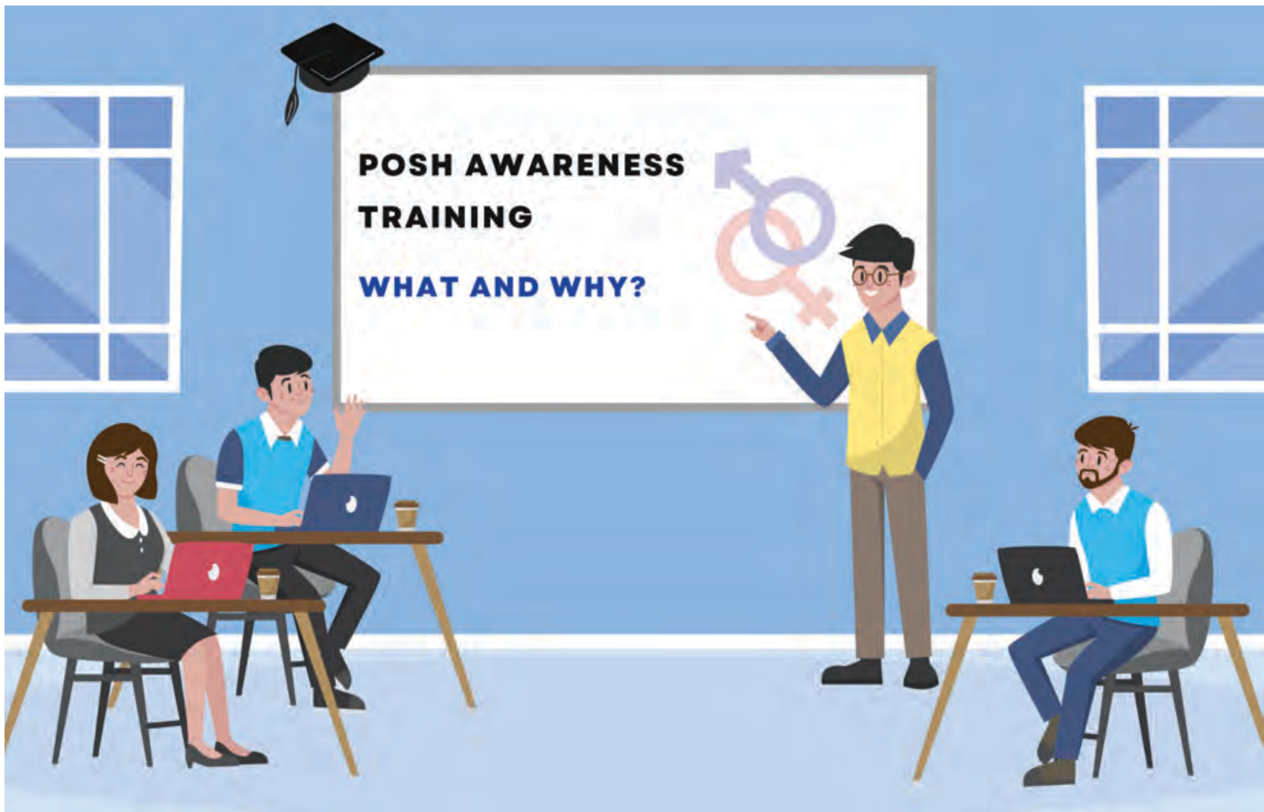
Company Secretaries are well-versed in handling sensitive and confidential information. In the context of POSH training, where discussions may involve personal experiences, having trainers who understand the nuances of confidentiality is crucial.

Communication Skills

Effective communication is at the heart of POSH training. Company Secretaries, as communication experts, can articulate the complexities of the POSH Act in a clear and comprehensible manner, ensuring that employees grasp the significance of preventing sexual harassment.

Essential Competencies for an Effective POSH Trainer

The Prevention of Sexual Harassment (POSH) Act has transformed workplace dynamics, emphasizing the importance of creating safe and respectful environments. For individuals undertaking the critical role of a POSH



trainer, possessing a diverse skill set is essential. In this article, we explore the key competencies required for an effective POSH trainer. Becoming an effective POSH trainer requires a multifaceted skill set that goes beyond a mere understanding of the legal framework. By incorporating compliance knowledge, training delivery skills, cultural sensitivity, and a commitment to continuous improvement, POSH trainers contribute significantly to building workplaces that prioritize safety, respect, and inclusivity. The role is dynamic, demanding adaptability and a genuine dedication to creating positive organizational cultures.

Understanding of POSH Act

To be an effective POSH trainer, a comprehensive understanding of the POSH Act is paramount. Trainers should be well-versed in the legislation's provisions, intricacies, and nuances. This knowledge forms the foundation for delivering accurate information during training sessions and ensuring compliance with the legal framework.

Compliance and Legal Awareness

A POSH trainer must have a strong background in compliance and legal awareness. Keeping abreast of any amendments or updates to the POSH Act is crucial to provide up-to-date and accurate information during training. This competency ensures that trainers can guide organizations in aligning their policies with the evolving legal landscape.

Training Delivery Skills

Effective communication and training delivery skills are essential for a POSH trainer. The ability to convey complex information in a clear, engaging, and accessible manner is key to fostering understanding among diverse audiences. Trainers should employ various teaching methodologies to cater to different learning styles and ensure maximum retention of information.

Creating a Safe and Respectful Workplace

Beyond imparting knowledge, a POSH trainer plays a pivotal role in instilling a culture of safety and respect in the workplace. Trainers should possess the ability to communicate the importance of a respectful environment, emphasizing the role of each employee in contributing to a positive workplace culture.

Compliant Handling and Redressal

Trainers need to be well-versed in the procedures for handling and redressing complaints of sexual harassment. This includes knowledge of the internal complaint mechanisms, confidentiality measures, and the overall redressal process outlined in the POSH Act. Competence in guiding organizations through these processes is vital.

Sensitivity and Cultural Awareness

A POSH trainer must exhibit high levels of sensitivity and cultural awareness. Workplaces are diverse, and trainers should be attuned to cultural nuances to ensure

that their training is inclusive and respectful of various backgrounds and perspectives.

Case Studies and Practical Scenarios

The ability to present relevant case studies and practical scenarios enhances the effectiveness of POSH training. Trainers should draw upon real-world examples to illustrate the application of the POSH Act in different situations, facilitating a better understanding among participants.

Evaluation and Continuous Improvement

A competent POSH trainer should be committed to continuous improvement. This involves regularly evaluating the effectiveness of training programs, seeking feedback, and incorporating learnings to enhance future sessions. This iterative approach ensures that training remains relevant and impactful.

BLENDING THE ROLE OF A POSH TRAINER AND A SOFT SKILLS TRAINER

Combining the roles of a POSH (Prevention of Sexual Harassment) trainer and a soft skills trainer can be a powerful and comprehensive approach to workplace training. Let's elaborate on how these two roles can complement each other:

1. **Communication Skills**

   POSH Trainer: A POSH trainer needs effective communication skills to convey legal information, policies, and procedures related to preventing and addressing sexual harassment.

   Soft Skills Trainer: Soft skills trainers specialize in enhancing communication skills, ensuring employees can express themselves clearly, empathetically, and assertively.

2. **Empathy and Sensitivity**

   POSH Trainer: Sensitivity is crucial when dealing with issues related to sexual harassment. A POSH trainer needs to convey information empathetically and create a safe space for discussion.

   Soft Skills Trainer: Training in empathy and sensitivity is a core component of soft skills training, promoting better understanding and collaboration among colleagues.

3. Conflict Resolution

   POSH Trainer: Dealing with complaints and conflicts related to sexual harassment requires conflict resolution skills, ensuring fair and just outcomes.

   Soft Skills Trainer: Conflict resolution is a key soft skill. Soft skills training can equip employees with techniques to manage conflicts amicably and professionally.

4. **Teamwork and Collaboration**

   POSH Trainer: Promoting a collaborative and supportive workplace culture is vital for preventing harassment. A POSH trainer may emphasize the importance of teamwork in creating a respectful environment.

   Soft Skills Trainer: Teamwork and collaboration are central themes in soft skills training, fostering positive relationships and effective teamwork.

5. **Building a Positive Workplace Culture**

   POSH Trainer: A POSH trainer contributes to creating a workplace culture that is free from harassment and discrimination.

   Soft Skills Trainer: Soft skills training focuses on building a positive workplace culture by developing qualities such as respect, courtesy, and effective communication.

6. **Holistic Employee Development**

   Combining Roles: The combined role of a POSH trainer and a soft skills trainer offers a holistic approach to employee development. It addresses legal compliance (POSH) while also nurturing essential interpersonal and behavioral skills (soft skills).

7. **Training Effectiveness**

   POSH Training: The integration of soft skills training in POSH programs can enhance the overall effectiveness by making the sessions more engaging and relatable.

   Soft Skills Training: Incorporating POSH awareness in soft skills training ensures that employees are not only developing interpersonal skills but are also aware of the legal and ethical aspects of workplace behavior.

   Blending the roles of a POSH trainer and a soft skills trainer creates a training approach that goes beyond compliance, fostering a workplace where employees not only understand the legal framework but also develop the interpersonal skills needed for a respectful, inclusive, and harmonious work environment.

CONCLUSION

As organizations prioritize compliance with the POSH Act, the role of POSH trainers becomes increasingly crucial. Company Secretaries, with their legal expertise, ethical governance principles, confidentiality, and excellent soft skills, are well-positioned to take on this responsibility. By leveraging their unique skill set, Company Secretaries can contribute significantly to building workplaces that are not only legally compliant but also respectful, safe, and inclusive.

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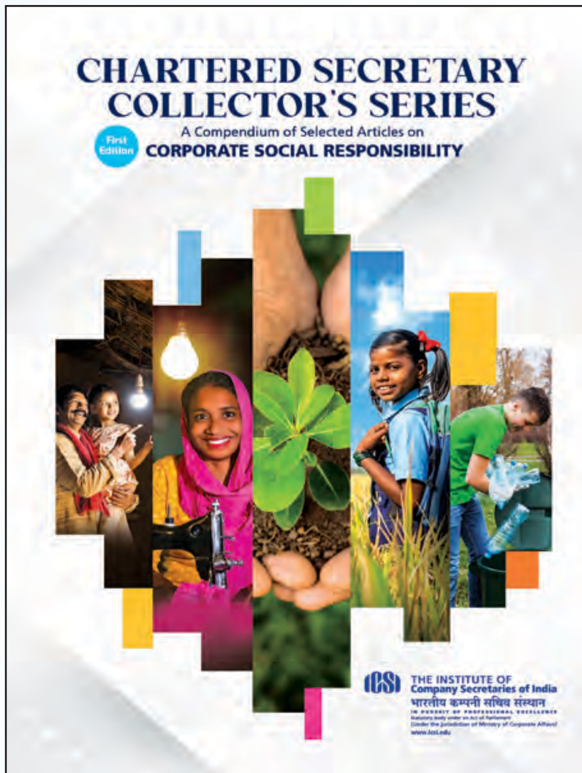

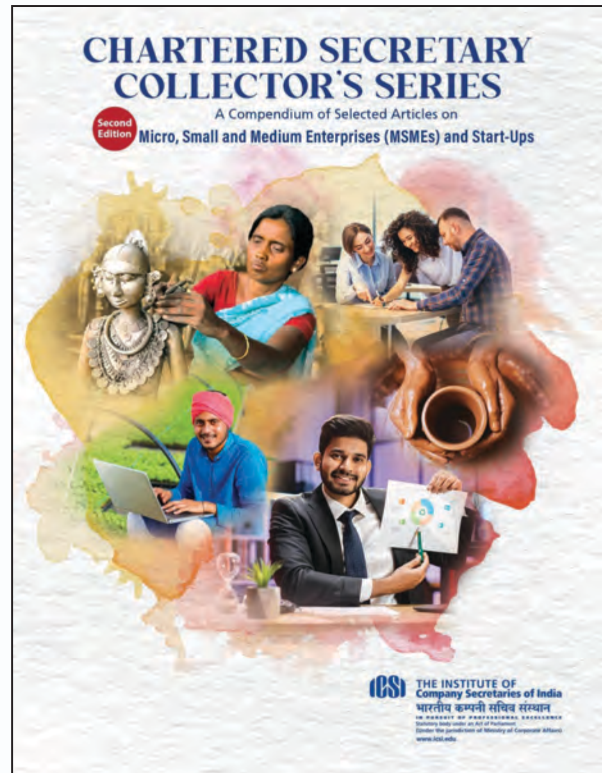

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2

RESEARCH CORNER

- CAN CORPORATE SOCIAL RESPONSIBILITY FUNDS BE AN EFFECTIVE TOOL FOR SOLAR ENERGY ADAPTATION IN INDIA? A STUDY TOWARDS SUSTAINABLE DEVELOPMENT

Can Corporate Social Responsibility Funds be an Effective Tool for Solar Energy Adaptation in India? A Study Towards Sustainable Development

Today's humanity is eroding the biological and physical resilience of mother Earth's physical systems by transgressing environmental limits that endanger their smooth functioning – the "planetary boundaries" which regulate Earth system. Latest scientific assessments indicate that six out of nine planetary boundaries have been breached pointing to global risks well beyond the climate change, including the loss of biodiversity and ecological functions, changes in natural land use configuration, overuse of both green and blue water, overloading of nitrogen and phosphorus and widespread chemical pollution.

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INTRODUCTION

Economic growth & development has pulled millions of people out of poverty around the world with increase in per capita energy consumption which resulted in harmful emissions causing global warming & climate change. Todays' humanity is eroding the biological and physical resilience of mother Earth's physical systems by transgressing environmental limits that endanger their smooth functioning – the "planetary boundaries" which regulate Earth system. Latest scientific assessments indicate that six out of nine planetary boundaries have been breached pointing to global risks well beyond the climate change, including the loss of biodiversity and ecological functions, changes in natural land use configuration, overuse of both green and blue water, overloading of nitrogen and phosphorus and widespread chemical pollution. The interconnected environmental, social and health challenges can be characterized as a planetary health crisis caused by human activities such as industrialization, urbanization, deforestation, and the burning of fossil fuels. The consequences of inaction in the face of this crisis are significant and far-reaching, affecting both the natural systems that sustain life on Earth and the well-being of human societies (lova, 2011). Beside Government, use of corporate social responsibilities (CSR) fund towards addressing sustainable energy and environment can play an important role by the corporates as their responsibility to the human civilization in particular and to the mother earth in general.

THE AGE & STAGES OF CSR

Though CSR has been included in the business regulation in India through Section 135 of Company Act, 2013 with effect from FY-2014 but considering the evolution of CSR as part of business practices in the world there could be five ages & stages of CSR (Table-1) i.e., the ages of Greed, Philanthropy, Marketing, Management and Responsibility and each of these ages manifests different stages of CSR namely Defensive, Charitable, Promotional, Strategic and Systematic CSR respectively.

Table 1: The Ages and Stages of CSR (Visser, 2010)

Economic Age	Stage of CSR	Modus Operandi	Key Enabler	Stakeholder Target
Greed	Defensive	Ad hoc interventions	Investments	Stakeholders, Govt. & employees
Philanthropy	Charitable	Charitable Programmes	Projects	Communities
Marketing	Promotional	Public relations	Media	General public
Management	Strategic	Management systems	Codes	Shareholders & NGOs/CSOs
Responsibility	Systematic	Business models	Products	Regulators & Customers

METHODOLOGY

In the passage of CSR today is the age of responsibility and this is reached after the failure of the ages of Greed, Philanthropy, Marketing and Management which are caused by three reasons or curses (Table-2).

Table-2 : Threats of Modern CSR

Curses	Nature of Failing
Peripheral CSR	CSR has remained largely restricted to the largest companies, and mostly confined to PR, or other departments, rather than being integrated across the business.
Incremental CSR	CSR has adopted the quality management model, which results in incremental improvements that do not match the scale and urgency of the problems.
Uneconomic CSR	CSR does not always make economic sense, as the short-term markets still reward companies that externalise their costs to society.

According to DNA model (Visser, 2010) the essence of today's CSR are four DNA responsibility bases like four nitrogenous bases of biological DNA. These are Value creation, Good Governance, Societal contribution and environmental integrity (Table-3).

Table-3: DNA model of CSR

DNA Code	Strategic Goals	Key Indicators
Value creation	Economic development	Capital investment (financial, manufacturing, social, human & natural capital) Beneficial products (sustainable & responsible goods & services) Inclusive business (wealth distribution, bottom of the pyramid markets).
Good governance	Institutional effectiveness	Leadership (strategic commitment to sustainability & responsibility) Transparency (sustainability & responsibility reporting, government payments) Ethical practices (bribery & corruption prevention, values in business).
Societal contribution	Stakeholder orientation	Philanthropy (charitable donations, provision of public goods & services) Fair labour practices (working conditions, employee rights, health & safety) Supply chain integrity (SME empowerment, labour & environmental standards).
Environmental integrity	Sustainable ecosystems	Ecosystem protection (biodiversity conservation & ecosystem restoration) Renewable resources (tackling climate change, renewable energy & materials) Zero waste production (cradle-to-cradle processes, waste elimination).

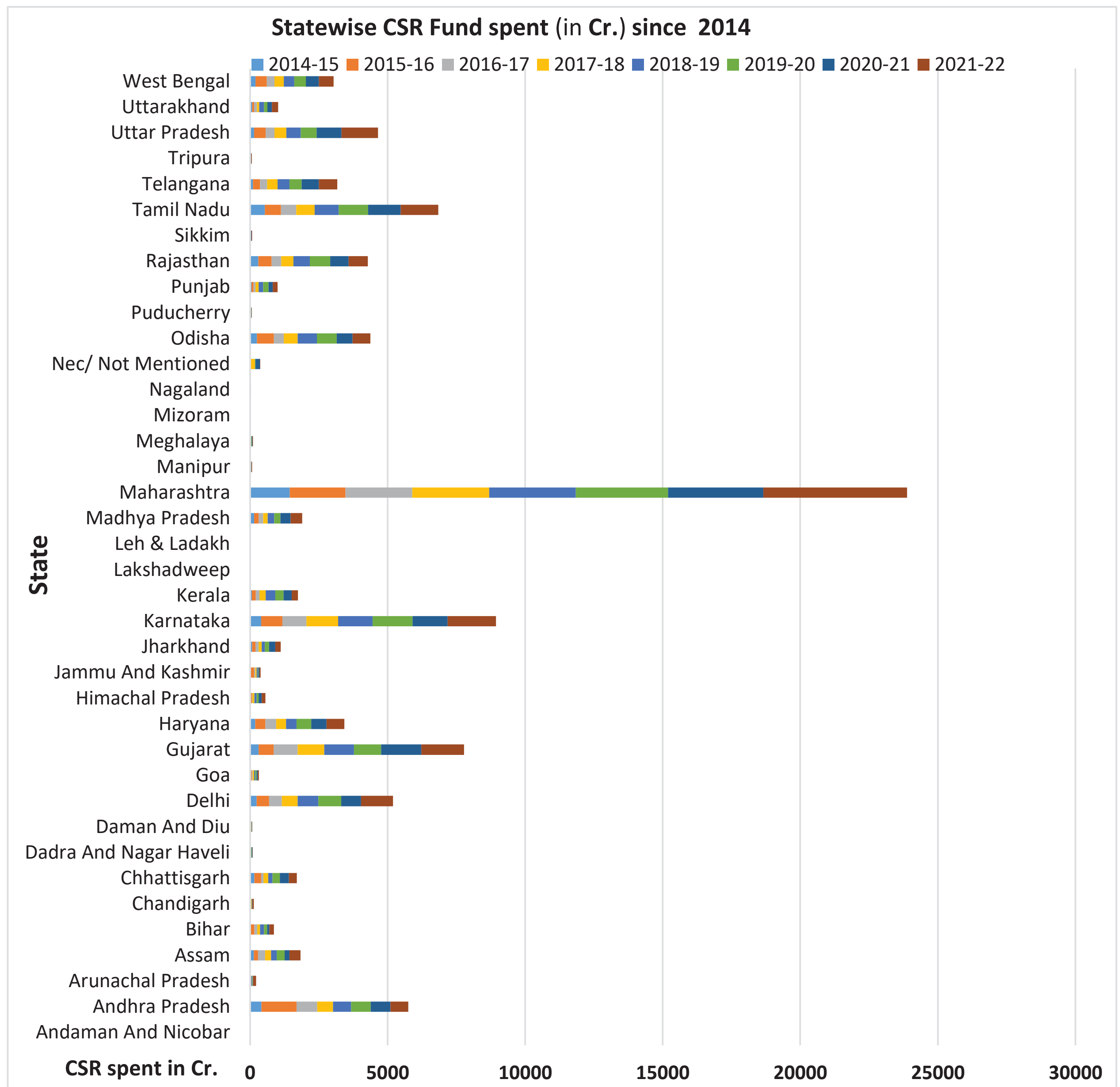
The most important and timely code is the environmental integrity with the strategic goal of sustainable ecosystem in the today's crisis of adverse global warming and climate change.

CSR IN INDIA

Since the enactment of CSR in India from 2014 we have found that maximum CSR fund has been spent in Maharashtra, Karnataka, Gujarat, Tamilnadu, and states like Andhra Pradesh, Delhi, Uttar Pradesh, Rajasthan, Haryana and Odisha have received considerable good amount of the fund. Interestingly it has been found that all these states are falling under climatic zones of Hot& Dry, Warm& Humid or Composite which means the annual average cooling need (CDD) is high and facing adverse effect of climate change. Thus if CSR fund be utilized for solar energy driven cooling solutions and other energy needs that will actually boost up sustainable development and environmental integrity. Except cold, in all the four climatic zones we have found that sustainable cooling of building is possible by rooftop solar PV. Only the area of rooftop will vary with respect to the location/climatic zone (Table-5).

> Though CSR has been included in the business regulation in India through Section 135 of Company Act, 2013 with effect from FY-2014 but considering the evolution of CSR as part of business practices in the world there could be five ages & stages of CSR (Table-1) i.e., the ages of Greed, Philanthropy, Marketing, Management and Responsibility and each of these ages manifests different stages of CSR namely Defensive, Charitable, Promotional, Strategic and Systematic CSR.

Figure 1: State-wise CSR Fund spent since inception (2014) in India



source: *www.csr.gov.in*

According to MEFCC, Govt. of India, space cooling in building sector will continue to dominate in India with about 57% share of entire cooling energy demand and refrigeration will be next largest contributor at ~25% in 2027 and room AC stock-in-use will reach 170 million units in 2027 and refrigeration will be next largest contributor about 25% in 2027 and room AC stock-in-use will reach 170 million units in 2027.

Table 4: CSR fund spent for Environmental sustainability including solar energy *(www.csr.gov.in)*

Development Sector	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**
Environmental Sustainability Incl. Solar Energy (Rs. Cr.)	773.99	796.69	1082.63	1301.96	1368.27	1470.53	1030.16	2366.15
As % of total CSR spent	7.69%	5.49%	7.44%	7.61%	6.77%	5.89%	3.93%	9.12%

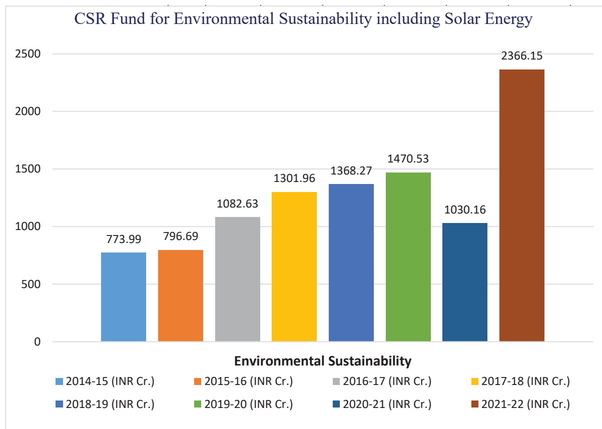


Fig-2: Use of CSR fund for environmental sustainability including solar energy (*Source:www.iica.nic.in*)

as per methodology laid by UN in spite of having the lowest SDG Score (63.5).

Investment in renewable energy sector in India has shown overall growth in last three years 2019-20. 2020-21 and 2021-22 as USD 8361, 6389 and 14387 million respectively. It has been envisaged that the investment in solar energy sector is slowing down, as after a record addition of 9780 MW in FY2018-19, the solar capacity additions will also slow down to 8000 MW in 2019-20. India needs to turn around in terms of renewable energy use and investment in rooftop solar system which can also provide substantial cooling load, from 97% to 100% (Table-5). Thus, a huge potential with a target to achieve 100 GW_{peak} rooftop solar will remain unutilized if suitable financial mechanism is not in place. This is the right time to enhance investment in solar energy also because the cost of solar photovoltaic systems has gone down the maximum among all renewable energy systems – as much as 82% decrement over ten years (2010-19).

Table 5:.Floor-wise rooftop area for cooling electricity requirement in four climate zones of India with growing cooling need

Climatic Zone	Buildings with number of Floor(s) considered	Rooftop Area (sqm)	Cooling energy served (%)	Climatic Zone	Buildings with number of Floor(s) considered	Rooftop Area (sqm)	Cooling energy served (%)
Warm & Humid (Location: **Kolkata**)	One	111.79	100%	**Composite** (Location: **Delhi**)	One	30.76	100%
	Two	179.67	98.50%		Two	53.35	100%
	Three	201.9	97.09%		Three	77.74	100%
Hot& Dry (Location: **Ahmedabad**)	One	31.2	100%	**Temperate** (Location: **Bangalore**)	One	15.8	100%
	Two	52	98.17%		Two	28.65	100%
	Three	84.6	100%		Three	43.73	100%

Source: DesignBuilder Simulation software

SDG in India: United Nations declared 17 SDGs in 2015 to be achieved by 2030, after the period of Millennium Development Goals (MDGs) 2000-2015. Recent reports show that as of now the achievements are far behind the desirable path in order to achieve the targets within the commitment period. India ranks 112 out of 166 countries who have reported their SDG overall performance parameters. SDG 7 (Affordable and Clean Energy) four targets are shown to be either improving or remain steady. Similarly, in SDG 9 (Industry, Innovation and Infrastructure) out of seven targets monitored, only two are showing desired improvement. But among the G20 Nations, India has shown the highest improvement rate in the SD ranking calculations (22.8% during 2000 to 2022)

IMPACT OF CSR TO ATTAIN SDGs

CSR and SDGs are being separately implemented in the reality but if the CSR activities promote SDGs the impact will be huge as also the UN envisions a more sustainable, efficient, safe and productive world as well as India by 2030. It can be suggested that if CSR fund be invested in the SDGs activities then the SDGs can be achieved effectively (Fallah Shayan, Mohabbati-Kalejahi, Alavi, & Zahed, 2022). The figure is showing the comprehensive framework where CSR drives SDGs.

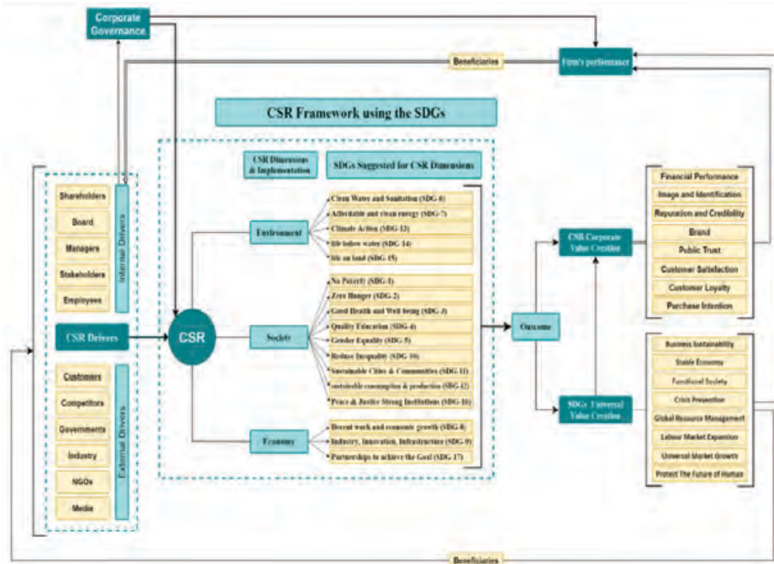


Figure 3: A comprehensive framework for CSR implementation addressing SDGs

SWOT ANALYSIS

A SWOT analysis have been attempted to assess the feasibility of the use of CSR Fund towards solar energy application which has all positive alignment with the SDGs.

IMPACT ASSESSMENT

National CSR Award is annual event for giving recognition of the CSR activities by the corporates by the Ministry in assessing the impact of the project on the society towards sustainable development. Few CSR projects on solar energy with great impact is given below.

Table-6: CSR fund spent for solar energy with impact to SDG

Corporate	Activity	Location
TATA STEEL	3MW Solar project.	Naomudi, Jharkhand
Susken Technologies	wins energy harvesting, rooftop solar. So reducing 220 ton CO2 monthly.	Bangalore
Hindusthan Aeronautics Ltd (HAL)	provides soalr street lights and solar water heater in villages in South India and 4 kW of solar power systems with battery backup in over 50 government schools in Gubbi Taluk in Karnataka. Committed to install 50 MW of renewable energy power projects to reduce its carbon footprint and has already installed wind and solar power projects of nearly 46 MW capacity.	Karnataka

Power Finance Corporation	Affordable and clean energy access to 8589 homes in Arunachal Pradesh and 25000 households in Bihar and 10000 solar street lights in various parts of country.	Arunachal Pradesh, Bihar and other parts of country
MECON Ltd.	320 households benefited for solar powered safe drinking water and other living amenities.	Bartoli Village of Ranchi district in Jharkhand
Adani Ports and SEZ Ltd.	4230 households and 6067 fishermen, 1780 children directly benefited from various environmental, economic and health, educational & social sustainable projets.	Kutch region of Gujarat
TATA Sponge Iron Ltd.	1200 households directly benefited for health, sanitation and safe drinking water from 200 water point.	Joda block, Keonjhar district of Odisha
ITC Ltd.	Waste Recycling project covers 1900000 households to manage 50196 tonnes of dry waste while providing livelihood to 14500, constructed 31347 toilets.	16 states
Schneider Electric and IT Business India pvt. Ltd.	Environment, sustainable development and solar Energy project covers 400 villages, 30 cities.	12 states

Source: www.iica.nic.in, www.csr.gov.in

WAY FORWARD

Since 2016 as India become 62nd country to ratify Paris Agreement to come up with national plan to curb carbon emission and rising temperature, India has set a goal of generating 40% of its electricity from renewables, therefore access to finance is the biggest challenges which can be partially met through CSR funds from corporates. The study revealed that out of top 100 companies only 39 have program on clean energy. 50% of the top companies have CSR projects in other areas like education, sanitation, livelihood etc. but only industries into power, oil, and gas are likely to support RE. Energy interventions sometimes perceived to be highly technical which may discourage CSR team in companies that may not have required capabilities and capacities. Companies found it difficult to source qualified & technically competent implementing partners in geographic areas of interest. As there are plenty opportunities, firms working with renewables should educate and communicate the benefits and ease of installing renewable energy to companies for CSR fund to spend while helping protect the environment. Efforts have been made to assess the market potential of renewable energy driven systems in India (Manna, N.S. 2020). Solar energy is the viable solution to curb the emission and meet net-zero target (Jeffrey D. Sachs, 2023)

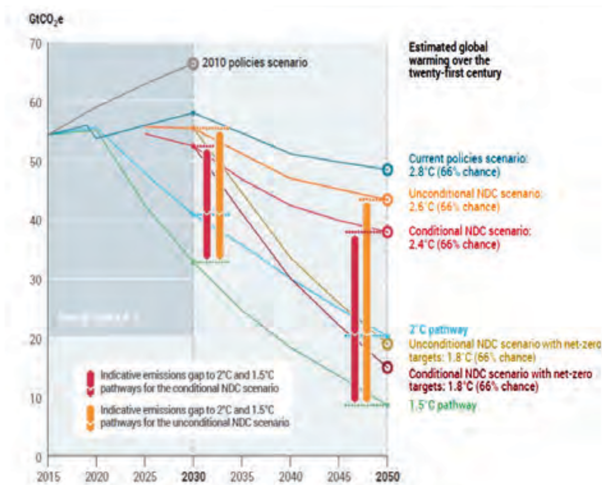


Figure 5: Projected Global warming under alternative policy scenario ((*Source:* UNEP, *Emissions Gap Report 2022)*

CONCLUSION

"The earth, the air, the land and the water are not an inheritance from our forefathers but on loan from our children. So we have to handover to them at least as it was handed over to us." – is the main motto of sustainability and for that use of solar energy in particular and renewable energy in general is utmost important for the sustainable ecosystem. Corporates are developing and growing by consuming the natural resources of physical ecosystem and partially distorting the nature and their growth and prosperity is because of the people, the community and the society at large. So it's time for the CSR fund to be spent on renewable energy in general and solar energy in particular for energy sustainable environment.

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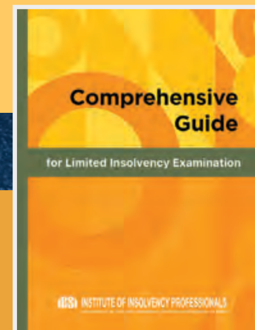

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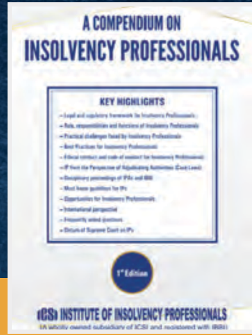

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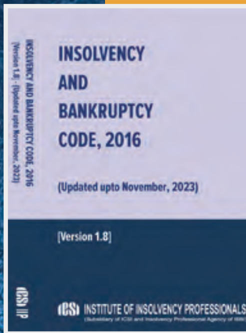

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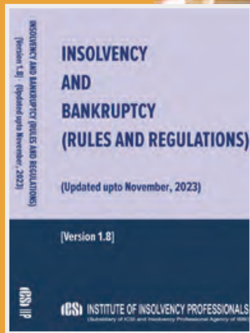

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3

LEGAL WORLD

- LALITA JALAN & ANR v. BOMBAY GAS CO. LTD & ORS [SC]
- BHARTI AIRTEL LTD & ANR v. VIJAYKUMAR V. IYER & ORS [SC]
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Corporate Laws

Landmark Judgement

LMJ 02:02:2024

LALITA JALAN & ANR v. BOMBAY GAS CO. LTD & ORS [SC]

Appeal (Crl) No.774 of 2003

S. Rajendra Babu, Ar. Lakshmanan & b G.P. Mathur,JJ. [Decided on 16/04/2003]

Equivalent citations: AIR 2003 SC 3157; 2003 AIR SCW 2175; (2003) 4 JT 64 ; 2003 (6) SCC 107; (2003) 114 Comp Cas 515.

Companies Act,1956-section 630- Recovery of company property- legal heirs of the deceased director withholding the property- whether they are coming within the ambit of the section- Held, Yes.

Brief facts:

The appellants are legal heirs of the deceased director of the respondent company. The deceased director was allotted a company flat which the appellants continued to retain and occupied the death of the director and they refused to vacate the flat. The respondent company initiated proceedings under section 630 of the Companies Act, 1956 The appellants contended that they are not officers of the company and the said provision is not applicable to them. The trial court and the High Court rejected this contention. Aggrieved they approached then Supreme Court.

Decision: Dismissed.

Reason:

The question which requires consideration is whether the appellants having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as Director of the Company, come within the ambit of Section 630 of the Act. The main ingredient of the Section is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the Section is that property of the company is preserved and is not used for purposes other than those expressed or directed in the Articles of Association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company.

The view expressed in J.K. (Bombay) Ltd. (supra) runs counter to the view expressed in Abilash Vinodkumar Jain (supra) wherein it has been clearly held that the object of Section 630 of the Act is to retrieve the property of the company where wrongful holding of the property is done by an employee, present or past, or heirs of the deceased employees or officer or anyone claiming the occupancy through such employee or officer. The view expressed in Abilash Vinodkumar Jain (supra) clearly subserves the object of the Act which is to the effect of recovering the possession of the property belonging to the company. If it is held that other members of the family of the employee or officer or any person not connected with the family who came into possession through such employee would not be covered by Section 630 of the Act, such a view will defeat the quick and expeditious remedy provided therein. The basic objections to this view is that the aforesaid provision contained in Section 630 of the Act is penal in nature and must be strictly construed and therefore the actual words used should not be given any expansive meaning. A provision of this nature is for the purpose of recovery of the property and if, in spite of demand or subsequent order of the court, the possession of the property is not returned to the company, the question of imposing penalty will arise. Similar provisions are available even under the Code of Civil Procedure. In execution of a decree for recovery of money or enforcement of an injunction, the judgment-debtor can be committed to a prison. Such a provision by itself will not convert the civil proceeding into a criminal one. Even assuming that the said provision is criminal in nature, the penalty will be attracted in the event of not complying with the demand of the recovery of the possession or pursuant to an order made thereof. The possession of the property by an employee or anyone claiming through him of such property is unlawful and recovery of the same on the pain of being committed to a prison or payment of fine cannot be stated to be unreasonable or irrational or unfair so as to attract the rigour of Article 21 of the Constitution. If the object of the provision of Section 630 of the Act is borne in mind, the expansive meaning given to the expression 'employee or anyone claiming through him' will not be unrelated to the object of the provision nor is it so farfetched as to become unconstitutional. Therefore, with profound respects the view expressed in J.K. (Bombay) Ltd. (supra)

in our opinion is not correct and the view expressed in Abilash Vinodkumar Jain (supra) is justified and should be accepted in interpreting the provision of Section 630 of the Act.

If an erstwhile or former employee is prosecuted under Section 630 of the Act on account of the fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or he is living elsewhere. In such cases all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under Section 630 of the Act. This will include anyone else who has been inducted in possession of the property by such persons who continue to withhold the possession of the premises as such person is equally responsible for withholding and non- delivery of the property of the company.

In view of the discussions made above, we are of the opinion that the plea taken by the appellants for recall of the process issued against them has no substance. The fact that the appellant no.2 Siddharth Jalan was born subsequent to the death of N.K. Jalan, would make no difference as his occupation of the flat in question clearly amounts to withholding of the property of the company. The appeal is accordingly dismissed.

LW 09:02:2024

BHARTI AIRTEL LTD & ANR v. VIJAYKUMAR V. IYER & ORS [SC]

Civil Appeal Nos. 3088-3089 of 2020

Sanjiv Khanna & S.V.N. Bhatti, JJ.[Decided on 03/01/2024]

Insolvency and Bankruptcy Code,2016- CIRP- section 25- right to claim set off- whether the appellant entitled to claim set-off- Held,No.

Brief facts:

The present appeals raise an interesting question on the right to claim set-off in the Corporate Insolvency Resolution Process, when the Resolution Professional proceeds in terms of clause (a) to sub-section (2) of Section 25 of the Insolvency and Bankruptcy Code, 20161 to take custody and control of all the assets of the corporate debtor.

The dispute emanates from the 8 spectrum trading agreements entered into by Bharti Airtel Ltd and Bharti Hexacom Ltd (Airtel entities) with Aircel Ltd and Dishnet wireless Ltd(Aircel entities) for purchase of the right to use the spectrum allocated to the latter in the 2300 MHz band. Corporate Insolvency Resolution Process was initiated against Aircel entities. Airtel filed its claim and RP of the Aircel adjusted certain claim owed by airtel to Aircel.

Decision: **Dismissed.**

Reason:

In the present case we are examining and concerned with the provisions as applicable to the Corporate Insolvency Resolution Process in Chapter II Part II of the IBC.

Having examined the different concepts of set-off including insolvency set-off, we would now like to examine the contentions raised by the parties with reference to the provisions of the Corporate Insolvency Resolution Process under the IBC. Further, the provisions relating to Chapter II Part II being explicit and not ambiguous, do not require purposive interpretation. We should, however, take on record that the UNCITRAL guide does distinguish between the set-off obligations maturing prior to the commencement of the insolvency proceedings and set-off obligations after the commencement of the insolvency proceedings.

On the aspect of mutual dealings and also equity, it is to be noted that adjustment of the inter-connect charges are under a separate and distinct agreement. The telephone service providers use each other's facilities as the caller or the receiver may be using a different service provider. Accordingly, adjustments of set-off are made on the basis of contractual set-off. These are also justified on the ground of equitable set-off. The set-off to this extent has been permitted and allowed by the Resolution Professional. The transaction for purchase of the right to use the spectrum is an entirely different and unconnected transaction. The agreement to purchase the spectrum encountered obstacles because the DoT had required bank guarantees to be furnished. Accordingly, Airtel entities, on the request of Aircel entities had furnished bank guarantees on their behalf. The bank guarantees were returned and accordingly Airtel entities became liable to pay the balance amount in terms of the letters of understanding. The amounts have become payable post the commencement of the Corporate Insolvency Resolution Process. For the same reason, we will also reject the argument that by not allowing set-off, new rights are being created and, therefore, Section 14 of the IBC will not be operative and applicable. Moratorium under Section 14 is to grant protection and prevent a scramble and dissipation of the assets of the corporate debtor. The contention that the "amount" to be set-off is not part of the corporate debtor's assets in the present facts is misconceived and must be rejected.

Having considered the contentions raised by the appellant Airtel entities in detail, and in light of the provisions of

the IBC relating to the Corporate Insolvency Resolution Process, we do not find any merit in the present appeals and the same are dismissed. There will be no order as to costs.

LW 10:02:2024

DBS BANK LTD SINGAPORE v. RUCHI SOYA INDUSTRIES LTD & ANR [SC]

Civil Appeal No. 9133 of 2019 with Civil Appeal No. 787 of 2020

Sanjiv Khanna & S.V.N. Bhatti, JJ. [Decided on 03/01/2024]

Insolvency and Bankruptcy Code,2016- section 30- right of dissenting financial creditor to receive minimum value of secured interest- conflict of opinion- referred to larger bench.

Brief facts:

The issue that arises for consideration in the present appeals is whether Section 30(2)(b)(ii) of the Insolvency and Bankruptcy Code, 2016, as amended in 2019, entitles the dissenting financial creditor to be paid the minimum value of its security interest?

Decision: Referred to larger bench as there was conflict of opinion.

Reason:

We would, for the above reasons, reject the submission on behalf of the respondents that Section 30(2)(b)(ii) is unworkable because it involves deeming fiction relating to liquidation, which is inapplicable during the CIRP period. This would be contrary to the legislative intent and is unacceptable.

Respondent no. 2 – CoC has submitted that the appellant has dissented because it did not approve the manner of distribution of the proceeds under the resolution plan. The appellant did not dispute the resolution plan itself. Accordingly, Section 30(2)(b)(ii) is not applicable. The argument is fallacious and must be rejected. Section 30(2)(b)(ii) relates to the proportion of the proceeds mentioned in the resolution plan or the amount which the dissenting financial creditor would be entitled to in terms of the waterfall mechanism provided in Section 53(1), if the corporate debtor goes into liquidation. The dissenting financial creditor does not have any say when the resolution plan is approved by a two-third majority of the CoC. The resolution plan will be accepted when approved by the specified majority in the CoC. The dissenting financial creditor cannot object to the resolution plan, but can object to the distribution of the proceeds under the resolution plan, when the proceeds are less than what the dissenting financial creditor would be entitled to in terms of Section 53(1) if the corporate debtor had gone into liquidation. This is the statutory option or choice given by law to the dissenting financial creditor. The option/choice should be respected.

Respondent no. 2 – CoC had referred to the objections referred to in the CoC meetings dated 15.04.2019 and 23.04.2019. We are of the view that the objections raised by the appellant relate to the distribution of the proceeds in terms of the liquidation plan. According to them, they were entitled to money of value not less than the amount that they would have received under Section 53(1) of the Code.

It is also argued that the NCLAT had rejected the first appeal on the ground that the appellant had only challenged the distribution of the pay-out under the plan inter se the financial creditors of the corporate debtor and not the resolution plan. Accordingly, the amendment to Section 30(2)(b) vide the Amendment Act of 2019 was not applicable. We have already rejected this argument, for the reasons set out above. In our opinion, the contention that the appellant is not the dissenting financial creditor is to be rejected.

The contention on behalf of the respondent that there is conflict between sub-section (4), as amended in 2019, and the amended clause (b) to sub-section (2) to Section 30 of the Code does not merit a different ratio and conclusion. Section 30(4) states that the CoC may approve the resolution plan by a vote not less than 66% of the voting share of the financial creditor. It states that the CoC shall consider the feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors under sub-section (1) to Section 53, including the priority and value of the security interest of the secured creditors, and other requirements as may be specified by the Board. These are the aspects that the CoC has to consider. It is not necessary for the CoC to provide each assenting party with liquidation value. However, a secured creditor not satisfied with the proposed pay- out can vote against the resolution plan or the distribution of proceeds, in which case it is entitled to full liquidation value of the security payable in terms of Section 53(1) on liquidation of the corporate debtor. The conflict with sub-clause (ii) to clause (b) to sub-section (2) to Section 30 does not arise as it relates to the minimum payment which is to be made to an operational creditor or a dissenting financial creditor. A dissenting financial creditor does not vote in favour of the scheme. Operational creditors do not have the right to vote.

In view of the aforesaid discussion, and as we are taking a different view and ratio from India Resurgence ARC Private Limited (supra) on interpretation of Section 30(2)(b)(ii) of the IBC, we feel that it would be appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench. The matter be, accordingly, placed before the Hon'ble the Chief Justice for appropriate orders.

Tax Laws

LW 11:02:2024

M/S K. P. MOZIKA v. OIL AND NATURAL GAS CORPORATION LTD [SC]

Civil Appeal No.3548 of 2017

Abhay S. Oka & Rajesh Bindal,JJ. [Decided on 09/01/2024]

Assam General Sales tax Act and VAT Act - hiring of vehicles, cranes etc- whether taxable as transfer of right to use goods- Held,No.

Brief facts:

This group of appeals concerns the liability to pay tax under the Assam General Sales Tax Act, 1993 (for short, 'the Sales Tax Act') and the Assam Value Added Tax Act, 2003 (for short, 'the VAT Act'), respectively. In some cases, in this group of appeals, the assessees have, under a contract, agreed to provide different categories of motor vehicles, such as trucks, trailers, tankers, buses, scrapping winch chassis, and cranes, to the Oil and Natural Gas Corporation Limited (for short, 'ONGC'). There are other cases where Indian Oil Corporation Limited (for short, 'IOCL') has entered into agreements with transporters to provide tank trucks to deliver its petroleum products.

These cases have been clubbed together as similar questions of law and fact arise. Broadly, the question is whether, by hiring these motor vehicles/cranes, there is a transfer of the right to use any goods. If there is a transfer of the right to use the goods, it will amount to a sale in terms of Clause 29A(d) of Article 366 of the Constitution of India. In short, if the transactions do not fall in the definition of 'Sale' in Clause 29A(d), the same may not attract tax under the Sales Tax Act or the VAT Act. As a result, there will be other questions about whether the transactions will amount to service, thereby attracting liability to pay service tax.

Decision: **Allowed.**

Reason:

In our opinion, the essence of the right under Article 366(29A)(d) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at the time of transfer, must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use, that the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents, are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods, would not arise." (underline supplied) Thus, this Court held that to attract subclause (d) of Clause 29A of Article 366, the goods must be available at the time of transfer, must be deliverable and delivered at some stage. If the goods are not deliverable at all by the service provider to the subscriber, the question of the right to use those goods would not arise.

Essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract), but also the control of the goods by the user. When the substantial control remains with the contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be of rendering service within the meaning of Section 65(105) (zzzzj) of the Finance Act after the said provision came into force.

To conclude, all the appeals preferred by the assessees will have to be allowed. Accordingly, we allow all the appeals of the assessees by holding that the contracts are not covered by the relevant provisions of the Sales Tax Act and of the VAT Act, as the contracts do not provide for the transfer of the right to use the goods made available to the person who is allowed to use the same.

LW 12:02:2024

M/S ABHISHEK TRADING CORPORATION v. COMMISSIONER (APPEALS) & ANR [ALL]

Writ Tax No. 1394 of 2023

Shekhar B. Saraf, J. [Decided on 19/01/2024]

Central Goods and Services Act,2017- Section 107- first appeal- limitation of 3 months plus 30 days for condonation of delay- appeal filed after 120 days- whether barred by limitation-Held, Yes.

Brief facts:

The petitioner is aggrieved by the order dated August 28, 2023 passed by the appellate authority being the Commissioner (Appeals), CGST and Central Appeal Commissionerate, Allahabad under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). By the aforesaid order, the appellate authority dismissed the appeal filed by the petitioner on the ground that the same was time barred as it was filed beyond the period of four months.

Decision: Dismissed.

Reason:

Upon perusal of the memo of appeal filed by the petitioner, it is clear that the order was communicated on October 13, 2021, as admitted by the petitioner itself. It is further to be noted that the order cancelling the registration was passed even earlier on January 22, 2021 and had been uploaded on the portal. As there is no dispute with regard to communication of the order and the fact that the appeal was filed beyond the time prescribed, this Court under the extraordinary jurisdiction cannot interfere with the appellate authority's order as the application of Limitation Act, 1963 does not apply to Section 107 of the Act.

The Supreme Court in Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others reported in (2008) 3 SCC 70, while dealing with a similar issue as in the present case, has held as under:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Ac') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

In Commissioner of Customs and Central Excise v. Hongo India Private Limited and Another reported in (2009) 5 SCC 791, the Supreme Court has reiterated its stand and held as under:

"31.In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd.[(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises v.CCE [(2008) 3 SCC 70] and Punjab Fibres Ltd. case [(2008) 3 SCC 73] concluded that the High Court was justified in holding that there was no power for condonation of delay in filing reference application.

As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

The Central Goods and Services Act is a special statute and a self-contained code by itself. Section 107 of the Act has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite law that Section 5 of the Limitation Act, 1963 will apply only if it is extended to the special statute. Section 107 of the Act specifically provides for the limitation and in the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. Accordingly, one cannot apply Section 5 of the Limitation Act, 1963 to the aforesaid provision. In light of the above, no interference is required in this petition and the same is, accordingly, dismissed.

LW 13:02:2024

RELIANCE LIFE INSURANCE COMPANY LTD & ANR v. JAYA WADHWANI [SC]

Civil Appeal No.........of 2024 [@ SLP(C) No.10954 of 2019] with Civil Appeal No.........of 2024 [@ SLP(C) No.15888 of 2021]

Vikram Nath & Rajesh Bindal,JJ.[Decided on 03/01/2024]

Insurance policy- from what date the policy becomes effective- Supreme court explains the law.

Brief facts:

The sole question involved in these appeals is as to what would be the date from which the policy becomes effective; whether it would be the date on which the policy is issued or the date of the commencement mentioned in the policy or it would be the date of the issuance of the deposit receipt or cover note. The District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Commission and the National Commission have proceeded on the basis that the date of issuance of the initial deposit receipt of premium is the date of commencement of the Policy and have accordingly allowed the complaint filed by the respondent.

Decision: **Allowed.**

Reason:

We may also refer to the two judgments relied upon by the counsel for the appellants, in support of his submission that the terms and conditions of the contract as contained in the policy should be strictly adhered to. Otherwise mentioning of the terms and conditions would be a futile exercise, if any other interpretation is given or terms and conditions are relaxed.

In this connection, it would be useful to reproduce the extract which form part of paragraph 6 in the case of Life Insurance Corporation of India and Another vs. Dharam Vir Anand. It reads as follows:

"6. Having examined the rival submissions and having examined the policy of insurance which is nothing but a contract between the parties and having considered the expressions used in Clause 4-B of the terms of the policy, we are persuaded to accept the submissions made by Mr. Salve, the learned Senior Counsel appearing for the appellant. In construing a particular Clause of the Contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the Contract cannot be made otiose by giving a meaning to the policy of the contract. Then again, when the same Clause of a contract (1998) 7 SCC 348 uses two different expressions, ordinarily those different expressions convey different meanings and both the expressions cannot be held to be conveying one and the same meaning.

Bearing in mind the aforesaid principle of construction, if Clause 4- B of the terms of policy is scrutinized, it become crystal clear that the date on which the risk under the policy has commenced is different from the date of the policy. In the case in hand, undoubtedly the date on which the risk under the policy has commenced is 10.5.89 but the date of the policy is 31.03.1990 on which date the policy had been issued. Even though the Insurer had given the option to the Insured to indicate as to whether the policy is to be dated back and the insured indicated that the policy should be dated back to 10.05.1989 and did pay the premium for that period, thereby the risk under the policy can be said to have commenced with effect from 10.5.1989 but the date of the policy still remains the date on which the policy was issued i.e. 31.03.1990. The death of the life assured having occurred as a result of suicide committed by the assured before the expiry of three years from the date of the policy, the terms contained in Clause 4-B of the policy would be attracted and, therefore, the liability of the Corporation would be limited to the sum equal to the total amount of premium paid under the policy without interest and not the entire sum for which the life had been insured. The Forums under the Consumer Protection Act committed gross error in construing Clause 4-B of the policy and giving the same meaning to the two expressions in the aforesaid Clause 4-B namely "the date on which the risk under the policy has commenced" and "the date of the policy".

The construction given by us to the provisions contained in Clause 4-B get support, if the proviso to Clause 4-B is looked into. Under the proviso, if the life assured commits suicide before expiry of one year reckoned from the date of the policy, then the provisions of the Clause under the heading "suicide" printed on the back of the policy would apply. In a case therefore where a policy is dated back for one year prior to the date of the issue of the policy, the proviso contained in Clause 4-B cannot be operated at all. When parties had agreed to the terms of the contract, it is impermissible to hold that a particular term was never intended to be acted upon. The proviso to Clause 4-B will have its full play if the expression "the date of the policy" is interpreted to mean the date on which the policy was issued and not the date on which the risk under the policy has commenced. In the aforesaid premises, we are of the considered opinion that under Clause 4-B of the policy the date of the policy is the date on which the policy had been issued and not the date on which the risk under the policy had commenced by way of allowing it to be dated back. In view of our aforesaid construction to Clause 4-B, in the case in hand, the respondent in law would be entitled to only the sum equal to the total amount of premium paid under the policy without any interest inasmuch as the death of the life assured has occurred before the expiry of three years from the date of the policy, i.e., 31.3.1990… ………"

Relying upon the above judgment in the case of Dharam Vir Anand (supra), this Court again in the case of Life Insurance Corpn. of India vs. Mani Ram, reiterated the same view and held that the date of issue of policy would be the relevant date even if there was backdating as has been done in the case of Dharam Vir Anand (supra).

In the present appeals, we do not find any such issue of back dating but the date of issuance of the policy would be the relevant date for all the purposes and not the date of proposal or the date of issuance of the receipt. In view of the above, the stand taken by the appellant is approved.

The impugned orders are thus liable to be set aside. Accordingly, the orders passed by the District Forum, the State Commission, and the National Commission are set aside and the claims of the respondent are rejected. The appeals are, accordingly, allowed as above.

LW 14:02:2024

SUSHMA SHIVKUMAR DAGA & ANR v. MADHURKUMAR RAMKRISHNAJI BAJAJ [SC]

Civil Appeal No.1854 of 2023

Aniruddha Bose & Sudhanshu Dhulia, JJ. [Decided on 15/12/2023]

Arbitration and Conciliation Act,1996- section 8- Conveyance deed based on several tri-partite agreements- tripartite agreement contained arbitration clause- plaintiff filed suit on the basis of conveyance deed- defendants filed application filed to refer the case to arbitration- whether tenable-Held Yes.

Brief facts:

The appellants/Plaintiffs filed a civil suit seeking declaration that the Conveyance Deed dated 17.12.2019 to be declared null and void, and that the registered Development Agreements dated 17.09.2007, 20.11.2007, 30.11.2007, 03.12.2007 and 27.02.2008 stand validly terminated. The respondents/defendants moved an application under Section 8 of the Arbitration & Conciliation Act, 1996 for referring the matter to arbitration by relying upon the arbitral clause in the two agreements dated 31.03.2007 and 25.07.2008. It was contended that the aforesaid agreements formed the basis of the Conveyance Deed and the Development Agreements which are subject matter of the suit. The Trial Court allowed the application of the defendant and referred the matter for arbitration. This order was challenged by the appellants / plaintiffs before the Bombay High Court, which was dismissed vide order dated 10.12.2021. Aggrieved by these two orders, the appellants / plaintiffs are now before the Supreme Court.

The only question to be decided by the Court was whether the Trial Court and the High Court have rightly referred the matter to arbitration or the dispute is of such a nature that it is not liable to be referred to arbitration, as there was no arbitration clause in the Conveyance Deed dated 17.12.2019 or if there was, yet the matter in any case is such that it is not arbitrable.

Decision: **Dismissed.**

Reason:

After the 2015 amendment, primarily the court only has to see whether a valid arbitration agreement exists. Additionally, the clear non-arbitrability of cases, such as where a party to the agreement is statutorily protected, such as a consumer "has also to be seen by the Court" (Booz Allen supra). Short of the narrow field stated above, the scope of judicial scrutiny at the stage of Section 11 (6) or Section 8 is extremely limited.

Objections will nevertheless be raised both on Section 8 and Section 11 applications. These objections can be genuine, such as where there is no arbitration clause or where the matter is itself non-arbitrable, but often these objections could be only to wriggle out of the statutory commitment of parties to a defined process of redressal mechanism.

In the present case there are broadly three objections of the appellants on the Section 8 application moved by the respondents which has already been allowed by the two courts below. The first objection regarding the absence of an arbitration clause in the Conveyance Deed dated 17.12.2019 and the development agreements has already been discussed in detail in the preceding paragraphs.

The second is that the suit filed by the appellants is for cancellation of a document relating to immovable property i.e. land and it therefore amounts to an action in rem and hence arbitration is not the remedy. This question, however, is no more res integra. Elaborate analysis on this aspect has been done by this Court in the case of Deccan Paper Mills v. Regency Mahavir Properties, (2021) 4 SCC 786, therein this court after referring to all the relevant precedents and the case laws has held that whether it is a suit for cancellation of a deed or a declaration of rights rising from the deed, it would only be an action in personam and not in rem. The decision of the Division Bench of Andhra Pradesh High Court in Aliens Developers (P) Ltd. v. Janardhan Reddy, 2015 SCC Online Hyd 370, was held to be wrong wherein it was held that a suit under Section 31 of Specific Relief Act amounts to an action in rem and this adjudicatory function can only be done by the Competent Civil Court and the powers cannot be exercised by an Arbitrator. The basic foundation of the Court for holding that a Section 31 suit for cancellation of a document amounts to an action in rem was held to be wrong. The entire scope and ambit of the Specific Relief Act, 1963 was considered and in Deccan Paper Mills (supra), the anomalies in law for holding such to be an action in rem were discussed and it was held that a relief sought under the Specific Relief Act is nothing but an action in personam.

The third objection is regarding fraud. The plea of fraud raised by the appellants in their objection to the Section 8 application has never been substantiated. Except for making a bald allegation of fraud there is nothing else. This Court has consistently held that a plea of fraud must be serious in nature in order to oust the jurisdiction of an

Arbitrator. In Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710, this Court laid down two conditions which must be satisfied before the Court can refuse to refer the matter to the Arbitrator, a forum consciously decided by parties in an agreement. The first is whether the plea permeates the entire contract and above all, the arbitration agreement, rendering it void or secondly, whether the allegation of fraud touches upon the internal affairs of the parties inter se having no implication in the public domain. The allegations must have some implication in public domain to oust the jurisdiction of an Arbitrator, if an allegation of fraud exists strictly between the parties concerned, the same will not be termed to be as a serious nature of fraud and hence would not be barred for arbitration.

In the present case, therefore there is absolutely no ambiguity that both the Tripartite Agreements dated 31.03.2007 and 25.07.2008 contain an arbitration clause, which forms the basis of all subsequent agreements including the agreements sought to be declared as validly terminated by the appellants and the conveyance deed sought to be declared as null and void. Both the trial court as well as the High Court have given a correct finding on facts as well as on law. We find no scope for interference in the matter. This appeal hence has no force, and is hereby dismissed.

LW 15:02:2024

YOGESH PRATAP SINGH v. PVR Ltd [CCI]

Case No. 40 of 2022

Ravneet Kaur, Anil Agrawal & Deepak Anurag. [Decided on 03/01/2024]

Competition Act,2002- sections 3&4- film exhibition in multiplexes- screening of film- allocation of screens- most screens allotted to large production houses and less screens to small production houses- whether discriminatory treatment- whether amounts to abuse of dominance-Held, No.

Brief facts:

The Informant alleged that the OP, by virtue of controlling more than half of the upscale multiplex screens in India, is in a dominant position in the film exhibition market and has abused its dominance by according special treatment to films of powerful and monetarily affluent production houses and constraining the entry of films by independent filmmakers. It is also stated that OP has indulged in cartelization and vertical integration by entering into business of film production, film distribution and film exhibition with the big production houses.

Decision: **Dismissed.**

Reason:

The Commission notes that the primary grievance of the Informant stems from the alleged discriminatory treatment by OP in allocation of screens for exhibition of movies. It has been alleged that OP allocates almost all of its screens to films produced by large production houses which leaves no place for films produced by independent filmmakers. Furthermore, vertical integration by OP in the film exhibition industry which may squeeze out competition has also been alleged by the Informant.

With regard to the allegation of allocating almost all its screens to films produced by large production houses, the Commission notes that OP has submitted evidence of exhibiting Informant's film titled as 'Kya Yahi Sach Hai' alongside blockbuster commercial movie 'Don 2'. Further, it has been submitted that the Informant's film earned a collection of merely Rs. 3 lakhs in 90 allocated shows across 11 different locations.

With regard to the allegation that the OP has vertically integrated itself with production, distribution and also exhibition of films, the Commission notes that the vertical integration per se is not prohibited under the provisions of the Act. Furthermore, the Informant has not adduced any evidence in this regard to substantiate the allegations. On the other hand, OP has submitted that films produced by independent filmmakers were exhibited alongside exhibition of films produced by large production houses. It has also been submitted that in FY 2022-23, majority of the films exhibited at the OP's theatre as well as revenue earned from them were produced or distributed by third-party. Accordingly, OP has submitted that there can be no question of foreclosure to the films produced or distributed by the third- party. The Commission finds force in the argument of OP.

With regard to the allegation of preferential treatment being afforded to the large production houses, the Commission notes that OP has stated that most of the terms including the revenue sharing terms, agreed to with all producers/distributors are largely the same, regardless of whether they are independent filmmakers or large production houses. Further, OP has submitted that the agreement for exhibition of movies at OP's

multiplexes is prepared by the producers/distributors of the films themselves and not the exhibitors like the OP.

As far as allegations of discriminatory screen allocations, the Commission notes that the OP has submitted that the allocation of screens is being done following criteria such as revenue generating potential of the movie, excitement/buzz around the film, marketing, advertising and promotions done, historical data (admission/box office revenue) of films of similar genres, previous review of the film maker, selection team's estimate of box office collection, language of the film and cast & crew etc. It has further been submitted that the guiding factor for selection of films and screen allocation is maximization of footfalls and revenue.

The Commission is of the view that the commercial wisdom of the exhibitors is largely governed by consumer demand and unless harm to competition is apparent, any intervention will only lead to undesirable consequence by taking away the autonomy of such undertaking and substituting the decision of such entity by the decision of the regulator. In the realm of competition law, it is widely understood that firms have an autonomy to choose their trading partners as long as the exercise of such autonomy does not affect the fair functioning of the markets. The Commission in its various orders has upheld the freedom enjoyed by the enterprises in the market subject to compliance of the provisions of the Act.

Based on the justifications provided in preceding paragraphs, the Commission is of the view that there must be autonomy available to the exhibitors to deal with movies the way they want, in alignment with their business requirements and subject to provisions of the Act. In this vein, nobody can ask for an absolute right to deal with a particular business. Similarly, there is no absolute right of refusal. This will depend upon the facts and circumstances of each case. Thus, the right to choose a movie for exhibition lies with OP and this freedom cannot be curtailed by compelling it to exhibit the movie of the Informant unless and until it causes any harm to competition.

Against the aforesaid backdrop, the Commission is of the opinion that, prima facie, as there appears no discernible competition concern in the matter.

LW 16:02:2024

JARNAIL SINGH v. MADHAV KRG LTD & ANR [CCI]

Case No. 29 of 2023

Ravneet Kaur, Anil Agrawal & Deepak Anurag. [Decided on 16/01/2024]

Competition Act,2002- sections 3&4- treatment of zinc dust- price variation-allegation of connivance between OP 1 and OP 2 -whether amounts to abuse of dominance-Held, No.

Brief facts:

The Informant has alleged that OP-1 by virtue of its dominant position, used to purchase pollution dust at Rs. 8 per kg when zinc was priced at Rs. 325 per kg. Later, with the entry of two other entities, namely, M/s Jogindra Castings Pvt. Ltd. and R.P. Multimetals Pvt. Ltd., OP-1 and few other units started purchasing it at Rs. 20 per kg and later, at Rs. 25 per kg. The Informant states that given the content of zinc in the pollution dust, market value of the pollution dust is estimated to be around Rs. 40 per kg, which is significantly higher than what is offered to the induction furnaces. The Informant has alleged that OP-1, with the connivance of OP-2 [Pollution Control Board], is abusing its dominant position, in contravention of Section 4 of the Act.

The Informant has prayed for the Commission's directions to the relevant authorities to remove pollution dust from the category of hazardous waste, so that the prices can be determined by market forces rather than certain business entities. It has also prayed for fixation of lower limit at which the commodity can be traded and criminal action be taken, along with imposition of penalties, against OP-1 for violating the law.

Decision: **Dismissed.**

Reason:

The Commission notes that the Informant has alleged abuse of dominance by the OPs in the market for purchase of pollution dust from the induction furnaces, wherein OP- 1, in connivance with OP-2, is making undue profits by extracting zinc from the pollution dust, procured from induction furnaces at low prices vis-à-vis market rate of zinc.

From the Information, it appears that OP-2, being a state pollution board, allows only certain entities to purchase pollution dust from the induction furnaces. The Commission further observes that there has been entry of at least two entities that purchase pollution dust. Further, the bills/invoices provided along with the Information indicate that the procurement price of pollution dust has increased from Rs. 8 per kg to Rs. 25 per kg. Accordingly, the Commission notes that in the facts and circumstances of the present case, more players coming into the market and increase in procurement prices are indicative of greater competition.

The Commission also notes that there is no specific allegation against OP-2 in respect of violation of provisions of Section 4 of the Act. Thus, the Commission is of the prima facie view that there is no competition concern arising in the present matter and therefore, the matter be closed forthwith under Section 26(2) of the Act.

4

FROM THE GOVERNMENT

- COMPANIES (LISTING OF EQUITY SHARES IN PERMISSIBLE JURISDICTIONS) RULES, 2024
- NOTICE INVITING COMMENTS ON THE REVIEW OF RULES PRESCRIBED UNDER THE COMPANIES ACT, 2013 AND LIMITED LIABILITY PARTNERSHIP ACT, 2008
- INVITING COMMENTS OF ALL STAKEHOLDERS ON DRAFT AMENDED RECRUITMENT RULES FOR RECRUITMENT OF INDIAN CORPORATE LAW SERVICE (ICLS) IN DIFFERENT OFFICES OF THE MINISTRY OF CORPORATE AFFAIRS - REG
- POLICY FOR PRE-LEGISLATIVE CONSULTATION AND COMPREHENSIVE REVIEW OF EXISTING RULES AND REGULATIONS
- STREAMLINING OF REGULATORY REPORTING BY DESIGNATED DEPOSITORY PARTICIPANTS (DDPs) AND CUSTODIANS
- EXTENSION OF TIMELINE FOR VERIFICATION OF MARKET RUMOURS BY LISTED ENTITIES
- FRAMEWORK FOR OFFER FOR SALE (OFS) OF SHARES TO EMPLOYEES THROUGH STOCK EXCHANGE MECHANISM

- GUIDELINES FOR AIFs WITH RESPECT TO HOLDING THEIR INVESTMENTS IN DEMATERIALISED FORM AND APPOINTMENT OF CUSTODIAN
- EASE OF DOING BUSINESS- CHANGES IN REPORTING
- EASE OF DOING INVESTMENTS BY INVESTORS- FACILITY OF VOLUNTARY FREEZING/ BLOCKING OF TRADING ACCOUNTS BY CLIENTS
- FOREIGN INVESTMENT IN ALTERNATIVE INVESTMENT FUNDS (AIFs)
- FRAMEWORK FOR SHORT SELLING
- FORMATION OF NEW DISTRICTS IN THE STATE OF MADHYA PRADESH – ASSIGNMENT OF LEAD BANK RESPONSIBILITY
- SECOND SCHEDULE TO THE RESERVE BANK OF INDIA ACT, 1934 – NORMS FOR INCLUSION
- MASTER CIRCULAR- EXPOSURE NORMS AND STATUTORY / OTHER RESTRICTIONS - UCBs
- GUIDELINES ON APPOINTMENT / RE-APPOINTMENT OF STATUTORY AUDITORS OF STATE CO-OPERATIVE BANKS AND CENTRAL CO-OPERATIVE BANKS
- CREDIT/INVESTMENT CONCENTRATION NORMS – CREDIT RISK TRANSFER
- IMPLEMENTATION OF SECTION 51A OF UAPA,1967: UPDATES TO UNSC'S 1267/ 1989 ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST: AMENDMENTS IN 14 ENTRIES
- IMPLEMENTATION OF SECTION 51A OF UAPA, 1967 UPDATES TO UNSC'S 1267 / 1989 ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST AMENDMENTS IN 07 ENTRIES
- IMPLEMENTATION OF SECTION 12A OF THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005: DESIGNATED LIST (AMENDMENTS)
- RISK MANAGEMENT AND INTER-BANK DEALINGS – HEDGING OF FOREIGN EXCHANGE RISK

Corporate Laws

01 Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024

[Issued by the Ministry of Corporate Affairs [F. No. 5/1/2021-CL-I] dated 24.01.2024. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-section (3) of section 23 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.— (1) In these rules, unless the context otherwise requires,—

   (a) "Act" means the Companies Act, 2013 (18 of 2013);

   (b) "Authority" means the International Financial Services Centres Authority established under section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019);

   (c) "fees" means fees as specified under the Companies (Registration Offices and Fees) Rules, 2014;

   (d) "permissible jurisdiction" means a jurisdiction specified in the First Schedule;

   (e) "Schedule" means the Schedule annexed to these rules;

   (f) "Scheme" means the Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme made by the Central Government in the Ministry of Finance.

   (2) The words and expressions used herein and not defined in these rules but defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 or the Scheme, shall have the meanings as respectively assigned to them in the Act, Rules or in the Scheme.

3. Application.- The provisions of these rules shall apply to —

   (a) unlisted public companies;

   b) listed public companies, so far as they are in accordance with regulations framed or directions issued in this regard by the Securities and Exchange Board or the Authority, which issue their securities for the purposes of listing on permitted stock exchanges in permissible jurisdictions.

MANOJ PANDEY
Additional Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

02 Notice Inviting Comments on The Review of Rules Prescribed Under The Companies Act, 2013 and Limited Liability Partnership Act, 2008

[Issued by the Ministry of Corporate Affairs dated 15.01.2024.]

The Ministry of Corporate Affairs (MCA) is the nodal Ministry for administration of the following legislations which require framing of rules by the Ministry:-

- The Companies Act, 2013
- The Limited Liability Partnership Act, 2008.
- The Competition Act, 2002.
- The Insolvency and Bankruptcy Code,
- The Chartered Accountants Act, 1949.
- The Cost and Works Accountants Act, 1959.
- The Company Secretaries Act, 1980.

2. Subordinate Legislation in the form of Rules and Orders have been prescribed by MCA under above legislations. Such Rules/Orders have been prescribed pursuant to the powers available to MCA under respective legislations. While prescribing such Rules/ Orders or during their subsequent revision, from time to time, the following factors have been considered by the MCA viz:-

   (a) Necessity of a robust corporate governance framework.

   (b) Ease of doing business and ease of compliance.

   (c) Economic environment in the country as well as internationally.

   (d) Levels of various thresholds in respect of class or classes of companies for the purposes of various governance and compliance requirements.

   (e) Pronouncements of various Courts/NCLT/ NCLAT & other quasi-judicial bodies.

   (f) Legal & Technological developments taking place across the globe.

3. Pursuant to the announcement made in Para 99 & 100 of the Budget Speech (2023-24) The Ministry of

Corporate Affairs (MCA) has released a Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations prescribed under various legislations administered by it. The Policy has been placed on the website of MCA.

4. In accordance with para B.1 of such Policy, it has been decided to initiate comprehensive review of all the Rules prescribed under various legislations being administered by MCA as mentioned in para 1 above. Accordingly, it has been decided to invite comments/ suggestions on the Rules issued under such legislations from all the stakeholders through e-consultation Platform on the MCA website.

5. It is requested that comments/suggestions on the Rules may be provided through such facility within 30 days of posting of the rules on e-consultation module. Comments/suggestions should be with specific reference to one or more Rule/sub-rule/clause of relevant Rules and should be submitted through the online facility only. Suggestions not related to the provisions of the Rules will not be taken on record. In order to avoid repetition/duplication of comments/ suggestions, the members of the Professional Institutes/ Councils/ Industry Chambers should route their comments/ suggestions through respective Institute/ Council/ Chamber.

6. In the first phase, rules relating to Companies Act, 2013 and LLP Act, 2008 shall be posted on e-consultation module for inviting comments/suggestions with effect from 25.01.2024.

03 Inviting comments of all stakeholders on draft amended Recruitment Rules for recruitment of Indian Corporate Law Service (ICLS) in different offices of the Ministry of Corporate Affairs - Reg

[Issued by the Ministry of Corporate Affairs [F. No. A-12018/2/2023-Ad. II-MCA) dated 08.01.2024.

The undersigned is directed to refer to the Department of Personnel and Training's OM No. AB-14017/61/2008-estt. (RR) dated 13.10.2015 regarding inviting comments of all stakeholders on the draft Recruitment Rules framed/amended by the respective Department/ Ministry.

2. Accordingly, the draft amended Recruitment Rules for recruitment of Indian Corporate Law Service (ICLS) in different offices of the Ministry of Corporate Affairs are available on the Ministy's website with a request to all stakeholders to expedite their comments/objections or suggestions on the aforesaid draft Rules, in writing and within a period of 30 days from publication of these draft Rules on the website of the MCA, to the Ministry for facilitating further action in the matter.

PRASHANT RASTOGI
Under Secretary

04 Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations

[Issued by the Ministry of Corporate Affairs dated 01.01.2024.

Introduction

Ministry of Corporate Affairs (MCA) is primarily responsible for administering the Companies Act, 2013, LLP Act, 2008, IBC-2016, Competition Act, 2002 and legislations relating to the Three Professional Institutes (PIs), namely Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost Accountants of India (ICOAI). Various Rules have been prescribed by the Ministry under respective legislations. The Regulators (viz. the IBBI, CCI, ICAI, ICSI, ICoAI) established under respective Statutes have framed regulations as required. NFRA does not, at present, have statutory authority to make regulations.

2.1 MCA has generally undertaken public consultation at the stage of framing or making amendments in the principal legislations. The recommendations of the relevant Committees (CLC, ILC, etc.) are placed on the website of the Ministry for public comments. Attention of the Industry Chambers, Professional Institutes, Regulatory Bodies etc. is drawn to the process of consultation. In many cases, public comments received are analysed through statements giving Ministry's observations on such comments. These are not placed in public domain.

2.2 While rules are framed by the Ministry, the concerned regulators frame regulations. The practice of public consultation for regulation making is not uniform across all regulators. IBBI has issued a regulation in 2018 about the manner of public consultation. Statutes governing the Three PIs mandate publication of draft regulations for public consultation before finalising the regulations. Until a recent amendment was made in year 2023 in the Competition Act, the CCI did not engage in a consultative process while framing regulations. As far as amendments in rules are concerned, the process of public consultation is not being currently followed in all cases, although original rules for Companies Act, 2013 and Limited Liability Partnership Act, 2008 were published for carrying out such consultation.

Need for Public Consultation in Rule/Regulation Making Exercise

3. Need for public consultation in rule/regulation making exercise has been felt for bringing in greater transparency and greater involvement of the stakeholders. The Legislative Department vide their DO Letter DO 11(35)/20-13-L.I dated 5th February, 2014 has also laid emphasis on the process of pre-legislative consultation for principal legislations as well as for subordinate legislation.

4. In this context, paragraphs 99 and 100 of Budget Speech (2023-24) of Hon'ble Finance and Corporate Affairs Minister read as under:-

   Financial Sector Regulations

   99. To meet the needs of Amrit Kaal and to facilitate optimum regulation in the financial sector, public consultation, as necessary and feasible, will be brought to the process of regulation-making and issuing subsidiary directions.

   100. To simplify, ease and reduce cost of compliance, financial sector regulators will be requested to carry out a comprehensive review of existing regulations. For this, they will consider suggestions from public and regulated entities. Time limits to decide the applications under various regulations will also be laid down.

5. The issue has also been discussed in the Financial Stability and Development Council (FSDC) meeting. Para 13 of RoD of 27th FSDC Meeting (08.05.2023) is as shown below:

   "Para 13: The Chairperson (IBBI) outlined the Board's practice of inviting extensive discussions prior to the issuance of any regulation, highlighting that there is a specific regulation on regulation-making. Following the recent budget announcements, resolution professionals and other stakeholders have been requested to provide comments on all existing regulations. IBBI is willing to revise any cumbersome or unfriendly regulation based on the feedback received in the next three months. To reduce compliance costs, the existing eight forms have been consolidated into one form, and the process of digitisation is to follow suit under the IBC 21 initiative, with the launch of a new portal expected by the end of the year. This digitisation is expected to further reduce compliance costs for resolution professionals and other intermediaries. In addition, amendments to regulations were made following extensive consultation, seminars, and workshops, and the Ministry of Corporate Affairs (MCA) is actively considering them."

Policy and its Date of Effect

6. Given the above background, the Ministry has taken a decision to frame a policy for pre-legislative consultation and for comprehensive review of rules/regulations which is annexed hereto. The concerned Divisions of the Ministry and the regulators constituted under various Statutes being administered by the Ministry would comply with the Policy as far as practicable and within the respective statutes.

7. Where there is a specific statutory provision on the subject of or manner of consultation, it shall be followed. This policy is advisory in nature and may not be construed as a policy directive under section 55 of competition Act, 2002 or under section 225 of IBC, 2016.

8. The policy aims towards carrying out public consultations both at the time of framing original rules and regulations, and at the time of review as outlined in Para 100 of Budget Speech (2023-24).

9. The annexed Policy shall be effective with effect from 01.01.2024.

YOGITA JADHAV
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

05 Streamlining of Regulatory Reporting by Designated Depository Participants (DDPs) and Custodians

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/AFD/ AFD-SEC-2/P/CIR/2024/8 dated 25.01.2024]

1. SEBI has reviewed various reports submitted by DDPs and Custodians in order to have uniform compliance standards, for ease of compliance reporting and for regulatory purposes.

2. In terms of Regulation 31(4) of SEBI (Foreign Portfolio Investors) Regulations, 2019, and Regulation 20 of the SEBI (Custodian) Regulations, 1996 read with the provisions of Master Circular for Custodians dated April 27, 2023 (referred as Master Circular for Custodians) all DDPs and Custodians shall submit the reports specified by the Board from time to time.

3. Subsequent to the review, it has been decided that the following reports shall henceforth be submitted on the SEBI Intermediary Portal (SI Portal) by DDPs and Custodians:

Table 1: Reporting Requirements with Periodicity

S. No	Reporting Requirements	Periodicity
i.	Annual audit reports on internal controls of DDPs under Regulation 31(6) of SEBI (Foreign Portfolio Investors) Regulations, 2019.	Annual
ii.	Annual review report of the systems, procedures & controls of the Custodian by an expert under Regulation 14 (2) of Custodian Regulations read with Clause 8 of Chapter IV of the Master Circular for Custodians.	
iii.	Audited Annual report along with Net worth certificate under Clause 7 of Chapter IV of the Master Circular for Custodians.	
iv.	AI / ML report under Clause 9 (v) of Chapter IV of the Master Circular for Custodians.	Half yearly

v.	Custodian Quarterly report under Clause 6 of Chapter IV of the Master Circular for Custodians.	Quarterly
vi.	FPI General Information to assess the eligibility under Regulation 4 of FPI Regulations, 2019.	
vii.	NRI/OCI/RI requirements under Clause 1(ii) of Part A of Master Circular for FPIs and DDPs dated December 19, 2022.	Quarterly
viii.	FPIs non-compliant with Legal entity identifier requirements under circular dated July 27, 2023.	
ix.	FPIs who have not submitted granular BO details under circular dated August 24, 2023.	
x.	Details of FPIs granted exemption under circular dated August 24, 2023.	
xi.	Change in material information where there is a delay of 6 months as provided under Clause 14(iii) of Part A of the Master Circular for FPIs and DDPs.	Monthly
xii.	Report of short sales by FPIs under Clause 4 of Chapter IV of the Master Circular for Custodians.	

4. The reporting formats which were finalised in consultation with the pilot Custodians and Designated Depository Participants Standard Setting Forum (CDSSF) shall be shared by CDSSF with all the DDPs and Custodians, who shall disclose the same on their websites.

5. Reporting by DDPs under Clause 14(iii) of Part A of Master Circular for FPIs and DDPs shall be on monthly basis on SI portal. However, the DDPs shall continue to submit delay in intimation of certain material changes (excluding change in Name, Change in Senior Managing Official and Change in Beneficial owner not leading to change in Investor Grouping), within 2 working days from the receipt of intimation by FPI by email to misc-fpi@sebi.gov.in.

Timelines for submission of reports

6. These reports shall be submitted by DDPs and Custodians on the SI portal on monthly, quarterly, half yearly and annual basis as specified. The monthly and quarterly reports shall be uploaded within 15 calendar days from the end of each month and quarter, respectively. The other reports shall be uploaded as per timelines specified in the Master Circular.

7. The mode and periodicity of the provisions of circulars as mentioned in para 2 stand modified to the extent specified herein.

8. The provisions of this Circular shall come into effect from month ending February - 2024 onwards.

9. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

10. This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework - Circulars” and "Info for Foreign Portfolio Investors”.

TREASA KURIALA
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 Extension of timeline for verification of market rumours by listed entities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/7 dated 25.01.2024]

1. The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) inter-alia requires top 100 listed entities by market capitalization and thereafter the top 250 listed entities by market capitalization to mandatorily verify and confirm, deny or clarify market rumours from the date as may be specified by SEBI. Further, SEBI vide Circular no. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/162 dated September 30, 2023, has made the said provision applicable to top 100 listed entities by market capitalization from February 1, 2024 and to top 250 listed entities by market capitalization from August 1, 2024.

2. Considering the fact that the industry standards are under finalization and certain amendments to LODR Regulations are required for implementation of the aforesaid provision, it has been decided to extend the timeline for effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to June 1, 2024 and for top 250 listed entities by market capitalization, to December 1, 2024.

3. This Circular is issued in exercise of the powers conferred under Section 11 of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the LODR Regulations.

4. This Circular is available at www.sebi.gov.in under the link “Legal→Circulars”.

VIMAL BHATTER
Deputy General Manager

07 Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/6 dated 23.01.2024]

1. SEBI vide Master Circular No.SEBI/HO/MRD2/PoD-2/CIR/P/2023/171 dated October 16, 2023

at paragraph 19 of Chapter 1 has specified the comprehensive framework on Offer for Sale (OFS) of shares through stock exchange mechanism. Under the said framework, the relevant provisions regarding offering of shares to employees by the promoters of the company have been prescribed as under:

"19.1.2.2.4. Promoters of eligible companies shall be permitted to sell shares within a period of 2 (two) weeks from the OFS transaction to the employees of such companies. The offer to employee shall be considered as a part of the said OFS transaction.

19.1.5.3.2. The promoters may at their discretion offer these shares to employees at the price discovered in the said OFS transaction or at a discount to the price discovered in the said OFS transaction.

19.1.5.3.3. Promoters shall make necessary disclosures in the OFS notice to the exchange including number of shares offered to employees and discount offered, if any."

2. The existing procedure of OFS to employees of the eligible company is happening outside the stock exchange mechanism. Based on the feedback received from stakeholders, it is observed that the said procedure is time consuming, involves additional costs and multiple activities.

3. In order to enhance efficiency, ease of compliance and reduce cost, based on deliberations in the Secondary Market Advisory Committee of SEBI and discussions with stock exchanges and clearing corporations, it has been decided that the promoters can also offer the shares to employees in OFS through the Stock Exchange Mechanism.

4. The procedure for OFS to employees through the Stock Exchange Mechanism is an additional option to the existing procedure of OFS to employees outside the exchange mechanism.

5. The procedure for offering shares to the employees in OFS through stock exchanges is as under:

   i. OFS to employees shall be on T+1 day along with the retail category under a new category called as "Employee".

   ii. While bidding, the employee shall select "Employee" category for employee bids. However, the employees can also bid for other categories, as per the applicable limits.

   iii. For employee OFS, certain number of shares shall be reserved for the employees. The same shall be mentioned in the OFS notice to the stock exchanges by the promoter(s).

   iv. Bidding shall be allowed during trading hours on T+1 day only.

   v. Floor price of the retail category shall be disclosed to the participants under the "Employee" category.

   vi. Employees shall place bids only at cut-off price of T+1 day. The allotment price shall be based on the Cut-off of the retail category, subject to discount, if any.

   vii. The maximum bid amount shall be INR 5,00,000.

   viii. Each employee is eligible for allotment of equity shares up to INR 2,00,000.

   Provided that in the event of under-subscription in the employee portion, the unsubscribed portion may be allotted to such employees whose bid amount is more than INR 2,00,000, on a proportionate basis, for a value in excess of INR 2,00,000, subject to the total allotment to an employee not exceeding INR 5,00,000.

   ix. The employees shall pay upfront the margin to the extent of 100% of the order value in cash or cash equivalents.

   x. Bids for "Employee" category shall not be displayed on the stock exchange website.

   xi. The bid book of "Employee" Category shall be segregated from Retail Category book for allotment.

   xii. Allotment under the "Employee" category shall be based on the PAN details of employees shared by the company on T-1 day. The PAN mis-matched bids shall be rejected.

   xiii. The promoters shall transfer the total shares of OFS on T-1 day including shares reserved for "Employee" category, to the designated clearing corporation.

HRUDA RANJAN SAHOO
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 Guidelines for AIFs with respect to holding their investments in dematerialised form and appointment of custodian

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/AFD/PoD/CIR/2024/5 dated 12.01.2024]

1. SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") have been amended and notified on January 05, 2024, with respect to AIFs holding their investments in dematerialised form and appointment of custodian. Copy of the notification is available at link.

A. Holding investments of AIFs in dematerialised form

2. In terms of Regulation 15(1)(i) of AIF Regulations, AIFs shall hold their investments in dematerialised form, subject to such conditions as may be specified by the Board from time to time. The said requirement does not apply, inter-alia, to such investments by AIFs and such schemes of AIFs as may be specified by the Board from time to time.

3. In this regard, the following is specified:

   3.1. Any investment made by an AIF on or after October 01, 2024 shall be held in dematerialised form only, irrespective of whether the investment is made directly in the investee company or is acquired from another entity.

   3.2. The investments made by an AIF prior to October 01, 2024 are exempted from the requirement of being held in dematerialised form, except in the following cases:

   3.2.1.Investee company of the AIF has been mandated under applicable law to facilitate dematerialisation of its securities;

   3.2.2.The AIF, on its own, or along with other SEBI registered intermediaries/entities which are mandated to hold their investments in dematerialised form, exercises control over the investee company.

   For the purpose of the aforesaid clause, the definition of 'control' shall be construed with reference to Regulation 2(1)(f) of AIF Regulations.

   3.3. The investments made by an AIF prior to October 01, 2024 which are covered under conditions as specified in paras 3.2.1 and 3.2.2 above, shall be held in dematerialised form by the AIF on or before January 31, 2025.

   3.4. The aforesaid requirement of holding investments in dematerialised form shall not be applicable to:

   3.4.1. Scheme of an AIF whose tenure (not including permissible extension of tenure) ends on or before January 31, 2025;

   3.4.2. Scheme of an AIF which is in extended tenure as on date of this circular.

B. Appointment of custodian for AIFs

4. In terms of Regulation 20(11) of AIF Regulations, the Sponsor or Manager of the AIF shall appoint a custodian registered with the Board for safekeeping of the securities of the AIF, in the manner as may be specified by the Board from time to time.

5. Further, in terms of Regulation 20(11A) of AIF Regulations, a custodian which is an associate of the Sponsor or Manager of an AIF may act as a custodian for that AIF only when the conditions specified in the said Regulations are met.

6. In this regard, the following is specified:

   6.1. The custodian for a scheme of an AIF shall be appointed prior to the date of first investment of the scheme.

   6.2. Existing schemes of Category I and II AIFs having corpus less than or equal to INR 500 crore and holding at least one investment as on date of this circular shall appoint custodian on or before January 31, 2025.

   6.3. In case of AIFs with custodians that are associates of their manager or sponsor, managers of such AIFs shall ensure compliance with Regulation 20(11A) of AIF Regulations on or before January 31, 2025.

SANJAY SINGH BHATI
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

09 Ease of doing business- Changes in reporting

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/03 dated 12.01.2024]

1. SEBI has taken various measures to safeguard investors' collateral lying with the stock brokers. Clause 15 of SEBI master circular on stock brokers ("master circular") dated May 17, 2023 safeguards against misutilisation of clients' funds. Clause 42 safeguards against the use of one clients' collateral for another. Stock Exchanges and Clearing Corporations draw various reports from the stock brokers for this purpose.

2. SEBI received representations from various stakeholders citing inefficiencies due to duplication of monitoring mechanisms and difficulties in uploading data to exchanges. In order to address the issue, SEBI advised the industry associations to consult with MIIs under the aegis of Broker's Industry Standards Forum (ISF) and submit a proposal to SEBI. The ISF has recommended that some of the reports can be discontinued.

3. These recommendations have been considered by SEBI and as the changes in reports shall continue to allow the stock exchanges and clearing corporations to retain the supervision over client collateral, in order to bring in efficiencies in reporting and a step towards ease of doing business, certain reports are being discontinued. Based on the above decision the following clauses of the master circular stand modified:-

   3.1. Clause 15.5.2 stands deleted.

   3.2. Clause 15.5.3 stands modified whereby G principle is reiterated as follows:

   15.5.3 Stock exchanges shall put in place a mechanism for monitoring of clients' funds ('G'

principle) lying with the stock brokers on the principle enumerated below:

G Principle: The total available funds i.e. cash and cash equivalent with the stock broker and with the clearing corporation/clearing member should always be equal to or greater than clients' funds as per the ledger balance.

3.3. Table 5, 6 and Table 7 stands deleted.

4. The provisions of this circular shall come into force with immediate effect.

5. 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. Jointly issue the following within 15 days from the date of issuance of this circular

      i. operational guidelines in consultation with relevant stakeholders; and

      ii. an SOP for monitoring the implementation of provisions of this circular.

   c. Make amendments to the relevant bye-laws, rules and regulations for the implementation of the above provisions; and

   d. Communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development report.

6. 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

10 Ease of Doing Investments by Investors-Facility of voluntary freezing/ blocking of Trading Accounts by Clients

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/4 dated 12.01.2024]

1. Stock broking industry in India has moved from a call and trade type of scenario to online mode, wherein the investors use the login ids and passwords provided to them by the Trading Members. It has been observed that at times, suspicious activities are noticed by investors, but the facility of freezing/ blocking of accounts is not available with majority of Trading Members.

2. Many a times, investors raise issues of suspicious activities in their trading accounts and thus, there is an urgent need to address the situation of having a facility for blocking of trading accounts as it is available for blocking of ATM Cards and Credit Cards.

3. Similar facility of voluntary blocking/ freezing of demat accounts is already available for investors and this facility is now proposed to be offered to the investors for their trading accounts also.

4. In this respect, pursuant to consultation with the Brokers' Industry Standards Forum (ISF) and to enhance ease of doing business and ease of investment, it has been decided that the framework for Trading Members to provide the facility of voluntary freezing/ blocking the online access of the trading account to their clients on account of suspicious activities shall be laid down on or before April 01, 2024, by the ISF, under the aegis of stock exchanges, in consultation with SEBI and the same shall, inter-alia, contain necessary guidelines with respect to the following:

   4.1. Detailed policy for voluntary freezing/ blocking the online access of the trading account of the client including the following:

   - modes through which a client can request/ communicate to the Trading Member for voluntarily blocking the trading accounts;
   - issuing of acknowledgement to the clients on receipt of message;
   - time period within which the request shall be processed and the trading account shall be frozen/blocked.

   4.2. Action to be taken by the Trading Member pursuant to the receipt of request for freezing/ blocking of the trading account;

   4.3. Process for re-enabling the client for trading/ transfers;

   4.4. Intimation to be provided by the trading member to the clients w.r.t. introduction of the facility to block the trading accounts.

5. Further, the Stock Exchanges shall ensure that the guidelines so issued under the aforesaid Framework are implemented by Trading Members with effect from July 01, 2024. Stock Exchanges shall also put in place an appropriate reporting requirement by Trading Members to enforce the above system. A compliance report to this effect shall be submitted to SEBI by Stock Exchanges latest by August 31, 2024.

ARADHANA VERMA
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

11 Foreign investment in Alternative Investment Funds (AIFs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/AFD/PoD1/CIR/2024/2 dated 11.01.2024]

1. The Government of India through gazette notification dated March 07, 2023 and September 04, 2023 has amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, inter-alia, to revise the thresholds for determining the beneficial ownership.

2. In view of the amendments to the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, para 4.1.2. under Chapter 4 of SEBI Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 for AIFs stands modified as mentioned below:

   The investor, or its beneficial owner as determined in terms of sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, is not the person(s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as –

   (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

   (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

3. In case an investor who has been already on-boarded to scheme of an AIF, does not meet the revised condition as specified at para 2 above, the manager of the AIF shall not drawdown any further capital contribution from such investor for making investment, until the investor meets the said condition.

4. The provisions of this circular shall come into force with immediate effect.

5. This circular is issued with the approval of the competent authority.

6. This circular is issued in exercise of powers conferred under 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.

7. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - Alternative Investment Funds".

SANJAY SINGH BHATI
Deputy General Manager

12 Framework for Short Selling

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/1 dated 05.01.2024]

1. SEBI vide Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171 dated October 16, 2023 issued the Master Circular for Stock Exchanges and Clearing Corporations. Paragraph 10 of Chapter 1 of the Master Circular contains the framework on 'Short Selling and Securities Lending and Borrowing Scheme'.

2. The broad framework for short selling is specified in 'Annexure 3' of Chapter 1 of the said Master Circular. In this regard, it is mentioned that the contents of 'Annexure 3' of Chapter 1 of the Master Circular dated October 16, 2023 shall be read as under (which are in line with the provisions of rescinded SEBI Circular No. MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007):

"Annexure 3: Broad Framework for Short Selling

1. *"Short selling" shall be defined as selling a stock which the seller does not own at the time of trade.*

2. *All classes of investors, viz., retail and institutional investors, shall be permitted to short sell.*

3. *Naked short selling shall not be permitted in the Indian securities market and accordingly, all investors would be required to mandatorily honor their obligation of delivering the securities at the time of settlement.*

4. *No institutional investor shall be allowed to do day trading i.e., square-off their transactions intra-day. In other words, all transactions would be grossed for institutional investors at the custodians' level and the institutions would be required to fulfill their obligations on a gross basis. The custodians, however, would continue to settle their deliveries on a net basis with the stock exchanges.*

5. *The stock exchanges shall frame necessary uniform deterrent provisions and take appropriate action against the brokers for failure to deliver securities at the time of settlement which shall act as a sufficient deterrent against failure to deliver.*

6. *A scheme for Securities Lending and Borrowing (SLB) shall be put in place to provide the necessary impetus to short sell. The introduction of a full-fledged securities lending and borrowing scheme shall be simultaneous with the introduction of short selling by institutional investors.*

7. *The securities traded in F&O segment shall be eligible for short selling. SEBI may review the list of stocks that are eligible for short selling transactions from time to time.*

8. *The institutional investors shall disclose upfront at the time of placement of order whether the*

transaction is a short sale. However, retail investors would be permitted to make a similar disclosure by the end of the trading hours on the transaction day.

9. *The brokers shall be mandated to collect the details on scrip-wise short sell positions, collate the data and upload it to the stock exchanges before the commencement of trading on the following trading day. The stock exchanges shall then consolidate such information and disseminate the same on their websites for the information of the public on a weekly basis. The frequency of such disclosure may be reviewed from time to time with the approval of SEBI."*

3. 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 Regulation 51 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, Section 26(3) of the Depositories Act, 1996 and Regulation 97 of Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

4. This circular is available on SEBI website at www.sebi.gov.in at "Legal Framework - Circulars."

HRUDA RANJAN SAHOO
Deputy General Manager

13 Formation of new districts in the State of Madhya Pradesh – Assignment of Lead Bank Responsibility

[Issued by the Reserve Bank of India vide RBI/2023-24/116 FIDD.CO.LBS.BC.No.14/02.08.001/2023-24 dated 19.01.2024]

The Government of Madhya Pradesh has notified formation of two new districts, viz., Pandhurna vide Gazette Notification No. F-Rev-6-0029-2023-VII-Sec-7 dated October 5, 2023 and Maihar vide Gazette Notification No. F-Rev-6-0030-2023-VII-Sec-7 dated October 05, 2023. Accordingly, it has been decided to designate the 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.	Pandhurna	Central Bank of India	02O (to be read as 'numeral zero, numeral two, alphabet O')
2.	Maihar	Indian Bank	02P (to be read as 'numeral zero, numeral two, alphabet P')

2. There is no change in the Lead Banks of the other districts in the state of Madhya Pradesh.

NISHA NAMBIAR
Chief General Manager

14 Second Schedule to the Reserve Bank of India Act, 1934 – Norms for inclusion

[Issued by the Reserve Bank of India vide RBI/2023-24/115 DoR.REG/LIC.No.72/16.05.000/2023-24 dated 17.01.2024]

Please refer to our circular UBD.CO.BPD(PCB).No.20/16.05.000/2013-14 dated September 27, 2013 on the captioned subject.

2. Subsequent to release of the Revised Regulatory Framework for Urban Co-operative Banks (UCBs) on July 19, 2022, revised categorization norms for UCBs for regulatory purposes was notified vide circular DOR.REG.No.84/07.01.000/2022-23 dated December 01, 2022 and the criteria for classifying a UCB as Financially Sound and Well Managed (FSWM) have been revised vide circular DOR.REG.No.85/07.01.000/2022-23 dated December 01, 2022.

3. It has now been decided to revise the eligibility norms for inclusion of UCBs in the Second Schedule to the Reserve Bank of India Act, 1934 to bring them in conformity with the Revised Regulatory Framework.

4. In this regard, Government of India notification F.No.3/16/2023-AC dated September 04, 2023 has been published in Gazette of India on September 23, 2023 notifying that licensed Tier 3 and Tier 4 Primary (Urban) Co-operative Banks, fulfilling the criteria stipulated for Financially Sound and Well Managed Urban Co-operative Banks by the Reserve Bank of India, subject to maintenance of minimum deposits required for categorisation as a Tier 3 Urban Co-operative Bank for two consecutive years, would be the eligible financial institutions for the purpose of sub-clause (iii) of clause (a) of sub-section (6) of section 42 of the Reserve Bank of India Act, 1934 (copy enclosed).

5. Such eligible UCBs satisfying the following criteria shall be considered for inclusion in the Second Schedule:

   a) CRAR of at least 3 per cent more than the minimum CRAR requirement applicable to the UCB; and

   b) No major regulatory and supervisory concerns.

6. The information at 5(a) shall be based on the assessed financials and findings of RBI inspection report or audited financial statements, whichever is latest. Such eligible UCBs may submit their application for inclusion in the Second Schedule to the Reserve Bank of India Act, 1934 to the concerned Regional Office of Department of Supervision (in case of UCBs under jurisdiction of Mumbai office, the application should be sent to Department of Supervision, RBI, Central Office) of the Reserve Bank along with the following documents (two sets):

   a) Copy of resolution passed by the Annual General Body/Board of Directors to make an application

to RBI for inclusion in the Second Schedule to the Reserve Bank of India Act, 1934 and containing the name(s) of bank official(s) authorized to correspond with RBI in this regard; and

b) Major financial details of the bank together with copies of the published balance sheet for the last three years.

7. These instructions are issued under clause (a) of sub-section (6) of section 42 of the Reserve Bank of India Act, 1934.

8. The revised instructions shall come into force from the date of issue of the circular. The circular UBD.CO.BPD(PCB).No.20/16.05.000/2013-14 dated September 27, 2013 will thus stand repealed.

MANORANJAN PADHY
Chief General Manager

15 Master Circular- Exposure Norms and Statutory / Other Restrictions - UCBs

[Issued by the Reserve Bank of India vide RBI/2023-24/114 DoR.CRE. REC.71/07.10.002/2023-24 dated 16.01.2024]

Please refer to RBI Master Circular DCBR.CO.BPD. (PCB) MC No.13/13.05.000/2015-16 dated July 1, 2015 on the captioned subject (available at RBI website www.rbi.org.in). The updated Master Circular consolidates all the instructions / guidelines on the subject issued till date.

VAIBHAV CHATURVEDI
Chief General Manager

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16 Guidelines on Appointment / Re-appointment of Statutory Auditors of State Co-operative Banks and Central Co-operative Banks

[Issued by the Reserve Bank of India vide RBI/2023-24/113 Ref.No.DOS. ARG/SEC.8/08.91.001/2023-24 dated 15.01.2024]

The Banking Regulation (Amendment) Act, 2020 (No. 39 of 2020), notified in the Gazette of India on September 29, 2020 (vide Notification No. 64 of that date), has come into force with effect from April 01, 2021 (Gazette Notification No. 4113 dated December 23, 2020), for Rural Co-operative Banks i.e., State Co-operative Banks (StCBs) and Central Co-operative Banks (CCBs).

2. Accordingly, Reserve Bank of India (RBI), in exercise of its powers conferred under Section 30(1A) of the Banking Regulation Act, 1949, has framed the guidelines enclosed as Annex of the Circular which shall be applicable to StCBs and CCBs for seeking prior approval of RBI for appointment, re-appointment or removal of Statutory Auditor (SA), and other related matters.

3. These guidelines shall come into effect from April 1, 2024. Accordingly, for all accounting periods commencing on or after April 1, 2024, all StCBs and CCBs shall submit application for prior approval of RBI before July 31 of the reference accounting year, in accordance with the guidelines.

RAJNISH KUMAR
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

17 Credit/Investment Concentration Norms – Credit Risk Transfer

[Issued by the Reserve Bank of India vide RBI/2023-24/112 DOR.CRE. REC.70/21.01.003/2023-24 dated 15.01.2024]

Please refer to the following instructions, as amended from time to time: (i) paragraphs 32, 91 and 110.4.2 of Master Direction - Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023 dated October 19, 2023 ("MD on NBFC"); and (ii) paragraph 20 of Master Direction - Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 dated February 17, 2021 ("MD on HFC").

2. The guidelines on Large Exposures Framework (LEF) are applicable to NBFC-Upper Layer (NBFC-UL) in terms of paragraph 110 of the MD on NBFC. The NBFC-Base Layer (NBFC-BL) and NBFC-Middle Layer (NBFC-ML) are, however, governed by the credit/investment concentration norms prescribed at paragraphs 32 and 91 of the MD on NBFC, paragraph 20 of MD on HFC and circular on Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs dated October 22, 2021. In order to ensure uniformity and consistency in computation of concentration norms among NBFCs, a review of the extant concentration norms has been carried out and it has been decided as under:

A. Regulations for NBFC-ML

3. Computation of exposure – Credit Risk Transfer

Instruments Aggregate exposure to a counterparty comprising both on and off-balance sheet exposures are calculated based on the method prescribed for capital computation in MD on NBFC and MD on HFC; i.e., on-balance sheet exposures are reckoned at the outstanding amount [1] while the off-balance sheet exposures are converted into credit risk equivalent by applying the credit conversion factor prescribed under capital requirements. Further, as per Annex XIV of the MD on NBFC, credit default swaps (CDS) are currently allowed as credit risk transfer instruments for offsetting exposure to the underlying counterparty. Henceforth, the exposures of NBFC-ML shall also be offset with credit risk transfer instruments listed below:

a. Cash margin/caution money/security deposit held as collateral on behalf of the borrower against the advances for which right to set off is available;

b. Central Government guaranteed claims which attract 0 percent risk weight for capital computation;

c. State Government guaranteed claims which attract 20 percent risk weight for capital computation[2];

d. Guarantees issued under the Credit Guarantee Schemes of Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Credit Risk Guarantee Fund Trust for Low Income Housing (CRGFTLIH) and individual schemes under National Credit Guarantee Trustee Company Ltd (NCGTC) subject to meeting the conditions of circular on 'Review of Prudential Norms – Risk Weights for Exposures guaranteed by Credit Guarantee Schemes (CGS)' dated September 07, 2022, as amended from time to time.

Provided that to be eligible as a credit risk transfer instrument, guarantees shall be direct, explicit, irrevocable and unconditional.

4. Exemptions from credit/investment concentration norms

In addition to the exposures already exempted from credit/investment concentration norms in terms of paragraph 91 of MD on NBFC and paragraph 20 of MD on HFC, exposures listed below shall also be exempt from credit/investment concentration norms:

a. Exposure to the Government of India and State Governments which are eligible for zero percent risk weight under capital regulations applicable to NBFC[3];

b. Exposure where the principal and interest are fully guaranteed by the Government of India[3].

5. Disclosure: The exposures where the NBFC has exceeded the prudential exposure limits during the year are required to be disclosed in the Notes to Accounts in the annual financial statements, presently as per paragraph 3.5.4 of Annex XXII of the MD on NBFC and paragraph 3.7.4 of Annex IV of the MD on HFC. Henceforth, computation of exposure limit for disclosure requirements shall be reckoned as per paragraphs 3 and 4 of this circular.

VAIBHAV CHATURVEDI
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

18 Implementation of Section 51A of UAPA,1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 14 Entries

[Issued by the Reserve Bank of India vide RBI/2023-24/111 DOR. AML. REC.69/14.06.001/2023-24 dated 11.01.2024]

Please refer to Section 51 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04 , 2024 (MD on KYC), 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/15560 dated January 10, 2024 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 specified with strikethrough and/or underline in the entries below on its ISIL (Da'esh) and Al-Qaida Sanctions List of 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.

SAIDUTTA SANGRAM KESHARI PRADHAN
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

19 Implementation of Section 51A of UAPA, 1967 Updates to UNSC's 1267 / 1989 ISIL (Da'esh) & Al-Qaida Sanctions List Amendments in 07 Entries

[Issued by the Reserve Bank of India vide RBI/2023-24/110 DOR.AML. REC.68/14.06.001/2023-24 dated 06.01.2024]

Please refer to Section 51 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), 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/15556 dated January 05, 2024 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 specified with strikethrough and/or underline in the entries below on its ISIL (Da'esh) and Al-Qaida Sanctions List of 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.

SAIDUTTA SANGRAM KESHARI PRADHAN
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

20 Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)

[Issued by the Reserve Bank of India vide RBI/2023-24/109 DOR.AML.REC.67/14.06.001/2023-24 dated 06.01.2024]

Please refer to Section 52 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), in terms of which, inter alia "Regulated Entities (REs) shall ensure meticulous compliance with the "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005" laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated September 01, 2023, by the Ministry of Finance, Government of India (Annex III of the Master Direction on Know Your Customer)."

2. Further, in terms of Section 53 of our MD on KYC, "the REs shall verify every day, the 'UNSCR 1718 Sanctions List of Designated Individuals and Entities', as available at https://www.mea.gov.in/Implementation-of-UNSC-Sanctions-DPRK.htm, to take into account any modifications to the list in terms of additions, deletions or other changes and also ensure compliance with the 'Implementation of Security Council Resolution on Democratic People's Republic of Korea Order, 2017', as amended from time to time by the Central Government".

3. A reference is also invited to our circular DOR.AML.REC.23/14.06.001/2023-24 dated July 04, 2023, communicating thereby the Consolidated List of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation. Certain amendments to the entries in the List were notified vide our circulars DOR. AML.REC.24/14.06.001/2023-24 dated July 04, 2023 and DOR. AML.REC.33/14.06.001/2023-24 dated August 18, 2023, respectively.

4. In this regard, Ministry of External Affairs (MEA), GoI has informed that the UNSC Committee established pursuant to resolution 1718(2006) has enacted the amendments, specified with strikethrough and/or underline in certain entries on its Sanctions List of individuals and entities (enclosed with this circular). Hence, the 'designated list' as referred in Para 2.1 and other relevant paras of the aforementioned Order dated September 01, 2023 is amended in accordance with the changes in these relevant entries.

5. The latest version of the UNSC Sanctions lists on DPRK is accessible on the UN Security Council's website at the following URLs: https://www.un.org/securitycouncil/sanctions/1718/materials

6. The REs are advised to take note of the aforementioned communications and ensure meticulous compliance.

SAIDUTTA SANGRAM KESHARI PRADHAN
General Manager

21 Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk

[Issued by the Reserve Bank of India vide RBI/2023-24/108 A. P. (DIR Series) Circular No. 13 dated 05.01.2024]

Please refer to paragraph 1 of the Statement on Developmental and Regulatory Policies, issued as a part of the Bi-monthly Monetary Policy Statement for 2023-24 dated December 08, 2023 on review of the regulatory framework for hedging of foreign exchange risks. Attention of Authorised Persons is invited to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 03, 2000 (Notification No. FEMA.25/RB-2000 dated May 03, 2000), as amended from time to time and Master Direction – Risk Management and Inter-Bank Dealings dated July 05, 2016, as amended from time to time.

2. The Foreign Exchange Management (Foreign Exchange Derivative Contracts) (First Amendment) Regulations, 2020 (Notification no. FEMA.398/RB-2020 dated February 18, 2020) and A. P. (DIR Series) circular no. 29 dated April 07, 2020 (which came into effect from September 01, 2020) were issued after a comprehensive review and public consultation. The foreign exchange risk management facilities have been further reviewed based on the feedback received from market participants and experience gained since the revised framework came into force. Also, the Directions in respect of all types of foreign exchange transactions (including cash, tom and spot) have been consolidated. Further, the Directions contained in the Currency Futures (Reserve Bank) Directions, 2008 (Notification No. FED.1/DG(SG)-2008 dated August 06, 2008), as amended from time to time, and Exchange Traded Currency Options (Reserve Bank) Directions, 2010 (Notification No. FED.01/ED(HRK)-2010 dated July 30, 2010), as amended from time to time, are now being incorporated in the Master Direction – Risk Management and Inter-Bank Dealings.

3. The revised Directions are provided at Annex-I to this circular. These Directions shall come into effect from April 05, 2024, replacing the existing Directions in Part A (Section I) of the Master Direction – Risk Management and Interbank Dealings dated July 5, 2016, as amended from time to time, and in supersession of the notifications listed in the Annex-II.

4. Authorised Persons shall mean Authorised Dealer Category - I banks and for the purpose of exchange traded currency derivatives, Recognised Stock Exchanges and Recognised Clearing Corporations, authorised under Section 10 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

5. The Directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and Section 45W of the Reserve Bank of India, 1934 (02 of 1934) and are without prejudice to permissions/ approvals, if any, required under any other law.

DIMPLE BHANDIA
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 DECEMBER 2023
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2023
- LIST OF PEER REVIEWED UNITS
- NEW ADMISSIONS
- UPLOADING OF PHOTOGRAPH AND SIGNATURE
- OBITUARIES
- CHANGE / UPDATION OF ADDRESS

Institute News

MEMBERS RESTORED DURING THE MONTH OF DECEMBER 2023

SL. NO	NAME	MEMB NO	REGION
1	CS RAMAMOORTHY SUGANYA	ACS - 26704	SIRC
2	CS SUMAN KANDOI	ACS - 29480	EIRC
3	CS KAPIL SUBHASH CHAAND	ACS - 36673	NIRC
4	CS PAYAL AGGARWAL	ACS - 46632	NIRC
5	CS SUNIL GANDHI	ACS - 53001	NIRC
6	CS KANWAL OHRI	ACS - 31907	NIRC
7	CS VEENITA GUPTA	ACS - 26207	NIRC
8	CS REKHA SHAW	ACS - 28571	EIRC
9	CS SONAL VINAY BILALA	ACS - 27682	WIRC
10	CS RAJIV MALIK	FCS - 3928	NIRC
11	CS WINNIE CHANDRASHEKHAR SANTWANI	ACS - 38733	WIRC
12	CS VISHAL KUMAR	ACS - 52766	NIRC
13	CS NEHA MUNOT	ACS - 50387	NIRC
14	CS PRIYANKA JAIN	ACS - 30898	NIRC
15	CS MOHAMMED ILIYAS	ACS - 56489	EIRC
16	CS PUNA KUMAR SINGH	FCS - 7053	SIRC
17	CS NEHA DHANDHANIA	ACS - 46217	EIRC
18	CS NISHA JAIN	FCS - 9401	SIRC
19	CS POOJA DANGRA	ACS - 43663	WIRC
20	CS HARISCHANDRA BEHERA	ACS - 66922	EIRC
21	CS RAJEEV KUMAR AGARWAL	FCS - 4581	NIRC
22	CS MANOJ KUMAR RATH	FCS - 9756	SIRC
23	CS YOGESH KUMAR YADAV	ACS - 49095	NIRC
24	CS P GURUNATHAN	ACS - 7994	SIRC
25	CS SANJAYA KHARE	FCS - 7869	WIRC
26	CS SHARADA RAJARAM	ACS - 7285	SIRC
27	CS MURALI NARAYANAN	ACS - 9478	WIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2023

SL. NO	NAME	MEMB NO	COP NO	REGION
1	CS CHANDINI MANSUKH PATEL	ACS - 47462	23759	WIRC
2	CS ROHIT BANTHIA	ACS - 29574	19594	NIRC
3	CS SONALI RATHI	ACS - 56039	22304	NIRC
4	CS JYOTI PANDEY	ACS - 38838	22809	NIRC
5	CS KIRTI HEMANT PATIL	ACS - 57613	21744	WIRC
6	CS PAYAL AKHIL DHOOT	ACS - 63873	24072	WIRC
7	CS ANKITA NEVATIA	FCS - 8510	9709	EIRC
8	CS ASHISH BANSAL	FCS - 12701	14896	NIRC
9	CS NIKETA SETHI	ACS - 46119	25469	NIRC
10	CS PRITAM	ACS - 70495	26636	NIRC
11	CS ANAM	ACS - 67406	26340	NIRC
12	CS MILEE CHANDRESH KAMDAR	ACS - 51296	23966	WIRC
13	CS CHANDAN	ACS - 33129	14232	NIRC
14	CS ANJU	ACS - 54620	25151	NIRC
15	CS GAUTAMI GUPTA	ACS - 57547	21796	SIRC
16	CS ADHISH SWAROOP	ACS - 16034	25998	NIRC
17	CS SHIWANI SINGH	ACS - 63089	25890	NIRC
18	CS AASTHA VIJ	ACS - 49523	26817	NIRC
19	CS PRANETA	ACS - 60965	24136	NIRC
20	CS RAMANUJ SATYANARAYAN ASAWA	FCS - 3107	1872	WIRC
21	CS SHWETA BHARDWAJ	ACS - 43310	26149	NIRC
22	CS KAVITA GUPTA	FCS - 12527	26717	NIRC
23	CS NISHA RADHAKISHAN NAWANI	FCS - 9308	24950	WIRC
24	CS SATYABRATA BARAL	ACS - 60484	22653	EIRC
25	CS SUJITH K RAVINDRANATH	ACS - 39757	17491	SIRC
26	CS ALKA MUNDHRA	ACS - 69543	26335	SIRC
27	CS ANSHUL AGARWAL	FCS - 8832	26911	NIRC
28	CS KALPANA GUPTA	ACS - 48139	25445	NIRC
29	CS NIDHI AGARWAL	ACS - 46078	17426	EIRC
30	CS AMIT CHAUHAN	ACS - 63094	25527	NIRC
31	CS K MASILAMANI	ACS - 10022	26140	SIRC
32	CS RAHUL	ACS - 69984	26158	NIRC

33	CS POORNA CHANDRIKA	ACS - 65029	25124	SIRC
34	CS KAJAL JAIN	FCS - 6811	7283	WIRC
35	CS NEHA SANDAL	ACS - 39369	24464	NIRC
36	CS ANAND BHAGWAN SOMAN	ACS - 25799	13109	WIRC
37	CS NEELAM	FCS - 8661	9866	NIRC
38	CS MANSI JAIN	ACS - 59659	26077	NIRC
39	CS MONIKA SINHA	ACS - 23040	20684	NIRC
40	CS PURSHOTAM LAHOTI	ACS - 61315	24536	EIRC
41	CS DIVYA LEKSHMI SASIDHARANNAIR PUSHPAKUMARI	ACS - 63299	24462	SIRC
42	CS TEENA KISHOR DEDHIA	FCS - 8922	9214	WIRC
43	CS EENASRI MITRA	ACS - 66097	24955	EIRC
44	CS ANKIT TIWARI	ACS - 47270	21118	NIRC
45	CS ANURAG KUMAR SAXENA	FCS - 8115	25879	WIRC
46	CS JASPREET KAUR DHANJAL	ACS - 53127	24370	NIRC
47	CS AJAY KUMAR RAMNAYAN VISHWAKARMA	ACS - 45552	27025	WIRC
48	CS ANUSHREE MANMOHAN CHANDAK	ACS - 63739	23862	WIRC
49	CS ASHISH GOEL	ACS - 23217	21332	NIRC
50	CS SAGAR BHAVANBHAI PARMAR	ACS - 63904	24102	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

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

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

CS Kottayam Lakshmi (29.03.1986 – 01.10.2023), a Fellow Member of the Institute from Chennai.

CS Bharat Bhushan (15.10.1958 – 18.10.2023), a Fellow Member of the Institute from Faridabad.

CS Ramkrishna Nathoomal Agrawal (04.01.1943 – 01.10.2023), a Fellow Member of the Institute from Mumbai.

CS Manohar Ramrao Kulkarni (01.01.1945 – 07.01.2024), a Fellow Member of the Institute from Chhatrapati Sambhajinagar.

CS Sourav Kedia (22.03.1986 – 02.01.2024), a Fellow Member of the Institute from Kolkata.

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

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)

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.

ICSI PUBLICATIONS

INSOLVENCY
AND
BANKRUPTCY
CODE, 2016

(Updated upto November, 2023)

[Version 1.8]

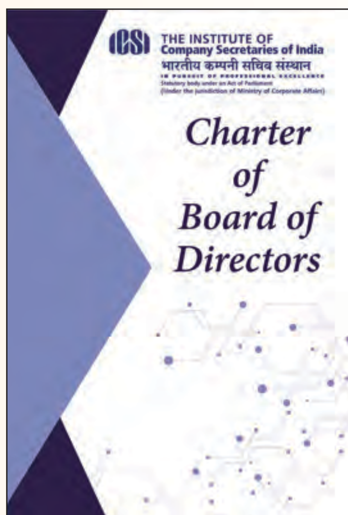
INSTITUTE OF INSOLVENCY PROFESSIONALS

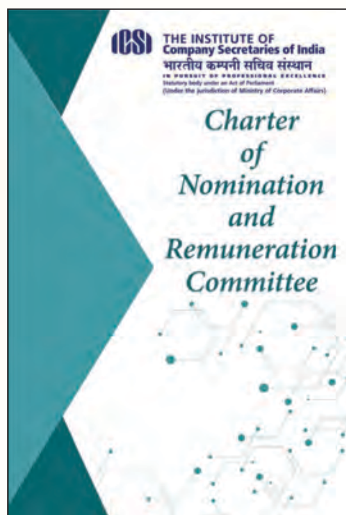
INSOLVENCY
AND
BANKRUPTCY
(RULES AND REGULATIONS)

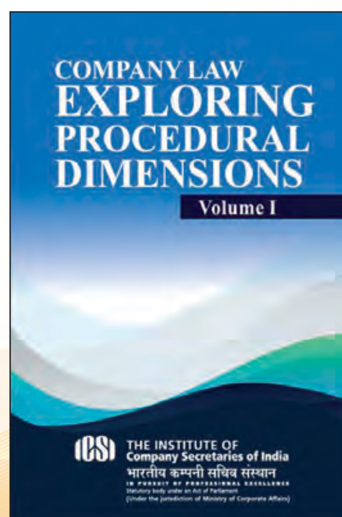
(Updated upto November, 2023)

[Version 1.8]

INSTITUTE OF INSOLVENCY PROFESSIONALS







6

MISCELLANEOUS CORNER

- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER

NOTIFICATIONS

NOTIFICATION NO. 01/2024- CENTRAL TAX DATED 5TH JANUARY, 2024

This notification seeks to extend the due date for filing of return in FORM GSTR-3B for the month of November, 2023 till the tenth day of January, 2024, for the registered persons whose principal place of business is in the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu and are required to furnish return under sub- section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009980/ENG/Notifications

NOTIFICATION NO. 02/2024- CENTRAL TAX DATED 5TH JANUARY, 2024

This notification seeks to extend the due date for filing FORM GSTR-9 and FORM GSTR-9C for the Financial Year 2022-23 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu from thirty first day of December, 2023 to the tenth day of January, 2024.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009981/ENG/Notifications

NOTIFICATION NO. 03/2024- CENTRAL TAX DATED 5TH JANUARY, 2024

This notification seeks to rescind Notification No. 30/2023-CT dated 31st July, 2023.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009982/ENG/Notifications

NOTIFICATION NO. 04/2024- CENTRAL TAX DATED 5TH JANUARY, 2024

This notification seeks to notify special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009983/ENG/Notifications

NOTIFICATION NO. 01/2024- CENTRAL TAX (RATE) DATED 3RD JANUARY, 2024

This notification seeks to amend Notification No 01/2017-Central Tax (Rate) dated 28th June, 2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009974/ENG/Notifications

NOTIFICATION NO. 01/2024- INTEGRATED TAX (RATE) DATED 3RD JANUARY, 2024

This notification seeks to amend Notification No 01/2017-Integrated Tax (Rate) dated 28th June, 2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009975/ENG/Notifications

CORRIGENDUM TO NOTIFICATION NO. 01/2024- INTEGRATED TAX (RATE) DATED 3RD JANUARY, 2024

Source:https://taxinformation.cbic.gov.in/view-pdf/1009978/ENG/Notifications

NOTIFICATION NO. 01/2024- UNION TERRITORY TAX (RATE) DATED 3RD JANUARY, 2024

This notification seeks to amend Notification No 01/2017-Union Territory Tax (Rate) dated 28th June, 2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009976/ENG/Notifications

CORRIGENDRUM TO NOTIFICATION NO. 01/2024- UNION TERRITORY TAX (RATE) DATED 3RD JANUARY, 2024

Source:https://taxinformation.cbic.gov.in/view-pdf/1009979/ENG/Notifications

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YOUR OPINION MATTERS

'Chartered Secretary' has been constantly striving to achieve Excellence in terms of Coverage, Contents, Articles, Legal Cases, Govt. Notification etc. for the purpose of knowledge sharing and constant updation of its readers. However, there is always a scope for new additions, improvement, etc.

The Institute seeks cooperation of all its readers in accomplishing this task for the benefit of all its stakeholders. We solicit your views, opinions and comments which may help us in further improving the varied segments of this journal. Suggestions on areas which may need greater emphasis, new sections or areas that may be added are also welcome.

You may send in your suggestions to the Editor, Chartered Secretary, The ICSI at cs.journal@icsi.edu

Company Secretaries in Practice: Professional Ethics

According to the Companies Act, 2013, *"company secretary in practice"* means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980.

Company Secretaries in Practice should not certify or submit in his name a report of examination of matters relating to Secretarial practices unless the examination of such statement has been made by him or by his partner or an employee in his firm or by another Company Secretary in Practice. Company Secretaries in Practice are required to exercise due diligence and due care during the conduct of their professional assignments. Company Secretaries in Practice are expected to thoroughly examine and verify the registers, books, and papers and other relevant records of the company or client before certification.

As per Section 22 of the Company Secretaries Act, 1980, the expression *"professional and other misconduct"* in relation to Company Secretaries shall be deemed to include any act or omission provided in any of the Schedules i.e. First and Second Schedule to the Company Secretaries Act, 1980, 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 of the Company Secretaries Act, 1980 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 First Schedule and Second Schedule. First Schedule is divided into four parts and Second Schedule is divided into three parts.

CASE STUDY

1. A complaint of professional or other misconduct has been filed in connection with non-compliance of the Companies (Compliance Certificate) Rules, 2001 read with Section 383A of the Companies Act, 1956. The Respondent in his deposition before the Complainant during the investigation of the said company has stated that- *"...I have given the compliance certificate for the year .... in respect of the company M/s. .... as per the standard format maintained in my computer system without verifying the records/registers of the company also I have not asked them to produce the requisite documents/registers. It is a fact that I don't know about the company and the Directors, but as the Chartered Accountant of the company insisted him, he has signed the compliance report on his faith with the impression that all the documents/registered are maintained properly by the company and correct."*

2. According to the Complainant, the Respondent has certified the Compliance Certificate without examination and verification of the registers and books and papers and has neglected his duty regarding proper verification of the records of the company.

3. The Respondent has contended that during the time he has signed the deposition, he was in the initial stage of cancer, and he was not in a proper frame of mind and the deposition which was given by him was partially wrong i.e., *without verifying the records/registers of the company also the Respondent has not asked them to produce the requisite documents/registers and* given under the influence of mental trauma. The Respondent has also stated this in his letter to the Complainant. At the time of issue of the Compliance Certificate he has verified all the relevant documents, Audit Report for the relevant Financial Year, previous years' Compliance Certificates, Form 23AC/23ACA provided to him by the Statutory Auditor.

4. Form 66 was filed by the company, attaching the Compliance Certificate provided by the Respondent

wherein the Respondent has certified about proper maintenance of company's registers and minutes book, books of accounts as reported by the statutory Auditor in his audit report. In point No. 4(b) of the Auditor's Report, it is stated that, *'the company has kept proper books of accounts, as required by law, so far as it appears, from our examinations of those books'.* The Respondent has certified accordingly, based on the Statutory Auditor's Report and documents produced before him. His report was based on the relevant documents provided to him, the Compliance Certificate, and e-forms 23AC/23ACA filed by the company for the previous years. In the Compliance Certificates of those years, it was mentioned regarding maintenance of registers as maintained by the company. He has not done any professional misconduct and has carried out his professional duties to the best of his conviction and has acted after verifying the Auditor's Report and relevant documents provided to him.

5. The Director (Discipline) has opined that Respondent is *prima facie* 'guilty' of professional misconduct under clause (7) of Part I of Second Schedule to the Company Secretaries Act, 1980.

6. The Respondent contended before the Disciplinary Committee that his deposition before the Complainant was partially wrong, as he was not in a proper frame of mind, being detected with cancer and deposed under the influence of mental trauma. He has exercised required due diligence and has also submitted supporting documents. On being asked as to why the documents were not found at the time of inspection by the regulatory authorities, the the Respondent submitted that the documents might be destroyed by the company at that time, for which he cannot be held responsible, as he has checked various documents required for exercising the due diligence.

7. The Disciplinary Committee was not satisfied with the contentions of the Respondent and observed that the deposition of the Respondent before the regulatory authority was later retracted by him stating that his deposition was partially wrong and was given under mental trauma after he was detected with the cancer.

8. The Disciplinary Committee held the Respondent 'guilty' of Professional Misconduct under clause (7) of Part I of Second Schedule to the Company Secretaries Act, 1980. The Respondent prayed for leniency before the Disciplinary Committee.

9. The Disciplinary Committee passed an order of 'Reprimand' against the Respondent.

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Carbon Capture, Utilisation and Storage (CCUS)

CCUS involves the capture of CO2, generally from large point sources like power generation or industrial facilities that use either fossil fuels or biomass as fuel. If not being used on-site, the captured CO2 is compressed and transported by pipeline, ship, rail or truck to be used in a range of applications, or injected into deep geological formations such as depleted oil and gas reservoirs or saline aquifers. Carbon Capture and Storage (CCS) has been in operation since 1972 in the US, where several natural gas plants in Texas have captured and stored more than 200 million tons of CO_2 underground.

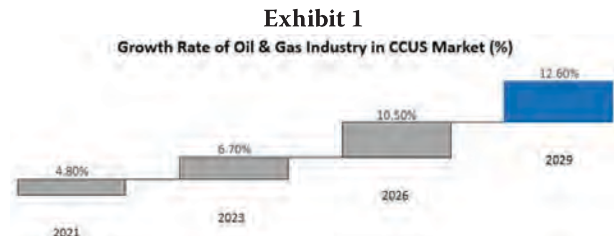
CCUS can be retrofitted to existing power and industrial plants, allowing for their continued operation. It can tackle emissions in hard-to-abate sectors, particularly heavy industries like cement, steel or chemicals. CCUS is an enabler of least-cost low-carbon hydrogen production, which can support the decarbonisation of other parts of the energy system, such as industry, trucks and ships. Finally, CCUS can remove CO2 from the air to balance emissions that are unavoidable or technically difficult to abate.

Countries and regions making notable progress to advance CO_2 utilisation include:

- The **United States'** 2022 Inflation Reduction Act included major increases to the tax credit for CCUS, which supports CO_2 utilisation by providing tax credits now valued at USD 60 per tonne of CO_2 used. In May 2023, the US government also launched the Clean Fuels & Products Shot, which aims to support alternative routes that can reduce the emissions intensity of fuels and chemicals by 85% by 2035, including CO_2 utilisation.
- In April 2023, the **European Union** approved the ReFuelEU Aviation proposal which imposes blending mandates on synthetic fuels for aviation, increasing from 0.7% in 2030 to 28% in 2050, and 3 CCU projects targeting synthetic fuel received funding from the EU Innovation Fund's latest large-scale call in 2022.
- In **Belgium**, the first large-scale capture plant converting steel emissions to ethanol was commissioned in December 2022.
- In **Canada**, the 2022 federal budget proposed an investment tax credit for CCUS projects between 2022 and 2030, valued at 37.5% for utilisation equipment.

The majority of CO2 extracted in 2021 came from natural gas processing facilities. Natural gas output will increase at a 2.7% annual rate between 2012 and 2040, accounting for over 30% of global energy generation by that time. The deployment of carbon capture, utilization, and storage in this industry will help create a viable pathway for a sustainable environment. (Please refer exhibit 1).

Exhibit 1



Source: *Maximize Market Research*

India is the 3rd largest emitter of CO2 in the world after China and the US, with estimated annual emissions of about 2.6 gigatonne per annum (gtpa). The Government of India has committed to reducing CO2 emissions by 50% by 2050 and reaching net zero by 2070.

The growth of renewable power capacity has been one of the key success stories of the clean energy transition in India; however, the power sector only contributes to about 1/3 rd of the aggregate CO2 emissions, which will continue to abate as renewables increasingly replace fossil fuel based power generation. The growing industrial economy emits close to another third of the aggregate emissions that are hard to abate, and will continue to increase unless new technologies and carbon abatement mechanisms are deployed.

It is heartening to note that India has already espoused noteworthy CCUS initiatives which are as under:

1. To foster CCUS technologies, Government of India has established two National Centres of Excellence in Carbon Capture and Utilization with support from the Department of Science & Technology. These two Centres are – (i) National Centre of Excellence in Carbon Capture and Utilization (NCoE-CCU) at Indian Institute of Technology (IIT) Bombay, Mumbai and (ii) the National Centre in Carbon Capture and Utilization (NCCCU) at Jawaharlal Nehru Centre for Advanced Scientific Research (JNCASR), Bengaluru.

   These centres facilitate capturing & mapping of current R&D and innovation activities in the domain and also develop networks of researchers, industries and stakeholders with coordination and synergy between partnering groups and organizations. The Centres will act as multi-disciplinary, long-term research, design development, collaborative and capacity-building hubs for state-of-the-art research and application-oriented initiatives in the field of CCU (Carbon Capture and Utilisation).

2. Another such measure is the Mission Innovation Challenge on CCUS. The objective and scope of the challenge is to enable near-zero CO2 emissions from power plants and carbon-intensive industries. Department of Science and Technology, in collaboration with Department of Biotechnology has established a national program on CO2 storage research which supports carbon capture research and develops pilots and projects.

CCUS can achieve significant CO2 reductions from power plants (fuelled by coal, natural gas, and biomass) and industrial applications. The efforts for the same started in 2018 when the DST-DBT jointly launched a Call on IC3 on CCUS to undertake joint Research & Development with *24 member MI (Mission Innovation) countries to identify and prioritize breakthrough technologies in the field of CO2 capture, separation, storage and CO2 value addition. 20 Proposals have been recommended for support, 17 from DST and 3 from DBT.

3. Another major step includes Accelerating CCS Technologies (ACT). This initiative aims to facilitate R&D and innovation that can lead to development of safe and cost-effective CO2 capture, utilisation and storage (CCUS) technologies. The intension is to facilitate the emergence of CCUS by accelerating and maturing CCUS technologies through targeted financing of innovative and research activities.

   The scope also envisages to address the challenges related to CCUS in technological, environmental, social and economic context of the country. India has joined forces with France, Germany, Greece, Norway, Romania, Switzerland, The Netherlands, Turkey, the United Kingdom, and the United States to achieve these objectives. The initiative has witnessed four successful ACT calls targeting research, development and innovation projects within CCUS.

Moreover, the Indian corporate sector has also come forward to contribute substantially towards Carbon Capture, Utilisation and Storage. A few exemplars of CCUS by Indian companies are as under:

a) **Oil India** has recently announced that it is working on a plan to capture carbon dioxide emitted from its natural gas field in Rajasthan and store it in some of the nearby dry wells, in what could be the first such projects in the country. Carbon sequestration is one of those initiatives, which Oil India is well placed to undertake as it has deep knowledge of the subsurface and has access to many not-so-successful wells that could be used to store CO2. The company's field in Jaisalmer, Rajasthan, produces gas with about a quarter of CO2 content. The company is planning to set up a gas sweetening plan, where CO2 will be stripped, rendering the gas from the field more valuable for customers.

   The company has done some preliminary studies and will soon engage a consultant to prepare a feasibility report for the carbon sequestration project, which will offer a plan on carbon capture, transportation, storage and monitoring.

b) **India's Oil and Natural Gas Corporation (ONGC)**, a government-owned oil and gas explorer and producer, recently signed a Memorandum of Understanding (MoU) with Norway-based energy company Equinor to explore opportunities in low-carbon and renewable sectors, specifically focusing on CCUS.

c) **ONGC, in partnership with the Indian Oil Corporation (IOCL),** another public sector oil producer, is also working on India's first industrial-scale carbon capture project at the Koyali refinery. The project will capture CO_2 emissions at the refinery that will be transported through pipelines to the Gandhar oil field, owned by ONGC, where, as per media reports, carbon will be stored.

d) **The Gas Authority of India Limited (GAIL)** has also implemented a pilot project for fixing CO_2 using microalgae, which will convert inorganic carbon into organic compounds, in an artificial pond at its Pata petrochemical complex in Uttar Pradesh.

The majority of these companies have set targets to achieve zero emissions through renewable energy, such as solar, wind, biofuel, green hydrogen as well as CCUS technologies. ONGC targetting net zero by 2050, IOCL plans to achieve it by 2046. HPCL, BPCL, and GAIL have set the deadline to achieve net zero by 2040.

Most significantly, not only the goliaths of the corporate world are showing proclivity towards CCUS in India, even start-ups are exhibiting enthusiasm to work in the area of CCUS. Some of the leading carbon sequestration companies and start-ups in India are- Araville Green Energy Ventures Pvt. Ltd., Strawcture Eco Pvt. Ltd., Carbon Craft Design etc.

Carbon Capture, Utilization and Storage Market was valued at USD 2.76 Billion in 2023, and is expected to reach USD 7.39 Billion by 2030, exhibiting a CAGR of 15.1% during the forecast period (2024-2030) The global carbon capture, utilization and storage market is expected to get boost from large consumer base in developed as well as developing economies. Developing regions such as Asia-Pacific, the Middle East and Africa, are fast-growing markets. The carbon capture, utilization and storage market globally is witnessing increases in growth due to technological advancements, high industrial activity, large investments and high demand for industrial processes, leading to a rise in industrial gas market.

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7

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.

Parties to the dispute in the present case study:

Appellants

MNT Bank Private Limited

Respondents:

1. XYZ Limited…………………. the corporate debtor

2.Mr. X……………. personal guarantors

3.Mr. Y…………….. personal guarantors

Facts of the case: XYZ Limited (hereinafter referred as "the corporate debtor") had availed financial assistance from the ILS Limited (Bank). Mr. X and Mr. Y, the promoters of XYZ Limited, had offered their personal guarantee in respect of the said financial assistance. The respondents had defaulted in repayment of the dues and the account having been classified as nonperforming asset was thereafter auctioned by the Bank (ILS Limited), wherein the MNT Bank Private Limited (the appellant herein) was the successful bidder and accordingly, the unpaid debt and nonperforming asset was assigned in their favour. The assignment as made was assailed by the corporate debtor before the High Court which was dismissed and in the said proceedings the settlement which was entered into between the parties was recorded and disposed off.

As per the settlement, the respondents No. 1 to 3 had agreed to repay the sum of Rs.145 Crores with interest at 15% per annum subject to the same being repaid on or before 31.07.2012. The respondent's No. 1 to 3 are stated to have not adhered to the terms of settlement and the repayment was not made. The appellant Bank, therefore, instituted recovery proceedings by filing an application before the Debts Recovery Tribunal ('DRT' for short), New Delhi in 2015. In the said proceedings, the appellant claimed that the Respondents No. 1 to 3 would be liable to pay the entire outstanding i.e. Rs 574 cr (before settlement) since the benefit of the settlement, wherein the outstanding amount was frozen, had not been availed within the time frame. A part of the outstanding amount was paid by the respondents to the appellant from the compensation amount (i.e. Rs. 152 cr) received for acquisition of one of mortgaged property for development of National Highway. This payment was made during pendency of proceedings before DRT in 2015.

With these developments in the background, the DRT had proceeded to consider the claim application and ultimately ordered issue of recovery certificate for Rs.145 Crores with, future interest at 9% per annum till the realisation, on reducing balance. This amount would be payable after taking into consideration Rs 152 cr paid during the pendency of the proceedings before DRT.

The appellant as well as respondents No. 1 to 3 claiming to be aggrieved by the order dated 15.03.2018 passed by DRT preferred appeals before the DRAT as well as sought waiver of pre-deposit of the debt payable determined by DRT. The DRAT noted that after taking into account payment of Rs 152 cr, still the respondents need to pay Rs 68 cr as per DRT order. So, it rejected the application seeking waiver of predeposit amounting to fifty percent of the debt determined by the DRT.

The High Court permitted to prosecute the appeal before the Debts Recovery Appellate Tribunal ('DRAT' for short) without predeposit of a portion of the debt determined to be due, as provided under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDBA Act' for short). The appellant claiming to be aggrieved by the said order filed an appeal before the Supreme Court.

Give your professional opinion regarding whether High Court can waive requirement of pre-deposit stated in Section 21 of the RDBA.

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 – January 2024

CS Ashish Mehta
ACS-15469

Answer to Q (i) :

The Securities Appellate Tribunal, Mumbai has in August, 2023 passed an Order in a similar case. In the given Case Study, issuance of the preferential allotment by XYZ Limited to a total 100 persons on three instances from November 01, 2012 to November 10, 2012 is squarely in violation of Section 67 (3) of the Companies Act, 1956 and the ICDR Regulations. By virtue of Section 55A of the Companies Act, 1956, the provisions contained in Sections 55 to 81 and certain other sections, so far as they relate to issue and transfer of securities, in case of those public Companies which intend to get their securities listed on any recognised Stock Exchange in India, be administered by SEBI.

In the above referred similar case, plea of the Issuer/ Noticee, of not making the allotment to more than 49 persons AT A TIME and not making the allotment to more than 200 persons in a financial year was not found tenable by SEBI (and later by SAT in the appeal made by Issuer) having regard to the judgement of Hon'ble Supreme Court of India in **Sahara India Real Estate Corporation Limited & Ors.vs. SEBI (2013) 1 SCC 1**, where the Hon'ble Supreme Court dealt with similar contention and held that... *"...... Even if armed with a special resolution for any further issue of capital to person other than shareholders, it can only be subjected to provisions of Section 67 of the Companies Act, 1956, that is, if the offer is made to fifty persons or more, then it will have to be treated as public issue and not a private placement. A public issue of securities will not become a preferential allotment on description of label. Proviso to Section 67(3) does not make any distinction between listed and unlisted public companies or between preferential or ordinary allotment."*

Answer to Q (ii) :

Violation of the above provisions may lead to issuance of Directions by SEBI :

(a) Against the Issuer and officers in default for refund of all subscription money in terms of Section 73 of the Companies Act, 1956.

(b) Restraining the Issuer from issuing further securities and from accessing the capital market for a period as deemed appropriate.

(c) Restraining the officers in default from accessing the capital market for a period as deemed appropriate.

It may be noted that no penalty for violation of Section 67 (3) is stipulated under the Companies Act, 1956 and accordingly Section 629A of the Companies Act, 1956 is applicable. Any offence covered under Section 629A is compoundable. Under Section 629A, the Company and every officer in default shall be punishable with fine which may extend to Rupees five thousand and where the contravention is a continuing one, with a further fine which may extend to Rupees five hundred for every day after the first during which the contravention continues.

It is also pertinent to note that prior to 1st April, 2014, offers of securities by Companies to more than 49 persons were deemed to be public offers. Under the new Companies Act, 2013 (Section 42 read with applicable rules), post 1st April, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees/allottees exceeds 200 persons in a financial year, excluding certain class of subscribers. Considering the higher cap of private placement provided in the Companies Act, 2013, SEBI decided (and issued Circular No.CIR/CFD/DIL3/18/2015 dated 31st December, 2015) that in respect of cases, prior to April 1, 2014, involving issuance of securities to more than 49 persons but upto 200 persons in a financial year, the Companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at price not less than the amount of subscription money paid along with 15% interest per annum thereon or such higher return as promised to investors. SEBI did lay down the refund procedure vide the referred Circular.

Answer to Q (iii) :

The submission of XYZ Limited that the allotment of preferential shares never exceeded 49 persons at a time and therefore, there was no violation of Section 67 of the Companies Act, 1956, can not be accepted in view of the Hon'ble Supreme Court of India in **Sahara India Real Estate Corporation Limited & Ors.vs. SEBI (2013) 1 SCC 1,** wherein it was held that if the offer is made to fifty persons or more, then it will have to be treated as a public issue and not as a private placement. In a similar case decided by SAT, it was held that since

the procedure relating to the public issue was not followed, the Company had violated Section 67(3) of the Companies Act, 1956.

Answer to Q (iv) :

The scope of Section 73 of the Companies Act, 1956 is that every public company is required before issuing shares or debentures for public subscription by issue of prospectus, to make an application for listing the security in one or more recognised stock exchanges. In case permission is not granted by any stock exchange then no allotment can be made. However, in case, where no application is made or permission has not been granted, then the Company is required to repay all monies received from the applicants/investors. Failure to repay the money within 8 days will made the Company and Directors liable to repay the amount with interest. Thus, one of the necessary ingredients is listing permission and failure to get the shares listed entails refund of the allotment money to the investors applicants.

In the instant case, admittedly the shares of the Company got listed on 12th March, 2013 at the Bombay Stock Exchange. Thus, in the given facts and circumstances of the case, and considering that the shares of the Company were listed pursuant to the successful completion of IPO which allowed the shareholders an option to exit, it is prudent to view that the investors in the deemed public issue (through allotment of preferential shares) have not been substantially prejudiced due to non- compliance with the provisions of Section 67 of the Companies Act, 1956 read with Section 73. Hence, the direction of WTM to refund the money collected through preferential allotment under Section 67 along with interest is inappropriate and is not sustainable.

Answer to Q (v) :

Plea of law of limitation including that of inordinate delay with respect to issue of show case notice seems unfructuous.

In a similar case (referred to above) the facts and circumstance [including issue of letter dated June 14, 2016 by SEBI to Issuer seeking information/ documents with regard to the issue and allotment of shares in the financial year 2012-13, issue of another letter dated December 6, 2017 advising the Issuer to give an option to the investors to get refund in terms of SEBI Circular dated December 31, 2015, subsequent reminders and affixture of letters (in March, 2018)] led to issuance of show cause notice dated 19th September, 2018.

In such case, the WTM noted that in **Ravi Mohan & Ors v. SEBI** and other connected appeals, the Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI (Appeal No.114 of 2012 decided on August 27, 2013) and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Panit Industry (India) reported in 2003 (158) ELT 129 (S.C.) held as under:

"...Based on decision of this Tribunal in case of HB Stockholding Ltd. vs. SEBI (Appeal No.114 of 2012 decided on August 27, 2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.) has held that if there is no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after lapse of several years from the date of issuing notice...."

The WTM further referred to the judgement of the Hon'ble Supreme Court of India in the matter of **Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294,** which has also been relied upon by the Noticee No.1 to 3, wherein, the Hon'ble Supreme Court held that :

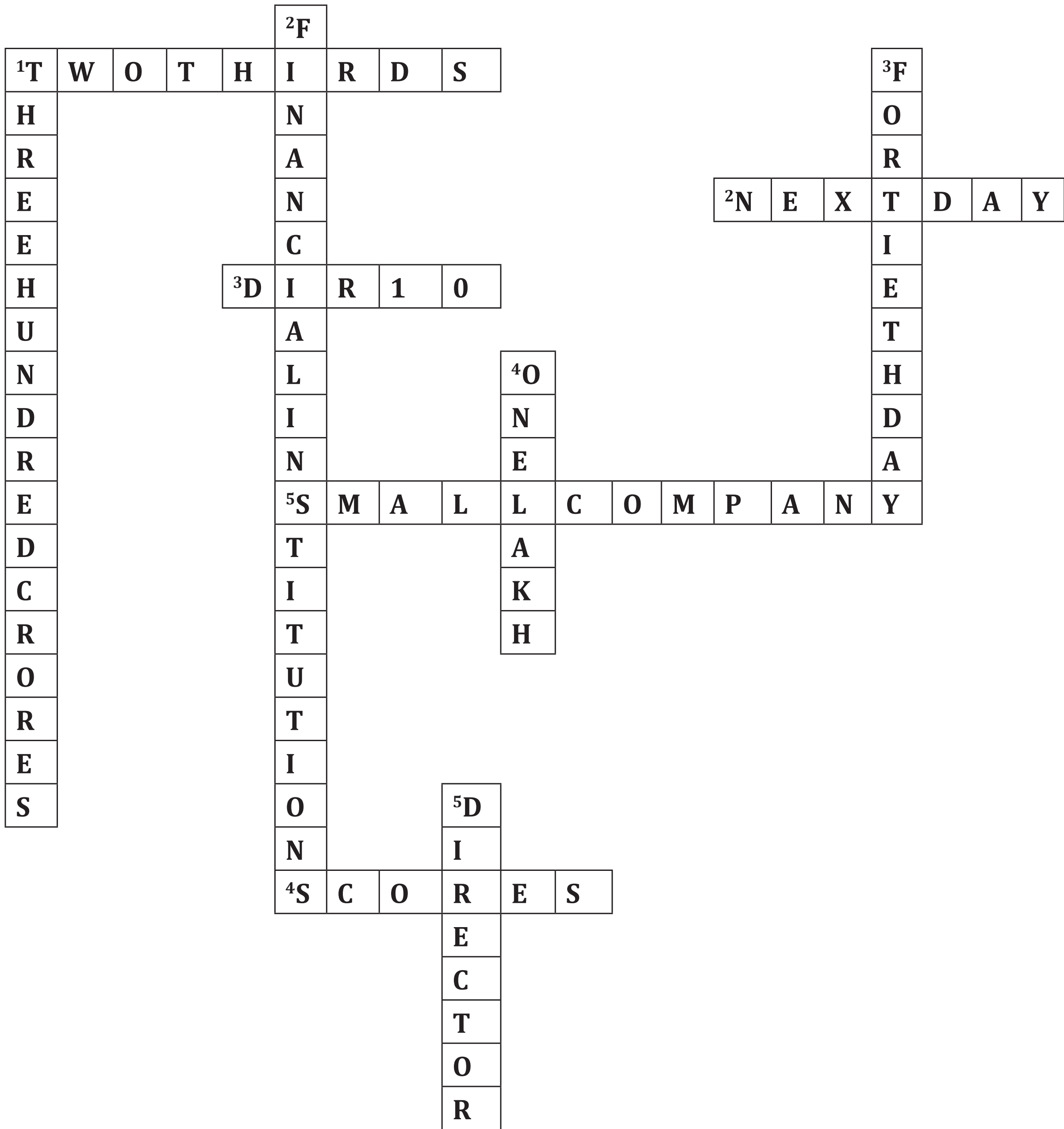
"There are judgements which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc."

Having regard to facts, in particular, delay in response by the Issuer and investigation conducted by SEBI into the above referred IPO of the Issuer resulting in an Order holding that the Issuer achieved the threshold of minimum subscriptions in its IPO only through fraudulent scheme, it seems that the plea of law of limitation is untenable.

Answer to Q (vi) :

SAT may upheld the directions of SEBI debarring the appellants from accessing the securities market.

CROSSWORD PUZZLE – JANUARY 2024 ANSWERS



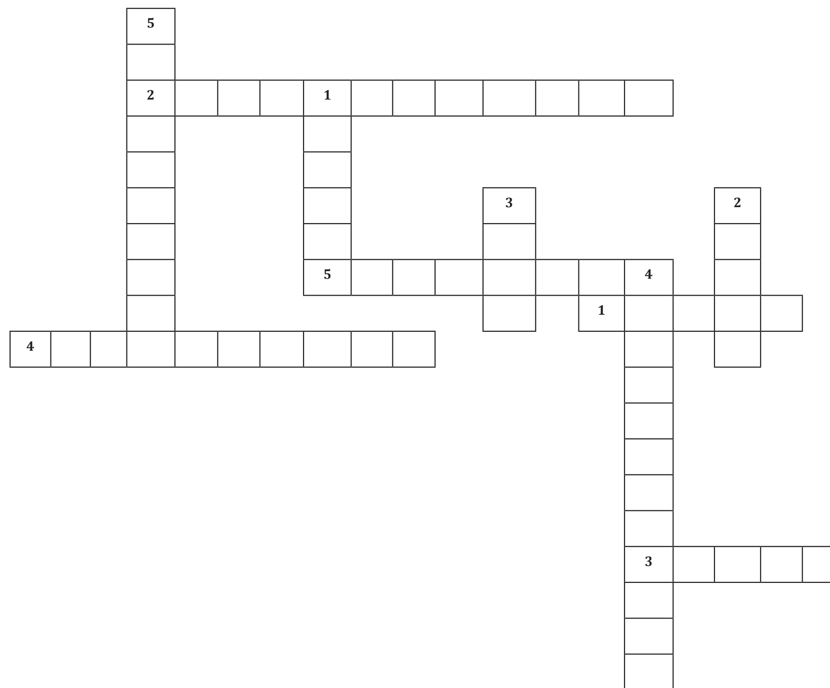
Winners - Crossword January 2024

1ST CS Alka Shridhar Babaladi ACS-67485

2ND CS Devansh Aggarwal ACS-58937

3RD CS K Kalaivani ACS-70922

CROSSWORD PUZZLE – COMPANY LAW - FEBRUARY 2024



ACROSS

1. Every limited liability partnership shall file the Statement of Account and Solvency in______________ with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates.

2. Under the Insolvency and Bankruptcy Code, 2016, A financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a ___________of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

3. Under Companies Act, 2013, No person, who is or has been a director of a company which has not filed financial statements or annual returns for any continuous period of______ financial years, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

4. Under Insolvency and Bankruptcy Code, 2016, the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process or pre-packaged insolvency resolution process, as the case may be is known as ____________Date.

5. Under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, An issuer shall be eligible to issue warrants in an initial public offer subject to that the tenure of such warrants shall not exceed ___________months from the date of their allotment in the initial public offer.

DOWNWARDS

1. Under Companies Act, 2013, The special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than ____________months from the date of passing of the special resolution.

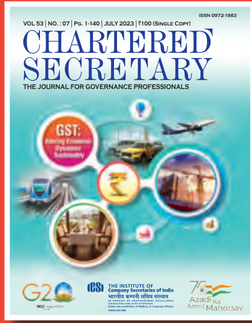
2. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in ____________of Schedule II.

3. Under Companies Act, 2013, The company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No. ____________.

4. Under SEBI LODR 2015, The chairperson of Stakeholder Relationship committee shall be a ________________director.

5. Under Insolvency and Bankruptcy Code, 2016, The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within __________hours of the said meeting.

CHARTERED SECRETARY



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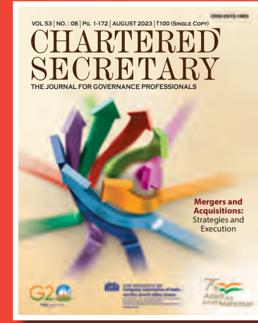

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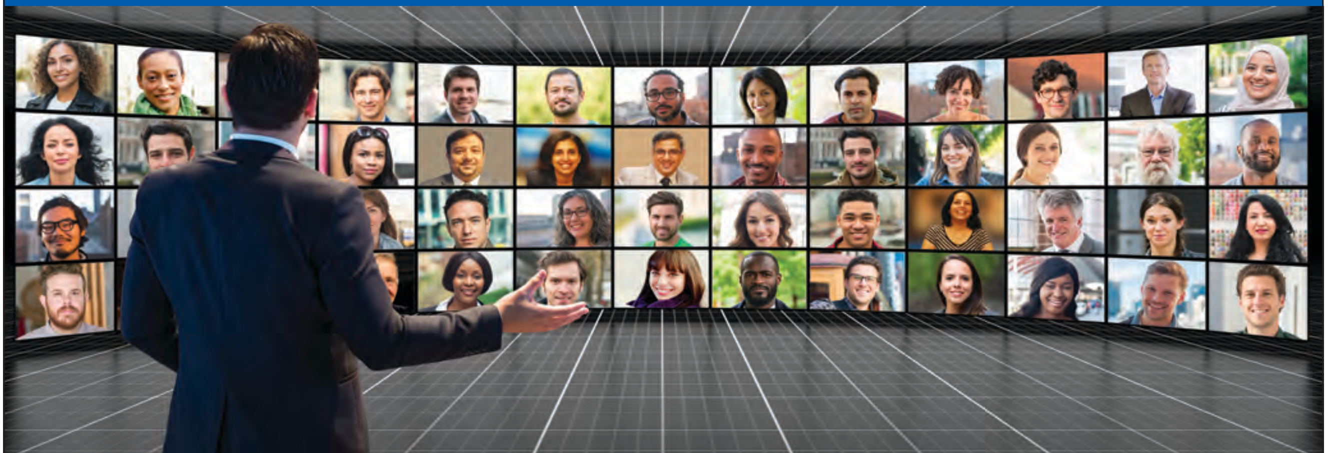

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