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51st National Convention of Company Secretaries

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Highlights of the Speech of Hon'ble Vice-President of India, Shri Jagdeep Dhankhar at 51st National Convention of Company Secretaries, at Varanasi

It is this place which had taught the world for ages what is ethics, what is morality, what is spirituality.

So you have chosen such a good place that you can go absolutely charged to deliver for the nation and discharge your obligations as envisioned by law.

As professionals, you will have to detach yourselves from the management objectives.

If you slightly bend, trust me, the bending will never stop !

You have to exhibit meticulously, scrupulously, the highest standard of professionalism that adheres only to the rule of law.

The role of a company secretary has evolved over the years.

They are now key pillars of governance and compliance within organizations; upholding the principles of transparency, ethics and accountability in corporate governance.

We have now an ecosystem, where anyone is in a position to unleash one's potential energy and achieve aspirations.

CS are the custodians of Corporate Governance upholding the compliance & governance of India Inc. high. They are the epicentre of the change in the Regulatory Regime & are playing multifaceted role today.

51st National Convention of Company Secretaries held on November 2-4, 2023, at Varanasi

Theme : India@G20: Empowering Sustainable future through Governance & Technology

Chief Guest : Shri Jagdeep Dhankhar, Hon'ble Vice-President of India

Guest of Honour : Smt. Anandiben Patel, Hon'ble Governor, Uttar Pradesh

Special Guest : Dr. Manoj Govil, Secretary, Ministry of Corporate Affairs, Government of India

INAUGURAL SESSION


THE INSTITUTE OF
Company Secretaries of India
51st National Convention
Company Secretaries
India@G20: Empowering Sustainable Future
Governance & Technology
November 2 - 4, 2023 | Varanasi, Uttar Pradesh


India@G20: Empowering Sustainable Future through Governance & Technology

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SPECIAL SESSION - ON DIGITALIZING, CORPORATE GOVERNANCE SHAPING THE FUTURE OF BHARAT

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SPECIAL SESSION - REINVENT, EVOLVE AND LEAD THE PROFESSION ETHICALLY

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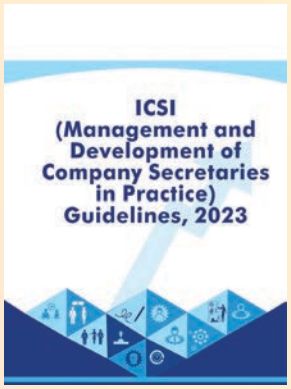

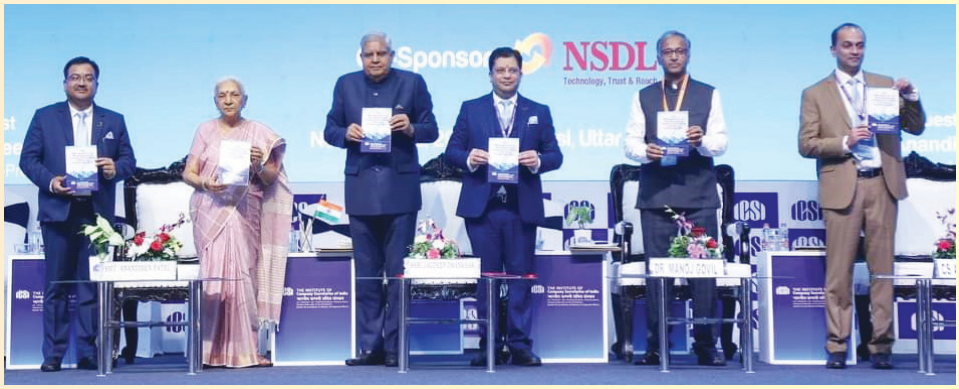

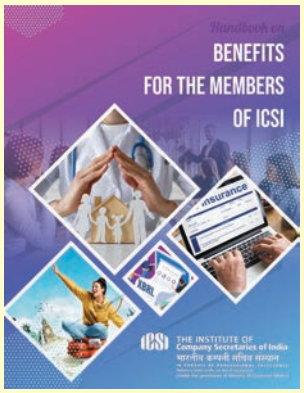
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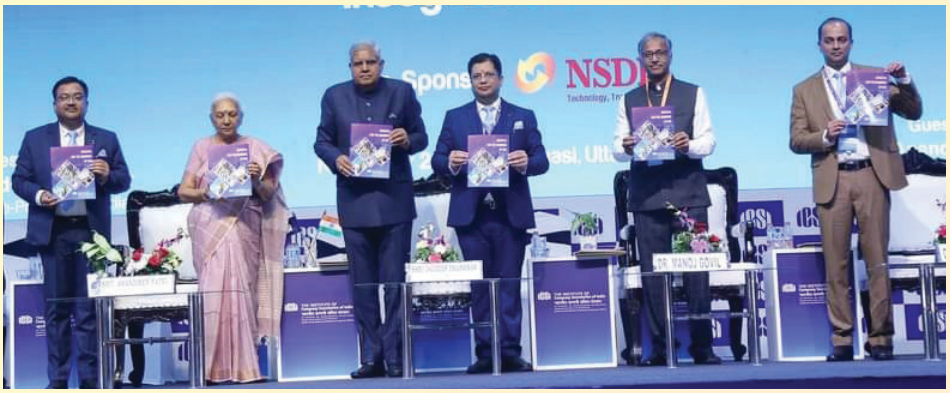

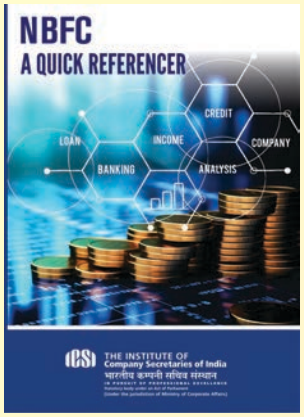
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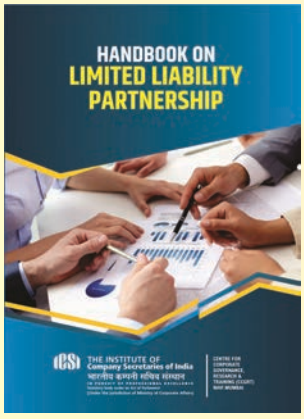
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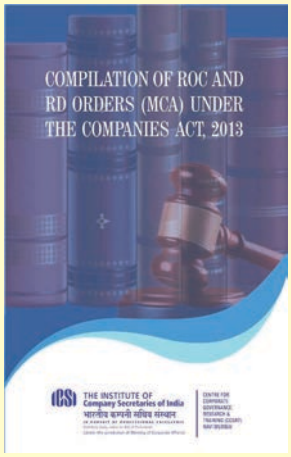
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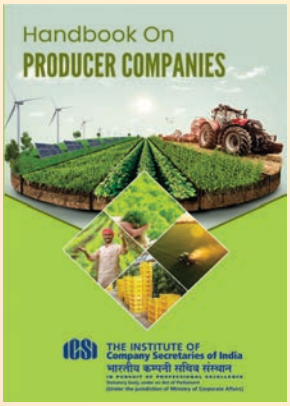

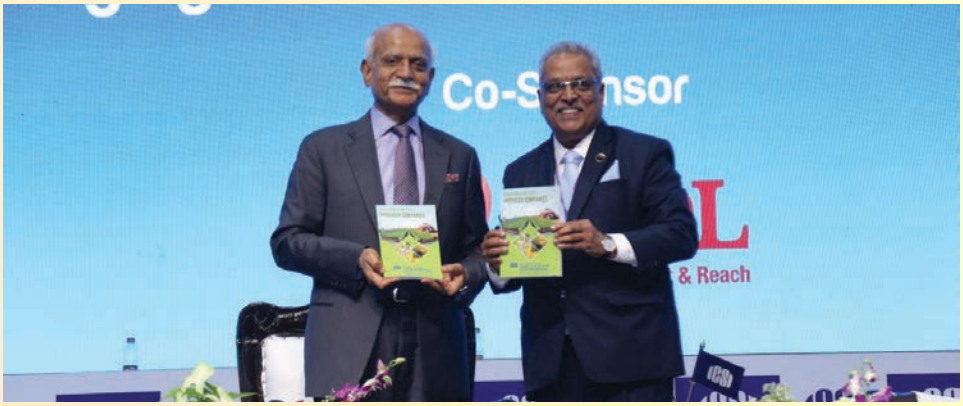

MoUs SIGNED AT 51ST NATIONAL CONVENTION OF COMPANY SECRETARIES

MoU WITH HDFC LIFE FOR TERM INSURANCE

MoU WITH PRUDENT INSURANCE BROKERS ON MOTOR VEHICLE INSURANCE

MoU WITH SAMSUNG FOR DISCOUNT ON ELECTRONIC PRODUCTS

MoU WITH MAHINDRA HOLIDAYS AND RESORTS

Best Regional Council and Chapter Awards 2022

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Best Chapter Platinum - Indore

Best Chapter Diamond - Bengaluru

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Best Chapter Silver - Nashik

Best Chapter Emerging - Palakkad

Proceedings of the 51st National Convention of Company Secretaries held on November 2-3-4, 2023 at Varanasi

Theme : India@G20: Empowering Sustainable future through Governance & Technology

The Institute organized the 51st National Convention of Company Secretaries at Deendayal Hastkala Sankul (Trade Center and Craft Museum), Varanasi, Uttar Pradesh during November 2-3-4, 2023 on the theme "India@G20: Empowering Sustainable Future through Governance & Technology" in hybrid mode. The Convention witnessed the presence of around 4,500 delegate's present in-person and connected virtually from different parts of the country and abroad. A galaxy of distinguished guests, invitees, speakers and professionals from India and abroad made the Convention a grand success.

SPECIAL SESSION: ROLE OF IFSC AND OPPORTUNITIES FOR PROFESSIONALS

Shri K. Rajaraman, Chairperson, International Financial Services Centres Authority (IFSCA); CS Manish Gupta, President, ICSI; CS Dhananjay Shukla, Programme Director and Council Member, ICSI; CS Asish Mohan, Secretary ICSI; CS Devender Suhag Chairman, NIRC; CS Sonali Gupta, Chairperson, Varanasi Chapter of ICSI graced the dais during the session.

CS Devender Suhag, Chairman, NIRC introduced the esteemed Speaker and all other dignitaries on the dais.

CS Dhananjay Shukla, Programme Director & Council Member, The ICSI delivered the welcome address and also introduced the theme of the Convention. Appreciating the theme of the Convention, he mentioned that it is in line with the theme of India's G20 Presidency "Vasudhaiva Kutumbakam" which means 'One Earth, One Family, One Future' where the underlying principle is to have an equitable and sustainable society. He also expressed his delight on the Convention being organized in Varanasi and said that Varanasi is not just the spiritual capital of India but also a spiritual capital for the world.

CS Manish Gupta during his presidential address expressed his delight on holding the 51st National Convention of Company Secretaries at the holy city Varanasi. Welcoming the Chairperson, IFSCA, he apprised the delegates that the Council of ICSI has decided on opening a Chapter in the Gift City, Gandhinagar very soon.

A publication titled 'NBFC - A Quick Referencer' was released at the august hands of dignitaries present.

Shri K Rajaraman, Chairperson, IFSCA in his special address appreciated ICSI for being a valued partner in progress of nation and more so in the case of a growing ecosystem like GIFT IFSC. He highlighted the Tax and Structural reforms that took place over the last nine years. He briefed on India's maiden GIFT IFSC, its regulatory architecture with 30 regulations that are benchmarked with global best practices and the upcoming release of pension related regulations. He also highlighted the Legal, Compliance, Secretarial and Ancillary Services wherein the Company Secretaries can showcase their essential expertise to units set-up in the IFSC. He concluded by acknowledging the Company Secretaries as custodian of compliances and cornerstone of law, who can play a pertinent role in the overall technological foundation at the corporate and the national level. He requested ICSI to consider setting-up a Global ICSI Centre of Excellence, build global compliance business, look into mutual recognitions with other countries and also encourage India focussed business abroad to relocate to GIFT City. He also invited all to join Infinity Forum and Vibrant Gujarat.

CS Asish Mohan, Secretary, ICSI proposed the Vote of Thanks and expressed his sincere gratitude to the Shri K Rajaraman for addressing the special session of the 51st National Convention of Company Secretaries and motivating the Company Secretaries to embark on their journey of professional excellence in GIFT IFSC. He also wished happy stay and learning for delegates during Convention at Varanasi.

Shri Jagdeep Dhankhar, Hon'ble Vice President of India, Chief Guest and Smt. Anandiben Patel, Hon'ble Governor, Uttar Pradesh, Guest of Honour planted a sapling at the Dendayal Deendayal Hastkala Sankul on their arrival before the Inaugural Session.

INAUGURAL SESSION

The Inaugural Session of the Convention was illuminated with the presence of Shri Jagdeep Dhankhar, Hon'ble Vice President of India, Chief Guest of the day; Smt. Anandiben Patel, Hon'ble Governor, Uttar Pradesh, Guest of Honour; and Dr. Manoj Govil, Secretary, Ministry of Corporate Affairs, Government of India, Special Guest.

The inaugural session commenced and concluded with National Anthem.

CS Manish Gupta, President, ICSI commenced his presidential address by expressing sincere gratitude towards Shri Jagdeep Dhankhar, Hon'ble Vice President

of India, Chief Guest of the day; Smt. Anandiben Patel, Hon'ble Governor, Uttar Pradesh, Guest of Honour; Dr. Manoj Govil, Secretary, Ministry of Corporate Affairs, Government of India, Special Guest and the delegates on behalf of more than 72,000 members and 2 lakh students for joining the 51st National Convention of Company Secretaries. He apprised that the theme was planned to be in sync with India's G20 Presidency so that the ICSI could take a lead and contribute in the thought process of the Government. He referred ICSI to be the largest body of the governance professionals in the world, working towards a vision to be a global leader in promoting good corporate governance. He highlighted various initiatives taken by the Institute such as Syllabus Review in sync with the New Education Policy 2020, Group Health Policy for members launched on the 55th Foundation Day of ICSI, release of a Booklet containing details of all the MOUs and tie-ups of ICSI till date, waiver of 100% of fees at the time of registration to CS Course to Agniveers and Families of Martyrs, under the Agnipath Scheme of the Government of India, launch of first International ADR Centre etc.

Dr. Manoj Govil, Secretary, MCA while delivering his address highlighted the initiatives of the MCA for better legal framework and simplified procedures. He further stated that the Government has also reposed its faith in the Company Secretaries who are greatly responsible for making India an efficient and transparent nation. He further stated that ICSI has always provided support to MCA, CRC, CSC, IEPFA Authority, etc. He further stated that the 51st National Convention of Company Secretaries will be an opportunity for brainstorming and learning.

Smt. Anandiben Patel, Hon'ble Governor, Uttar Pradesh welcomed all to 'Sanskritik Nagri' and 'Adhyatmik Rajdhani' Varanasi. She said that Company Secretaries have a prominent role to play in helping corporates tread the path of progress. She appreciated the Institute for shaping such important professionals of the country. She urged all the governance professionals to make sure that the corporates they are associated with fulfils all the requirements of the current generation without compromising on the resources for the future generations. Quoting Mahatma Gandhiji, she said that "keep your thoughts positive, as your thought only become your words. Keep your behavior positive, habits positive, your values positive as these all become your destiny." She concluded by thanking the Vice President of India for gracing this occasion and wished for successful Convention.

The following releases and Best Region and Chapter Awards for the year 2022 were facilitated at the august hands of Shri Jagdeep Dhankhar, the Chief Guest and Smt. Anandiben Patel, Guest of Honour along with other dignitaries present at the dais:

1. Souvenir of the 51st National Convention of Company Secretaries
2. Handbook on Benefits for the Members of ICSI
3. ICSI (Management and Development of Company Secretaries in Practice) Guidelines, 2023
4. Flyer release for ESG Conclave
5. Video Release of 3rd International Conference at Singapore

AWARDS

1. Emerging Chapter Award – Palakkad Chapter of SIRC of ICSI;
2. Best Chapter Award in Silver Grade – Nashik Chapter of WIRC of ICSI;
3. Best Chapter Award in Gold Grade - Kochi Chapter of SIRC of ICSI;
4. Best Chapter Award in Platinum Grade - Indore Chapter of WIRC of ICSI;
5. Best Chapter Award in Diamond Grade - Bengaluru Chapter of SIRC of ICSI;
6. National Best Chapter Award - Kochi Chapter of SIRC of ICSI; and
7. National Best Regional Council Award - Western India Regional Council of ICSI

Shri Jagdeep Dhankhar, the Chief Guest of the day, spoke about the dignitaries present on and off the dais. He congratulated the Institute for choosing an absolute relevant theme and the location *Kashi* for the 51st National Convention of Company Secretaries. He underlined that the fruitful deliberations in this Convention will determine the future of India in 2047. He mentioned that Company Secretaries are the custodians of Corporate Governance upholding the compliance and governance of India Inc. high and they are the epicenter of the change in the regulatory regime and are playing a multifaceted role today. He also encouraged the professionals for upholding the highest standards of professionalism and the Rule of Law to drive the nation forward. He congratulated Institute for its commendable work towards a worthy cause. He extended his best wishes for mission of ICSI of good corporate governance with environmental sustainability. He concluded by urging all to pledge in Kashi to work 24x7 for building Bharat@2047.

SPECIAL SESSION: DIGITALIZING CORPORATE GOVERNANCE: SHAPING THE FUTURE OF BHARAT

Session Coordinator: CS Suresh Pandey, Council Member, The ICSI

Speaker: Mr. Amit Jain, Co-Founder & CEO, CarDekho Group

CS Suresh Pandey in his introductory remarks briefed about the session theme and welcomed the learned speaker and invited him for sharing his views and experiences with the delegates and proposed vote of thanks at the end.

Mr. Amit Jain, in his opening remarks discussed how India can take lead in next 25 years not only in business but also in digitalisation and can become the world leader. He mentioned that the Company Secretaries gaining the position of a Key Managerial Personnel is a reflection of the calibre and knowledge possessed. He also emphasized that Company Secretaries have a major role in ensuring ESG implementation in the corporate. He also suggested that the corporates & professionals should go for technological advancement and innovation in their organization for long term growth. He further discussed about the shift in economy from financial capitalism to data capitalism and also specified 'data' as the oil for any economy in the modern era. He further discussed about the importance of large scale digitization of data for economic growth and the essence of continuous learning along with the willingness to learn as professionals and how the Company Secretaries can become leaders with their skill-set and approach.

A publication titled 'Compilation of ROC and RD orders (MCA) under the Companies Act, 2013' was released at the august hands of dignitaries present.

SPECIAL SESSION: EMERGING TRENDS IN CORPORATE GOVERNANCE

Session Coordinator: CS Dwarkanath Chennur, Council Member, The ICSI

Speaker: Shri B.V.R. Mohan Reddy, Founder Chairman & Board Member, Cyient Ltd.

CS Dwarkanath Chennur in his introductory remarks briefed about the session theme and welcomed the learned speaker and invited him for sharing his views and experiences with the delegates and proposed vote of thanks at the end.

Shri B.V.R. Mohan Reddy in his introductory remarks described Corporate Governance as an oversight of business activities bringing in transparency and helping Board of Directors in corporate strategies, risk management, etc. He further explained Corporate Governance in his words as 'RAFT' i.e. Responsibility, Accountability, Fairness and Transparency. He thanked all the Company Secretaries for continuously maintaining the high standards of Governance and Compliance. He further stated that awareness levels of consumers have increased tremendously and the Company Secretaries have to play significant role in creating the level of awareness for ESG, its implementation and execution. He further deliberated that the number of tools coming in are commendable and digital boards, risk rating, cyber security are the new things to implement. He concluded by stating that Good Governance will bring sustainable successful companies and urged Company Secretaries to also become entrepreneurs and to make sure to add value for customers.

A publication titled 'Handbook on Producer Companies' was released at the august hands of dignitaries present.

FIRST TECHNICAL SESSION: DIGITAL INCLUSION: A CATALYST FOR CORPORATE INNOVATION AND SOCIAL PROGRESS

Session Coordinator(s): CS Mohan Kumar Aravamudhan, Council Member, The ICSI and CS Praveen Soni, Council Member, The ICSI

Panelists: Dr. Rajiv Mani, Additional Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India; Dr. C.S. Mohapatra, IES (Retd.), IEPF Chair Professor, NCAER; Shri Yaduvendra Mathur, IAS (Retd.), Former Secretary, NITI Aayog.

CS Praveen Soni in his introductory remarks briefed about the session theme and welcomed all the learned panelists and invited them for sharing their views and experiences with the delegates.

Dr. Rajiv Mani shared his thoughts on the need for digital transformation in today's environment from corporate perspective. He also emphasized on the adaptation and importance of digital & technological advancement for the Professionals. He emphasized on the importance of social welfare measures like Direct Benefit Transfer (DBT), importance of KYC and Due Diligence and various digital inclusion steps taken by the Government in making India as third highest innovating country after US and China. He also emphasized on the role of good governance and ethics in determining the success and longevity of any organisation.

Dr. C. S. Mohapatra deliberated on the role of data protection & cyber security and emphasised upon the role of ethics and morality for Company Secretaries. He mentioned that the Company Secretaries are the think tank of the corporate. He discussed about the changes in the regulatory and judicial framework and how a professional can keep pace with these changes and also suggested them to work in a detailed manner with utmost efforts. He also shared his thoughts on the importance of digital inclusion and its potential for corporate innovation and mentioned that inclusivity is important.

Shri Yaduvendra Mathur discussed the importance of Independent Directors and stated that Company Secretaries play a very important and significant role in fostering Governance in the organisation. He discussed the importance of compliance in the larger context with respect to Good Governance aspects. He also suggested the professionals to improve their skills and competencies to provide value added services to their organisation. He also deliberated on the importance of digital technologies such as AI and that the Company Secretaries should utilize the tools & technologies of AI and Machine Learning to its full potential.

The panelists further deliberated on the issues pertaining to the theme of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

A publication titled 'Handbook on Limited Liability Partnership' was released at the august hands of dignitaries present.

CS Mohan Kumar Aravamudhan summed up the discussions and proposed the Vote of Thanks.

SPECIAL SESSION: REINVENT, EVOLVE AND LEAD THE PROFESSION ETHICALLY

Session Coordinator: CS Rajesh Tarpara, Council Member, The ICSI

Speaker: Pujya Dr. Gnanvatsalswami, Life Coach & Eminent Speaker, BAPS Swaminarayan Sanstha

CS Rajesh Tarpara in his introductory remarks briefed about the session theme and welcomed the learned speaker and invited him for sharing his views and experiences with the delegates and proposed vote of thanks at the end.

Pujya Dr. Gnanvatsalswami ji presented an insightful address and motivated the professionals to reinvent as human beings for tapping into their highest potential. He explained that a Smart Professional is a subset of a wonderful human being and one should focus on reinventing not just the outer self but also the inner self in order to evolve as a better human being. He encouraged the gathering to inculcate an attitude of being a lifelong student and believe in the process of continuous learning in order to reinvent the inner self in terms of values and virtues. He further apprised the gathering on four focus areas for redesigning the internal structure: Reinvent to become a prosperity thinker, never be a poverty thinker; Reinvent for absolute ethical living; Reinvent for Work-life balance and Reinvent to become a person of faith. He concluded that by reinventing these four areas, professionals can evolve and lead themselves, their families, their community and their organisation well.

SECOND TECHNICAL SESSION: START-UPs AND MSMEs – ENGINES FOR GROWTH

Session Coordinator(s): CS Venkata Ramana R., Council Member, The ICSI & CS Sandip K. Kejriwal, Council Member, The ICSI

Panelists: CS Parveen Kumar Gupta, Chairman, Utkarsh Small Finance Bank; CS (Dr.) Preet Deep Singh, Chief Analytics Officer & Vice President, Invest India; Shri Rajiv Chawla, Chairman, Integrated Association of Micro, Small & Medium Enterprises of India; Dr. Rajeev Roy, Dean Academics, XLRI Xavier School of Management, Delhi-NCR

CS Sandip K. Kejriwal in his introductory remarks briefed about the session theme and welcomed all the learned panelists and invited them for sharing their views and experiences with the delegates.

CS Parveen Kumar Gupta, in his opening remarks discussed about challenges and opportunities in MSMEs and Start-Ups. He advised the Company Secretaries to be the representatives for MSMEs and Start-Ups. He mentioned that banks are not the only source of funding for MSMEs but Fintech and NBFCs are also the major source of funding to MSMEs. He emphasised on the good business model for both Start-Ups and MSMEs to overcome the challenges faced during funding. He also discussed about various schemes introduced by SIDBI such as collateral free loan, seed funding, etc. He concluded that the Company Secretaries are indispensable for the success of MSMEs and Start-Ups and should become a part of their growth process.

CS (Dr.) Preet Deep Singh, in his address stated that Company Secretaries shall keep an eye on the latest amendments. He discussed about the importance of Generative AI as how the knowledge has automated and its benefits for the Company Secretaries. He also discussed about various emerging technologies such as Microsoft Automate, Power-Flo technologies and their benefits. He also discussed about usage of digital technologies to serve the complexities of business organization and guided as to how AI can be used to provide better services to clients and how automation changes the role of Company Secretaries.

Shri Rajiv Chawla, started his address discussing about India achieving the goal of US$ 5 Trillion economy in coming years and emphasized that Company Secretaries are the professionals who can lead the economy on the path of good governance and sustainability. He said that "Sustainability" and "Scalability" are the two important pillars for MSMEs and Start-Ups. He also mentioned that with the support of Company Secretaries in providing governance and proper legal system to this sector, the Indian economy will be on its way to become an economic superpower which will not only enhance the economic value of the nation but will be an opportunity for the Profession of Company Secretaries to have a paradigm shift.

Dr. Rajeev Roy started his address with the discussion about problems faced by Start-Ups such as technology, Regulations, etc. He discussed about the three resources available to Start-Ups viz. "Incubator", "Mentor" and "Professional". He said that it is imperative for MSMEs and Start-Ups to ensure that their governance structures appropriately correspond to their activities and risks, especially when they are in the growth phase. He added that the company look for the advice of the Company Secretary in every important decision.

The panelists deliberated on the issues pertaining to the theme of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

A publication titled 'Chartered Secretary Collector's Series Second Edition - A Compendium of Selected Articles on Micro, Small and Medium Enterprises (MSMEs) and Start-Ups' was released at the august hands of dignitaries present.

CS Venkata Ramana R. summed up the discussions and proposed the vote of thanks.

THIRD TECHNICAL SESSION: ESG: CREATING VALUE AND SUSTAINABILITY FOR FUTURE

Session Coordinator: CS NPS Chawla, Council Member, The ICSI

Panelists: Mr. M Nurul Alam, Senior Vice-President, Institute of Chartered Secretaries of Bangladesh; Ms. Anneliese Reinhold, Council Member, Institute of Directors, UK; Mr. Soorin Babu, Assistant Honorary Treasurer, Malaysian Association of Company Secretaries; Mr. Shujath Bin Ali, Global General Counsel & Chief Compliance Officer, Re Sustainability Limited.

CS NPS Chawla in his introductory remarks briefed about the session theme and welcomed all the learned panelists and invited them for sharing their views and experiences with the delegates and proposed the vote of thanks at the end.

Mr. M. Nurul Alam shared his insights on the ESG framework in Bangladesh, Netherlands and Egypt and said that ESG has become a top priority for corporate houses to comply with as the United Nations SDGs are also driving global commitment towards sustainability. He also highlighted the benefits of investing in ESG for corporates viz. improving reputation and brand value, attracting and retaining top talent, improving financial health, improving transparency and attracting global investments. He said that ESG compliance is a growing opportunity for Company Secretaries all over the world. He urged the Company Secretaries to regularly update themselves on ESG developments in order to effectively guide their Boards on incorporating ESG strategies.

Ms. Anneliese Reinhold shared her perspective as an Independent Director holding positions in UK, UAE and Europe. She said that understanding ESG's impact should be a priority for corporate leaders and Boards need to re-establish their leadership role and engage more effectively with stakeholders. She said there should be a clearer delineation of responsibility for decision-taking between boards, regulators and investors. She concluded that the ESG Reporting requirements are maturing in India and Company Secretaries are the drivers of engines of Boardroom and they need to be aware of the global trends along with the mandatory ESG requirements in order to mitigate the risks for the company they serve.

Mr. Soorin Babu, shared the Malaysian perspective in his address and said that ESG Reporting was made mandatory by Bursa Malaysia previously known as the Kuala Lumpur Stock Exchange since 2016 in order to provide evidence for transparency and accountability to the investors. He also highlighted that the Malaysian Code of Corporate Governance recommends directors to fully disclose the company's policies and implementation of ESG in the annual report. He said that ESG integration and disclosure helps in mitigating long term risks and improving the non-financial indicators such as market acceptance, enhanced reputation, talent attraction, lower cost of debt and the societal values it brings to its stakeholders.

Mr. Shujath Bin Ali in his address spoke about Indian perspective on adoption of ESG and said that the current generation is the biggest driver of ESG since they are really concerned about sustainability, natural resources and the future. He spoke of how companies are struggling between the pull approach which is consumer driven and the push approach which is regulator driven. He said that ESG has shades of compliance, risk management, strategy, technology and management and urged the professionals to enhance their skillset through resources such as courses, certifications and conclaves on ESG. He concluded by briefing on the opportunities available for Company Secretaries in the area of ESG and said that Company Secretaries are already champions of the Governance and Social aspect, they must focus on building their capacities on the Environmental aspect.

National Conference on "Developments and trends in Corporate Law and Governance" Flyer was released at the session.

The panelists deliberated on the issues pertaining to the theme of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

SPECIAL SESSION: JOURNEY OF THE CS PROFESSION

Session Coordinator: CS Ashish Karodia, Council Member, The ICSI

Speaker: CS R. Krishnan, Past President, The ICSI

CS Ashish Karodia in his introductory remarks briefed about the session theme and welcomed the learned speaker and invited him for sharing his views and experiences with the delegates and proposed the vote of thanks at the end.

CS R. Krishnan started his address by sharing the journey of the profession of Company Secretaries in India. He told how Ministry of Corporate Affairs (MCA) has appointed him as their Nominee on the Council of ICSI to represent the interests of GDCS and how MCA has decided to conduct the first elections for the Council and he was elected as the first President of the ICSI in 1970. He also discussed about how the ICSI made a contribution to the Corporate Governance movement in India when he was nominated by MCA on the Naresh Chandra Committee on Corporate Governance. He shared how ICSI became a statutory body and that right from East India Company, 'Company Secretary' was designated as the principal officer of the company.

OPEN HOUSE SESSION

Second day of the 51st National Convention of Company Secretaries concluded with an Interactive Session of the Council with the members. CS Manish Gupta, President, ICSI, CS NPS Chawla, CS Rupanjana De, CS Ashish Karodia, CS Rajesh C. Tarpara, CS Pawan G. Chandak, CS Manoj Kumar Purbey, CS Suresh Pandey, CS Dhananjay Shukla, CS Mohan Kumar Aravamudhan, CS Dwarakanath Chennur, CS Sandip Kumar Kejriwal, CS Praveen Soni, CS Venkata Ramana, Council Members, ICSI and CS Asish Mohan, Secretary, ICSI were present on the dais at the session.

The following MOU's were exchanged between President, ICSI and representatives of the respective organisation at the beginning of the Open House:

1. MOU with Mahindra Holidays & Resorts India Limited
2. MOU with Prudent Insurance Brokers Private Limited (PIBL)
3. MOU with HDFC Life Insurance Company Limited
4. MOU with Samsung India Electronics Pvt. Ltd. (SIEL)

CS Manish Gupta, President, ICSI apprised all participants about the initiatives and representations submitted by the Institute to various Regulators and replied suitably to the queries /suggestions raised/given by the members during the open house.

FOURTH TECHNICAL SESSION: WOMEN-LED DEVELOPMENT: ACCELERATED, INCLUSIVE & RESILIENT GROWTH

Session Coordinator: CS Rupanjana De, Council Member, The ICSI

Panelists: Ms. Sweta Agarwal, IAS, Additional District Magistrate, West Bengal; CS Preeti Malhotra, Past President, The ICSI

CS Rupanjana De in her introductory remarks briefed about the session theme and welcomed the learned panelists and invited them for sharing their views and experiences with the delegates and proposed the vote of thanks at the end.

CS Preeti Malhotra, shared her thoughts on how women-led development immerged as the new narrative during India's G20 Presidency marking a critical shift from women empowerment towards women-led development. She said that rather than being a passive recipient, women have to be an active catalyst of change and the architect of India's progress and development. She said that gender parity will become a reality only when women are not just the beneficiaries of development but are setting the agenda as leaders and equal participants. She also said that equal representation of women in boardroom is required for making gender parity a reality in an organisation and affirmative action and legislative policy can help to achieve this objective. She also shared that hard work, perseverance, commitment and positive attitude are the keys to success. She quoted Anais Nin "Life shrinks or expands in proportion to one's courage" and said that Technology and Women are the two factors driving change in today's redefining times and it is time for women to have the courage and be willing to take on additional responsibilities which must be supported by their families.

Ms. Sweta Agarwal in her address shared her perspective of women-led development in the Government. She highlighted the role of literacy and education in enabling women-led development and stated that it is important to not only be literate but also be educated which requires wisdom and change of mindset to shift the narrative from women's development to women-led development. Discussing the key principles of women-led development and how they contribute to inclusive and resilient growth, she highlighted the importance of supporting four M's *i.e.* Mobility, Marriage, Maternity and Menopause. She said that men and women must take responsibility to support these 4 Ms in order to ensure gender parity. She also highlighted the Nari Shakti Vandan Adhiniyam, 2023 which had reserved 33% of seats in the Lok Sabha and State Legislative Assemblies for women and concluded by appreciating the ability of this Act to empower and inspire women to take up leadership roles.

The panelists deliberated on the issues pertaining to the theme of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

FIFTH TECHNICAL SESSION: CORPORATE BOARDS: READINESS FOR DIGITAL TRANSFORMATION & CLIMATE CHANGE

Session Coordinator(s): CS Pawan G. Chandak, Council Member, The ICSI & CS Manoj Kumar Purbey, Council Member, The ICSI

Panelists: Shri P. K. Malhotra, Former Union Law Secretary, Government of India; Shri Anup Wadhawan, IAS (Retd.), Former Commerce Secretary, Government of India; Dr. Ashok Kumar Mishra, Govt. Nominee to the Council of the ICSI and Ex-Technical Member, NCLAT and Shri D. Sundaram, Lead Independent Director, Infosys.

CS Pawan G. Chandak in his introductory remarks briefed about the session theme and welcomed all the learned panelists and invited them for sharing their views and experiences with the delegates.

Shri P. K. Malhotra discussed about the regulatory developments relating to Board Governance in India. He further stated that Government, Banks, RBI, Statutory Authorities and Independent Directors need to come together to have a full proof system to eradicate the malice of corporate misuse. He deliberated that Digital Transformation is a critical imperative for organizations in today's rapidly evolving business landscape and that Boards play a pivotal role in shaping and driving digital initiatives ensuring their companies can harness the benefit of technology while mitigating risk. He concluded stating that in the days to come, self-regulation is going to become more important than Government-controlled regulations.

Shri Anup Wadhawan stated that the Company Law has indeed evolved towards prudence and transparency over time. He further stated that the Independent Directors play an important role to protect the interest of minority shareholders, public and society, employees and also of the policy makers and regulators. He also deliberated upon the system driven compliances, Artificial Intelligence, Data Analytics, Blockchain, IOT, Robotics, Industry 4.0, e-commerce platforms and how all of these are force multipliers in enhancing efficiencies. He also touched upon the challenges when you are operating digitally like data privacy, guard against fraud, etc. He concluded on the note that for the first time Climate Change has become apparent all around and is affecting us and the corporates' major challenge is adopting technology and sound practices in terms of mitigating and adapting to climate change.

Dr. Ashok Kumar Mishra deliberated upon the various aspects such as type of skillset required by the professionals while appearing before NCLT and NCLAT. He mentioned that Company Secretaries due to their calibre, capacity, knowledge and interpretation skills are evolving, developing and growing exponentially. He also motivated the Company Secretaries to grab the opportunities in the field of Competition Law. He motivated and suggested the young Company Secretaries and other professionals to take-up new roles and appear before the NCLT, Appellate Tribunal with confidence. He also stated that Project Management is the new field which will offer numerous opportunities to Company Secretaries and urged Company Secretaries to be ready to take upon it in near future. He concluded on the note by urging the young professionals to not give any certifications without going to the records.

Shri D. Sundaram stated that the four signs i.e., customer intimacy, rewarding investors, governing responsibly and ensuring are socially relevant and are really important for the Board to bring these into agenda of their company's operations. He opined that the Board shall demand management a strategic roadmap on readiness to digital transformation and climate change. He deliberated upon capital allocation, talent pool, company structure, compensation structure, ESG issues, etc. He concluded on a note that Board has to ensure that the processes are in place and they are not doing only because it is regulated, though impetus comes from regulatory sources but it is responsibility of the Board to imbed it in the culture of the company and drive the management towards that.

The panelists deliberated on the issues pertaining to the theme of the session and also answered suitably to various queries which made the deliberations fruitful and interactive.

CS Manoj Kumar Purbey summed up the discussions and proposed the vote of thanks.

VALEDICTORY VOTE OF THANKS

CS Dhananjay Shukla, Programme Director & Council Member, The ICSI proposed the Vote of Thanks to the Chief Guest, Guest of Honour, Special Guest and all esteemed speakers for their kind presence and words of wisdom during the 51st National Convention of Company Secretaries. He also thanked all the moderators and panelists for fruitful deliberation, powerful and thought-provoking insights during the technical and special sessions. He also appreciated and thanked the President, ICSI; Council Members; Past Presidents; Past Regional Council member; 51st National Convention Programme Organising Committee; Chairman, NIRC; NIRC Regional Council Members; Chairperson, Varanasi Chapter; Varanasi Chapter Managing Committee; esteemed members, students and team ICSI from Headquarters, NIRC and Varanasi Chapter for the grand success of the 51st National Convention of Company Secretaries. He also conveyed his sincere thanks to the sponsors, advertisers, volunteers, media, photographers, videographers, transporters, venue and caterers for their support. At the end he thanked one and all for the success of the 51st National Convention of Company Secretaries.

EDITORIAL

The month of November began with ICSI again making an intriguing historical stride with its Mega Congregation of Company Secretaries, Professional and Government dignitaries bringing forth intense deliberations amongst intellectuals and visionaries of our coveted profession at its 51st National Convention of Company Secretaries, organised by the Institute, at the Holy City of Varanasi.

Hon'ble Vice-President of India, Shri Jagdeep Dhankhar as the Chief Guest and the Hon'ble Governor of Uttar Pradesh, Smt. Anandiben Patel as the Guest of Honour, graced the occasion with their gracious presence.

The Institute has always been aiming at achieving the highest benchmark for Corporate Governance and through these mega platforms which have global reach, it is conveying its exact intentions which is to create business environments which are well governed and ethical both in letter and spirit, nationally as well as globally.

The CS Professionals are catering to various multi-disciplinary areas and there is an urgent need to adhere to 'Compliance and Governance' and the need to analyse ongoing standardization processes of risk factors across various sectors, processes, and practices. Standards are not only technical specifications and guidelines to support efficient risk governance, but also contain social, political, economic, and organizational aspects.

This month's issue of the Journal presents deliberations through its articles and research inputs on the quintessential area of Governance and Compliance attempting to create in-depth awareness on the standardization processes and applications of standards that may influence judgements of risk, the organizing of risk governance, and, accordingly, our behaviour, flexibility in decision-making, communication, and cooperation through its array of articles and professional view -points.

The Institute in furtherance of its objective of spreading the cause of good Corporate Governance has been instrumental in cogitating and bringing awareness on various topics, 'Significant Beneficial Ownership' (SBO) being one of them. The Journal this month has published view-points of various authors on 'SBO' .

Article on 'The Rectification of Register of Members of a Company: Supreme Court re-confirms Summary Jurisdiction of NCLT under Section 58/59 of Companies Act, 2013' provides the necessary opinion on 'The Rectification of Register of Members of a Company'. An article on 'Risk Management Committee – A step forward in risk management and corporate governance' lays out steps to ensure effective business working as per the Companies Act, 2013 and the SEBI (LODR) Regulations. The article on 'The significant role of Governance in mitigation of Risk Assessment' covers how within the context of today's fast-paced and ever-changing global marketplace, effective risk management is an essential component of the decision-making process. The author through the article 'Governance, Risk Management and Compliance (GRC) and Effective Implementation Monitoring' highlights the need for Good corporate governance, as it provides a framework for achieving a company's objectives, addressing the needs of its shareholders, and ensuring accountability and transparency in all its operations. The article on 'Standardizing Foreign Exchange Laws' explores how Foreign Exchange Management Act (FEMA), implemented in 1999, has been the backbone of India's foreign exchange regulations, but the changing dynamics of international trade, coupled with technological advancements, have rendered FEMA's existing framework less effective. An Article on 'The Digital Governance Blueprint for Unified Compliance Standards' emphasises how in a dynamic and evolving regulatory landscape, compliance with laws and regulations is a critical aspect of running any business or organization.

A research contribution on 'Plastic Waste Management Rules in India – Perspectives on overcoming implementation challenges' takes cognisance of how Plastic has become the mainstay material used in our daily life, and Plastic waste generation has doubled during the previous 5years resulting in harmful environmental consequences.

Article on 'Decoding The SBO Chain: An Insightful Analysis' analyses the complex structure of the holding subsidiary, associate companies, fellow subsidiaries, joint ventures, LLPs and other form of organizations which is the need of the business. An insightful article on 'Significant Beneficial Ownership: Navigating through the Framework to reveal the True Owners' emphasises on the Role of FATF which is an inter-governmental body whose main focus is to set international standards to prevent illegal activities that can cause harm to the society at large. An eye-opening study on 'Anomalies in identification and monitoring of changes in SBO' delves deep into the mechanism for identification of 'beneficial owner' which was already in existence under Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 ("PMLA Rules") and it was implemented as a part of KYC check by banks. The Article on 'Section 89 & 90 : Understanding the Spirit' studies the situation where 'Beneficial Ownership' is the situation where a person enjoys the advantages of owning a company, fund, trust, etc., while the legal ownership title is held by someone else. The Author through the article, 'Intricacies of SBO in the context of Limited Liability Partnership' stresses on the fact that though both company and LLP enjoy Limited Liability and are incorporated bodies, their features are completely different and hence adopting SBO framework applicable to Companies, for LLP may give rise to ambiguities and anomalies.

The Institute is also honoured to publish the interview of CS (Dr.) M. S. Sahoo, Former Secretary, The ICSI, Distinguished Professor, National Law University Delhi and Former Chairperson, Insolvency and Bankruptcy Board of India.

Wishing the readers a Happy Diwali!

Happy reading !

CS Asish Mohan
(Editor - Chartered Secretary)

1. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Dharmendra Pradhan, Hon'ble Minister of Education & Skill Development & Entrepreneurship to apprise him about the activities of the Institute & the important role played by CS in nation building.
2. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Chandrakant Patil, Hon'ble Minister for Higher & Technical Education, Textiles, Parliamentary Affairs, Govt. of Maharashtra to discuss ICSI's initiatives for strengthening governance in India Inc.
3. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Shailendra Deolankar, Director, Higher Education, Maharashtra, to discuss creating career awareness avenues in the state of Maharashtra.
4. CS Manish Gupta, President, The ICSI & CS Asish Mohan, Secretary, The ICSI met Shri Santosh Kumar Gangwar, Chairman, Committee on Public Undertakings to apprise him about ICSI's various initiatives.
5. CS Manish Gupta , The President, ICSI, addressed the One-day Conference on the Theme 'Decade of Companies Act & Nitty Gritty of CSR' organised by Pune Chapter of ICSI on October 7, 2023.
6. CS B. Narasimhan, Vice-President, The ICSI, addressed 'Members Interaction Program' organised by Belagavi Chapter of SIRC of ICSI
7. CS Asish Mohan, Secretary, The ICSI graced as Chief Guest at the Felicitation Ceremony organized for teachers by Commerce Teachers Foundation (CTF).

8. CS Manish Gupta, President, The ICSI addressed the Foundation Day programme of Indore Chapter of ICSI. CS Ashish Garg, Former President, ICSI; CS Ashish Karodia and CS Dhananjay Shukla, Central Council Members, ICSI were also present at the event.

9. ICSI conducted a Two-day Training Programme on the Companies Act, 2013 for SEBI officials in Mumbai.

10. ICSI-CCGRT, Hyderabad commenced its XI batch of CLDP on 26 October 2023. CS T Chandrasekhar, Director, Hetero Drugs of Companies, Hyderabad graced the occasion as chief guest. CS R Venkata Ramana, Council Member and Chairman, Management Committee of the ICSI CCGRT, Hyderabad were also present at the event.

11. Kochi Chapter of the SIRC of ICSI organised the 15th Southern India Regional Conference of Practicing Company Secretaries on the theme "Inspire. Innovate. Illuminate" held on October 13-14, 2023.

12. ICSI NCLT Conclave'23 organised by SIRC of ICSI on October 6, 2023 at Chennai.

13. CS Manish Gupta, President, The ICSI addressed the Press Conference on the occassion of 51st National Convention held at Varanasi.

परमेशि जगन्मातर्महालक्ष्मि नमोऽस्तु ते।।

Salutations to Goddess Mahalakshmi who is the mother of the universe. The supreme one. - *Mahalaksmyastakam 7.*

Dear Professional Colleagues,

Penning down this message, wherein the preparations are in full swing to celebrate the festival of lights across the length and breadth of this nation and even beyond, we at the Institute of Company Secretaries of India are basking in the glory of celebrations of the 51st National Convention of Company Secretaries – the annual mega festival of the ICSI.

It is amazing to witness how just a few days can add so much to the memoir books, paint golden in the leaves of history, lend to our already sprinting feet and fill our hearts with copious volumes of pride and humility at the same time.

Just a month ago, the pages of this journal had been filled with tons of memories created in the gracious presence of the Hon'ble President of India, Smt. Droupadi Murmu, Hon'ble Finance Minister – Smt. Nirmala Sitharaman and the 55th Foundation Day of the ICSI on October 4, 2023.

Not only are the moments still fresh and alive in our thoughts, but their words of wisdom, appreciation, and expectations of all echoing inside each one of us. I am just when you wonder cannot get any better than this, the Lord Almighty invites you to his beautiful land and be stores with his choicest of blessings.

51ST NATIONAL CONVENTION OF COMPANY SECRETARIES: KASHI VISHWANATH KI NAGRI KO DHANYAVAAD

सानन्दमानन्दवने वसन्तमानन्दकन्दं हतपापवृन्दम्।
वाराणसीनाथमनाथनाथं श्रीविश्वनाथं शरणं प्रपद्ये।।

'Kashi', as we all fondly called the city of Varanasi comes from the Sanskrit word 'Kas', which means 'to sparkle'. It is believed that when the Earth was created, the first ray of light fell on Kashi.

For a city with such religious, historic and spiritual significance, one is bound to be reminded of the infinitesimal nature of human life in individuality - nothing more than a blip in the universe. And yet the Lord of Kashi, Mahadev has not only lent magnanimity to our pursuits by according us this opportunity to host the 51st National Convention of Company Secretaries in the historic city of Banaras; rather I would call it, his blessing that the biggest congregation of Company Secretaries was inaugurated at the hands of our Hon'ble Vice President of India, Shri Jagdeep Dhankar, and the Hon'ble Governor of Uttar Pradesh, Smt. Anandiben Patel.

Irrespective of the language I choose, words will definitely fail me in defining the surge of emotions experienced on meeting the Hon'ble Vice President of India, Shri Jagdeep Dhankar. An epitome of true humility, his joviality was beyond contagious. Not only did he put us all at ease with his encouraging smile, his genuine interest in the workings of the Institute as well as those pursuing various responsibilities made his presence seem more than familial.

"It is this place which had taught the world for ages what is ethics, what is morality, what is spirituality. So you have chosen such a good place that you can go absolutely charged to deliver for the nation and discharge your obligations as envisioned by law".

"The role of a company secretary has evolved over the years. They are now key pillars of governance and compliance within organizations; upholding the principles of transparency, ethics and accountability in corporate governance."

His words of appreciation on the choice of city as well as our theme along with the roles and responsibilities of Company Secretaries have given a fine sense of direction to our thoughts, intent and action.

I am equally humbled to acknowledge the gracious presence of Smt. Anandiben Patel, Hon'ble Governor of Uttar Pradesh. An octogenarian by age, her acclimatisation with the recent trends, of both government and governance has left us all spellbound. Not only was her address filled with words of wisdom and expectations, her understanding of the role of Governance Professionals – both present and future what is crystal clear. To quote her, ***"CS play a prominent role in helping corporates tread path of progress. I appreciate ICSI for shaping such important professionals of the country & organising events that give opportunity of extensive learning".***

The ICSI has always been proud of its alignment with the Ministry of Corporate Affairs. The feeling is par ecstatic when the same pride is reciprocated. The presence of Dr. Manoj Govil, Secretary, MCA, his acknowledgement and appreciation of the role of Company Secretaries and ICSI before the Hon'ble VP and Governor has added further vigour in our action.

I am equally gratuitous towards our Guest Speakers - Shri K Rajaraman, IAS, Chairperson, IFSCA; Shri Amit Jain, CEO & Co-founder, CarDekho Group; Pujya Dr. Gnanvatsalswami, Life Coach & Eminent Speaker BAPS Swaminarayan Sanstha; Dr. BVR Mohan Reddy, Founder Chairman and Board Member, Cyient Ltd. and CS R Krishnan, Former President, The ICSI for their time and their presence amongst us deliberating on the various aspects of our core theme **India at G20: Empowering Sustainable Future through Governance and Technology.**

I cannot help but thank our International Delegates - Mr. M Nurul Alam, Senior Vice President, Institute of Chartered Secretaries of Bangladesh; Ms. Anneliese Reinhold, Council Member, Institute of Directors, UK; Mr. Soorin Babu, Assistant Honorary Treasurer, Malaysian Association of Company Secretaries; joining us from different parts of the world and rendering the National Convention into an International one.

Although the ritualistic vote of thanks has been given at the Convention Venue itself, I feel truly humbled and grateful to each and every member of the ICSI, who, with their participation – physically or virtually have played the role in the success of the 51st National Convention of Company Secretaries. I am sure that the deliberations, takeaways and cherished friendships fostered shall guide our way into a promising future filled with the most unique of opportunities !!!

BENEFITING MEMBERS: COLLABORATING THROUGH MoUs

The ICSI has always been innately conscious of the needs and requirements of the professionals as regards dispensing off of their professional responsibilities. As a parent institution, while our intent is to create avenues of capacity building, as a professional organisation our intent is to find arenas of providing technical and technological support and comfort; and as a family, our intent is to find means of personal growth, safety, security, leisure, even self-actualisation.

Adding to the thought, the 51st National Convention came across as the perfect opportunity to not only launch publications, but release a dedicated Handbook on Benefits for the members of the Institute. Along with that, we have signed and exchanged MoUs with HDFC Life for providing insurance options, Samsung India to avail the benefits of the Samsung Corp+ Program offering unique privileges on Samsung products and payment options; Prudent Insurance for securing the Prudent Protect Motor Insurance benefits and Club Mahindra for bringing to all members, membership access to 4300+ resorts at a special discounted rate.

I am absolutely sure that the members shall avail of the offerings of these companies and relish the benefits and experience.

STRENGTHENING SELF-GOVERNANCE: ICSI (MANAGEMENT AND DEVELOPMENT OF COMPANY SECRETARIES IN PRACTICE) GUIDELINES, 2023

Amongst the long list of publications released at the hands of our dignitaries during the various sessions of the National Convention, one that I would like to share a bit more in detail is the ICSI (Management and Development

of Company Secretaries in Practice) Guidelines, 2023. If 'Preach what you practice' is the mantra that we swear by, it is only fitting that good governance begins at home. And to materialise the same, the primary step is to have an accurate sense of the law. Apprehending the same, the ICSI has brought all the Guidelines pertaining to members within the binds of a single book.

Given the evolving boundaries of Practice and the expanding footprints of the Profession in emerging areas with multitude of opportunities demanding expertise, significant duties have been cast on the Company Secretaries in Practice necessitating high degree of professionalism and meticulous abidance with the applicable legislations.

All this and more have placed before us the need to have a dedicated set of Guidelines to facilitate the practising members by consolidating all the relevant Guidelines as applicable and the processes involved therein in a coherent manner ensuring ease of reference and enhanced comprehension; right from applying for the PCS Orientation Programme and enrolling as a Company Secretary in Practice to running a successful Practice. These Guidelines primarily focus on the procedure to be followed by members in all stages of Practice; starting from undergoing the PCS Orientation Programme, obtaining the Certificate of Practice, venturing into Practice and managing their Firm, the service areas available to them, branding and development of Profession, and so on.

I am of the firm belief that these Guidelines will serve as a valuable aid to members in their professional endeavours.

STRONG ROOTS MAKE FOR A STRONGER TREE : ICSI CHAPTERS AND REGIONAL COUNCILS

Each year as we begin to chalk out the plans for the months ahead, the ICSI Leadership summit brings together not only the members of the ICSI Central Council and the Heads at the Secretariat, rather it is those three days when the entire ICSI with all its Chapter and Regional Councils, their Managing Committees and their Executive Officers comes under one roof to demarcate activities and initiatives, sharing their concerns and the possible challenges and making a selfless commitment to serve each and every stakeholder to the best of their capabilities.

The reason why I mention a long bygone event is because it makes my heart swell with pride to thank and congratulate all the Regional Councils and Chapters who have lived up to their commitment and supported the ICSI initiatives to the hilt.

But more than myself, I believe each of the Regional Councils and Chapters who have received the Awards for the year 2022 must be on cloud nine for have had the opportunity to be bestowed upon these honours at the hands of the Hon'ble Vice President of India and Hon'ble Governor of Uttar Pradesh.

I extend my heartiest acclamations to all of you for your tremendous efforts making you worthy of these honours and believe that all the other RCs and Chapters shall while taking a cue from them strive towards more... much more…

MONTH GONE BY AND THE TIMES AHEAD

If the launches and releases of the 51st National Convention are any indication, the times ahead expected to be equally riveting and nail biting as the ones we have passed by. If the past two months saw us hosting the NCLT Conclave across various ROs and Chapters, the months to come intend to encourage us in raising interesting deliberations on the issues and challenges in the achievement of the ultimate goal of sustainability.

Since good governance, as a concept cannot thrive in isolation, practical roadmaps are required to be chalked out to imbibe the ESG principles in the smallest and biggest of business enterprises, all with the aim of leading a sustainable road to development. The ESG Conclave launched at the hands of the Hon'ble Vice President aims to do just that.

Meanwhile preparations are on for the Jury Meeting and Award Ceremony of the ICSI National Awards for Excellence in Corporate Governance, the details of which would be sharing in the next edition. Just as we had released the Chartered Secretary Collectors' Series on CSR at the 55th Foundation Day, we released the Collectors' Series for MSMEs and Start-ups at the 51st National Convention; and as we talk the next series are in progress.

As we celebrate the festival of knowledge and wealth, of righteousness and expansive growth, of Lord Ganesha and Maa Lakshmi, I wish, hope and pray that each one of us in our capacity as individual members and together representing an entire profession take this Institution to unfathomable heights and glory…!

Happy reading !!!

Yours Sincerely

CS Manish Gupta
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF OCTOBER, 2023

ICSI CELEBRATES 55TH FOUNDATION DAY

The Institute of Company Secretaries of India celebrated its 55th Foundation Day on October 4, 2023 at Vigyan Bhawan, New Delhi in the august presence of Hon'ble President of India, Smt. Droupadi Murmu, and Hon'ble Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman. The event also witnessed the presence of Shri Manoj Govil, Secretary, Ministry of Corporate Affairs, and BK Shivani - recipient of the prestigious Nari Shakti Puraskar. Appreciating the initiatives of the ICSI on this momentous occasion, the Hon'ble President of India, Smt. Droupadi Murmu said *"The contribution of the ICSI in building a strong and capable India is commendable. The Institute is not just demonstrating efficiency and proficiency but has also set new dimensions and standards of excellence in accordance with its motto "Satyam Vada, Dharmam Chara".*

ICSI CONTRIBUTION TO SHAHEED KI BETI

The ICSI made a further contribution of Rs.11,00,000 on the occasion of its 55th Foundation Day through the Hon'ble Finance Minister to the Shaheed ki Beti Fund for the education of the girl children of the Martyrs of the nation.

MEETINGS AND GREETINGS

During the month, ICSI delegation met with the following dignitaries *(in alphabetical* order):

- Shri Dharmendra Pradhan, Hon'ble Minister of Education & Skill Development & Entrepreneurship
- Shri Chandrakant Patil, Hon'ble Minister for Higher & Technical Education, Textiles, Parliamentary Affairs, Govt. of Maharashtra
- Shri Shailendra Deolankar, Director, Higher Education, Maharashtra
- Shri Santosh Kumar Gangwar, Chairman, Committee on Public Undertakings

51ST NATIONAL CONVENTION OF COMPANY SECRETARIES

51st National Convention of Company Secretaries was inaugurated on November 2, 2023 at **Deendayal Hastkala Sankul (Trade Center and Craft Museum), Varanasi** on the theme **India@G20: Empowering Sustainable future through Governance & Technology** in the august presence of Chief Guest, Shri Jagdeep Dhankhar, Hon'ble Vice President of India; Guest of Honour, Smt. Anandiben Patel, Hon'ble Governor, Uttar Pradesh; Special Guest, Dr. Manoj Govil, Secretary, Ministry of Corporate Affairs, Government of India. The Convention was attended by around 4,500 corporate leaders, professionals and delegates in physical and virtual mode. Five Technical and Five Special Sessions were organised during the Convention, which witnessed presence of speakers and panelists comprising Regulators, industry experts, academicians, etc. The releases/launches at the occasion were as under:

- Convention Souvenir
- Handbook on Benefits for the Members of ICSI
- ICSI (Management and Development of Company Secretaries in practice) Guidelines, 2023
- ESG Conclave Flyer
- Announcing 3rd International Conference at Singapore (Flyer & Video)
- Compilation of ROC and RD orders (MCA) under the Companies Act, 2013
- Handbook on Producer Companies
- Handbook on Limited Liability Partnership
- Chartered Secretary Collector's Series Second Edition - A Compendium of Selected Articles on MSMEs and Start-Ups
- National Conference on "Developments and trends in Corporate Law and Governance" Flyer
- Presentation of Best Region and Chapter Awards

IOD INDIA'S 2023 LONDON GLOBAL CONVENTION

CS B Narasimhan, Vice President, The ICSI addressed the session on Board dynamics and enhancing efficiency of various Board committees in IOD India's 2023 London Global Convention on 17-20 October 2023 in London.

INTERNATIONAL WEBINAR ON CS OVERSEAS OPPORTUNITIES IN AUSTRALIA & NEW ZEALAND

The ICSI organized an International Webinar on CS Overseas Opportunities in Australia & New Zealand on 20 October 2023. CS NPS Chawla, Chairman International Affairs Committee and Council Member, The ICSI welcomed all participants. Renowned speakers from Australia and New Zealand, Mr. Robert Agati, Company Secretary, Qudos Bank, Australia; CS Manish Ghiya, Principal, Compliense Advisors, Australia; CS Joginder Sharma, Senior Compliance Manager, Rabobank, Australia; CS Nirupama Ravindran, Compliance Analyst, Rabobank, Australia; CS Siddharth Sharma, head Cosec Services & Compliance Officer, TMF Group New Zealand were the panelists and CS Pawan Chandak, Council Member, The ICSI was the moderator of the session.

3RD INTERNATIONAL CONFERENCE OF ICSI OVERSEAS CENTRE

The ICSI unveiled a flyer and video for the ICSI 3rd International Conference, to be organized in association with ICSI Overseas Centre, Singapore, on 5-6 April 2024, in Singapore.

SIGNING OF MOUs

During the 51st National Convention of Company Secretaries, the ICSI signed and exchanged MOUs with the following organizations for the benefit of its members and employees:

- Mahindra Holidays & Resorts India Limited
- Prudent Insurance Brokers Private Limited (PIBL)
- HDFC Life Insurance Company Limited
- Samsung India Electronics Pvt. Ltd. (SIEL)

BEST REGIONAL COUNCIL AND BEST CHAPTER AWARDS

The Best Regional Council Award and Best Chapter Award were instituted with the intent of honouring the efforts made and the achievements gained by Regional Councils and Chapters, as well as to stimulate and create a competitive spirit amongst them. Following were the recipients of the Awards for the year 2022:

Category of Awards	Winners
Best **Regional Council**	**Western India Regional Council** of ICSI
National **Best Chapter**	**Kochi** Chapter of SIRC of ICSI
Best Chapter in **"Diamond"** Grade	**Bengaluru** Chapter of SIRC of ICSI
Best Chapter in **"Platinum"** Grade	**Indore** Chapter of WIRC of ICSI
Best Chapter in **"Gold"** Grade	**Kochi** Chapter of SIRC of ICSI
Best Chapter in **"Silver"** Grade	**Nashik** Chapter of WIRC of ICSI
Emerging Chapter	**Palakkad** Chapter of SIRC of ICSI

The Awards were conferred upon the winners at the 51st National Convention of Company Secretaries, organized at the Deendayal Hasthkala Sankul (TFC), Varanasi, during November 2-4, 2023.

MASTER KNOWLEDGE SERIES: EEE

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

Date	Topic	Faculty	Links
October 05, 2023	Inspection, Inquiry & Investigation under Companies Act, 2013	Shri Manmohan Juneja Ex-Director General of Corporate Affairs (DGCoA), MCA	www.youtube.com/watch?v=8-dN0RLx ZKQ
October 11, 2023	Green Bond Framework and Sustainable Borrowing	Shri Pramod Rao, Executive Director, Department of Debt and Hybrid Securities, SEBI Shri Pradeep Ramakrishnan, General Manager, Department of Debt and Hybrid Securities, SEBI Ms. Harini Balaji Chief General Manager, Department of Debt and Hybrid Securities, SEBI	www.youtube.com/watch?v=yXQMUn9 lhMw
October 18, 2023	Legal framework of PMLA and WMD Act: Guidance for Practising Professionals	Shri Balasubramanian K JS (TPRU), DoR, MoF CS Manish Ghiya Chairman, ICSI Overseas Centre, Australia CS Anshul Kumar Jain, Company Secretary, Mumbai	www.youtube.com/watch?v=ce3KkrL6J zM
October 25, 2023	RPT under Ind-AS	CA Kamal Garg Insolvency Professional	www.youtube.com/watch?v=gtnN6q B1rzM

October 27, 2023	SDD under SEBI (PIT) Regulations, 2015	Shri Anindya Das CGM-SEBI Shri Gopalkrishnan Iyer CGM-Listing Compliance, BSE Ltd. Shri Avishkar Naik VP - Surveillance, NSE of India Limited CS Makarand M. Joshi Founder & Senior Partner Makarand M. Joshi & Company	www.youtube.com/watch?v=CfWDIvKpiQ4
October 30, 2023	Significant Beneficial Ownership under Companies Act, 2013	CS Ranjeet Pandey Former President, The ICSI CS Devendra V. Deshpande Former President, The ICSI	www.youtube.com/watch?v=giU4dqGqlWI

WEBINAR SERIES ON STARTUPs

A series of webinars were conducted on a weekly basis touching upon significant areas pertaining to MSMEs and another one for Start-ups to guide members so as to render them capable in supporting and strengthening governance frameworks in these entities. During the month, following webinars were conducted:

Date	Topic	Faculty	Links
October 03, 2023	Go to Market Strategy: The How and Why of it	Wg Cdr Anthony Anish (Retd) COO, T Hub and Founding team member, MyGate	www.youtube.com/watch?v=RMKgGQHc05o
October 09, 2023	Valuation Game: Making Startups Investor Appealing	CS Maneesh Srivastava Angel Investor and Founding Partner, Alphavalue Consulting	www.youtube.com/watch?v=XxGmhF3_WME
October 23, 2023	Branding Startups: Intellectual Property Due Diligence	Mr. Vivek Dahiya IP practitioner and strategist	www.youtube.com/watch?v=aSCb0npYAV0

ICSI NCLT CONCLAVE

The Council of the ICSI had thought it fit to conduct NCLT Conclave jointly through all Chapters of ICSI where the NCLT Benches have been constituted and all Four Regional Offices. The events under the head were conducted jointly with ICSI-IIP in the presence of Judicial and Technical Members of the National Company Law Tribunal. During the month, following Programmes were conducted:

Benches of NCLT	ROs /Chapters of ICSI	Date
National Company Law Tribunal, Chennai Bench	SIRC-ICSI	06.10.2023
National Company Law Tribunal, Chandigarh Bench	Chandigarh Chapter	06.10.2023
National Company Law Tribunal, Kochi Bench	Kochi Chapter	14.10.2023
National Company Law Tribunal, Mumbai Bench	ICSI-CCGRT, Navi-Mumbai jointly with ICSI-WIRC and ICSI-IIP in association with NSE Academy	21.10.2023

VIEWS/REPRESENTATIONS/SUGGESTIONS SUBMITTED

Purpose	Authority	Date
Request to dispense with the requirement for dispatch of physical copy of Notice and Annual Report with respect to General Meetings of Listed Entities who have listed their Non-convertible Securities under Regulation 58(1) of the SEBI (LODR) Regulations, 2015	SEBI	October 3, 2023

FORMATION/RENEWAL OF ICSI STUDY CIRCLES

The ICSI has been promoting the Formation of Study Circles for creating knowledge upgradation avenues through professional discussion and deliberation. **Dwarka Study Circle of NIRC of ICSI** was formed in October, 2023 for the Financial Year 2023-24.

CRASH COURSE ON INTERPRETATION OF STATUTES

The Institute has launched a new Crash Course on Interpretation of Statutes with reference to Company Law commencing from 20th October'23 with a view to equip the members with the necessary knowledge and skills in this area. Threadbare deliberations on intricacies of interpretation of statutes with specific reference to

Company Law was the major highlight of the course. The online assessment of the course was conducted on 27th and 28th October 2023.

ONLINE ASSESSMENT OF CERTIFICATE COURSE ON BRSR & ESG- BATCH 1

Online assessment of Certificate Course on BRSR and ESG- Batch 1 was conducted on October 13-14, 2023.

GROUP HEALTH INSURANCE SCHEME

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

PLACEMENT OPPORTUNITIES FOR COMPANY SECRETARIES

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

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

S. No.	Organization	Location	Designation
1.	Central Electronics Limited	Ghaziabad	Company Secretary
2.	Central Registration Centre, MCA	Manesar	Administrator (CRC)
3.	Dholera Industrial City Development Limited	Gandhinagar	Company Secretary
4.	Energy Efficiency Services Limited (EESL)	Delhi	Company Secretary
5.	Gujarat Informatics Limited (GIL)	Gandhinagar	Company Secretary
6.	Hindustan Prefab Limited (HPL)	New Delhi	Company Secretary
7.	LICHFL AMC Limited	Mumbai	Company Secretary
8.	Mazagon Dock Shipbuilders Limited	Mumbai	Dep. General Manager
9.	National Highways Logistics Management Limited	Multiple Cities	Company Secretary
10.	National Jute Manufactures Corporation Limited	Kolkata	Assistant Company Secretaries
11.	National Pension System Trust (NPS)	New Delhi	Chief Executive Officer
12.	Pharmacy Council of India	New Delhi	Consultant
13.	RITES Limited	Gurgaon	JGM (CS)
14.	The Handicrafts and Handlooms Exports Corporation of India	New Delhi	Consultants (CS & Legal)
15.	Transmission Corporation of Andhra Pradesh Limited	Vijayawada	Company Secretary & Compliance Officer
16.	Uttarakhand Power Corporation Limited	Dehra Dun	Company Secretary
17.	Alok Industries Limited	Mumbai	Executive/Asst. Manager
18.	AU Small Finance Bank Limited	Jaipur	Deputy Manager/Manager
19.	Bharat Ekansh Limited	Noida	Company Secretary
20.	Biorx Venture Advisers	Noida	Assistant Manager
21.	Cavitak Marketing Private Limited	Ahmedabad	Company Secretary
22.	Classic Promoters and Builders Private Limited	Pune	Company Secretary
23.	Equippp Social Impact Technologies Limited	Hyderabad	Company Secretary
24.	Honda R&D (India) Private Limited	Manesar	Assistant Manager
25.	Hyundai Motor India Limited	Kanchipuram	Asst. Company Secretary
26.	IDBI Capital Markets and Securities Limited	Mumbai	Company Secretary
27.	Indigenesis Consulting Private Limited	Delhi	Associate/Senior Associate
28.	JBM Auto Limited	Faridabad	Company Secretary
29.	JHS Svendgaard Laboratories Limited	New Delhi	Company Secretary
30.	JK Agri Genetics Limited	New Delhi	Company Secretary
31.	Jubilant Foodworks Limited	Noida	Manager - Secretarial
32.	KPI Green Energy Limited	Surat	Asst. CS
33.	Mahalakshmi Profiles Private Limited	Hyderabad	Company Secretary

34.	Mcwane India Private Limited	Coimbatore	Company Secretary
35.	Medplus Health Services Limited	Hyderabad	Deputy CS
36.	MPJ Jewellers (GB) Private Limited	Kolkata	Company Secretary
37.	MSP Steel & Power Limited	Kolkata	Company Secretary
38.	Muktaa Mahila Milk Producer Company Limited	Sagar	Company Secretary
39.	Neeraj Paper Marketing Limited	Delhi	Company Secretary
40.	Ocfo Enterprises Pvt Ltd	Bangalore	Asst. Company Secretary
41.	Olectra Greentech Limited	Hyderabad	Asst. Company Secretary
42.	Parinita Investments Private Limited	Delhi	Company Secretary
43.	Pentagon Rugged Systems (India) Pvt. Ltd.	Hyderabad	Company Secretary
44.	Peoplequest Data Services Private Limited	Mumbai	Company Secretary
45.	Polylink Polymers (India) Limited	Ahmedabad	Company Secretary
46.	Prayas Financial Services Private Limited	Gurgaon	Asst. Company Secretary
47.	Privi Speciality Chemicals Limited	Navi Mumbai	Asst. Company Secretary
48.	Proyuga Advanced Technologies Limited	Hyderabad	CS & Compliance Officer
49.	Raminfo Limited	Hyderabad	Company Secretary
50.	Real Eco-Energy Limited	Ahmedabad	CS & Compliance Officer
51.	Samay Project Services Pvt Ltd	Chennai	Company Secretary
52.	Sequent Scientific Limited	Thane	Company Secretary
53.	Shigan Quantum Technologies Limited	Manesar	Asst CS /Compliance Officer
54.	South India Corpn Private Limited	Chennai	Company Secretary
55.	Tirupati Sugars Limited	Faridabad	Company Secretary
56.	Tolani Shipping Company Limited	Mumbai	Asst. Company Secretary
57.	UBS	Mumbai	Anti Money Laundering Analyst
58.	Universal Sompo General Insurance Company Limited	Mumbai	Assistant Manager - Secretarial
59.	Vedanta Limited	Multiple Cities	Officer
60.	Vishwa Samudra Engineering Private Limited	Hyderabad	Company Secretary
61.	Visionfund India Private Limited	Chennai	Company Secretary
62.	Yuken India Limited	Bangalore	CS & Compliance officer
63.	Zoho Corporation Private Limited	Chengalpattu	Company Secretary

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

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on 31st October, 2023)

Registered Users			Total no. of Vacancies
Members	Students	Corporates	Jobs/ Trainings
18,252	24,581	5,491	9,285

CAMPUS PLACEMENT PROGRAMME

The Campus Placement Programme of the Institute provides a unique opportunity to corporates to peruse the profiles of qualified young and experienced Company Secretaries, interview them and select those ones whoever suits their requirement. Campus Placement drive is a one-stop solution for corporates and members.

During the month, few members also received offers from PSUs through Campus Placement Programme. CS Aashee Naha (ACS-71195) received an offer of Rs. 22.00 LPA from Indian Renewable Energy Development Agency (IREDA), a Government of India enterprise, and CS Vasudha Tiwari (ACS-71205) & CS Rutuja Patil (ACS-71399) received an offer of Rs. 11.50 LPA from Mazagon Dock Shipbuilders Limited, a Government of India Undertaking.

ICSI MEGA PLACEMENT DRIVE II OF 2023

The Institute is conducting the ICSI Mega Placement Drive II of 2023 on 18th November 2023 at EIRO (Kolkata), NIRO (Delhi), SIRO (Chennai), WIRO (Mumbai), Ahmedabad, Bengaluru, Bhopal, Gurugram, Hyderabad, Indore, Jaipur, Nagpur, Noida, Pune and Thane. Last date of Registration is 15th November 2023. Kindly register to participate in the placement drive at https://bit.ly/MPD2-2023. For details, kindly visit https://www.icsi.edu/placement/important-announcement/

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- **Workshops**

Date	Topic
October 07, 2023	Learning Aspects of Valuation under IBC
October 09-13, 2023	Perspectives on IBC - An Array (Series VI)
October 28, 2023	Real Estate Ecosystem and Treatment of Homebuyers

- **Webinars**

Date	Topic
October 06, 2023	Anatomy of IBC Case Laws – 9
October 20, 2023	Anatomy of IBC Case Laws – 10

- Training Program on the topic *"Challenges under IBC 2016: Practical Implications"* (Hybrid Mode) held on October 13, 2023

ICSI REGISTERED VALUERS' ORGANISATION

- **50 Hours Online Education Course**

  ICSI RVO announced "50 Hours Educational Programme" on Valuation of Securities or Financial Assets from November 14, 2023 to November 20, 2023.

- **Case Study Workshop**

  ICSI RVO announced Case Study Workshop for November 4, 2023 on the Topic of: "Case Study Workshop on Business and Equity Valuation".

ICSI-CCGRTs

ICSI-CCGRT MUMBAI

- 14th 15 days Residential Corporate Leadership Development Program (CLDP) and the 84th Management Skill Development Program (MSOP) conducted from September 26 to October 11, 2023. The valedictory session was elevated by the presence of the Chief Guest, Dr. Kiran Somvanshi, a Journalist and Researcher at The Economic Times.

- The ICSI NCLT Conclave 2023 was organized by the ICSI-CCGRT, Navi-Mumbai, ICSI WIRC, and ICSI IIP, in association with NSE Academy, on October 21, 2023 focusing on NCLT practices and procedures. The inaugural session was graced by Chief Guest Hon'ble Justice (Retd.) Sh. Ramesh D Dhanuka and Guest of Honour CS Lakshmi Gurung, Hon'ble Judicial Member, NCLT Mumbai Bench.

ICSI-CCGRT HYDERABAD

- 11th batch of Corporate Leadership Development Programme (CLDP) commenced on 26 October 2023. CS T Chandrasekhar, Director, Hetero Drugs of Companies, Hyderabad graced the occasion as chief guest. CS R Venkata Ramana, Council Member and Chairman, Management Committee of the ICSI CCGRT, Hyderabad was also present during the inauguration of the event. A total of 12 participants from all parts of the country are part of the batch.

INITIATIVES FOR EMPLOYEES

- *Webinar on "Celebrating Freedom from Migraine" by Dr. Reddy's Foundation*

  A webinar was organized on the occasion of Migraine Awareness Month on October 13, 2023 on the topic "Celebrating Freedom from Migraine" by Dr Reddy's Foundation for the benefit of ICSI employees and pensioners. All employees/veterans participated in the webinar presented by Dr. Vishal A Chafale, Neurologist.

- *Online Training on POSH through the Institute of Good Governance, New Delhi*

  An Online training on Prevention of Sexual Harassment of Women at Workplace (POSH) was organized by the Institute of Good Governance on 26th October, 2023 for the benefit of all employees. Mr. K G Verma, Retd. Joint Secretary and Director - Institute of Good Governance undertook the session. The training was attended by all the employees.

INITIATIVES FOR STUDENTS

ONLINE QUIZ ON CURRENT AFFAIRS AND GENERAL KNOWLEDGE 2023

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

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

The three rounds of quiz will be conducted - prelims, semi-final and final on different dates and the winners in each Category will be awarded with cash prizes.

CONSTITUTION DAY ONLINE QUIZ 2023

To enhance the knowledge levels of students in Constitution of India and to generate interest among the students for in-depth study of the subject including greater conceptual clarity, the Institute is organizing Constitution Day Online Quiz - 2023 on 26 November 2023 at 11 am for below category of students:

- Students pursuing 11th / 12th (Commerce Stream)/12th Passed (Commerce Stream)

- Students Pursuing Graduation (Commerce / Law / Management)

- Students of CS Executive & Professional Program

To register, kindly click on https://tinyurl.com/3kvptwfn

The last date to register for the Constitution Day Online Quiz by ICSI is 15 November 2023.

WEBCAST FOR ICSI STUDENTS

The Institute conducted Webcast for the students of the Institute on 16th October 2023. The webinar was addressed by President, The ICSI and Secretary, The ICSI. The HoDs of various Directorates of the Institute were also present to respond to the queries of the students.

2ND ICSI GURU SHRESTHA AWARDS 2023

ICSI in its endeavour to acknowledge the immense contribution of educators in education is conducting 2nd Gurushrestha awards during the year 2023. The purpose of "ICSI Gurushrestha" award is honouring those Teachers and Lecturers/Professors across India who have through their commitment and industry contributed immensely to improve the quality of Commerce/Finance Education at School as well as College /University level and have augmented the lives of their students. The awards will be conferred upon to the faculties of universities with whom ICSI has entered into MoU.Professors/Lecturers working on full–time regular basis in Commerce/Law /Management Department of these Universities are eligible to apply. The faculties will be evaluated through a multi-layered evaluation process through an expert group and eminent jury comprising top academicians of the country.

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

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

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

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).

ICSI SAMADHAN DIWAS

Samadhan Diwas was launched by the Institute on February 27, 2021 with the objective of providing "on-the-spot" resolution to issues/grievances of trainees and trainers. During the Samadhan Diwas, the officials of Directorate of Training interact with the trainees and trainers and provide them the resolution to their grievances.

The 36th Samadhan Diwas was organized on October 11, 2023 through virtual mode in the presence of officials of all designated offices of the Institute. 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.

ICSI CLASSES AT REGIONAL/ CHAPTER OFFICES FOR DECEMBER 2023 EXAMINATIONS

Classes are being conducted by Regional/Chapter Offices for the students appearing in December 2023 Examinations. Details of Regional/Chapter offices conducting classes are available at the following link.https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

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.

GO-LIVE OF PROFESSIONAL PROGRAMME REGISTRATION FOR NEW SYLLABUS 2022

Automation of Professional Registration of New Syllabus 2022 with two elective subjects on SMASH w.e.f. 1st August 2023. Announcement pertaining to Professional Registration under New Syllabus 2022 available at Institute's website or at the following url : https://www.icsi.edu/media/webmodules/AnnouncementProfessionalNewSyllabus22082023.pdf

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

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

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

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

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

RE-OPENING OF ONLINE ENROLLMENT WINDOW FOR SUBMISSION OF CS EXAMINATION FORM FOR DECEMBER 2023 EXAM SESSION

The Last date for submission of Examination form for CS Executive/ Professional Program Examinations for December 2023 Session was September 25, 2023 without late fees and October 10, 2023 with late fees.

In view to facilitate the students who could not submit the examination form and were desirous to appearing in the Examination for December 2023 Session, online window for submission of the said form for December 2023 session for CS Executive/ Professional students, it was decided to re-open the online enrolment window from 4.00 PM on October 17, 2023 till 23:59 hrs. on October 19, 2023. During the window for resuming enrolment, 837 requests received

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 through following link for information to all concerned: https://www.icsi.edu/media/webmodules/ATTENTION_STUDENTS_RECIPROCAL_EXEMPTION_NEW_SYLLABUS_2022_Updated.pdf

PROFESSIONAL PROGRAMME PASS CERTIFICATE OF ICSI IN DIGILOCKER

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

TRANSCRIPTS & EDUCATION VERIFICATION

It has been observed that on completion of Course the professionals are also applying for Foreign Courses / degrees /or immigration based on CS Qualification. 18 No of such Transcripts were issued in this line in the month of October 2023 under review.

Likewise, on request of the employer/PSU/government authorities and other Education verifier agencies, 7 Education Verification requests of CS students were processed in the month of October 2023.

ACTIVATION OF SWITCHOVER OPTION FOR EXECUTIVE OLD SYLLABUS (2017) STUDENTS

The Institute has notified that candidate who have registered under the CS Executive Old Syllabus (2017) can switch over to CS Executive New Syllabus (2022) comprising 7 papers. Accordingly, the portal for switchover from old syllabus (2017) to New Syllabus (2022) was activated for Executive Programme Students w.e.f., 2nd May 2023.

Till date, 3468 students have switched from the old executive syllabus (2017) to the new executive syllabus (2022).https://www.icsi.edu/media/webmodules/Declaration_to_cater_switchover_Request_of_executive_&_professional_old_ysllabus_students.pdf

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 classes (November 2023 session)***

  CSEET Classes are being conducted by Regional/ Chapter Offices for the students appearing in CSEET to be held in November 2023. Details of Regional/ Chapter offices conducting classes are available at the following link: 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, CS Foundation course e-journal for Foundation programme students of ICSI and CSEET Communique covering the latest update on the subject on the CSEET have been released for the month of **October, 2023**. The journals are available on the Academic corner of the Institute's website at the link: https://www.icsi.edu/e-journals/

- *Research Tab under Academic Portal for students*

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

- *Recorded Video Lectures*

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

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

- *Info Capsule*

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

ICSI CAREER AWARENESS

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

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

- ICSI-HQ in association with NIRC conducted following CAP's (Career Awareness Programmes) in the month of October 2023 in addition to the other programmes being conducted by RC/Chapter offices across the country.

Date	School
October 4, 2023	KR Mangalam School
October 7, 2023	Khaitan Public School
October 7, 2023	Tagore International School
October 10, 2023	Lotus Valley School
October 19, 2023	HDFC School
October 26, 2023	Cambridge School

Interview

CS (Dr.) M. S. Sahoo, Former Secretary, The ICSI,
Distinguished Professor, National Law University Delhi and Former Chairperson, IBBI

CS (Dr.) M. S. Sahoo presently serves the National Law University Delhi as a Distinguished Professor. He earlier served as the Chairperson of the Insolvency and Bankruptcy Board of India, a Member of the Competition Commission of India, the Secretary of the Institute of Company Secretaries of India, a Whole-time Member of the Securities and Exchange Board of India, and the Economic Adviser with the National Stock Exchange of India Limited.

The Insolvency and Bankruptcy Code of 2016 (Code/IBC) is seen as a game changer. What has it changed over the last seven years?

IBC is a game changer from several perspectives. It had its genesis in the twin balance sheet problem, namely, the balance sheets of both companies and banks were under stress. Today after seven years, there is a twin balance sheet advantage, namely, the balance sheets of both companies and banks are in pink.

Let us see it from the perspective of companies. The Code provides for the resolution of their stress in two ways, namely, resolution plan and liquidation. Till September 2023, the Code has resolved the stress of 808 companies through resolution plans, and of 2249 companies through liquidations. The Code is resolving 26% of stressed companies, in terms of number, through resolution plans, and the balance through liquidations. However, it is resolving 75% of stressed assets, in terms of value, through resolution plans, and the balance through liquidations. Interestingly, of the companies resolved through resolution plans, one-third were either sick/ defunct and of the companies resolved through liquidations, three-fourths were either sick/ defunct. A recent study of the IIM, Ahmedabad has found that the average sales of the companies, which were resolved by resolution plans, increased by 75% in three years post-resolution. Similarly, the market capitalisation of these companies tripled from ₹2 lakh crore to ₹6 lakh crore during the same period. Thus, the companies are moving out of sick beds through IBC and leading a healthy and active life post-resolution.

Now from the perspective of creditors. As the IBC process commences, the company moves from the possession of debtor to creditors' control. If the stress is resolved by a resolution plan, the company most often moves further to a resolution applicant. If it is resolved by liquidation, the company disappears. In either case, the company does not remain with the existing management and promoters. This credible threat has changed the debtor-creditor relationship forever. Stressed companies are borrowing, begging, and stealing to avoid the IBC process. This is yielding handsome realisations for creditors. The Code has realised ₹3.16 lakh crore for creditors through resolution plans, which arise at the end of the IBC process. The realisation is much more if we consider the resolution of stress at different stages of the resolution process, before the end of the process.

Thousands of companies are resolving stress in the early stages- when the default is imminent, on receipt of a notice for repayment but before filing an application for initiation of the IBC process, after filing an application but before its admission, and even after admission of the application. Till September 2023, about 26000 applications for initiation of insolvency proceedings of companies having an underlying aggregate default of ₹9.33 lakh crore were withdrawn before admission. This enduring change in the debtor-creditor relationship prompted the apex court to observe in *Swiss Ribbons* in January 2019: "*The defaulter's paradise is lost*". A visible and tangible outcome of this is a decline in the NPA of banks from its peak of 14.8% in September 2018 to a low of 3.9% by March 2023. The banking system today is probably the healthiest ever, with a record aggregate profit of ₹2,22,135 crore in 2022-23 as against a loss of ₹32,438 crore in 2017-18.

After all, IBC is an economic reform. The biggest gainer, therefore, is the Indian economy and the people of India. The economic reform over decades has been promoting competition and innovation, which are two main sources of growth in a market economy. However, a firm gets into stress mostly on account of competition and innovation. In competition, efficient firms drive out inefficient ones, while in innovation, new order drives out the old ones. The higher the intensity of competition and innovation, the higher the incidence of stress of firms. Thus, the stress of firms is routine and inherent in a market economy. When a firm is under stress, the resources at its disposal are underutilised, which limits growth. The IBC process puts the failing, but viable firms at the disposal of the more dynamic, efficient, and credible management, through resolution plans. It releases the underutilised resources stuck up with failing and unviable firms for efficient use elsewhere through liquidation. This improves the productivity of resources, which, coupled with the twin balance sheet advantage, is powering the growth of the Indian economy.

The Code has revolutionised insolvency resolution: established the supremacy of markets and the rule of law in insolvency resolution and professionalised the process

of resolution. From providing freedom of exit to rescuing companies in financial stress to releasing entrepreneurs and idle resources stuck up in inefficient uses to helping creditors realise their dues and, most importantly, bringing about a behavioural change amongst the debtors and creditors alike, the list of achievements is a long one. The improvement in India's rank in the World Bank's resolving insolvency parameter from 136th to 52nd position in three years is testimony of the remarkable journey.

Talking of IBC, 2016, one cannot help but talk of the brigade entrusted with the responsibilities- the Insolvency Professionals. How has been the transformation in the roles of professionals, their responsibilities, and the expectations?

Insolvency profession is a profession of professions. It is not because an insolvency professional (IP) hires and supervises professionals from several disciplines, or she wields extraordinary powers, including the powers of a Board of Directors of a company. It is because of the kind of responsibilities she is entrusted with. Among others, three responsibilities stand out. First, the insolvency law typically overwrites the pre-insolvency rights and entitlements of parties and prioritises their rights in a hierarchical order (priority rule). This priority rule overrides every other law. Overwriting and overriding are essential features of insolvency frameworks worldwide. An IP jealously guards the rights of parties, while dealing with many competing and conflicting interests. Second, the resolution process is turbulent and distressing for the company and its stakeholders. It affects the lives, and livelihood of creditors, debtors, and other stakeholders. An IP is the beacon of hope for the distressed company and its stakeholders. Third, while conducting an insolvency proceeding, she discharges a whole array of statutory and legal duties/powers. He takes important business and financial decisions that have critical ramifications for the distressed company and all its stakeholders.

Considering the role, the legal framework laid down the strong DNA of the profession. For the first time in the history of any profession in India, it required a professional to be a fit and proper person to be enrolled as an IP, and two regulators, namely, the Insolvency and Bankruptcy Board of India (IBBI) and an Insolvency Professional Agency (IPA) to have simultaneous oversight over her work. To start with, professionals with certain years of experience in specified disciplines were allowed to join the insolvency profession, subject to passing a rigorous examination, and undergoing pre-registration training. They were also required to undergo continuing professional education to ensure that they do not run out of time, context, and relevance. Beyond these, IPs benefited from participation in several high-end capacity development programmes dished out by regulators and the market.

The Code was rolled out when there was no insolvency profession. Nor was there a body of knowledge that could be imparted to individuals before admitting them into the insolvency profession. Nevertheless, exceptionally talented professionals from disciplines of law, chartered accountancy, company secretary, and cost accountancy enthusiastically volunteered to join the insolvency profession. They learned quickly on the job and codified the learning which formed the knowledge base of the profession. Over time, IBBI led an industry initiative to launch a two-year programme for young talented professionals to join the profession. Today, the profession boasts of a 5000-strong brigade.

To my understanding, the brigade has performed exceptionally well, and often much beyond expectations. We started with a modern, market-led insolvency regime on ground zero, where every stakeholder needed professional support and guidance, and every proceeding required professional anchors. In no time, the insolvency profession professionalised insolvency services. IPs were the first to understand, interpret and apply the law. Such interpretation and application got at best refined through the hierarchy of agencies. For example, an IP conducts the resolution process and submits the resolution plan to the Adjudicating Authority (AA) for approval. The first plan under the Code was approved on 2nd August 2017. This plan dealt with several issues for the first time, and these were fiercely contested by stakeholders for years at various levels. The interpretation and application of the law by the IP was ultimately found to be in order. Further, every resolution process is unique and hence poses unique challenges. IPs have handled every such challenge deftly. The profession has emerged as a robust institution that the IBC ecosystem is proud of. The IBC owes what it is today to the enterprising brigade of IPs.

For a moment, I am not ignoring a few black sheep in the profession. However, IBBI and IPAs have been unsparing in their dealing with the misconduct of IPs. I am also cognisant of the hostile environment where an IP works. Every action of an IP affects someone's interest and hence triggers baseless allegations from vested interests. Therefore, the allegations against IPs need to be taken with a pinch of salt.

As the founder Chairperson of the IBBI, what do you believe has been the most important part of your role towards the insolvency and bankruptcy regime in India? What have been the biggest challenges and your biggest support systems in dealing with these?

As the first Chairperson, my task was cut. I was appointed as Chairperson of the IBBI on 1st October 2016 to set up the IBBI which would groom the ecosystem and lay down the regulatory framework required for implementation of the corporate insolvency provisions by 1st December 2016. This required nothing short of a miracle. The immediate tasks included: market volunteering to set up IPAs; individuals with the right calibre to enrol with IPAs and seek registration with the IBBI as IPs; regulations relating to IPs, IPAs, Corporate Insolvency Resolution Process (CIRP), and Liquidation Process to be in place; advocacy to spread the message of the Code and make the stakeholders aware of their role, and the IBBI to have

the capacity to work on these. The law was to be laid down; infrastructure to be created; capacity to be built; professions to be developed; the markets and practices to emerge; and stakeholders to understand the change in the offing, accept it, and learn to use it to their advantage.

I did not have any resources whatsoever in hand - no place to sit, no money, no computer, and not even a glass for fetching drinking water, leave aside human resources to steer the reform. The institutions required for the implementation of a modern and robust insolvency regime did not exist. As if this was not enough, there was tough resistance from some quarters to accept the change. Yet, the entire regulatory framework in respect of service providers and corporate insolvency, and the entire ecosystem for corporate insolvency was put in place, which made commencement of corporate insolvency proceedings possible by 1st December 2016.

The IBBI is a novel experiment, having no parallel either in the Indian regulatory milieu or in the insolvency space elsewhere. Its authority over the registered entities and its relationship with the AA was often misunderstood. For example, in the early years, some regulations were struck down by the AA, and some others were challenged in Court on the grounds of the competence of IBBI. However, on appeals, these regulations have been restored. It is now settled that the legality and propriety of any regulation cannot be considered by tribunals, and the competence of IBBI has been upheld by the High Court and Supreme Court. Nowadays, the AA or the NCLAT calls upon the IBBI to make regulations/guidelines to address the gaps noticed by them and the IBBI makes the best effort to address them, expeditiously.

IBBI was, however, blessed with incredible goodwill and the tremendous appetite of the stakeholders for the much-awaited insolvency reform in the country. The reforms very quickly attracted talented and aspirational employees to IBBI, the best professionals in insolvency and valuation professions, and capable and empowered market participants to undertake transactions. Many eminent citizens joined Working Groups and Advisory Committees of the IBBI and provided their precious time to guide the IBBI in laying down an appropriate regulatory framework in a virgin area. The Governing Board of IBBI moved away from playing the traditional role. They motivated out-of-box thinking, lent their expertise, and extended firm support for the successful implementation of the IBC. These people together ensured that IBC was up and running in the shortest time, unprecedented in the history of any economic legislation in the country, and that of the insolvency laws around the world.

The Code plays a significant role in promoting ease of doing business. What can further enhance the outcomes or bring about the necessary changes in the Indian business?

Business is typically carried on through two types of organisations, namely, proprietorship and partnership firms, and companies. The partnership and proprietorship firms are breeding grounds for entrepreneurship. There is at least one entrepreneur behind each of the six crore such firms. The failure rate is much higher in such firms. They need insolvency law the most to release entrepreneurs as well as other resources stuck up in failed firms. This benefit is not available, since the provisions of the Code relating to insolvency resolution of partnership and proprietorship firms are yet to come into force. Implementation of these provisions would promote entrepreneurship and thereby fire up business. As these are implemented, some kinks would surface which need to be straightened.

I am limiting my response to corporate insolvency which has been available since 1st December 2016. A corporate insolvency proceeding is like an orchestra where many constituents have specific roles. The AA, IPs, creditors, and committee of creditors, the corporate debtor and its erstwhile management, resolution applicants, professionals appointed by an IP to assist him, and other stakeholders including the Government, must play their roles actively and effectively, as envisaged in the Code. Further, the outcome of IBC is critically dependent on time. If the process starts early when there is value to be rescued, the likelihood of rescue of a company and realisation for creditors is much higher. If value has dissipated, IBC may yield dismal outcomes.

In particular, (a) all concerned must play by the rule book, have care for time and adhere to a timeline, consider the interests of all stakeholders, and avoid fruitless litigation; (b) the CoC must have commercial wisdom to distinguish viable firms from unviable ones and examine feasibility and viability of resolution plans. It must have concern for all stakeholders and its conduct must be above board; (c) the Government must submit claims in time and avoid litigation relating to claims post-resolution, and it must ensure a clean slate for successful resolution applicant; (d) the AA must have adequate bench capacity to admit applications for commencement of insolvency proceedings, approval of resolution plans and dispose of applications in respect of avoidance transactions, in a time bound manner, following a non-adversarial process and must not interfere in *bonafide* commercial wisdom; and (e) promoters and board of directors must avoid resistance to commencement of insolvency proceedings on frivolous grounds and extend all co-operation to the IP in running business as a going concern.

These must be complemented by tolerance for honest business failures, zero tolerance of contraventions of IBC provisions, a change in mindset from recovery to resolution, a robust and liquid market for distressed assets, keeping firms resolvable all the time, intensive use of information utility to facilitate processes and automation of resolution processes. Most of these do not require any legislative fix. Certain legislative fixes like an institutional framework for the valuation profession, cross-border insolvency, group insolvency, and regulatory jurisdiction over participants in the orchestra can enhance outcomes.

Good governance has been, now more than ever, occupying a place of prominence. How does IBC promote corporate governance?

The *raison d'être* of a company is that it must generate value and share the same among stakeholders, forever. It can do so only if it lives. The life of a company is in danger today more than ever. To me, corporate governance is something that prevents the premature death of a company or sustains the meaningful life of a company. By providing a lifeline to rescue a company, IBC has taken corporate governance to the next level.

The most fatal enemy to the life of a company is competition and innovation. It is the State policy to stimulate competition and innovation for higher growth. A company, however, loses life when it fails to compete with its peers in the industry for reasons such as poor organisation, inefficient management, malfeasance, etc. It also loses life when its business becomes unviable for reasons such as innovation, change in policy, change in social taste, or even black swan events like COVID-19. Creative destruction often destroys more companies than it creates!

IBC provides an insolvency resolution process to rescue a company when it experiences a serious threat to its life. It has conferred extra-ordinary powers on creditors of the company to do so: (a) they can take or cause a haircut of any amount to any or all stakeholders required for rescuing the company; (b) they seek the best resolution plan from the market, but from clean and credible persons unlike earlier mechanisms that allowed them to find a resolution only from existing promoters; and (c) the resolution plan can provide for several measures that may rescue the company. The resolution plan may entail a change of management, technology, or product portfolio; acquisition or disposal of assets, businesses, or undertakings; restructuring of organisation, business model, ownership, or balance sheet; strategies of turn-around, buy-out, merger, amalgamation, acquisition, or takeover; etc. that can rescue the company.

Further, IBC reverses irregular (preferential, under-valued, fraudulent, and extortionate transactions) to claw back the value lost through them. This increases realisation for creditors and therefore, the likelihood of rescue of the company through a resolution plan. Further, IBC requires the beneficiaries of irregular transactions to disgorge the value unlawfully appropriated by them through such transactions. These transactions could be considered criminal in certain circumstances, particularly when it is fraudulent, inviting criminal proceedings. If there is no way one can get away with these transactions with impunity, it does not make any sense for anyone to indulge in such transactions. In such a case, the value continues to reside in the company and consequently, the possibility of the company getting into stress is minimised. Thus, provisions relating to these transactions not only help rescue the company but also prevent the need for rescue.

IBC is liquidating more companies than it is rescuing. Is it not defeating the purpose of IBC?

It is important to remember that the IBC has only one objective, which is, stress resolution. It provides for stress resolution in either of the two ways, namely, resolution plan, and liquidation. Liquidation is not bad as such. As a resolution plan, it is an equally legitimate and efficacious means of resolution of stress.

Having said that, let us look at the numbers. These do not look that bad. 808 companies resolved by resolution plans had assets valued at ₹1.88 lakh crore, while the companies referred to for liquidation had assets valued at ₹0.60 lakh crore when they were admitted into CIRP. Thus, though in terms of number, three-fourths of companies were resolved by liquidations, three-fourths of distressed assets were resolved by resolution plans in value terms. In fact, of the companies resolved by resolution plans one-third were either sick or defunct.

Further, the rescue of 808 companies by resolution plans is only a part of the story. Over and above this, thousands of companies are rescued at different stages of the IBC process. For example, about a thousand companies were rescued upon resolution, by the withdrawal of applications after the commencement of CIRP. Thousands of companies are resolving distress in the early stages of distress. They are resolving when default is imminent, on receipt of a notice for repayment but before filing an application, after filing an application but before its admission, and even after admission of the application. Till September 2023, the stress of about 26000 companies was resolved after applications were filed for initiation of CIRP but before admission of the applications. If the universe of stressed companies is considered, the percentage of companies proceeding with liquidation is negligible, under 1%.

The incidence of liquidation under IBC is not different from that in advanced jurisdictions. In the USA, the stakeholders have the option of starting liquidation directly, without exploring a resolution plan. Of the insolvency proceedings they initiate, about 60% start with liquidation. An attempt is made to rescue companies through a resolution plan in case of balance of 40% of proceedings, of which some end up with liquidation. The sum of direct liquidations and liquidations on failure to have a resolution plan in the USA exceeds the liquidations under IBC.

It is important to note the kind of companies getting liquidated. Of the companies liquidated, three-fourths were either sick or defunct. At this stage, the value of the company is substantially eroded. The companies ending up with liquidation had assets, on average, valued at 4.8% of the outstanding debt, when they entered the CIRP. If a company has been sick for years and its assets have depleted significantly, the market is likely to liquidate it. More companies would be rescued if stakeholders initiated the proceeding in the initial

stages of stress. The companies that are getting rescued by resolution plans have assets, on average, valued at about 17% of the outstanding debt, when they entered the CIRP. IBC enables stakeholders to commence the process early and close it expeditiously for more rescues.

Even where a company is rescued by a resolution plan, creditors are recovering about one-third of their outstanding claims?

Please note that IBC is a mechanism for the recovery of the dues of creditors. The law provides for, and the Adjudicating Authority imposes huge penalties on the parties who trigger CIRP to recover their dues.

It must be noted that the companies, that have been rescued by resolution plans till September 2023, had assets valued, on average, at 18% of the amount due to creditors when they entered the IBC. This means that the creditors were staring at a haircut of 82% to start with. The IBC not only rescued these companies but also reduced the haircut to 68% for creditors. The haircut only reflects the extent of value erosion by the time the companies entered the CIRP. Despite the haircut, recovery under the IBC is the highest among all options available to creditors for recovery.

It is appropriate to see the haircut in relation to the assets available on the ground and not the claims of the creditors. Because the market offers a value in relation to what a company has on the table, and not what it owes to creditors. IBC maximises the value of the assets at the commencement of the process history. The realisable value of the assets available with the 808 companies rescued, when they entered the CIRP, was ₹1.87 lakh crore. The resolution plans realised ₹3.16 lakh crore, which is around 169% of the liquidation value of these companies. Any other option of recovery or liquidation would have recovered at best ₹100 minus the cost of recovery/liquidation, while the creditors recovered ₹168 under the Code. The excess recovery of ₹69 is a bonus from the Code for the creditors while rescuing the companies.

It is axiomatic that a company coming to IBC does not have adequate assets to fully repay all its creditors. About two years ago, *Ghotaringa Minerals Limited, and Orchid Healthcare Private Limited* caught media attention. They together owed ₹8,163 crore to creditors, while they had absolutely no assets when they entered the IBC process. Creditors had to take a 100% haircut. On the contrary, *Binani Cements and MBL Infrastructure* have yielded zero haircuts, in addition to rescuing the companies. The question arises why does IBC yield zero haircut in one case and 100% in another? It depends on several factors, including the nature of the business, business cycles, market sentiments, and marketing efforts. It, however, critically depends on at what stage of stress, the company enters the IBC, as much as at what stage a patient arrives in the hospital. The best hospital can do little if the patient reaches with a substantial haircut to his health. Similarly, if the company has been sick for years, the IBC may yield a huge *haircut* or even liquidation.

There are serious issues in the way haircut is being computed. It is typically total claims minus the amount of realisation divided by the amount of claims. This formulation does not tell the complete story. The amount of realisation often does not include the amount that would be realised from equity holding post-resolution, and through a reversal of avoidance transactions and insolvency resolution of guarantors. The amount of claim often includes NPA, which may be completely written off, and interest on such NPA. It may include loans as well as guarantees against such loans. These deflate the numerator and inflate the denominator and therefore, project a higher haircut than it is. That is why the World Bank finds realisation of 71.6 cents on a dollar, implying a haircut of only 28%.

Some of your statements in the context of IBC have become famous quotes like The best use of the IBC is not using it at all; IBC has changed the narrative from hopeless end to endless hope; IBC provides a market mechanism to rescue a firm wherever possible and close a firm wherever required; IBC has been a reform of the stakeholders, by the stakeholders and for the stakeholders; IBC is a road under construction; IBC has taken corporate governance to the next level; IBC is a kind of 'Swachhta' drive for business; Insolvency profession is a profession of professions; IBBI is a regulator like no other; IBC is not CBI; IBC response to Covid is a keyhole surgery; in etc. Can you please elaborate on these in two sentences each?

Very briefly, they are as under:

The best use of the IBC is not using it at all: Stakeholders are doing everything possible in their command to resolve stress well in time, through measures that are typically part of resolution plans, to avoid the IBC process and its consequences. Consequently, the stress of lakhs of companies is being resolved, which is the sole objective of IBC, without using it.

IBC has changed the narrative from hopeless end to endless hope: Earlier, underutilised resources and failed entrepreneurs remained trapped in *chakravyuha* of inefficient and defunct firms, without any hope in sight. Now, IBC is liberating the entrepreneurs and releasing resources from such firms, for continuous recycling, without any end in sight.

IBC provides a market mechanism to rescue a firm wherever possible and close a firm wherever required: IBC provides a market mechanism where players are driven by their interests. They are likely to rescue a firm that is failing, but viable, as it has a going concern surplus, and close a firm that is failing and unviable.

IBC has been a reform of the stakeholders, by the stakeholders, and for the stakeholders: IBC was a journey into unchartered territory. Its implementation required the creation of the rules of the game, acceptance of the said rules, and development of capacity in the ecosystem to use it. Stakeholders most enthusiastically took this responsibility on their shoulders and turned out to be the most valuable resource of the IBC.

IBC is a road under construction: IBC envisaged standard, plain vanilla processes to start with, but anticipated prompt course corrections. Such corrections arose from difficulties encountered while implementing the provisions of the Code and from the changes in the economic environment. The Code has witnessed six legislative interventions since its enactment, with some more in the offing.

IBC has taken corporate governance to the next level: Humans created companies to serve posterity with prosperity, which is possible if it lives in perpetuity. IBC prevents danger to the life of a company, rescues it when in danger, and ensures sustained life, post rescue. It provides a lifeline to a company when it is experiencing a serious threat to its life.

IBC is a kind of 'Swachhta' drive for business: Several elements in the IBC process drive cleanliness in business. A transparent market process discovers the value and its realisation. It prohibits persons with unclean hands from taking over a stressed firm. It claws back value lost by a firm through irregular transactions.

Insolvency profession is a profession of professions: Among all professionals, an IP has probably the highest responsibility and is most powerful, given the nature of her job. She substitutes for the Board of Directors of the largest company. She is the custodian of assets of distressed persons, guardian of the rights and interests of stakeholders, and has a duty of care for everyone around.

IBBI is a regulator like no other: There is no regulator like IBBI either in India or in the insolvency space elsewhere. It blends the duties of a regulator of the profession, a regulator of markets, and a regulator of utilities, having oversight over frontline regulators. It does not have jurisdiction over players in the insolvency space, instead relies on professionals to ensure good conduct of players. It does not have the opportunity to interpret the regulation it has made.

IBC is not CBI: IBC provides a transparent market process, which invites prospective resolution applicants to submit competing resolution plans to take over the company or prospective buyers to bid for assets in liquidation, as compared to earlier regimes where the parties concerned only worked out a bilateral restructuring deal.

IBC response to COVID-19 is a keyhole surgery: Most jurisdictions suspended initiation of insolvency proceedings during the Covid period. However, India suspended the initiation of insolvency proceedings for any default arising during the COVID-19 period only. It insulated a company, which did not have a default as of March 25, 2020, but committed a default during the COVID-19 period, from being pushed into an insolvency proceeding. It allowed insolvency proceedings for defaults that occurred before the Covid period.

How does the future of IBC look to you?

I am a great admirer of Victor Hugo and J M Keynes. I think IBC is an idea; it is about the ultimate economic freedom. Its time came in 2016 in India. The ideas encroach upon gradually as vested interests cede ground after fighting valiant battles. IBC is yielding some great outcomes today and will do better tomorrow.

What role do you think professionals and especially Company Secretaries are playing and expected to play in the future in strengthening the economy of our country and taking forward the initiatives of the Legislative bodies and Regulatory Authorities?

Transition to a market economy nudged increasing organisation of economic activity- the number of enterprises as well as their scale of operations is increasing at a rapid pace. The larger the scale and number, the higher the need for professionals to service the businesses. Professionals are called upon to structure complex, sophisticated, value-adding transactions. Further, a stakeholder takes a stance in relation to an enterprise based on audited financial statements. A professional prepares the financial statements; another audits them. In his address to chartered accountants in 2017, the Prime Minister of India underscored its importance: '*Your signature is more powerful than that of a Prime Minister*'. Professionals discharge second-order State functions such as audit, reporting, monitoring, due diligence, and compliances, as extended arms of the State/ Regulator. Professions have emerged as a key institution of a market economy. Professionals to a large extent determine the competitive edge of nations and the sustainability of prosperity.

As regards company secretaries, I consider them to be governance professionals. They have several responsibilities under various laws, including company law and securities laws. While companies are racing ahead at breakneck speed to survive the neck-to-neck competition, the chance of slipping from the right path is high. Company secretaries must ensure that the company moves firmly on the ethical path, generates wealth ethically, and distributes the wealth so generated equitably, on a sustained basis. This is akin to the role of a mother in a family. Like God has created mothers to be present in every family, the Government has created company secretaries to be present in every company.

IOD India's 2023 London Global Convention 17-20 October, London

CS B. Narasimhan, Vice-Presdient, The ICSI participated in IOD India's 2023 London Global Convention on 17-20 October in London.

ICSI Participated in OECD-Asia Roundtable on Corporate Governance

ICSI delegation Led by CS Dhananjay Shukla and CS Mohan Kumar A, Central Council members, the ICSI participated in OECD-Asia Roundtable on Corporate Governance on 11-12 October 2023 at Kuala Lumpur, Malaysia

WEBINAR ON

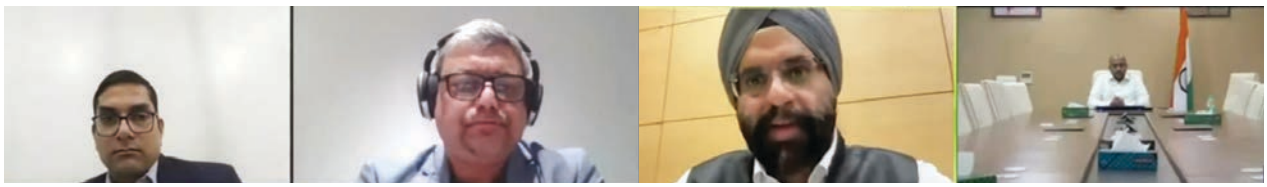
Valuation Game-Making Startups Investor Appealing held on 09.10.2023

WEBINAR ON

Webinar on Green Bond Framework and Sustainable Borrowing held on 11.10.2023

WEBINAR ON

Legal framework of PMLA and WMD Act: Guidance for Practicing Professionals held on 18.10.2023



WEBINAR ON

International Webinar on CS Overseas Opportunities in Australia & New Zealand held on 20.10.2023

WEBINAR ON

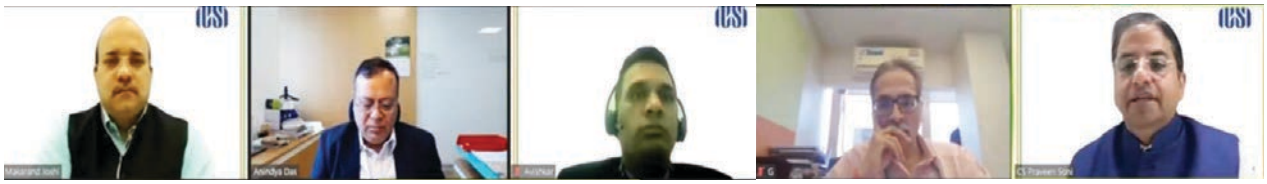
Branding Start-Ups - Intellectual Property Due Diligence held on 23.10.2023

WEBINAR ON

RPT under Ind-AS held on 25.10.2023

WEBINAR ON

SDD under SEBI (PIT) Regulations, 2015 held on 27.10.2023



WEBINAR ON

Significant Beneficial Ownership under Companies Act, 2013 held on 30.10.2023

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)

CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING [CCGRT] HYDERABAD

G20 भारत 2023 INDIA

NALSAR UNIVERSITY OF LAW HYDERABAD

CORP CON -2024

NATIONAL CONFERENCE ON "DEVELOPMENTS AND TRENDS IN CORPORATE LAW AND GOVERNANCE"

Dates of Conference: 5th , 6th & 7th January 2024

Organised jointly by

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Centre for Corporate Governance, Research and Training (CCGRT) Hyderabad.

NALSAR University of Law

Centre for Corporate and Competition Laws. &

Venue: NALSAR University of Law Campus, Shameerpet, Hyderabad.

ABOUT ICSI

The Institute of Company Secretaries of India (ICSI) is constituted under an Act of Parliament i.e. the Company Secretaries Act, 1980 (Act No. 56 of 1980). ICSI is the only recognized professional body to develop and regulate the profession of Company Secretaries in India. The Institute of Company Secretaries of India awards the certificate of bestowing the designation of Company Secretary (CS) to a candidate qualifying for the membership of the Institute. The Institute of Company Secretaries of India (ICSI) has since been converted into a statutory body w.e.f. 1.1.1981 under the Company Secretaries Act, 1980.

The Institute of Company Secretaries of India (ICSI) has on its rolls more than 72000 members including 9000 members holding certificate of the practice. The number of current students is over 200000. The Institute of Company Secretaries of India (ICSI) has its Headquarters at New Delhi and four Regional Offices at New Delhi, Chennai, Kolkata and Mumbai. The Institute has four Regional Councils and under their jurisdiction it has 72 Chapters. The Institute also has three Research & Training Centres at Navi Mumbai, Hyderabad & Kolkatta.

ABOUT NALSAR UNIVERSITY OF LAW

NALSAR University of Law was established by Act 34 of 1998 with the objective of imparting comprehensive legal education to promote cultural, legal and ethical values so as to foster the rule of law. The University is committed to ensure the highest quality in imparting legal education and undertaking research on contemporary areas in order to produce socially relevant lawyers.

NALSAR has been unequivocally acknowledged as the leader of legal education in the country with its academic standards being comparable to the best institutions of legal education in the world. In recognition of its academic standards, the National Assessment and Accreditation Council (NAAC) awarded it 'A' grade (A++' as per new grading system) second time in a row with a high score of 3.52 out of 4.00 in Cycle 2, which is the highest among the National Law Universities (NLUs). NALSAR has also been graded as a 'Category-I University' by the UGC under the Categorization of Universities (only) for Grant of Graded Autonomy Regulations, 2018.

NALSAR was the first law university in India to introduce a full-fledged 'Choice Based Credit System' (CBCS) which is consistent with international norms in terms of teaching hours. Among the NLUs, NALSAR offers the broadest range of elective and seminar courses of varying credits across its full-time taught programmes. Since 2016-2017, The University has been offering courses under the Global Initiative for Academic Networks (GIAN), of the Central Government by inviting eminent international academicians and practitioners from other nations to give international exposure to its students.

About ICSI-CGGRT, HYDERABAD.

The ICSI-CCGRT, Hyderabad erstwhile came into existence and dedicated to the nation on 16th September 2017 by the worthy hands of Shri M Venkaiah Naidu, former Vice President of India. The Centre is created to act as catalyst in the domain of providing qualitative research and training to the CS professionals & other academicians. The Centre started its operations from August 2018 focussing on the following objectives:

- To create knowledge creation its dissemination with the purpose of conducting qualitative research.

- To inculcate a research-based acumen amongst members towards making positive contribution in their respective areas of work.
- To provide a supportive research environment for the development of research capabilities amongst member scholars and students.
- To design and conduct skill-oriented quality training programs for members, students and other stakeholders.

The Centre is endowed with state-of-the-art infrastructural facilities and 25 self-content hostel rooms on twin sharing basis for residential training programmes.

About Centre for Corporate and Competition Laws

The Centre for Corporate and Competition Law (CCCL) was established under the aegis of NALSAR University of Law, Hyderabad, to promote interdisciplinary research in Corporate, Competition and other related legal areas such as Insolvency Laws, Taxation, Securities Law, etc. The Centre aims to create a platform for discussion and discourse on the latest issues relating to Corporate Laws.

The vision of the Centre is to bridge the gap between theory and practice by collaborating with experts in the industry, academicians, and government bodies while carrying out extensive research on important areas of Corporate and Competition Laws. In line with the aims, the Centre plans to publish an annual journal covering all corporate and competition laws developments during the relevant year.

The Centre aims to bring out a blog to keep abreast with the latest happenings and challenges in the field. The Centre organizes guest lectures, lecture series, certificate courses and conferences on the relevant laws. The Centre also organizes an annual symposium wherein industry experts would hold panel discussions on different areas of Corporate and Competition laws. With multiple aims and objectives, the Centre will act as an effective platform for discourse on corporate and competition laws through a multidimensional approach and activities at NALSAR University of Law

ABOUT THE CONFERENCE

Join us for the most anticipated event in the arena of corporate law and governance. The " Developments and Trends in Corporate Law and Governance" conference is a premier gathering of legal experts, scholars, industry leaders, corporate professionals and policymakers who are at the forefront of shaping the future of corporate governance. The conference acts as a platform for participants to exchange ideas, gain valuable insights, and network with peers to discuss and analyse the latest trends and advancements in the field of corporate law and governance. The conference will be a dynamic and engaging event, featuring a diverse range of activities designed to facilitate in-depth exploration of contemporary developments in corporate law and finance. Attendees can look forward to.

Keynote Speeches: Renowned experts and thought leaders will deliver keynote speeches, providing insights into the most pressing issues and trends in corporate law and governance.

Panel Discussions: Panels of experts and practitioners will engage in lively discussions on various themes of corporate law and governance, bringing out diverse perspectives and solutions to complex challenges.

Research Paper Presentations: Researchers and scholars will present their latest findings, offering a deep dive into emerging areas of interest within corporate law and finance. This is an opportunity to stay abreast of cutting-edge research.

The outcome of the Conference will be summarised to bring necessary changes in the existing Laws to the concerned Regulatory Authority.

Key Themes and Sub themes

ALTER NATE DISPUTE RESOLUTION MECHANISM

- Adaptability of Arbitration in dispute resolution: Emerging Trends
- Arbitrability of Disputes under various Statutes: a comparative study
- Statutory Arbitration-Land Acquisition Act/Telecom Act/Electricity Act
- Conciliation under MSMED Act 2006: Overlapping or Overriding
- Mediation Process in India and the role of Legal Practitioner
- Proposed Mediation Bill and the impact on ADR

INSOLVENCY & BANKRUPTCY CODE (IBC)

- Recent Trends under IBC
- Cross Border Insolvency
- Financial Creditors and Operational Creditors
- Practical Aspects Relating to Timelines under IBC
- Corporate Resolution Process – Challenges
- Latest Judgements in IBC – An Insight

CORPORATE AND SECURITIES LAWS

- Role of MCA & SEBI in Investors Protection
- Primary Market and Legal Issues in India
- SEBI and Corporate Restructuring
- Securities Market – Primary & Secondary
- Corporate and ESG

LABOUR LAWS, INDIAN STAMP ACT AND OTHER REVENUE LAWS

- Study of Labour Law Reforms in India
- Labour Codes in India: A comparative analysis
- Labour Law Compliance Audit and Simplification in processes
- State wise implementation of Labour Codes-Scope and Challenges
- Expanding role of Company Secretaries in Labour Law Compliance and Revenue Audit

BANKING, FEMA & INSURANCE LAWS

- FDI Policy in India
- Role of IRDA in Regulating Insurance Market
- Foreign Contribution Regulations
- FEMA and Cross Border Mergers
- Bank Concurrent Audit & Audits in Banking Sector – Role of Professionals

CORPORATE GOVERNANCE IN A DIGITAL AGE

- Cybersecurity and Data Privacy
- Technology and Board Governance
- Digital Reporting and Transparency
- Artificial Intelligence and Corporate Decision-Making
- Blockchain Technology and Smart Contracts
- AI in automating of Regulatory Compliance

These sub-themes offer more granularity to the main conference themes, enabling attendees to explore the most relevant and pressing issues in corporate law and governance. It ensures a well-rounded and in-depth examination of contemporary issues and future developments in corporate law and governance. It provides participants with a comprehensive understanding of the critical topics within the field.

CALL FOR RESEARCH PAPERS

We are pleased to announce a call for research papers for **Corp Con 2024** - National Conference on **"Developments and Trends in Corporate Law and Governance".** We invite academics, scholars, researchers, experts and professionals to submit their original research papers for consideration.

Themes and Topics

Papers are invited on the following themes (but not limited to):

a. Alter Nate Dispute Resolution Mechanism
b. Insolvency & Bankruptcy Code (IBC)
c. Corporate and Securities Laws
d. Labour Laws, Indian Stamp Act and other Revenue Laws
e. Banking, FEMA & Insurance Laws
f. Corporate Governance in a Digital Age

General Guidelines

i. Papers should be original and unpublished works.
ii. Co-authorship of a maximum of two people is allowed.
iii. The manuscripts shall be written in English language only.
iv. Papers submitted on or before the timeline shall only be considered.
v. All abstracts and final manuscripts shall be submitted in MS Word format.

Abstract Submission

I. An abstract with a word limit of 250 words along with 5 keywords shall be submitted.
ii. The selected abstracts shall be intimated to the author(s).

Full Paper Submission

I. The maximum limit of the final manuscript shall be between 3000 to 5000 words excluding the abstract and the footnotes.
ii. The first page of the manuscript should only contain the title of the paper followed by 250 words abstract.
iii. Submissions should be in Times New Roman, font size 12 with 1.5 line spacing, justified text
iv. Footnotes should conform to the 21st Edition of The Bluebook 'Uniform System Of Citation' Rules.
v. For submissions involving empirical research, authors must submit relevant datasets along with the article.

Deadlines

I. Abstract submission: 30th November, 2023
ii. Intimation of selection: 5th December, 2023
iii. Full paper submission : 15th December, 2023

Submission Process

I. Paper Abstracts are submitted exclusively in electronic form to the **e-mail address: corpcon24@nalsar.ac.in**

Selected papers will be part of the Research Publication and others may be published in Souvenir.

WHY PARTICIPATE

- **Expert Insights:** Gain valuable insights from leading experts and practitioners in the field of corporate law and governance.
- **Networking Opportunities:** Connect with peers, legal professionals, academics, CS professionals and industry leaders to expand your professional network.
- **Cutting-Edge Research:** Stay ahead of the curve with the latest research findings and developments in corporate governance.
- **Comprehensive Updates:** Ensure that your knowledge is up-to-date with the ever-evolving landscape of corporate law and governance

WHO CAN PARTICIPATE

- Corporate Lawyers and Legal Counsels
- Company Secretaries – Professionals/Members
- Academics and Researchers
- Compliance Officers
- Corporate Executives and Directors
- Academics and Researchers
- Consultants and Advisors

Delegate Fee & Registration Process

Early registration is highly recommended to secure your spot at this prestigious event. Don't miss the opportunity to be a part of this important gathering of minds in the field of corporate law and governance.

DELEGATE FEE (INCLUSIVE 18%GST)

	Early Bird upto 20-12-2023	After 20-12-2023
Professional Members, Academicians & Others	**2500.00**	**2950.00**
Students of ICSI & NALSAR University of Law	**2200.00**	**2360.00**

- The Above fee includes Lunch(3), Dinner (2), Morning / Evening Conference Tea, Coffee, Conference Kit and Souvenir.
- The Delegate Fee is Payable in Advance and is non-refundable.

DELEGATE REGISTRATION PROCEDURE

- Delegates are requested to register for the Conference by visiting the weblink: _____
- Registration for the Conference shall be through Online Mode Only.
- Please note that payments are not accepted through demand draft, cheque & Cash.

CS Manish Gupta, President, ICSI
CS B Narasimhan, Vice President, ICSI
CS R Venkata Ramana, Council Member, ICSI & Program Director
CS Pawan G Chandak, Council Member, ICSI & Program Co-Director
CS Asish Mohan, Secretary, ICSI

Prof. Srikrishna Deva Rao, Vice Chancellor, NALSAR University of Law
Prof. K. Vidyullatha Reddy, Registrar, NALSAR University of Law
Prof. V. Keshav Rao, Advisor, Centre for Corporate and Competition Laws NALSAR University of Law
Prof. K.V.S. Sarma, Advisor, Centre for Corporate and Competition Laws (NALSAR) Vice Chancellor, MNLU

AT A GLANCE

Articles P - 53

Articles
Part-I
"Governance and Compliance: Need for Standardisation"

Articles
Part-II

"Significant Beneficial Ownership"

of the urgency to manage plastic waste effectively, the Government is taking steps to strengthen the Plastic Waste Management Rules, 2016 and has affected 5 amendments during the years 2021 to 2023. The aim of this paper is to understand the development of plastic waste management rules over a period of time and analyze the challenges faced. This paper tracks the focus of the recent amendments to ensure effective plastic waste management.

Legal World P-127

- **LMJ 11:11:2023** We answer question No.1 in the negative and hold that a winding up petition filed by Severn Trent in the capacity as a contributory is not maintainable.[SC]
- **LW 76:11:2023** This Tribunal is of the considered view that there are no substantial grounds for concluding that there was any Oppression or Mismanagement and therefore, the question of passing any Order directing buyout of shares, bringing to an end any matter complained of, cannot be done in the facts of this case.[NCLAT]
- **LW 77:11:2023** In conclusion, as per the facts of this case, the Bank Guarantee, provided by the Respondent No. 2/Bank is held to be covered by the exception provided in provisions of Section 14(3)(b) of IBC, 2016, and the Moratorium prescribed under Section 14(1) of IBC, 2016, shall not apply to its Encashment.[NCLAT]
- **LW 78:11:2023** It can be safely opined that there is financial integrity between the Society of the appellant as well as the Ideal Institute as substantial funds have been advanced to the Institutes by the Society and both the Institutes are functioning from the same premises.[SC]
- **LW 79:11:2023** The approval under Section 33(2) (b) of I.D Act is hereby accorded for the dismissal/removal order passed by the petitioner against the respondent.[DEL]
- **LW 80:11:2023** Since the averments in the complaint are insufficient to attract the provisions under Section 141(1) of the NI Act, to create vicarious liability upon the appellant, he is entitled to succeed in this appeal.[SC]
- **LW 81:11:2023** The principle underlying the orders of this Court dated 08.03.2021, 27.04.2021 and 23.09.2021, in In Re: Cognizance for Extension of Limitation, albeit those orders being passed, subsequent to the impugned order, would enure to the benefit of the applicants-defendants.[SC]
- **LW 82:11:2023** The plaintiff being a pledgor, who is guilty of default as per clauses 16 (j) and (h) of the SPA, cannot be permitted to vote against this scheme of arrangement in the meeting of equity shareholders.[DEL]
- **LW 83:11:2023** We thus find that the Impugned Order does not satisfy the basic tenet of adherence to the principle of natural justice which was ingrained in section 36 of the Competition Act. On these grounds, we set aside the Impugned Order.[NCLAT]

From The Government P-135

- The Companies (Amendment) Act, 2020, section 1 (29 of 2020)
- The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023
- The Limited Liability Partnership (Third Amendment) Rules, 2023
- The Companies (Management and Administration) Second Amendment Rules, 2023
- The Companies (Incorporation) Third Amendment Rules, 2023
- Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Qualified RTAs (QRTAs)
- Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)
- Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under
- Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013
- Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg.
- Requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms
- Limited relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Centralized mechanism for reporting the demise of an investor through KRAs
- Banking Regulation (Amendment) Act 2020 - Change in Name of Co-operative Banks
- Clarification regarding Shifting of Branches/Offices/ Extension Counters within the same city, town or village by District Central Co-operative Banks (DCCBs) and Guidelines on Closure of Branches and Extension Counters by DCCBs
- Joining the Account Aggregator Ecosystem as Financial Information User
- Review of Financial Information Provider (FIP) under Account Aggregator Framework
- Review of Instructions on Bulk Deposits for Regional Rural Banks (RRBs)
- Non-Callable Deposits - Master Direction on Interest Rate on Deposits
- Framework for compensation to customers for delayed updation/ rectification of credit information
- Strengthening of customer service rendered by Credit Information Companies and Credit Institutions
- Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021: Presentation of unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund
- Appointment of Whole-Time Director(s)
- Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023
- Amendment to the Master Direction (MD) on KYC
- Reverse Repo transactions - Reporting in Form 'A' Return
- Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs) – Extension to Government NBFCs
- Gold Loan – Bullet Repayment – Primary (Urban) Co-operative Banks (UCBs)
- Status of March 31, 2024 for Government transactions through integration with e-Kuber

Other Highlights P-153

Call For ARTICLES

Call for Articles for Publication in Chartered Secretary Journal – December 2023

PMLA Legislations: Role of CS in ensuring compliance

The recent notification of the Ministry of Finance pertaining to the **Prevention of Money-laundering Act, 2002** is a step ahead wherein the financial transactions undertaken by relevant persons pertaining to buying and selling of any immovable property; managing of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities, have been enlisted under the law. And more importantly it has brought Company Secretaries in Practice along with other practising professionals within the ambit of the law. All this and more had been raising doubts amongst professionals.

In view of the same and more, we are pleased to inform you that the December 2023 issue of Chartered Secretary Journal will be devoted to the theme **"PMLA Legislations: Role of CS in ensuring compliance" covering** *inter alia* the following aspects:

- **PMLA : The old and the new legislations**
- **WMD Act: Decoding expectations of FIU-India**
- **AML & CFT Guidelines: The compliance expected**
- **CS as Reporting Entities: Roles and responsibilities**
- **Due diligence and internal control mechanisms: Linchpins of PMLA**
- **PMLA and WMD Act : Role of Practising Professionals.**

And many more…

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

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

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

Regards,

Team ICSI

Articles in Chartered Secretary

Guidelines for Authors

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

Declaration-cum-Undertaking

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

Signature

1 ARTICLES

Articles - Part-I
"Governance and Compliance: Need for Standardisation"

Articles - Part-II
"Significant Beneficial Ownership"

Rectification of Register of Members of a Company: Supreme Court re-confirms Summary Jurisdiction of NCLT under Section 58/59 of Companies Act, 2013

The Companies Act, 2013 enacted Sections 58 and 59. Unlike in the past, section 58 of the Companies Act, 2013 now permits to apply to the NCLT for rectification of the register of members only in the case of shares of public companies. Subsection (4) of section 58 specifically provides that, this remedy can be resorted to only if a public company without sufficient cause refuses to register the transfer of securities. Refusal to register a transfer or transmission of shares without sufficient cause is the only ground on which an appeal can be filed in terms of subsection (4).

CS (Dr.) K R Chandratre, FCS

Practising Company Secretary, Pune;
Former President, The Institute of Company Secretaries of India
krchandratre@gmail.com

INTRODUCTION

In *IFB Agro* Industries Ltd. v. SICGIL India Ltd. [2023] 236 Comp Cas 316 (SC), the Supreme Court has reiterated and reconfirmed the principle laid down in Ammonia Supplies Corporation P. Ltd. v. Modern Plastic Containers P. Ltd. [1998] 94 Comp Cas 310 (SC).

In *IFB Agro* case respondent Company acquired additional shares of the appellant Company, as a result whereof, its individual shareholding exceeded 5% of the total paid-up share capital of the appellant Company. Appellant filed a petition before the Company Law Board under S.111-A of the Companies Act, 1956 (presently S.59 of the 2013 Act), praying for rectification of its register by deleting the name of the respondents as the owner of shares which are over and above the 5% threshold. The National Company Law Tribunal allowed a company petition for rectification of Members Register. The Tribunal directed the appellant company to buy-back its shares which were held by respondent company.

The Supreme Court traced the historical legislative background of Section 59 of the Companies Act, 2013 since the Indian Companies Act, 1913, and held:

"NCLT under S.59 of 2013 Act cannot exercise a parallel jurisdiction with SEBI for addressing violations of SEBI Regulations. The Court observed that the rectificatory powers of a Board/Company Court under S.38 of the Companies Act, 1913, then under S.55 of the 1956 Act, followed by S.111A introduced by the 1996 Amendment to the 1956 Act, and finally, S.59 of the 2013 Act, demonstrate that its essential ingredients have remained the same. It is a summary power to carry out corrections or rectifications in the register of members. The rectification must relate to and be confined to the facts that are evident and need no serious enquiry. The Court held that the company petition under S.111-A of the 1956 Act for a declaration that the acquisition of shares by the respondents was null and void was misconceived. The Tribunal should have directed the appellant company to seek such a declaration before the appropriate forum. [emphasis supplied]

DEVELOPMENT OF LAW AS TO RECTIFICATION OF REGISTER OF MEMBERS

Before the Companies (Amendment) Act, 1988 was enacted, the provisions in regard to the remedy of rectification of register of members were contained in Section 155 of the Companies Act, 1956 under which an application for an order for rectification of the register lay before the High Court. These provisions were enacted in Section 38 of the Indian Companies Act, 1913.

Thus, until the 1988 Amendment Act was passed, the two remedies, namely, the appeal under Section 111 and the application under Section 155 were to be pursued with two distinct forums, namely, the Company Law Board (now NCLT) being the delegate of the Central Government under Section 111, and the court, respectively.

The Companies (Amendment) Act, 1988, deleted Section 155, and also Section 156 which was incidental to Section 155, and incorporated the provisions of Section 155 in the recast Section 111. These amendments were based on the recommendations of the Sachar Committee. The recommendations of the Committee in this regard as contained in para 7.21 of the Report. Section 111 applied only in the case of shares of private companies. The Inserted by the Depositories Act, 1996 inserted Section 111A which was made applicable for rectification of register of members of public companies.

Finally, the Companies Act, 2013 enacted Sections 58 and 59. Unlike in the past, Section 58 of the Companies Act, 2013[1] now permits to apply to the NCLT for rectification of the register of members only in the case of shares of public companies. Sub-Section (4) of Section 58 specifically provides that, this remedy can be resorted to only if a public company without sufficient cause refuses to register the transfer of securities. Refusal to register a transfer or transmission of shares without sufficient cause is the only ground on which an appeal can be filed in terms of Sub-Section (4).

The substantive provision regarding rectification of register of members, however, is in Section 59,[2] according to which if the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member. An application can be made to National Company Law Tribunal (NCLT) by the person aggrieved, any member of the company, or the company for rectification of the register. The NCLT may, after hearing the parties to the appeal by order, *inter alia*, direct rectification of the records of the depository or the register and in the latter case.

While Section 111A of the 1956 Act empowered the CLB to order rectification of register of members, it also made Sub-Section (7) of Section 111 applicable to Section 111A, which conferred on the CLB the powers to (*a*) decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register; (*b*) generally, to decide any question which is necessary or expedient to decide in connection with the application for rectification. This provision seemed to have given an unlimited jurisdiction to the CLB to order rectification of register of members.

RULE 70(4) AND (5) OF NCLT RULES: A QUESTIONABLE VALIDITY

Section 59 of the 2013 Act does not contain a provision corresponding to Section 111(7) dwelt upon the preceding paragraph.

However, Rule 70(4) and (5) of the National Company Law Tribunal Rules, 2016 confer such jurisdiction on NCLT. It read as follows:

(4) The Tribunal may, while dealing with a petition under Section 58 or 59, at its discretion, make-

  (a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;

  (b) such orders as to costs as it thinks fit; and

  (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any petition under Section 59, the Tribunal may-

  (a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

  (b) generally, decide any question which is necessary or expedient to decide in connection with the application for rectification.

It will be noticed that rules 70(4) and (5) confer on the Tribunal the powers which are not conferred on it by the statute and, therefore, validity of this Rule is questionable. It is a well settled principle that a rule, regulation or bylaw must not be ultra vires, that is to say, if a power exists by statute to make rules, regulations, bylaws, forms, etc, that power must be exercised strictly in accordance with the provisions of the statute which confers the power, for a rule, etc, if ultra vires, will be held incapable of being enforced.

"Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. The power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision."[3]

As noted above, the powers vested in the CLB by Sub-Section (7) of Section 111 were not there in Section 155 of the Companies Act, 1956 or in the corresponding provision of the India Companies Act, 1913. The concept of 'summary jurisdiction' was emphasised by the Supreme Court concerning Section 155 of the 1956 Act in *Ammonia Supplies Corporation Pvt Ltd* v *Modern Plastic Containers Pvt Ltd*.[4], thus:

"Section 155(1)(a) refers to a case where the name of any person without sufficient cause entered or omitted in the register of members of a company. The word 'sufficient cause' is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the Court has to exercise its jurisdiction. It cannot be doubted in spite of exclusiveness to decide all matter pertaining to the rectification it has to act within the said four corners and adjudication of such matter cannot be doubted to be summary in nature. So, whenever a question is raised

1. *Corresponding partly to section 111 of the Companies Act, 1956.*
2. *Corresponding to section 111A of the Companies Act, 1956.*
3. *Dr Mahachandra Prasad Singh v Chairman, Bihar Legislative Council (2004) 2 SCC 351;AIR 2005 SC 69.*
4. *(1998) 94 Comp Cas 310;.AIR 1998 SC 3153.*

Court has to adjudicate on the facts and circumstances of each case. If it truly is rectification all matter raised in that connection should be decided by the Court under S. 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by Civil Court. Unless jurisdiction is expressly or implicitly barred under a Statute, for violation or redress of any such right Civil Court would have jurisdiction. There is nothing under the Companies Act expressly barring the jurisdiction of the Civil Court, but the jurisdiction of the 'Court' as defined under the Act exercising its powers under various Sections where it has been invested with exclusive jurisdiction, the jurisdiction of the Civil Court is impliedly barred. The jurisdiction of the 'Court' under S. 155 to the extent it has exclusive, the jurisdiction of the Civil Court is impliedly barred. For what is not covered as aforesaid the Civil Court would have jurisdiction. Similarly, even under S. 446(1), its words itself indicate jurisdiction of Civil Court is not excluded. This sub-Section states, '.... no suit or legal proceedings shall be commenced ... or proceeded with .... except by leave of the Court'. The words 'except by leave of the Court' itself indicate on leave being given the Civil Court would have jurisdiction to adjudicate one's right. Of course, discretion to exercise such power is with the 'Court'. Similarly, under S. 446(2) 'Court' is vested with powers to entertain or dispose of any suit or proceedings by or against the company. Once this discretion is exercised to have it decided by it, it by virtue of language therein excludes the jurisdiction of the Civil Court. Thus, the jurisdiction of the Court under S. 155 is summary in nature." (Para 31)

In *Standard Chartered Bank* AIR 2006 SC 3626, scope of Section 111(7) was considered. It was observed that jurisdiction being summary in nature, a seriously disputed question of title could be left to be decided by the civil court. It was observed:

".....The nature of proceedings under Section 111 are slightly different from a title suit, although, Sub-Section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question relating to the title of any person who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in *Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd.* AIR 1998 SC 3153 that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title."

CONFLICTING JUDGMENTS

In a Company Law Board order[5] which was referred to by the Supreme Court in the *IFB Agro* judgment, it was held:

Where most of the allegations made by the petitioner-company against the respondents/respondent companies are yet to be investigated, crystallised or confirmed as violations of the law, and there are allegations of

5. *Zandu Pharmaceutical Works Ltd. v Devkumar Vaidya and others [2009] 89 CLA 65 (CLB).*

violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and the SEBI (Prohibition of Insider Trading) Regulations which are to be decided by the SEBI, and allegations of investment beyond limit which violations are to be investigated, crystallised, or confirmed by the Central Government, the Company Law Board would have no power to order rectification of register of members, and to prematurely declare the allegations as violations of law. Moreover, some of the allegations being of criminal nature, only a competent criminal court could decide the said matter.

Referring to *Ammonia Supplies* judgment, the Supreme Court in *IFB Agro* case observed:

"It is evident from the above that while interpreting Section 155, this court has held that the power of the CLB is narrow and can only consider questions of rectification. If a petition seeks an adjudication under the garb of rectification, then the CLB would not have jurisdiction, and it would be duty-bound to re-direct the parties to approach the relevant forum. The court also held that the words "sufficient cause" cannot be interpreted in a manner which would enlarge the scope of the provision."

Curiously, the *IFB Agro* case arose out of a petition under Section 111A of the Companies Act, Sub-Section (3) of which empowered the Company Law Board (CLB) to order rectification of register of members, if it was found by the Tribunal that a transfer of shares or debentures was, *inter alia*, in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or any Regulations made thereunder, and, yet, the ruled as aforesaid. In the Supreme Court's view, the NCLT should have referred the case for investigation to SEBI to decide whether there was a contravention of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or not.

Sub-Section (4) of Section 59 of the Companies Act, 2013 corresponds to Sub-Section (3) of Section 111A of the Companies Act, 1956. On this facet of the case, the Supreme Court remarked as follows:

"… the petition under Section 111A of the 1956 Act for a declaration that the acquisition of shares by the respondents was null and void was misconceived. The Tribunal should have directed the appellant to seek such a declaration before the appropriate forum. The Appellate Tribunal was, therefore, justified in allowing the appeal and setting aside the order of the Tribunal. The Securities and Exchange Board of India had comprehensive role in regulating the securities market with respect to insider trading, and the important role of the regulator could not be circumvented by simply asking for rectification under Section 111A of the 1956 Act. Such an approach was impermissible. The scrutiny and examination of a transaction allegedly in violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 had to be processed through the Regulations and the remedies provided therein. The appellant was not justified in invoking the jurisdiction of the Company Law Board under Section 111A of the Act for violation of the SEBI Regulations. The Tribunal committed an error in entertaining and allowing the petition filed under Section 111A of the 1956 Act. Though the reasoning adopted by the Appellate Tribunal in the order was not agreeable, its conclusion that the Tribunal exceeded its jurisdiction was correct."

SECTION 430 OF COMPANIES ACT 2013 LATEST CASES

After the arrival of the Companies Act 2013, the controversy on this subject once again cropped up due to insertion of Section 430 in the Act. In the article published in January 2023 issue of Chartered Secretary, this author has analysed Section 430 and concluded that the said Section does not completely bar jurisdiction of civil courts.

This Section corresponds to Section 10GB of the Companies Act, 1956, which was inserted by the Companies (Second Amendment) Act, 2002; but was never made effective.

Interestingly the *IFB Agro* decision does not refer to Section 430 of the Companies Act, 2013 which bars jurisdiction of civil courts, nor does it refer to the Supreme Court's earlier decision in *Shashi Prakash Khemka v NEPC Micon Ltd* [2019] 212 Comp Cas 385 (SC), in which the Supreme Court held that as the civil suit remedy was completely barred and the power was vested with the Tribunal under Section 59 of the Act, although the cause of action had arisen at a stage prior to the enactment of the Companies Act, 2013, relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act was widely worded, the appropriate course of action would be to permit the appellants to file a fresh petition before the Tribunal under the Companies Act, 2013 within two months. This decision, however, does not discuss the principle of summary jurisdiction of the NCLT in an application for rectification of register of members (which the *IFB Agro* judgment has discussed extensively). As held in *IFB Agro*, the jurisdiction even under Section 59 of the Companies Act, 2013 is summary in nature.

There were innumerable cases in which it was laid down that complicated questions of law and fact and where title to the question is in dispute or questions relating to succession are involved, should not be decided by the Company Law Board in a petition under Section 111A of the 1956 and the parties should be relegated to a civil suit. The cases decided under Section 59 are, however, creating doubts as to the correct interpretation of Section 430 vis-à-vis Section 59, and conflicting judgments of some High Courts and NCLT/NCLAT are confusing. The *IFB Agro* judgment should help settle substantially the controversy and confusion.

A Calcutta High Court judgment in *Phool Chand Gupta v Mukesh Jaiswal* [2023] 175 CLA 185 (Cal) does refer to *IFB Agro* decision and holds that where it appears that the disputed questions of the facts are complicated and cannot be conveniently decided in a summary procedure, the jurisdiction of the civil court is not ousted. It cannot be disputed that the NCLT may have jurisdiction to decide the title of any person who is a party to the application urging that his name has been wrongly omitted from the register or should have been entered in the register in a proceeding under Section 59. However, the issue in the suit is not one of rectification; the very word 'rectification' connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act.

A recently pronounced order of the NCLAT in *Satori Global Ltd v Manjula Jhunjhunwala* [2023] 239 Comp Cas 228 (NCLAT [Pr B]) is also worth noting in this regard and all NCLT Benches are expected to follow the principle laid down by the Supreme Court in *IFB Agro* case and by NCLAT in *Satori Global* case. In Satori Global order, the NCLAT concluded:

"From the aforenoted ratio, it is clear that the hon'ble apex court in a catena of the judgments has observed that the jurisdiction under Section 155 was summary in nature and the matter ought to be decided in a suit and a court may relegate the matter to such remedies…. At the cost of repetition, any dispute with respect to issues relating to "fraud", "manipulation", and "coercion", and false statements cannot be decided in a summary jurisdiction. The contentions of the learned counsel for the respondent that there is "over writing on the certificates", signatures were taken on blank forms, there is mala fide suppression of some documents all require examination of evidence and hence cannot be decided by the National Company Law Tribunal in a summary fashion."

This is equally true about the NCLT's jurisdiction under Section 58/59 of the Companies Act, 2013 despite the bar of jurisdiction created by Section 430 of the Act.

AMENDMENTS NEEDED

The problem area is Sub-Section (4) of Section 59, according to which, if the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

This provision confers on the NCLT the jurisdiction which actually falls within SEBI's jurisdiction and this is precisely what the Supreme Court pointed out in the *IFB Agro* case. Sub-Section (4) should essentially provide that if the transfer of securities is in contravention of any of the aforesaid Regulations, the Tribunal should direct the petitioner to approach SEBI or itself refer the case to SEBI. Sub-Section (4), thus, needs an amendment to end the controversy. A similar amendment needs to be made to provide that where the NCLT finds that the case involves a question of title to the shares in question or other complicated questions of fact and law which requires a civil court to try the case, the NCLT should refer the petitioner to civil court. Simultaneously, Rule 70(4) and (5) of the National Company Law Tribunal Rules, 2016 need to be omitted.

Governance, Risk Management and Compliance (GRC) and Effective Implementation and Monitoring

GRC - Governance, Risk Management, and Compliance is a concept around only since about 2007 in the corporate management system that integrates these three crucial functions into the processes of every department within an organization. GRC is in part a response to the "silo mentality," as it has become disparagingly known. That is, each department within a company can become reluctant to share information or resources with any other department. This is seen as reducing efficiency, damaging morale, and preventing the development of a positive company culture. Therefore it becomes important to understand concept of Governance, risk management and ensure the required compliance which is a key element of any organization's management for a long time prospective.

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INTRODUCTION

Governance Risk and Compliance (GRC) is the backbone of each and every organization – let it be small, medium or large. The whole objective of GRC is to ensure that all the organization's capabilities are working to the fullest extent i.e. to the optimum use and the efforts are being made towards achieving the said strategic goals and targets of the company. GRC is to ensure that the organization is on the right track and not pathless. The development which has taken place after the Enron scam, one of the big five auditing firms vanishing and the big five auditing firms becoming big four has brought out the concept of governance, risk and compliance (GRC). Ever since, especially from the year 2007, governance, risks and compliance are increasing the need for conscious planning, initiatives, and allocation of the resources by the organizations not only in India but world-wide to create resilience against the exposures and sustained business growth in the long term.

To meet the goals and targets of the organization, almost all the organizations need to draft out suitable policies and processes and put in place to promote excellent governance practices to inculcate a robust culture of compliance and risk mitigation in each and every operation of the organization. In the light of aforesaid, all the organizations need to adopt a broad range of governance, risk and compliance (GRC) policies, practices and processes to meet the requirements of the stringent regulatory environment, increasing business complexities and enhanced focus on accountability. As these processes are interdependent, when orchestrated in a well synchronized manner, will enhance the economic value for all the stakeholders of the organization and enable sustainable growth for in the long term on an ongoing basis.

Objective

When we talk about the objective of the Governance, Risk & Compliance, it is the framework which enhances organizational effectiveness by integrating processes and components of Governance, Risk and Compliance of the organization. The framework in any organization is to be put in place which is capable of, removing overlaps and redundancies and carrying out timely course correction as and when called for. The framework would also set out the organizational approach to governance, risk & compliance in an integrated manner to ensure the best supply of goods and services rendered by the organization on the principle of on time delivery in full (OTIF) and ensure at the end of the day the framework delivers the organization's strategic objectives and lay out a cohesive framework where all the governance related initiatives are monitored more objectively and at a regular periodical interval – the frequency as decided by the organization.

Scope

This framework set out by the organization would imply implementing the governance/ corporate policies in a manner that the framework produce the desired goals /

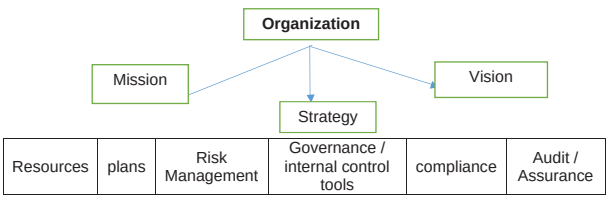
targets of the organization together with evaluating the impact on business performance. The framework also considers all the GRC components as a group and therefore serves as the group governance framework in terms of the provisions under the Companies Act, 2013 in respect of all organization and as well as per the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in respect of listed companies, are in addition to the provisions of the Companies Act, 2013.

Applicability

The framework should be made applicable across the company, and it is to be adhered by all the employees of the organization – top to bottom and in addition to the framework also should be made applicable to the organization's subsidiaries and Joint Ventures and to all the custodians, key stakeholders, committees etc., wherever applicable.

Understanding the GRC

In order to understand the GRC in a better way, we can put the following pictorial presentation to make the things clear.



Mission, Vision & Strategy

All the organizations – small, medium, and large have their own mission along with their vision which they like to pursue and achieve in the longer run and on sustainable basis. In order to achieve the desired vision, the organizations need to set their own strategy, set the goals / targets and then have an implementation programme / business plan.

Components of GRC

The GRC has three elements i.e. Governance, Risk and Compliance and let us have a brief of each element.

Table 1 - Elements of GRC

Sr. No.	Elements	Details
1	Governance	Governance is all about setting the plans, policies and procedures that are required for the achievement of the strategic goals of the company.
2	Risk	Risk management is all about mitigating the impact of uncertainties that could trigger during the course of working towards the achievement of the strategic goals / target set for the company.
3	Compliance	Compliance is nothing but strict adherence to the regulatory requirements, obligations and the set of rules, policies and procedures including any standards specified by the regulators in order to ensure that all the organizational capabilities are working together as per the strategy. Let us also understand that the compliance is not just ticking the boxes, stating yes or no – but is working ethically and responsibly.

Benefits of GRC

Having a GRC programme in place, the organizations are getting benefits as stated below:-

Table 2 - Benefits of GRC

Sr. No.	Benefit	Details
1	Identify / assess and manage risk	Assists / helps organizations, to identify, assess and manage regulatory risks and effectively ensure that their operations and practices are aligned with legal requirements.
2	Risk management framework	Ensures an effective risk management framework in place and GRC helps organizations identify, assess and manage risks that may impact their operations, finances, reputation and stakeholders amongst others.
3	Governance and Compliance	Assist the organization to address the governance issues, managing the risk and ensuring absolute compliance by creating policies, procedures, regulatory controls, risk assessment, risk monitoring and internal controls.
4	Promoting morale and efficiency	All the employees across the organization must adhere to company-wide the laid down policy, codes procedures etc. without any exception which would promote excellent morale and utmost efficiency.

Definitions

The framework may contain a definition clause which may spell out the various concepts. For example, the definition clause could be as under by way of illustration.

Table 3 – Illustrated definition clause

Sr. No.	Concepts	Defined
1	Policy	Internal corporate policies as published and amended by the organization from time to time.

2	Risk	Risk is any kind of risk included but not limited to economic risk, business continuity risk, compliance risk, financial Risk, reputation risk, operational risk, etc., as detailed in Risk Management Policy of the organization.
3	Committee	Committees formed by the Board under the Companies Act 2013 and LODR regulations 2015 and includes the – name of the committees may be mentioned.
4	GRC Committee	Committee formed under this framework and is responsible for the implementation and the smooth functioning of the GRC framework at the organization.
5	Custodian	Custodians are the identified people/ personnel who are responsible to administer, track and keep a record of the Policies/Standard operating procedures assigned to them.
Similarly other concepts could be defined under this clause		

GRC Committee

The organization could set Governance, Risk and Compliance (GRC) committee in order ensure smooth functioning of the integrated framework which is being put in place by the organization and GRC committee could have organizational structure with CFO as the chairperson assisted by senior GM-Operations, Company Secretary and Compliance Officer and Secretary to the GRC committee.

Responsibilities of the GRC Committee

To name the responsibilities of the GRC committee, we could list down the following:-

Table 4 - Responsibilities of GRC committee

Sr. No.	Responsibility	Details
1	Providing expert advice	To provide expert advice and support in relation to the company's governance, risk and compliance management.
2	Effective risk management	To establish link between the GRC components along with the GRC custodians that enables effective risk management and compliance activity to be carried out consistently across the organization.
3	Effective reporting	To ensure an appropriate level of understanding and engagement in risk and compliance management through effective education, reporting, escalation and discussion.

> When we talk about the objective of the governance, risk compliance, it is the framework is meant to enhance organizational effectiveness by integrating processes and components of governance, risk, and compliance of the organization. The framework in any organization is to be put in place which is capable of, removing overlaps and redundancies and carrying out timely course correction as and when called for. The framework would also set out the organizational approach to governance, risk & compliance in an integrated manner to ensure the best supply of goods and services rendered by the organization.

4	Business continuity	To establish a business continuity framework to ensure risks that threaten the ongoing operation of the organization are effectively planned and managed.
5	Continuous improvement	To review and continuous improvement of this framework and governance, risk and compliance management across the organization.
6	Facilitating	To facilitate the process outlined within the enterprise risk management and compliance framework and ensuring the ongoing reporting of the outcomes of those processes.
7	Measuring the impact and improving	To measure impact of various GRC components and making use of the same to improve the company's strategies.

EXECUTION OF BUSINESS PLAN

First and foremost, requirement for the execution of the business plan is that making the resources available and planning for the same. When we talk about the resources, we mean the required man power, material needed, equipment / machinery and above all the money i.e. finance. In addition to the above, the organizations may be needing various other ancillary plans which may be called for in order to executive the business plan / implementation of the set programme such as; (i) resource allocation plan; (ii) resource mobilization plan; (iii) planning of required finance;(iv) material procurement plan; (v) production plan; (vi) plan to have better quality i.e. quality control plan; and (vii) close our plan and many more depending upon the nature of industry in which the organization is operating and also with reference to the geographical location of the organization.

ARTICLE

INTEGRATION OF GOVERNANCE, RISK & COMPLIANCE COMPONENTS

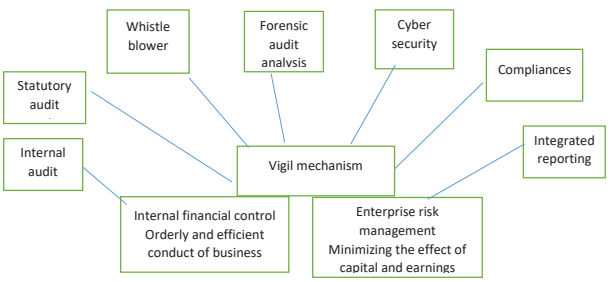
Organizations may put in place a wide range of monitoring tools in form of policies, procedures and SOP's in place falling under different categories in order to aiming to integrate these monitoring tools to create a strong mechanism. The organizations may formulate a broad governance framework comprising of the components such as; (a) internal financial control (IFC); (b) enterprise risk management (ERM); (c) internal audit (IA); (d) business code of ethics & compliance; and (e) health & safety & environment amongst others.

Every organization could develop their own values and they continue to maintain such values. In order to maintain the organizational values, the organization needs to have in place the various governance policies, internal control tools i.e. having in place a standard operation procedures (SoPs). Organization may need to put in place many policies and following are some of the illustrative examples in this respect.

	Table 5 - Policies / Procedures (illustrative)
Sr. No.	**Details of policies / procedures etc.**
1	Segregation of duties.
2	Workflows.
3	Delegation of Authority documentation.
4	Physical & IT recruitment policy.
5	Policy on health safety and environmental (workplace).
6	Quality policy.
7	Policy on familiarization programme of Directors.
8	Terms and conditions of appointment and payment to director.
9	Policy on gift & hospitability.
10	Procedure access control policy.
11	Business code of conduct and ethics.
12	Policy on dissemination of information to market.
13	Policy for determination of material event and information.
14	Code of fair disclosure.
15	Policy on Anti-bribery and anti-corruption.
16	Risk management policy.
17	Integrated management system policy.
18	Code of conduct to regulate monitor and report by insider.
19	Data privacy policy.
20	Record keeping plan of the organization.
21	Policy on preservation of documents.
22	Archival policy.
23	Policy relating to Conflict of interest.

24	Related party transaction policy.
25	Policy on POSH (Prevention of Sexual Harassment at Workplace).
26	Dividend distribution policy.
27	Code of fair competition and prevention of unfair trade practices.
28	Policy on Environmental, Social and Governance.
29	Corporate social responsibility policy.
30	Whistle blower policy / vigil mechanism.
Many more depending upon the organization need...	

The organization may aim at achieving an integrated framework as depicted below:



Each of the components mentioned above where output of one component serves as an input to another component will not only help to create a holistic approach towards governance but also facilitate continuous control monitoring and a robust integrated mechanism removing redundancies if any.

PUTTING THE GRC FRAMEWORK IN PLACE

The organization could put the GRC frame work clearly stating as to who are the custodians along with key stakeholders and the governance structure in place and the governing policies etc. An illustrated suggestive framework which could be put in place by the organization is provided below by way of illustration.

Table 6 - Suggested GRC framework (by way of illustration)				
GRC components	**Policies & Practices for monitoring specific areas**	**GRC custodians**	**Governance structure**	**Key stakeholders**
Annual Internal Audit	Annual Internal Audit Plan	GM – operations Head and Internal Controls	Audit Committee	Board/Audit Committee/ Statutory Auditors
IFC	Delegation of Authority	GM – operations / CFO/ Head and Internal Controls	Audit Committee	Committees/Employees
	Control Self Assurance	CFO /GM - Head and Internal Controls	Audit Committee	Board/ Audit Committee
	IFC testing	CFO, Senior / GM - Head - and Internal Controls	Audit Committee	Board/Audit Committee/ Statutory Auditors
Governance, Ethics & Compliance	Whistle Blower	Company Secretary & Compliance Officer	Audit Committee /HR	Board / Committees/ Employee
	Business code of conduct & ethics	Chief financial officer, Company Secretary & Compliance Officer / Senior executive (like general manager	Audit Committee / Statutory Auditors / Internal Auditors / Human Resources Department.	Stock exchanges / Investors
	POSH	Internal Compliance Committee (ICC) General Manager Chief Human Resource Officer	Internal Compliance Committee (ICC)/ Human Resource Department	ICC /State government / District Officers
	Related party transactions – policy and practices	CFO / GM – Finance & Accounts/ Company Secretary & Compliance Officer	Audit Committee	Board & Audit Committee, Investors, MCA & Stock Exchanges
	Materiality policy	CFO / GM – Finance & Accounts / Company Secretary & Compliance Officer	Audit Committee	MCA
	Dividend distribution policy	CFO, Company Secretary & Compliance Officer	Board	Share holders
	Prevention of insider trading	GM – operations GM – operations CFO, Company Secretary & Compliance Officer	Audit Committee	Board, Investors, MCA & Stock Exchanges
	Ethics & compliance framework	GM – operations CFO, Company Secretary & Compliance Officer / GM	Audit Committee	Board & Audit Committee
	Composition, Charter & Policies relating to Board and its committees	GM – operations CFO, Company Secretary & Compliance Officer /	Board	Investors Bankers & other stakeholders
ERM	Risk Management Policy & practices	CFO /GM – operations Company Secretary & Compliance Officer	Risk Management Committee	Board, Investors, Bankers, SEBI, Credit Rating Agencies
SHE	Safety, health & environmental Policy & practice	Chief Human Resource Officer	HR	Employees / Customers / Regulatory authorities

CORPORATE GOVERNANCE, ETHICS & COMPLIANCE

We could discuss this into two aspects i.e. one on Corporate Governance and the other on business code of conduct and ethics.

CORPORATE GOVERNANCE

Corporate Governance encompasses the entire system of managing and supervising an enterprise. The Board and the committees are committed to a responsible and transparent style of management and supervision aimed at increasing the Company's value over the long term. Every organization would like to stress upon great importance on responsible Corporate Governance and would like to achieve excellence in governance practices. All organization have been putting their maximum efforts year after year in order to maintain a high standard of governance and have been striving in continuing with the same. In this respect, the organization are working through forming various committees in order to scrutinize and look over various governance activities. To name some of the committees we could state; (a) Audit Committee; (b) Nomination & Remuneration Committee; (c) Stakeholders Relationship Committee (d) Risk Management Committee; and (e) Corporate Social Responsibility Committee and these committees are formed under the provisions of the Companies Act, 2013 by all companies and the LODR Regulations, 2015 for listed companies. The organization are also annually publishing their financial statements giving the disclosures about the details on the duties and activities of the Board committees in their Corporate Governance Report which forms part of the annual report.

BUSINESS CODE OF ETHICS AND CONDUCT

All organizations have their business responsibility to ensure the compliance with the statutory and regulatory requirements as applicable to the organization. Organization by and large defines compliance as legally and ethically impeccable conduct by all employees in their daily work, because the way they carry out their duties affects the reputation and the brand image of the company. Organization does not tolerate any violation of any laws, company's policy, business code of conduct and ethics or other internal regulations as applicable. It may be noted that ethics and compliance is not a one-time event and it's a continuous process and that's where the need of a robust compliance framework arises. All organizations are aiming to achieve this through flexible controls hierarchy, assessments and audits, issue tracking and remediation and analytics. To track and achieve high standards of ethics and compliance, the organization are framing their policies, codes, procedures and systems as outlined in Table 5 above.

RISK MANAGEMENT

With the frequent amendments in the regulatory from work from time to time, the organization are mandated and required to take actions and also with the rising of shareholder activism, many organizations have become sensitized to identifying and managing areas of risk in their business: whether it is financial, operational, brand or reputation related risk. These risks are no longer considered the sole responsibility of specialist executives, and the Board's demands clear accountability and visibility into exposure and status of mitigation measures so they can effectively implement the organization's long-term strategies.

Therefore, it is essential for every organization to put in place a risk management mechanism which aims at identifying, measuring, mitigating and managing risk. In every organization, the Risk Management Committee, the Audit Committee and the Executive Management Committee form the governance structure for each of the policies in order to take adequate measure to control and mitigate risks while putting in an exhaustive risk management policy. The organization may suitably adopt the guidelines brought out by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) 2004 framework for its enterprise risk management process. The Company's risk management should set up a framework for the foundations and organizational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management capability.

RESPONSIBILITIES OF CUSTODIANS

The custodians of the GRC are expected to work in an integrated manner and share outcomes, issues, learnings, developments & amendments relating to their field/GRC component. To achieve this integrated flow the GRC custodians shall meet on a quarterly basis and discuss the following issues so that suitable monitoring and actions could be taken:

Table 7 - Responsibilities of the custodian

Sr. No.	Responsibility	Details
1	Compliance arising from GRC component	Compliances arising from GRC component for which they are custodians.
2	Workflow & automation	Deciding workflows and automation.
3	Future initiates	Future Initiatives.
4	Integration	Integration opportunities & redundancy/overlap removal.
5	Tacking	Key developments which shall include tracking regulatory, statutory & external environment development with relation to GRC component.

6	Repository of decision for future reference	Centralized repository of decisions for future references and record.
7	Measuring impact	Measure the impact of the GRC framework on the business and functions.
8	Implementation of recommendations	Implementation of the recommendations of the respective committees and follow up.
9	Confidentiality	Maintain high degree of confidentiality of the matters discussed at the GRC Committee This quarterly meeting of the GRC custodians shall be chaired by the Group CFO and the Action Taken Report shall be reviewed jointly.

In addition to the above responsibilities, the GRC custodians shall ensure that the governance policies are not treated as a static document. Policy audits shall be undertaken by the GRC custodians to ensure that the policies are effectively implemented and aid the purpose of achieving the objectives relating to; (a) efficacy and relevance of policy; (b) managing compliance levels; (c) deviation management; (d) testing of controls; (e) SOP and responsibility matrix; and (f) policy audits on a half yearly basis.

Finally any change in these policies will be apprised during the GRC quarterly meet and then will be taken up for the Board's approval for implementation of changes and carrying out required modifications and bring out the revised policy.

RESPONSIBILITIES OF EMPLOYEES

It is the responsibility of the governance, risk and compliance (GRC) custodians to undertake a training programme as and when needed i.e. need based training sessions to bring the awareness for the employees on the various components of GRC. Besides the custodians and the committees, it is equally important for each and every employee of the organization to be responsible for:-

Table 8 - Responsibilities of employees

Sr. No.	Responsible for	Details
1	Understanding the objectives of GRC	Actively seeking to understand the objectives, risks, controls and obligations that relate to their activities and participate in governance, risk and compliance management.
2	Compliance with the regulations policies and procedures	Undertaking activities in compliance with legislation and our policies and procedures.
3	Identifying the risk events / non-compliance	Identifying and reporting risk events and instances of non-compliance.
4	Promptly reporting	Reporting new risks, risks exceeding tolerance, breaches or weaknesses of controls to their supervisor and as and when required.

Effectiveness of the GRC

The effectiveness of the integrated GRC framework could be monitored and measured through the following:-

a. Direct and indirect impact on operations in terms of profitability and sustainability;

b. Impact of each GRC component and measures taken;

c. Audit Committee and Internal/External Auditor feedback;

d. Communication of the impact – dash boards, score cards on an annual basis;

e. Calibration of the impact with external environment.

CONCLUSION

From the foregoing, we could conclude that the Governance, Risk and Compliance (GRC) framework implementation aims to provide effectiveness in order to reduce risk and improve control effectiveness, security and compliance through an integrated and unified approach that will ultimately reduce the ill effects of organizational silos and redundancies and take the organization to a much higher level with long term prospective and sustainability. Needless to mention that the frameworak will have to reviewed periodically with reference to the regulatory changes and amendments in the law and required to reviewed and revised.

ARTICLE

Risk Management Committee – A Step Forward in Risk Management and Corporate Governance

Risk is inherent in every business and risk and reward go hand in hand. Without risk there is neither any gain nor any growth and hence one should never be averse to risk taking. In the words of Mark Zuckerberg "The biggest risk is not taking any risk. In a world that's changing quickly, the only strategy that is guaranteed to fail is not taking any risks." To survive and succeed in the dynamic business environment the up and downside risks are to be handled appropriately with adequate risk mitigation measures.

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"If you do not invest in risk management, it doesn't matter what business you are in, it is a risky business."

INTRODUCTION

This is a famous quote by Gary Cohn, an American business leader and philanthropist. A deep insight into the quote points out the importance of the ups and downs that a business may face on the road to success. Risk is inherent in every business and risk and reward go hand in hand. Without risk there is neither any gain nor any growth and hence one should never be averse to risk taking. In the words of Mark Zuckerberg *"The biggest risk is not taking any risk... In a world that's changing quickly, the only strategy that is guaranteed to fail is not taking any risks."* To survive and succeed in the dynamic business environment the up and downside risks are to be handled appropriately with adequate risk mitigation measures. Managing risks also serves to promote trust, protect stakeholder interests and raises transparency among the corporate sectors.

To ensure effective business working, the Companies Act, 2013 (herein after referred to as 'the Act'), and the SEBI (LODR) Regulations, 2015 (herein after referred to as 'the Listing Regulations), brought about significant changes pertaining to the conduct of business in India. The Listing Regulations brought about the constitution of a risk management committee which was supported by the Act in terms of disclosing the risk management policy in the Board's report.

In the instant case, an attempt is made to understand how the risk management committee contributes to risk control and effective Corporate Governance. The same is discussed with practical examples of Infosys Limited and Tata Motors Limited wherein their risk management framework may be looked into. Taking two different businesses from different sectors shows how corporate governance level and risk management committees work differently due to varied risks.

CONNECTION BETWEEN BUSINESS, RISK AND RISK MANAGEMENT

A business is exposed to several factors and elements during the course of its operations. These elements are likely to cause businesses to face reduction in profits or make losses or the business may fail altogether. These elements are nothing but risks or uncertainties. Businesses which defy these elements can grow and succeed. Defying these elements requires the management of such elements, which is nothing but risk management and an effective strategic planning. The aim of this entire process of risk management is to identify the risks, understand them, determine strategies to cope mitigate or manage them, such that losses are reduced or are avoided all together.

Risk management is a strategic tool which helps in preparing the organization to handle the uncertainties and develop strategies where the importance is to be proactive rather than being reactive. Risk management begins with the risk identification, analyzing the risk factors, making assessment of the risk and mitigation of such risks. Unlike an event management, risk management is a continuous process of identifying, evaluating, and assessing the inherent and potential risk, adopting the methods for its systematic reduction in order to ensure sustainable business development. Businesses face risks in terms of inflation, supply chain issues, workforce, fire, natural calamities, new technologies and so on. Pandemic outbreak is also a risk which the businesses around the globe faced in the year 2020.

Once the risks are identified, steps are taken to reduce the chances of the occurrence of such risks or reduce their impact altogether. However, it is to be noted that every

business has its own set of risks. Strategies change with the nature of business and sometimes a combination of strategies are used. Thus, when a business risk landscape is considered, identifying and assessing risks is the first step followed by managing the same. Mitigation can also be treated as a part of risk management.

Thus, an effective risk management strategy will protect the business, capitalise on opportunities, ensure optimum use of resources and alleviate any threats that the business may face. Recognising the said importance of risk management, we shall further dwell as to how the law promotes the same.

CONTRIBUTION BY THE LAW TO RISK MANAGEMENT

Companies Act, 2013, provides for the development and implementation of a risk management policy for the company including identification of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company. A company's risk management policy should clearly describe the role, responsibilities and accountabilities of the Board of Directors, Risk Management Committee and Audit Committee.

Section 134(3)(n) of the Act, states that the Board's report should contain the details of the risk management policy of the company. This should be stated in terms of risk identification, assessment and management which the Board thinks that it shall influence and have an impact on the company. In addition, section 177 of the Act states that the audit committee shall evaluate the risk management systems of the business. But nowhere, the Act mandates or gives directions regarding the composition and constitution of the risk management committee. However, regulation 21 of the Listing Regulations, mandates for the constitution of Risk Management Committee, which shall be a board committee and to be constituted by the top 1000 listed entities. Further, in part C of Schedule II of the Listing regulations, the terms of reference of the said committee is elaborately stated. The role of the committee ranges from identification, management and mitigation of risks to framing a policy with respect to the same. In addition, the committee is also responsible for laying down procedures for risk identification, assessment, monitoring, reviewing and evaluating the risk management framework from time to time. It is also stated that when there is an overlap of any activities with the other committees then the risk management committee shall coordinate with them. The objective of the same is to create harmony in the efforts put forth by the company in the achievement of organizational objectives. This reduces conflicts and avoids any upcoming indifferences.

Here, the law intends to promote effective board oversight with respect to managing the business and its operations. It also reflects responsible culture by the board whereby they are considering the wellbeing of all those involved. Law is promoting the thought that businesses should think much more than just generating mere wealth. They should see themselves as promoters of effective administration i.e. Corporate Governance.

Corporate Governance is an approach whereby the conduct, management and control of the companies is of the highest order and a company's corporate governance structure is critical for its success. Corporate Governance is a system of rules, principles and processes by which a company is directed and controlled. The objective is to develop a framework wherein there is optimum transparency.

CONTRIBUTION OF THE RISK MANAGEMENT COMMITTEE TO CORPORATE GOVERNANCE

Corporate Governance is an approach whereby the conduct, management and control of the companies is of the highest order and a company's corporate Governance structure is critical for its success. Corporate Governance is a system of rules, principles and processes by which a company is directed and controlled. The objective is to develop a framework wherein there is optimum transparency, effective disclosures, accountability and responsibility. In other words, it means creating an effective working mechanism within the organization to achieve economic stability and creating value for the stakeholders.

Board committees are the pillars of Corporate Governance. As the organisation grows in size, it may not be possible for the Board to take all decisions and it is imperative for the Boards to delegate to Board committees. Constituting Board committees is one of the ways of supporting this order of business. Board committees is similar to creating a group of experts with skills and knowledge to deal in certain specialised matters. This way the work of the board is delegated, effectively handled and efficient results are generated.

While every business inherits its own set of risks, creating a risk management committee helps the board to strengthen business in this scenario of increasing complexities. The following gives an insight as to how this committee helps in risk mitigation through effective Corporate Governance-

- Risk management helps to identify risks so that businesses can develop strategies to avoid them. But it is vital to comprehend that it leads to risk mitigation where businesses, at times, can altogether reduce the chances of the occurrence of these uncertainties. This helps businesses to achieve stability.
- When risks are identified and strategies to manage them are developed, it is like accepting facts and facing the truth. This helps businesses to move forward and gain deeper understanding of the situation. This promotes fairness and transparency.
- Since the committee composes of experts in the field, it gives a chance for the members to deliberate on the

risks in detail and focus on arriving at solutions to either combat or mitigate them. This helps in arriving at findings and make effective recommendations to the Board.

- The risk management committee is laying a foundation for decision making. This way the Board can achieve effective decision making within limited time and ensure better management.
- The Listing regulations direct the inclusion of an Independent Director in the committee. The intent is clear enough to help the Board to stay away from undue influence of any kind and make an unbiased decision. It helps the board from falling on pressures and avoids manipulation.
- The creation of the risk management committee is applicable to the top 1000 listed entities based on the market capitalization and high value debt listed entity. When top 1000 companies based on market capitalization is considered, the intent of the law is clear that it wants these companies to focus on more than compliance and engage constructively with its stakeholders. In case of high value debt listed entity, the law intends to protect the lenders. The law is making an attempt to ensure that these businesses concentrate on the greater good and not just wealth generation. In a nutshell, be accountable and ethical.
- Risk management committee creates and develops a risk management framework which is unique to the risks faced by the business. This protects businesses from risks and increases the chances of long-term success. It also initiates an environment of Corporate Governance via fairness of decisions, development and disclosure of the risk management policy. All this together adds character and reputation to the business entity.

However, it is to be noted that risk management committee should also monitor risks and review their risk management framework from time to time, both, independently and in coordination with the other committees when there is an overlap.

RISK GOVERNANCE – PART OF CORPORATE GOVERNANCE

As stated earlier, Corporate Governance is an approach whereby the conduct, management and control of the companies is of the highest order. The business should adopt best practices to ensure integrity and ethical behaviour. Corporate Governance includes practices where risks are identified, assessed, communicated, strategies are developed, and risks are managed. In other words, these practices, policies and procedures when implemented guide the business. This is a good practice since risks are minimised and business is saved. Stakeholders also expect the same, thus, risk governance also implies stakeholder management. All this when viewed in a broader sense, reduces the negative impact on the business. Thus, without any doubt, risk governance is a part of Corporate Governance.

But it is to be noted that risk governance will change as per the needs and the risks faced by the business. In this reference, Infosys Limited and TATA Motors Limited are taken into consideration for detailed understanding.

REAL LIFE EXAMPLES

Infosys Limited

The Board's report of the Company for the year ended 2022-23 has identified the following risks :

1) Geo-political, economic or health events - may result in currency volatility and reduced spending on technology products and services.

2) Commoditization of services and heightened competitive landscape – may impact market share and decrease in revenues and profits.

3) Technology disruption and innovation – makes it difficult to predict the trend.

4) Talent supply constraints and Hybrid working model – could impact ability to staff projects or execute large and complex programs or optimize cost structures.

5) Cyber security - adversely impacts operations and client satisfaction or result in significant regulatory penalties.

6) Data protection and privacy – impact operations or result in significant regulatory penalties.

7) Cost inflation and inability to improve margins – long term profitability would be largely affected

8) ESG and contractual liabilities - operations, reputation, access to capital and longer-term financial stability could be adversely impacted.

9) Complex and evolving regulatory environment - could result in investigations, regulatory inquiries, litigation, fines, and negative client sentiments.

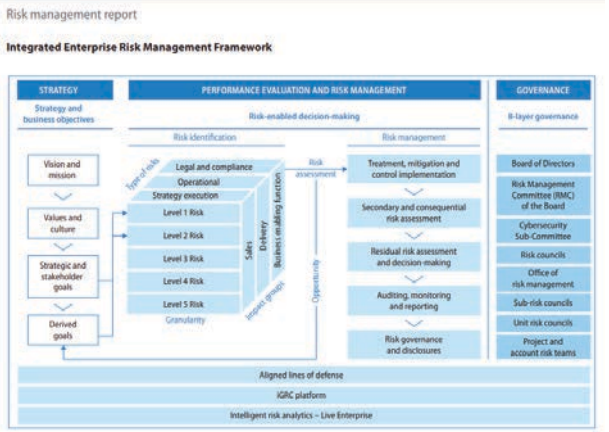

Fig.1. Integrated Enterprise Risk Management Framework of Infosys Limited

Considering the aforesaid risks, Infosys has set up an enterprise risk management (ERM) framework which focusses on the achievement of their corporate objectives based on their vision, mission, values, culture, stakeholder goals and strategic goals. Then, opportunities are determined and the ERM function enables identifying, analysing, assessing, mitigating, monitoring and governing any risk or potential threat to these objectives. This is followed by decision making. The entire risk governance framework is eight layered which is offering clear structure, stability and distribution of responsibilities.

TATA Motors Limited

The Boards Report of TATA Motors Limited for the year ended 2022-23, has identified key risks as follows –

1) Supply chain disruptions and commodity inflation – may impact production, increase raw material costs, product prices, revenue, profits, reputation and customer satisfaction.

2) Global economic and geopolitical environment – Changes in terms of cross border restrictions, trade barriers and tariffs can affect the supply chain and production schedules.

3) IT systems and security – can affect data privacy and data protection, lead to legal actions, impair reputation and cause financial damage. Above all, impacts client delivery schedules.

4) Growth strategy and competitive business efficiency – may impact financial objectives, reduced returns affects debt management, impacts performance and operations.

5) Brand positioning, innovation and technological change – may affect product demand, cause delays in launching new products and increase the chances of being obsolete in the market.

6) Manufacturing operations and pandemic – may disrupt supply and production schedules and delay in product deliveries.

7) Distribution channels, retailer network and customer service delivery - Delay or disruptions can lead to delay in deliveries and cause negative customer experience.

8) Environmental regulations and compliance – may incur costs, face penalties and damage to reputation.

9) Climate Change – can adversely affect supply chain and business operations on account of new environmental policies and rules.

10) Human Capital – can affect business operations, agility and speed of delivery.

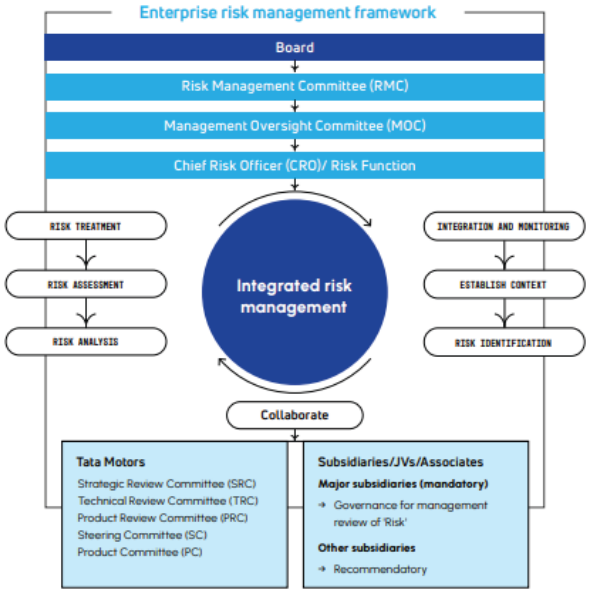

Fig.2. Enterprise Risk management Framework of TATA Motors

Here, the governance is four layered wherein the chief risk officer looks into the risk management aspect of the business. Their ERM process includes risk identification and monitoring with reference to the project under consideration. This is followed by risk analysis, assessment and treatment. This entire process forms the integrated risk management cycle wherein for better governance they co-ordinate with various committees and subsidiaries of TATA Motors as and when needed.

With reference to the above, it is clear that risks are integral part of every business. Every business sector has different risks i.e. there will be universal risks and sector specific risks. Therefore, their risk management framework also varies. These two examples show how risk management committees and governance layer works differently for different businesses to manage varied risks. It also indicates that changes in ERM framework are due to differences in the size of the organization, its goals, mission, vision, operational environment, difference in risk acceptance and management levels. This pinpoints that governance professionals involved in the business operations need to exercise responsible, care and caution while framing ERM.

ROLE OF COMPANY SECRETARIES IN RISK MANAGEMENT AND MITIGATION

As a professional, a Company Secretary is the primary official whose job is to ensure legal and regulatory compliances. In addition, the Company Secretary should also guide the Board on corporate compliances and governance. With the growing awareness on Corporate Governance and taking care of the stakeholders, the position of a Company Secretary has become more eminent. This is clear from the fact that the Company Secretary is Key Managerial Personnel in the eyes of the law.

A Company Secretary of a listed company should ensure that it advocates Corporate Governance by maintaining corporate integrity. This can be achieved by compliance with the Act and rules thereunder, as well as the Listing Regulations. This position should aim to avoid any risks arising out of noncompliance.

It is the role of the risk management committee to monitor risks and review the risk management system from time to time. Being a Key Managerial Person, the Company Secretary should ensure that these systems are effective and efficient enough. The intent here is to promote good governance and to avoid detection of any frauds or any kind of errors in the internal audit. Being a governance professional, the Company Secretary should sensitize on risk management at all levels within the organization. In a nutshell, the Company Secretary must ensure the best practices thereby balancing the interests of all the stakeholders involved.

CONCLUSION

Growing global, political and economic complexities have made the risk management a significant feature in the corporate sector. Risk management can be well attained with the help of the risk management committee which can handle and control risks irrespective of its nature and the level of exposure. Risk is integral to business and so is risk management. It is important to note that risk management is inclusive of risk mitigation.

Establishing the requirement of constituting a risk management committee under the law is a contribution towards making the business environment rewarding and improve business longevity. It also builds reputation of India, as a nation, willing to build responsible corporate culture and fostering the change where businesses are creating a holistic balance. This is a unique way to promote ease of doing business. Through risk management, businesses are signalling that they will do their best to handle the risk efficiently and achieve their corporate objectives. This is like reassuring the stakeholders that the business is being proactive and not reactive. It also shows that businesses are trying to balance their interests by acting responsibly. This is a reflection of good Corporate Governance practice.

The real life examples of the enterprise risk management framework of Infosys and TATA Motors shows that different businesses face different risks and that their risk management framework will also be unique to their risks. It is a reflection that risk management is a holistic approach rather than dealing with risks as they occur. This also implies that businesses intend to address matters of concern across the corporate horizon. Thus, risk management committee serves as an instrument of adding value to the business.

Lastly, the role of Company Secretaries is that of a guardian and a custodian of Corporate Governance. Company Secretaries along with risk management committees can navigate through complex situations and uphold the values of integrity, ethics, accountability, responsibility, disclosure and transparency.

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ARTICLE

The Significant Role of Governance in Mitigation of Risk Assessment

Risk is an intrinsic element of every undertaking, whether it is within the domain of finance, the public sector, or the field of public health. The implementation of efficient risk management strategies is crucial for achieving success and maintaining resilience across several domains. Governance is a fundamental aspect of risk management, including several components such as systems, structures, and culture that dictate the decision-making processes and management practices inside businesses. The function of governance is crucial in the identification, assessment, and mitigation of risks across different contexts.

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INTRODUCTION

In the background of an increasingly linked and dynamic global landscape, the effective management of risk has emerged as a critical priority for governments, corporations, and institutions. Risk is an intrinsic element of every undertaking, whether it within the domain of finance, the public sector, or the field of public health. The implementation of efficient risk management strategies is crucial for achieving success and maintaining resilience across several domains. Governance is a fundamental aspect of risk management, including several components such as systems, structures, and culture that dictate the decision-making processes and management practices inside businesses. The function of governance is crucial in the identification, assessment, and mitigation of risks across different contexts. This article explores the crucial significance of governance in the mitigation of risk, analyzing the interrelated structures and procedures that facilitate the achievement of efficient risk management.

- **The interconnected framework of governance and risk management:**

  The relationship between governance and risk management is inherently interconnected. Effective governance plays a crucial role in establishing the requisite structure and environment for the proactive detection, evaluation, and alleviation of risks. The interdependence between governance and risk management is mutually beneficial, as they mutually reinforce one another to promote long-term viability and welfare.

- **Evolution of Governance in Risk Management:**

  The concept of governance has undergone transformation in order to adapt to the growing intricacy of contemporary society. Historically, governance has been primarily concerned with the processes of decision-making and the establishment of mechanisms for ensuring responsibility. Nevertheless, in modern times, governance frameworks have evolved to include risk management as an essential element. The aforementioned trend signifies the acknowledgment that taking proactive measures to mitigate risks is crucial for achieving sustainable growth and promoting social well-being.

  The progression of governance in risk management demonstrates a transition from a responsive methodology to a proactive one. Historically, governance often addressed risks in a reactive manner, after they had already materialized. The focus was placed on the management and resolution of crises. Over the course of time, it became evident that this strategy was insufficient due to the interrelated and rapidly evolving structure of contemporary society, which necessitated the identification and mitigation of risks prior to their manifestation as crises.

- **Developing a Culture that Emphasizes on Risk Awareness:**

  The formation of a risk-aware culture inside an organization or government is a key responsibility of governance. This involves cultivating a cognitive framework that prioritizes the principles of openness, accountability, and proactive detection of risks. The establishment of a cultural environment that fosters and promotes the active engagement of employees across all hierarchical levels in the identification, reporting, and resolution of risks is of paramount importance in facilitating timely detection and

effective mitigation strategies. The establishment of a risk-aware culture encompasses many essential components:

- **Transparency:** Transparency is of utmost importance when it comes to decision-making and operational processes. This facilitates transparent communication on possible hazards and guarantees that stakeholders are informed about the implemented efforts to reduce them. In a setting characterized by transparency, people are inclined to have a higher propensity for reporting the hazards they come across.

- **Accountability**: Accountability refers to the set of processes that ensure people and organizations are held accountable for their actions and choices. The aforementioned components include internal and external audits, performance assessments, and reporting obligations. Accountability is a crucial aspect that ensures those responsible for the management of risks are held accountable for their choices and actions.

- **Training and education:** Training and education play a crucial role in cultivating a culture that is aware of and responsive to risks. These programs provide employees and stakeholders with the necessary knowledge and skills to effectively identify, evaluate, and mitigate risks. A workforce that has a high level of education is more proficient in their ability to actively participate in risk management endeavors.

- **Communication:** The core of risk awareness is in the efficacy of communication. It is essential for organizations and governments to have well-defined mechanisms for the reporting and communication of hazards. These measures include feedback systems, reporting hotlines, and periodic risk assessments.

- **Establishing Risk Tolerance**

  Governance frameworks play a crucial role in assisting businesses and governments in establishing a clear understanding of their risk tolerance levels. Risk tolerance is a crucial factor in decision-making as it pertains to the degree of risk exposure that is deemed acceptable. Through the establishment of explicit boundaries and limitations on the level of risk exposure, governance mechanisms play a crucial role in safeguarding the long-term viability of organizations by preventing the assumption of excessive risks. The process of determining risk tolerance entails a meticulous evaluation of an organization's inclination towards accepting risk, which is shaped by its purpose, goals, stakeholders, and the surrounding external factors. The choice at hand has significant importance as it influences several facets of risk management, including strategic planning and the allocation of resources.

  The idea of risk tolerance is multifaceted. The concept incorporates several aspects, including but not limited to financial risk, operational risk, reputational risk, and compliance risk. Various businesses and industries exhibit varying levels of risk tolerance, while banking institutions often have a lower risk tolerance compared to venture capital firms. The method of determining risk tolerance includes many essential steps:

  - **Stakeholder engagement:** Stakeholder engagement plays a critical role in identifying the relevant parties involved and comprehending their expectations around risk. Stakeholders include a range of individuals and entities, including as shareholders, consumers, workers, regulators, and the public.

  - **Risk Assessment:** Undertaking a thorough risk assessment in order to have a full understanding of the existing risk environment. This entails identifying and analyzing possible hazards and their potential consequences.

  - **Objective Setting:** Ensuring the alignment of risk tolerance with the aims and purpose of the company. This guarantees that the level of risk that an institution is willing to accept is aligned with its overarching objectives.

  - **Governance Framework:** The establishment of governance structures and systems is crucial for effectively monitoring and controlling risks in accordance with predetermined risk tolerance levels. This encompasses a range of elements, such as policies, procedures, and the processes involved in making decisions.

By establishing a well-defined level of risk tolerance, both enterprises and governments may make educated choices and effectively manage resources, therefore safeguarding themselves from excessive risks.

RISK OVERSIGHT AND COMPLIANCE

Effective governance encompasses the implementation of measures that facilitate the supervision of risks and ensure adherence to regulatory requirements. The aforementioned processes play a crucial role in the oversight of risk management endeavors, guaranteeing their efficient implementation, and implementing regulatory measures to limit potential hazards.

- **Governance oversight:**

  Within governance structures, various bodies and individuals are responsible for overseeing and regulating risk management efforts. In Corporate Governance, this often falls to Boards of Directors, while in government, regulatory agencies are tasked with oversight. These oversight mechanisms play a crucial role in monitoring risk management strategies.

> The relationship between governance and risk management is inherently interconnected. Effective governance plays a crucial role in establishing the requisite structure and environment for the proactive detection, evaluation, and alleviation of risks.

The Board of Directors, in the context of Corporate Governance, has a fiduciary duty to shareholders. This includes ensuring that the organization has effective risk management practices in place. The Board oversees risk management efforts by:

- **Setting Risk Management Policies:** The responsibility for establishing risk management policies and strategies lies with the Board. The risk framework is established to provide a context for the organization's operations.
- **Monitoring Risk Exposure:** The Board of Directors engages in the monitoring of the organization's risk exposure, with the aim of ensuring that it stays within acceptable boundaries as determined by the established risk tolerance.
- **Reviewing Risk Reports:** The Board engages in the process of reviewing frequent risk reports and assessments in order to get a comprehensive understanding of the prevailing risk environment and assess the efficacy of risk mitigation methods.
- **Holding Management Accountable:** The Board of Directors has the responsibility of holding senior management responsible for the implementation of efficient risk management strategies. This measure guarantees that the executive team have the necessary resources and assistance to effectively engage in risk management.
- **Communicating with Shareholders:** The responsibility of conveying the organization's risk profile and mitigation plans to shareholders lies with the Board. The maintenance of shareholder trust is contingent upon the crucial aspect of transparency.

Government oversight often exhibits a sectorspecific nature. Financial regulatory bodies are responsible for the oversight of banks and financial institutions, guaranteeing their compliance with risk management requirements. In a similar vein, regulatory bodies pertaining to the environment have the task of overseeing adherence to environmental legislation and regulations, with a primary emphasis on the mitigation of environmental hazards.

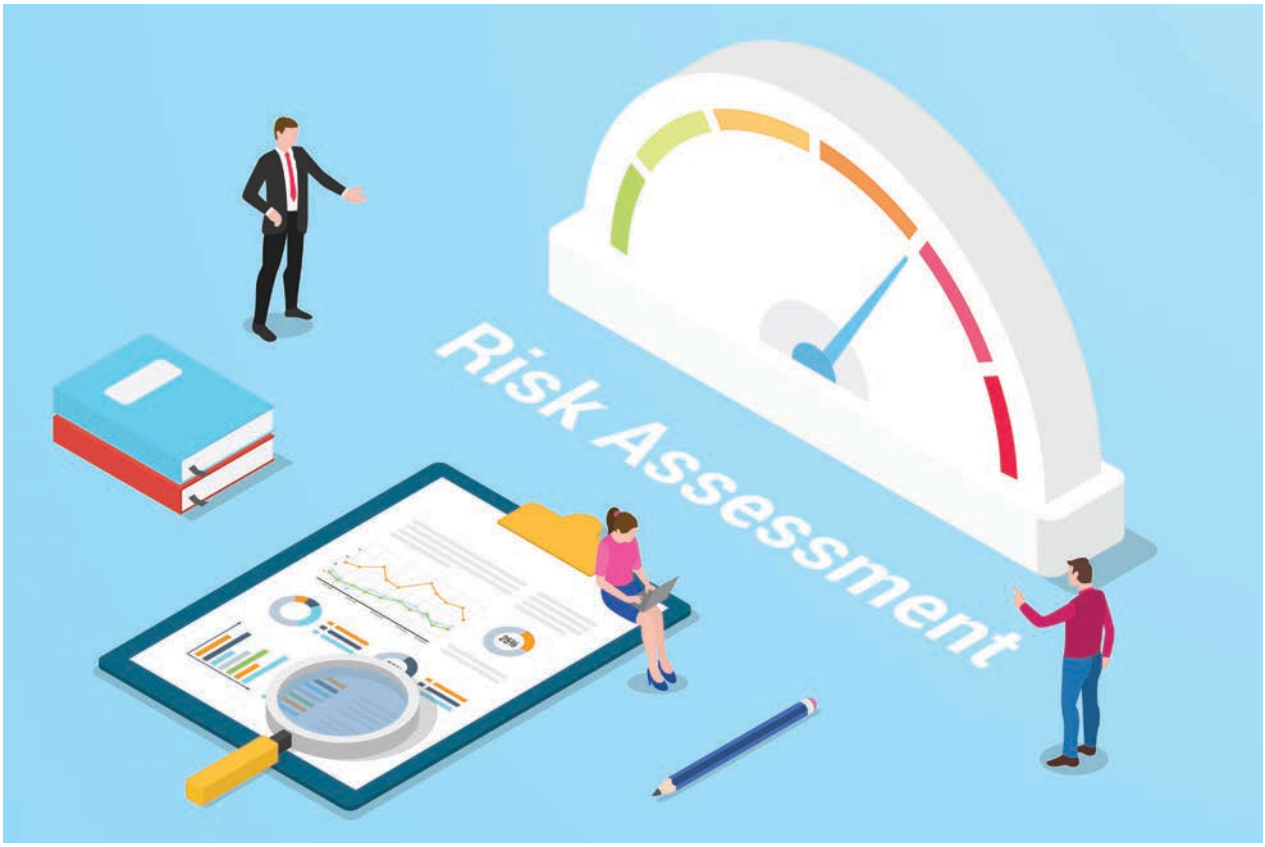
- **Regulatory compliance:**

Regulatory compliance refers to the adherence and conformity to laws, regulations, guidelines, and standards set out by governing bodies and regulatory authorities. The function of governance is of utmost importance in the formulation and implementation of regulatory frameworks. Regulations are established with the purpose of mitigating potential dangers and safeguarding the welfare of the general population. Regulatory authorities play a crucial role in overseeing compliance with defined governance requirements for risk management in several areas, including banking, healthcare, and environmental protection.

Importance of regulatory compliance in finance:

Financial rules have seen increased stringency, notably in response to the 2008 financial crisis. Regulatory authorities, such as the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA), have the responsibility of enforcing legislation that pertain to financial institutions. The primary important points of regulatory compliance in finance encompass:

- **Capital adequacy**: It refers to the regulatory mandate for financial institutions to maintain an appropriate level of capital in order to effectively mitigate the impact of financial shocks and economic downturns.
- **Risk Reporting:** Financial institutions have a legal obligation to disclose their risk exposures and measures for mitigating such risks to regulatory bodies. The provided information is of utmost importance in evaluating systemic risk within the financial system.
- **Consumer Protection:** Consumer protection regulations are in place to guarantee that financial institutions adhere to fair and transparent practices when dealing with customers. Consumer protection measures serve to limit the potential consequences that are linked with unethical conduct.
- **Anti-Money Laundering (AML) and Know Your Customer (KYC):** The implementation of Anti-Money Laundering (AML) and Know Your Customer (KYC) rules serves as a preventive measure against the illicit activities of money laundering and terrorism funding. Financial crimes pose significant dangers, and these risks may be effectively mitigated with the assistance of appropriate measures.
- **Market Integrity:** The maintenance of market integrity and the mitigation of market manipulation risks are achieved via the implementation of regulations that control trading behavior.



The adherence to financial laws is not just a question of legal duty, but rather a crucial aspect in the mitigation of risks within the financial industry. Failure to comply with regulations may result in the imposition of financial penalties, initiation of legal proceedings, and harm to one's reputation.

RISK ASSESSMENT AND MANAGEMENT

Effective governance encompasses a methodical framework for evaluating and addressing risks. The aforementioned procedure includes the identification of possible risks, the evaluation of their effect and possibility, and the formulation of solutions to minimize those risks. Governance structures also distribute resources and provide tasks for the purpose of conducting risk management operations.

- **Identifying Risks:**

  The process of identifying risks involves the systematic examination and evaluation of potential threats or uncertainties that may impact the achievement of objectives or the successful identification of possible hazards is a key role of governance in risk reduction. Governance structures provide systems via which workers, stakeholders, and people may effectively report and discuss potential concerns. The aforementioned dangers are thereafter submitted to a comprehensive evaluation. The identification of hazards is a continuous and perpetual undertaking. The process encompasses several sequential stages:

- **Stakeholder Involvement:** In many instances, stakeholders are the first to encounter risks. Their involvement is crucial in identifying potential issues. This includes employees, customers, suppliers, and the public.

- **Risk Registers:** Risk registers are often used by organizations and governments as a means of documenting and recording recognized hazards. The aforementioned registries function as primary repositories for risk-related data.

- **Monitoring External Factors:** Governance institutions often engage in the monitoring of external elements, including economic circumstances, political shifts, and technology advancements, with the aim of discerning any threats that may be on the horizon.

- **Data Analysis:** The process of data analysis is of utmost importance in several industries, such as banking and healthcare, since it enables the identification of trends and patterns that may serve as indicators of possible problems.

- **Risk Workshop & Assessment:** Organizations and governments conduct risk workshops and assessments to systematically identify risks and assess their potential impact.

- **Scenario Analysis:** Scenario analysis is a method that entails the creation of hypothetical situations in order to investigate prospective hazards and their corresponding outcomes. This aspect has significant value in the context of catastrophe preparation and the development of strategies for business continuity.

The first stage in the risk management process involves the identification of potential hazards. The development of successful mitigation plans is contingent upon a comprehensive comprehension of the various hazards that a company or government may encounter.

- **Evaluating the Impact and Probability of Risk:**

  Governance systems provide frameworks for evaluating the potential consequences and probabilities associated with identified risks. This procedure entails a thorough examination of the possible ramifications and the probability of occurrence. This information is crucial for discerning which threats require urgent action and which may be watched or ignored.

  Risk assessment involves a quantitative and qualitative evaluation of risks. It considers factors such as financial impact, operational disruption, reputational damage, and legal consequences. It also looks at the likelihood of these consequences occurring. Risk assessment often employs various risk management tools and techniques, including:

  - **Risk Matrices**: Risk matrices categorize risks based on their likelihood and impact, helping to prioritize risks.
  - **Monte Carlo Simulation:** This statistical technique is used to assess the impact of various factors on a given risk.
  - **Sensitivity Analysis:** Sensitivity analysis examines how changes in key variables affect the overall risk profile.
  - **Historical Data Analysis:** Historical data is examined to identify patterns and trends in risk occurrence.
  - **Expert Opinions:** Subject matter experts are consulted to assess the potential impact and likelihood of risks.
  - **Probabilistic Risk Assessment:** Probabilistic risk assessment uses mathematical models to assess risks in complex systems.

- **The formulation of mitigation strategies:**

  Governance structures play a crucial role in enabling the formulation and implementation of mitigation solutions. Various tactics may include a spectrum of risk management approaches, including risk avoidance, risk reduction, and risk transfer. Risk management specialists collaborate with decision-makers to develop comprehensive strategies for mitigating recognized risks. Common risk mitigation strategies include:

  - **Risk Avoidance:** Risk avoidance is the deliberate decision to abstain from engaging in activities or being exposed to circumstances that possess substantial dangers. This particular approach is often used in situations when the possible consequences of the risk are deemed to be too severe, and there are no feasible methods available to effectively mitigate it.
  - **Risk Reduction:** Risk reduction refers to the implementation of steps aimed at diminishing the probability or consequences associated with a certain risk. Potential strategies to consider include bolstering cybersecurity protocols, boosting existing infrastructure, and augmenting staff training initiatives.
  - **Risk Transfer:** Risk transfer refers to the practice of transferring the responsibility for a certain risk from one party to another. This objective is often accomplished via the use of insurance policies or contractual arrangements. For example, corporations have the option to shift the risk associated with data breaches to insurance carriers.
  - **Risk Acceptance:** Risk acceptance is a strategic decision that enterprises or governments may choose for under certain circumstances. Risk acceptance entails the recognition of a risk and its possible ramifications, coupled with a deliberate decision not to undertake proactive actions to alleviate it. This particular strategy is often used in situations when the expense associated with mitigating a risk is deemed to be greater than the possible consequences resulting from the risk itself.

The development of mitigation plans should be customized to address the unique risks that a company or government entity encounters, rather than adopting a standardized approach. Various tactics might be used in order to proficiently mitigate hazards.

- **Resource Allocation**

  The process of allocating resources is a crucial aspect of effective management and decision-making within organizations. Resource allocation refers to the distribution and assignment.

  The distribution of resources for risk management activities is also determined by governance structures. The allocation of financial, human, and technical resources is focused on implementing techniques that efficiently reduce risks. The allocation of resources is determined by evaluating the potential effect

and probability of risks, with the aim of optimizing resource use. Resource allocation is a process that encompasses on:

- **Budgeting:** It involves the allocation of financial resources to support various risk management activities, including but not limited to cybersecurity measures, disaster readiness, and compliance efforts.
- **Staff Allocation:** Ensuring appropriate assignment of staff, such as risk managers and compliance officers, for the purpose of executing risk management plans.
- **Technology:** The adoption of technical solutions aimed at improving risk monitoring and mitigation, such as the use of data analytics tools or the implementation of security systems, is a prudent investment strategy.
- **Training:** Offering comprehensive training and educational initiatives to workers and stakeholders with the aim of augmenting their understanding of risks and their ability to effectively respond to them.

Effective resource allocation is a fundamental component of risk management. This guarantees that the business or government have the requisite tools and capacities to effectively address and minimize the risks that have been identified.

Effective governance encompasses comprehensive strategies and protocols for the management and reaction to crises. These plans delineate the recommended actions that governments and organizations should do in order to alleviate the repercussions of unanticipated occurrences, including natural calamities, cyber assaults, or public health emergencies.

CONCLUSION

The function of effective governance is of utmost importance in the mitigation of risks across diverse sectors and scales, including national security, Corporate Governance, public health, and environmental preservation. Governance frameworks serve as a foundational framework for promoting risk awareness, establishing risk tolerance levels, and cultivating a proactive approach to identifying, assessing, and managing risks. Mechanisms are established to foster accountability and transparency, therefore safeguarding the resilience and security of countries, organizations, and institutions amidst the dynamic nature of the global landscape.

The progression of governance in reaction to the escalating intricacy of our global landscape has established a structure that facilitates the cultivation of risk consciousness, establishes thresholds for risk acceptance, and encourages proactive evaluation and control of risks. Governance structures play a crucial role in facilitating the management of risk by establishing a well-defined framework for its mitigation. Additionally, these structures serve as effective means for ensuring accountability and transparency within an organization. The significance of governance in risk mitigation spans across several domains, including national security and Corporate Governance. Its function is crucial in safeguarding the resilience and security of countries, companies, and institutions within the dynamic and evolving global landscape.

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Standardizing Foreign Exchange Laws

The evolution of India's foreign exchange regulations, encapsulated in the Foreign Exchange Management Act (FEMA) of 1999, stands as a testament to the nation's efforts to align itself with the global economic landscape. As the world witnessed significant transformations in international trade practices, financial instruments, and digital technologies, FEMA too underwent a series of amendments to adapt and respond to these changing paradigms.

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INTRODUCTION

The evolution of India's foreign exchange regulations, encapsulated in the Foreign Exchange Management Act (FEMA) of 1999, stands as a testament to the nation's efforts to align itself with the global economic landscape. As the world witnessed significant transformations in international trade practices, financial instruments, and digital technologies, FEMA too underwent a series of amendments to adapt and respond to these changing paradigms. This Section delves into the historical evolution of FEMA, meticulously tracing its trajectory from its inception to the present day, highlighting the pivotal amendments that have shaped India's foreign exchange policies.

A. Genesis and Objectives of FEMA

In the wake of economic liberalization in the early 1990s, India recognized the need for a modern, comprehensive, and coherent legal framework to govern foreign exchange transactions. The erstwhile Foreign Exchange Regulation Act (FERA) of 1973, with its stringent controls and bureaucratic oversight, had become incompatible with the aspirations of a liberalizing economy. Hence, FEMA was enacted in 1999, marking a significant departure from the restrictive policies of FERA. Its primary objective was to facilitate external trade and payments, simplify procedures, and promote the orderly development and maintenance of foreign exchange markets in India.

B. Key Amendments and their Impacts

1. Liberalization and Economic Reforms (1999-2004)

In its initial years, FEMA primarily focused on liberalizing trade and simplifying procedures. The period between 1999 and 2004 witnessed a series of amendments aimed at easing restrictions on foreign investments, encouraging exports, and fostering a conducive environment for businesses. FEMA facilitated the growth of India's export-oriented industries, making them globally competitive by easing access to foreign funds and simplifying repatriation processes.

Impact: The liberalization phase led to a surge in foreign investments, enhanced India's export capabilities, and bolstered the country's economic growth.

2. Embracing Capital Account Convertibility (2004-2010)

The mid-2000s saw India gradually embracing capital account convertibility, allowing for the free movement of capital in and out of the country. FEMA was amended to accommodate the changing dynamics of international finance. The relaxation of restrictions on foreign investments, especially in sectors like finance, telecommunications and retail, opened doors for increased Foreign Direct Investment (FDI) inflows.

Impact: India became an attractive destination for foreign investors, witnessing a steady increase in FDI, leading to the expansion and modernization of various sectors of the economy.

3. Strengthening Anti-Money Laundering and Regulatory Framework (2010-2015)

In response to global concerns about money laundering and terrorist financing, FEMA underwent amendments to strengthen its Anti-Money Laundering (AML) and Know Your Customer (KYC) provisions. These changes aimed at aligning India's regulatory framework with international standards set by organizations like the Financial Action Task Force (FATF).

Impact: The enhanced AML and KYC provisions improved India's standing in the global financial community, ensuring a more secure and transparent financial environment.

ARTICLE

4. Digitalization and Technological Adaptation (2015-Present)

The most recent phase of amendments focused on integrating FEMA with digital technologies. The rise of cryptocurrencies, digital payments, and online transactions necessitated a re-evaluation of FEMA's applicability and regulatory oversight. Amendments were made to address the challenges posed by these emerging technologies, ensuring their inclusion within the regulatory framework.

Impact: India's financial ecosystem became more technologically advanced, accommodating innovative financial instruments and digital transactions, enhancing financial inclusivity and efficiency.

C. Challenges Arising from Amendments

While these amendments were essential for keeping FEMA relevant in the face of global economic shifts, they also brought forth challenges. Ambiguities in interpretation, compliance complexities and the need for constant updates to accommodate emerging technologies became apparent. These challenges highlighted the necessity for a more standardized and adaptive regulatory approach, paving the way for the discussion on standardizing foreign exchange laws in India.

In the subsequent sections, this article will delve deeper into these challenges, exploring the need for standardization and proposing concrete measures to create a robust, adaptable and globally aligned framework for India's foreign exchange regulations.

CURRENT CHALLENGES IN FOREIGN EXCHANGE REGULATIONS

The landscape of international trade and finance is undergoing rapid transformations, driven by globalization, technological innovations and evolving market dynamics. In the context of India's foreign exchange regulations governed by FEMA, several pressing challenges have emerged, hindering the seamless flow of cross-border transactions and posing complexities for businesses and regulatory authorities alike. This section delves into these challenges, dissecting their nuances and implications.

A. Complexity Arising from Diverse International Transactions

The modern business environment is characterized by a plethora of intricate international transactions. From derivatives trading and foreign investments to cross-currency swaps and complex hedging strategies, businesses engage in a wide array of financial activities. FEMA, while designed to accommodate these transactions, often struggles to keep pace with the intricacies involved. As a result, interpreting FEMA's provisions for these diverse transactions becomes a daunting task. Lack of clarity on how these activities align with FEMA's regulations creates confusion, leading to potential legal issues for businesses.

Impact: Businesses face delays and legal uncertainties, affecting their ability to strategize and operate efficiently in the global market. Moreover, the ambiguity in regulations can deter potential investors, hampering India's attractiveness as an investment destination.

B. Compliance Burden and Regulatory Ambiguities

The compliance burden imposed by FEMA is substantial. Businesses are required to navigate through a labyrinth of regulations, filings and approvals, leading to significant administrative overheads. The regulatory language, at times, can be ambiguous, making it challenging for businesses to ensure full compliance. This ambiguity can lead to inadvertent violations, resulting in penalties and legal repercussions.

Impact: Businesses, especially smaller enterprises, find it challenging to comply with the intricate requirements, leading to potential legal consequences. This compliance burden hampers their ability to focus on core operations, stifling growth and innovation.

C. Impact of Technological Advancements

The digital revolution has given rise to novel financial instruments and platforms, including cryptocurrencies, blockchain technology and digital wallets. These innovations have the potential to revolutionize cross-border transactions, making them faster, cheaper and more efficient. However, these advancements operate in a regulatory grey area within FEMA. The lack of specific guidelines often leaves businesses uncertain about the legality of engaging in transactions involving these technologies.

Impact: Businesses are hesitant to adopt innovative technologies due to legal uncertainties, missing out on the efficiency gains and cost reductions these technologies offer. Additionally, the absence of clear regulations can lead to misuse and fraudulent activities in the digital space.

D. Fluctuating Exchange Rates and Hedging Challenges

Exchange rate volatility is an inherent risk in international trade. Businesses engage in hedging strategies to mitigate these risks. However, FEMA's regulations concerning hedging are complex and can be difficult to navigate. The evolving nature of global markets requires businesses to adapt their hedging strategies swiftly, making real-time compliance with FEMA's provisions a challenging task.

Impact: Businesses face financial losses due to ineffective hedging strategies or delayed adaptation to market fluctuations. The lack of flexibility in FEMA's regulations hampers businesses' ability to respond promptly to changing market conditions.

E. Necessity for a Unified Approach in Cross-Border Transactions

With the rise of global supply chains and multinational corporations, cross-border transactions involve multiple jurisdictions and entities. Harmonizing regulations across these jurisdictions is crucial for ensuring seamless transactions. However, divergent regulatory frameworks in different countries complicate these transactions, requiring businesses to navigate a complex web of regulations.

Impact: Businesses face delays, increased costs, and potential legal challenges due to the lack of uniformity in regulations. Standardization is essential to simplify these transactions, fostering a conducive environment for international trade and investments.

In the subsequent sections, this article will explore the imperative need for standardization in foreign exchange regulations. By addressing these challenges through a standardized approach, India can create a regulatory environment that not only fosters business growth and innovation but also positions the country as a global leader in international trade and finance.

THE NEED FOR STANDARDIZATION

In the complex tapestry of international finance, the need for standardized foreign exchange laws becomes increasingly apparent. The current regulatory framework, while designed to facilitate global transactions, often presents challenges that hinder the seamless flow of cross-border activities. Standardization emerges as a viable solution, promising simplicity, transparency and alignment with global best practices.

The Theoretical Significance of Standardization

At its core, standardization implies the formulation and application of consistent rules and regulations across diverse financial activities. This harmonization simplifies the regulatory landscape, making it easier for businesses to understand and adhere to the rules. Moreover, standardized regulations create a level playing field, ensuring fair competition among market participants. This theoretical foundation highlights standardization's role as a linchpin for fostering a conducive environment for international trade.

Global Alignment and Simplification

Standardization is not merely a local endeavor; it aligns nations with international norms, fostering a sense of security and predictability for global investors. When regulations are consistent with global standards, it instills confidence in foreign businesses, encouraging them to invest and engage in cross-border activities. Moreover, standardized laws simplify compliance procedures. A clear and consistent set of regulations reduces administrative overhead, enabling businesses to focus on their core operations and strategic initiatives.

> In response to global concerns about money laundering and terrorist financing, FEMA underwent amendments to strengthen its Anti-Money Laundering (AML) and Know Your Customer (KYC) provisions. These changes aimed at aligning India's regulatory framework with international standards set by organizations like the Financial Action Task Force (FATF).

Real-Life Examples: Learning from Success Stories

Several countries have successfully navigated the challenges posed by diverse international transactions by standardizing their foreign exchange laws. Notable examples include Canada, which streamlined its regulations through collaborative efforts with industry experts. By engaging stakeholders in the regulatory process, Canada created regulations that are both comprehensive and flexible, ensuring practicality in implementation.

Similarly, Malaysia's experience serves as a testament to the transformative power of standardization. By simplifying compliance procedures and removing bureaucratic hurdles, Malaysia attracted substantial foreign investments. This influx of capital stimulated domestic industries, leading to robust economic growth and job creation.

Estonia's digital governance revolution showcases the impact of technological innovation in simplifying regulatory processes. Through user-friendly online platforms, Estonia streamlined bureaucratic procedures, making compliance quick and accessible. This digital transformation not only reduced administrative burdens but also ensured transparency and accuracy in transactions.

Singapore's strategic approach involving international partnerships illustrates the importance of global alignment. By collaborating with global regulatory bodies and neighboring countries, Singapore harmonized its foreign exchange laws with international standards. These mutual recognition agreements and collaborative initiatives facilitated seamless cross-border transactions, promoting trade and investments.

Conclusion: The Imperative for Standardization

In conclusion, the theoretical significance of standardization, coupled with real-life success stories, underscores the imperative for India to standardize its foreign exchange laws. Standardization is not a mere regulatory adjustment; it is a strategic move that simplifies regulations, fosters global alignment and ensures a level playing field for businesses. By embracing standardized

foreign exchange laws, India can create an environment that attracts investments, stimulates economic growth, and enhances its global competitiveness. It is not just a regulatory reform; it is a transformative step toward India's ascent as a global economic leader.

PROPOSED MEASURES FOR STANDARDIZATION

India's foreign exchange regulations must evolve to meet the challenges posed by the modern global economy. Standardization is not only about simplifying regulations but also about fostering an environment that promotes innovation, transparency and international collaboration. This section presents a detailed roadmap for standardizing India's foreign exchange laws, offering specific measures supported by case studies, expert opinions and potential implementation strategies.

A. Digitalization and Simplification of Compliance Procedures

Embracing digital technologies can streamline compliance procedures significantly. Establishing a unified online portal where businesses can submit necessary documents, track applications, and receive real-time updates would reduce administrative burdens. Digitalization ensures transparency, enhances efficiency, and simplifies the entire compliance process.

Renowned economists and financial analysts emphasize the importance of digitalization in modernizing regulatory frameworks, citing increased efficiency and reduced operational costs as key advantages.

Case Study: The success story of Estonia's digital governance demonstrates how a streamlined online platform can revolutionize bureaucratic processes, making compliance quick, easy, and accessible for businesses of all sizes.

B. Clarifying Definitions and Providing Detailed Guidelines

Ambiguities in the definitions of financial instruments often lead to confusion among businesses. Providing clear, precise definitions and detailed guidelines for various transactions, including derivatives, cryptocurrencies, and digital assets, is crucial. A comprehensive glossary and an official repository of guidelines would serve as a reference for businesses, ensuring accurate interpretation and adherence to regulations.

Legal experts and regulatory analysts emphasize the importance of precise definitions, citing instances where regulatory clarity has facilitated international trade and investments.

Case Study: The European Union's Markets in Financial Instruments Directive (MiFID) serves as an example of a well-defined regulatory framework. Its clear definitions and detailed guidelines have contributed to the stability and transparency of financial markets within the EU.

C. Collaboration with Industry Experts and Knowledge Exchange

Industry leaders and experts emphasize the need for ongoing dialogue between regulators and businesses, underscoring the importance of real-world insights in shaping effective regulations.

Engaging industry experts and stakeholders in the regulatory decision-making process is paramount. Collaborative forums, workshops, and seminars involving financial analysts, legal experts and business leaders can bridge knowledge gaps. Regular consultations with industry professionals ensure that regulations remain practical, adaptable and conducive to business growth.

Case Study: Singapore's Monetary Authority collaborates with industry experts through the Financial Centre Advisory Panels, ensuring that regulatory decisions are well-informed and aligned with market dynamics.

D. International Partnerships for Regulatory Harmonization

Establishing partnerships with international regulatory bodies facilitates the harmonization of regulations across borders. Collaborative efforts with organizations such as the International Monetary Fund (IMF), the World Trade Organization (WTO), and the Financial Stability Board (FSB) enable India to align its foreign exchange laws with global standards. Mutual recognition agreements and information-sharing mechanisms enhance regulatory consistency and promote cross-border investments.

Regulatory experts and policymakers advocate for international collaborations, citing the benefits of shared best practices, enhanced market access and increased investor confidence.

Case Study: The ASEAN Banking Integration Framework exemplifies successful regional cooperation, where member countries harmonize their banking regulations, fostering financial stability and cross-border investments.

IMPACT ANALYSIS

The proposed measures for standardization are not mere theoretical concepts; they represent tangible pathways toward transformative change. By implementing these measures, India's foreign exchange regulations can catalyze a series of positive impacts on businesses, the economy and India's global standing.

A. Boosting Foreign Investments

The simplification of compliance procedures through digitalization significantly reduces the barriers for foreign investors. A user-friendly online platform not only attracts more foreign direct investments but also ensures a higher retention rate. Clarity in definitions and guidelines further enhances investor confidence, making India an attractive destination for global capital.

Impact: Streamlined processes attract a surge in foreign investments, leading to increased economic activities, infrastructure development and job creation.

B. Stimulating the Export Sector

A simplified regulatory framework empowers exporters, enabling them to focus on product innovation and market expansion rather than bureaucratic hurdles. With clear guidelines and reduced compliance complexities, Indian businesses can explore new international markets with confidence. This streamlined approach promotes exports, contributing significantly to the country's trade surplus.

Impact: A thriving export sector bolsters economic growth, enhances foreign exchange reserves and strengthens India's trade relationships with other nations.

C. Enhancing India's Competitiveness

Standardization not only simplifies regulations but also fosters innovation and entrepreneurial spirit. By collaborating with industry experts, India can ensure that its regulatory framework remains agile and responsive to market needs. This adaptability enhances India's competitiveness, making it a preferred choice for multinational corporations looking to establish a presence in the region.

Impact: Enhanced competitiveness drives economic diversification, innovation and the influx of skilled professionals, positioning India as a global hub for business and technology.

D. Strengthening India's Global Standing

International partnerships and regulatory harmonization elevate India's global standing. By aligning its regulations with international best practices, India becomes a reliable partner for global trade and investments. The mutual recognition agreements established through these collaborations enhance India's credibility, fostering diplomatic relationships and encouraging strategic alliances.

Impact: A strengthened global standing amplifies India's influence in international forums, promotes diplomatic ties and facilitates mutually beneficial trade agreements, contributing to the nation's soft power on the global stage.

E. Long-Term Economic Stability

The implementation of standardized foreign exchange laws creates a stable economic environment. Predictable regulations attract long-term investments, both domestic and foreign, fostering sustained economic growth. A stable economy insulates India from market uncertainties, ensuring a positive economic outlook for the future.

Impact: Long-term economic stability forms the foundation for a prosperous nation, fostering citizen well-being, social development and a positive outlook for future generations.

In conclusion, the proposed measures for standardization, when realized, have the potential to reshape India's economic trajectory. By fostering an environment of stability, transparency, and innovation, India can attract investments, stimulate economic growth, enhance its global competitiveness, and fortify its position as a key player in the international arena. The implementation of standardized foreign exchange laws is not merely a regulatory change; it is a catalyst for India's ascent in the global economic landscape.

CASE STUDIES

Case Study 1: Malaysia's Foreign Exchange Regulation Transformation

In the late 1990s, Malaysia faced economic challenges that necessitated a radical transformation of its foreign exchange regulations. Facing similar complexities as India, Malaysia embraced standardized foreign exchange laws, streamlining procedures and removing bureaucratic hurdles. The impact was remarkable. With simplified compliance processes, Malaysia became an attractive investment destination. Foreign investors found it easier to navigate the regulatory landscape, leading to a significant increase in foreign direct investments (FDI). This surge in investments stimulated domestic industries, creating jobs and fostering economic growth.

Lessons for India: Malaysia's experience highlights the power of regulatory simplification. By standardizing foreign exchange laws, India can attract foreign investments, leading to economic diversification, enhanced industrial growth, and job creation.

Case Study 2: Estonia's Digital Governance Revolution

Estonia's journey into the digital age exemplifies the transformative potential of technology in regulatory frameworks. By embracing digitalization, Estonia revolutionized its governance, including foreign exchange transactions. A user-friendly online platform simplified compliance procedures, making it easy for businesses to engage in international trade. The digital revolution not only reduced administrative burdens but also ensured transparency and accuracy in transactions. Estonia's experience showcases the importance of technological innovation in modernizing regulatory processes, making them efficient and accessible.

Lessons for India: India can learn from Estonia's digital governance model. Investing in technology, such as blockchain for secure transactions and AI for regulatory analytics, can streamline compliance, reduce fraud, and enhance the overall efficiency of foreign exchange operations.

Case Study 3: Canada's Collaborative Approach with Industry Experts

Canada's success in standardizing foreign exchange laws lies in its collaborative approach. Regular consultations with industry experts, including economists, legal professionals, and business leaders, have been integral in shaping effective regulations. By understanding the practical implications of regulations from those directly involved in international trade, Canada managed to create a regulatory framework that is both robust and flexible. This approach ensures that regulations remain adaptive to market needs while fostering a transparent and compliant business environment.

Lessons for India: Collaborative dialogue with industry experts can provide invaluable insights into the real-world challenges faced by businesses. Regular consultations can lead to regulations that strike the right balance between compliance and business facilitation.

Case Study 4: Singapore's International Partnerships for Regulatory Harmonization

Singapore's strategic approach involves active engagement in international partnerships. By collaborating with global regulatory bodies and neighboring countries, Singapore has harmonized its foreign exchange laws with international standards. This alignment not only attracts foreign investments but also enhances Singapore's reputation as a global financial hub. Mutual recognition agreements and collaborative initiatives have facilitated seamless cross-border transactions, promoting trade and investments.

Lessons for India: Building strategic alliances and participating in international forums can help India align its foreign exchange regulations with global best practices. Such partnerships foster investor confidence, promote international trade, and enhance India's credibility in the global market.

In analyzing these case studies, India can draw essential lessons about the significance of standardization, digitalization, collaboration and international partnerships. Implementing these strategies can pave the way for a standardized and globally competitive foreign exchange regulatory framework, positioning India as a prominent player in the international economic landscape.

CONCLUSION

India stands at a pivotal juncture, poised to shape its economic future through the standardization of foreign exchange laws. The journey explored in this article vividly illustrates the critical importance of this standardization in the context of the ever-evolving global economy. As businesses transcend borders and financial technologies reshape transactions, the need for clarity, simplicity and adaptability in regulatory frameworks has never been more pronounced.

Reiteration of Key Findings

This exploration revealed several key findings. First and foremost, the complexity arising from the diverse international transactions necessitates a regulatory approach that is both comprehensive and flexible. The case studies of countries like Malaysia, Estonia, Canada,

and Singapore showcased the transformative power of standardized, digital, and collaborative approaches. These strategies not only attract foreign investments but also stimulate domestic industries, enhance competitiveness, and fortify global standing.

The Urgency for Collaborative Action

The urgency for collaborative action among regulatory authorities, businesses and stakeholders cannot be overstated. The amalgamation of expertise from policymakers, industry leaders and legal professionals is indispensable. Regular consultations, akin to Canada's approach, ensure regulations are practical and effective, fostering an environment of mutual understanding and cooperation.

Continuous Evaluation and Adaptation

Crucially, the rapidly changing global landscape demands continuous evaluation and adaptation. The world of finance and international trade is dynamic, with new technologies and geopolitical shifts shaping the way business is conducted. Therefore, India's regulatory framework must remain agile, responsive to market needs and anticipatory of future challenges.

The Imperative for Standardization

In the broader context, standardizing foreign exchange laws is not merely a regulatory adjustment—it is a strategic imperative. A standardized framework simplifies compliance, fosters innovation and enhances transparency. It attracts foreign investments, stimulates economic growth and positions India as a global economic leader. Furthermore, it ensures the long-term stability of the nation's economy, offering a foundation upon which future generations can build.

A Call for Action

As this analysis concludes, it echoes a resounding call for action. India must embrace the proposed measures, leveraging technology, collaboration and international partnerships to standardize its foreign exchange laws effectively. Policymakers, regulatory authorities and businesses must work hand in hand, recognizing the transformative potential of this standardization. Through decisive and cooperative efforts, India can carve a path toward economic prosperity, sustainable growth, and a prominent role on the global stage.

In the face of challenges and opportunities, the standardization of foreign exchange laws emerges not only as a legal necessity but as a beacon guiding India's economic destiny. The time for action is now, and with collaborative determination, India can navigate the complexities of the global economy and emerge as a leader in international trade and finance.

RECOMMENDATIONS AND FUTURE OUTLOOK

The standardization of foreign exchange laws is not just a theoretical concept; it's a practical necessity for India's economic progress. Building on the insights gathered from the analysis and case studies, the following concrete recommendations are proposed for policymakers, regulatory authorities, and businesses. These recommendations are designed to guide India toward a standardized and globally competitive foreign exchange regulatory framework.

A. Policymakers and Regulatory Authorities

Regular Industry Consultations: Establish a structured dialogue with industry experts, economists, and legal professionals. Regular consultations can provide real-time insights into market dynamics and challenges, ensuring regulations remain practical and effective.

Investment in Technological Infrastructure: Invest in robust technological infrastructure, including blockchain for secure transactions, artificial intelligence for regulatory analytics, and user-friendly online portals. These technologies will streamline compliance procedures and enhance the efficiency of foreign exchange transactions.

Clarity in Definitions and Guidelines: Provide clear, precise definitions and detailed guidelines for various financial instruments, including derivatives, cryptocurrencies, and digital assets. A comprehensive glossary and an official repository of guidelines will serve as a reference, ensuring accurate interpretation and adherence to regulations.

Collaborative Research Initiatives: Encourage collaborative research initiatives between regulatory bodies, academic institutions, and industry stakeholders. Research can provide valuable insights into emerging financial technologies, enabling proactive regulation that anticipates future challenges.

International Partnerships: Actively engage with international regulatory bodies, such as the International Monetary Fund (IMF) and the Financial Stability Board (FSB). Collaborate on mutual recognition agreements and information-sharing mechanisms to align India's standards with global best practices.

B. Businesses and Stakeholders

Digital Literacy and Compliance Training: Invest in digital literacy and compliance training for businesses, ensuring they understand the nuances of standardized regulations. Workshops and seminars can help businesses adapt to digital platforms and navigate compliance procedures effectively.

Partnership with Regulatory Authorities: Foster a collaborative partnership with regulatory authorities.

Regular communication and feedback mechanisms can facilitate a better understanding of businesses' challenges, leading to more adaptive regulations.

Adaptability to Technological Innovations: Embrace emerging financial technologies, such as blockchain, artificial intelligence, and digital wallets. Businesses that adapt early can gain a competitive advantage, streamline transactions, and enhance operational efficiency.

Global Market Research: Invest in global market research to identify emerging trends and consumer preferences in international markets. Businesses can tailor their strategies to cater to specific market demands, fostering successful international trade relationships.

Future Outlook

Looking ahead, the future of India's foreign exchange regulations is intertwined with technological innovations and global collaborations. The rise of decentralized finance (DeFi) platforms, central bank digital currencies (CBDCs), and cross-border payment systems necessitates a regulatory framework that can adapt to these innovations swiftly.

Moreover, geopolitical shifts and international trade agreements will shape India's economic interactions with other nations. Therefore, a proactive approach to aligning regulations with changing geopolitical dynamics is essential.

By embracing these recommendations and anticipating future challenges, India can ensure the long-term effectiveness of its standardized foreign exchange laws. Proactive regulation, collaborative efforts, and adaptability to technological advancements will position India as a leader in international trade and finance, fostering sustained economic growth and prosperity for its citizens.

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The Digital Governance Blueprint for Unified Compliance Standards

The genesis of e-Governance can be traced back to the 1970s, when the Government of India took a significant step forward by establishing the Department of Electronics, which laid the foundation for what would later become the National Informatics Centre (NIC) in 1977. In those initial years, computers were already present within government offices, albeit primarily for word processing tasks. However, it wasn't until the 1980s that the computerization process evolved, shifting its focus towards the development of in-house government applications. This evolution aimed at enhancing the efficiency of various government functions, spanning crucial domains such as defence, economic monitoring, planning, and the utilization of Information Technology to manage data-intensive operations related to elections, census and tax administration, among others.

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INTRODUCTION

In the past two decades, the world has witnessed an unprecedented knowledge revolution, where the rapid expansion of technology has connected stakeholders on a global scale. This technological transformation, driven by an estimated 45 billion cellular/mobile phones, fibre optic cables, sensors, social media networks and satellites, has forever changed the way we communicate, conduct business and interact with the world around us. Internet servers and networks now link a staggering 5.19 billion online users worldwide, showcasing the remarkable extent of this connectivity. Notably, social media giant Facebook alone boasts a user base of 2.9 billion individuals, representing nearly one-third of the global population. This level of interconnectivity was beyond imagination when e-Governance and internet browsers first became widely available.

ORIGIN OF INDIAN E-GOVERNANCE

The genesis of e-Governance can be traced back to the 1970s, when the Government of India took a significant step forward by establishing the Department of Electronics, which laid the foundation for what would later become the National Informatics Centre (NIC) in 1977. In those initial years, computers were already present within government offices, albeit primarily for word processing tasks. However, it wasn't until the 1980s that the computerization process evolved, shifting its focus towards the development of in-house government applications.

This evolution aimed at enhancing the efficiency of various government functions, spanning crucial domains such as defence, economic monitoring, planning and the utilization of Information Technology to manage data-intensive operations related to elections, census, and tax administration, among others. The true milestone in the e-Governance journey emerged when the tax department, both at the state and union levels, embraced this transformative approach to streamline their internal operations, thereby setting the stage for the wider adoption of e-Governance. This transition marked a pivotal moment in the annals of governance, as it ushered in an era of greater efficiency, transparency, and effectiveness in the delivery of government services.

RECENT LESSONS IN NEED FOR E-GOVERNANCE

The world's recent encounter with the global coronavirus pandemic, which emerged in early 2020, presented an extraordinary challenge to governments worldwide. It also provided a fresh impetus for the application of technology to public services. As social distancing became a critical component of containing the spread of the virus, the utilization of electronic and digital government services witnessed a significant surge. These platforms became indispensable in facilitating online interactions, serving as lifelines for both individuals and organizations during a time of crisis.

Furthermore, electronic and digital platforms have played a pivotal role in developing innovative solutions to promote remote work, social distancing and effective healthcare crisis management. While the pandemic brought many "normal" economic and social activities to a standstill, e-government applications underwent a

massive stress test, demonstrating their resilience and adaptability in the face of unforeseen challenges.

Digital governance not only addresses the challenges brought about by global crises but also paves the way for a more efficient, transparent and interconnected future.

UNDERSTANDING DIGITAL GOVERNANCE

Digital governance (also called 'e-Governance') is characterised as the use of information technology in a government operation to increase the delivery of public services to people and other government services user, individuals and organisations.

This modernization aims to benefit not only individuals but also organizations that interact with the government. In essence, it's about using technology to make government services more efficient, accessible and user-friendly, ultimately improving the way citizens and entities engage with their government. This shift towards digital governance represents a forward-looking commitment to using technology for the greater good, simplifying and enhancing interactions between the government and its constituents.

Think of it as the high-tech wizardry that transforms traditional government services into sleek, efficient, and user-friendly digital experiences. Whether you're renewing your driver's license, filing your taxes, or simply looking for information on government websites, digital governance is the force behind it all. In this digital realm, government services become more accessible, responsive, and tailored to your needs. It's like having a personal assistant that's available 24/7, guiding you through the maze of bureaucracy with just a few clicks.

So, digital governance isn't just a fancy term; it's the magic wand that makes your interactions with the government as smooth as using your favourite app, all thanks to the power of technology and innovative thinking.

INTERSECTION OF DIGITAL GOVERNANCE & COMPLIANCE

The Need for Standardization

In a dynamic and evolving regulatory landscape, compliance with laws and regulations is a critical aspect of running any business or organization. However, it is often the case that various laws in India have different provisions for different entities, leading to a lack of standardization. This lack of standardization leaves a significant gap when the law is silent on a particular issue, creating a need for a common standard to be followed. This is where the concept of compliance standards comes into play, and digital governance plays a crucial role in making this a reality.

In a diverse and complex legal framework, businesses and individuals often find themselves grappling with multiple, intricate regulations that may not provide explicit guidance on every aspect of compliance. This lack of clarity can make it challenging for entities to ensure they are adhering to the law correctly. To bridge this gap, compliance standards serve as a set of guidelines that individuals and organizations can voluntarily follow when the law is silent on a particular issue.

Voluntary Compliance

Compliance standards essentially hinge on voluntary actions. Since there may not be specific legal provisions mandating compliance with these standards, individuals and organizations have the discretion to adhere to them voluntarily. This could include self-attestation, declarations, letters in good faith, or full disclosure of their compliance efforts. These voluntary actions can be both one-time efforts and recurring disclosures, as the situation demands.

The Digital Governance Advantage

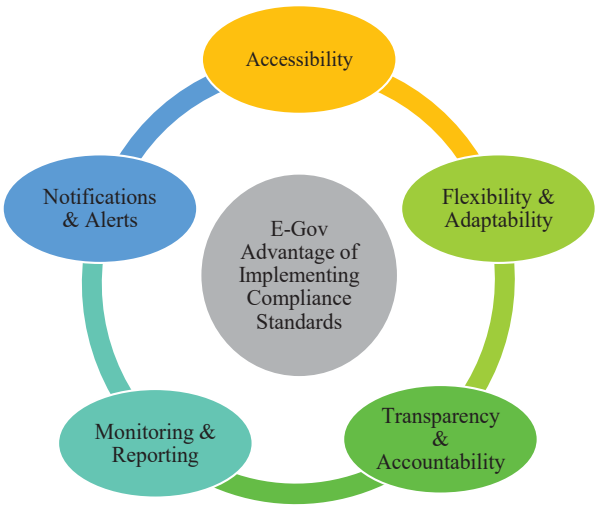

Figure 1E-Gov Advantage of Implementing Compliance Standards; Source: Author's Presentation

One of the key advantages of implementing compliance standards through digital governance is that it can absolve individuals and organizations from shouldering the burden of liability for compliance requirements, they weren't aware of in the first place. By providing a clear and standardized framework, digital governance ensures that entities can confidently follow compliance standards, thereby reducing the risk of non-compliance due to ignorance or misunderstanding.

Digital governance, a comprehensive framework for managing and enforcing digital policies, procedures and standards, plays a pivotal role in the implementation of compliance standards. Here's how:

- **Standardization and Accessibility:** Digital governance enables the creation and dissemination of compliance standards in a standardized and accessible manner. With a clear and centralized digital platform, these standards can be readily available to all concerned parties.
- **Flexibility and Adaptability:** Digital governance platforms offer the flexibility to adapt compliance standards to specific contexts and industries. This

adaptability is crucial in addressing the diverse needs of different entities and situations.

- **Transparency and Accountability:** Digital governance promotes transparency by ensuring that compliance standards are clear, easily accessible, and consistently updated. This transparency, in turn, fosters accountability among stakeholders, as they can readily access and understand their compliance obligations.
- **Monitoring and Reporting:** Digital governance systems can provide tools for monitoring compliance efforts and generating reports. This helps entities track their adherence to compliance standards and identify areas that may need improvement.
- **Notifications and Alerts:** These systems can also send notifications and alerts to entities when compliance standards change or new standards are introduced. This proactive approach ensures that individuals and organizations stay up-to-date with evolving requirements.

Models of Digital Governance

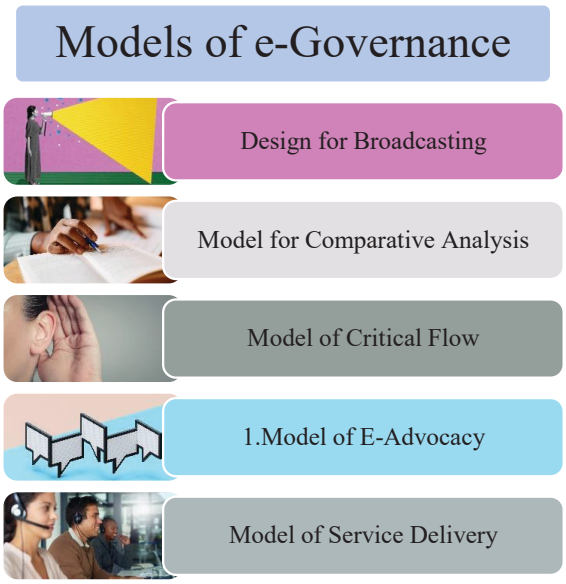

Figure 2: Models of e-Governance; Author's Presentation

Several models of e-Governance can be used for standardizing compliance. Let's break down these different models of digital governance and how they can help :

1. **Design for Broadcasting:**
   - In this model, information that the government wants to share is made easily accessible to the public using modern technology.
   - This helps people understand what the government is doing and what services are available to them.
   - For compliance, this means the government can make its regulations and rules available online for everyone to see and follow. It standardizes how people access and understand the rules.

> Compliance standards essentially hinge on voluntary actions. Since there may not be specific legal provisions mandating compliance with these standards, individuals and organizations have the discretion to adhere to them voluntarily. This could include self-attestation, declarations, letters in good faith, or full disclosure of their compliance efforts. These voluntary actions can be both one-time efforts and recurring disclosures, as the situation demands.

2. **Model for Comparative Analysis:**
   - This model involves comparing good and bad governance practices to learn from them.
   - It uses a lot of data and social media to see what works and what doesn't.
   - When it comes to compliance, this model helps identify best practices and use them as standards. It shows what's effective and what's not, so people can follow the right way to comply with rules.
3. **Model of Critical Flow:**
   - This model focuses on sharing important information that is not meant for everyone.
   - It could be shared with the media, researchers, or the public.
   - In terms of compliance, this model ensures that the right people get the right information at the right time, helping in enforcing compliance effectively.
4. **Model of E-Advocacy:**
   - This model builds online communities with similar interests and values.
   - These communities work together for common goals in the real world.
   - For compliance, it means that groups with shared compliance goals can come together online, making it easier for them to follow and advocate for specific compliance standards.
5. **Model of Service Delivery:**
   - This model lets people interact directly with government services online.
   - It covers various aspects, including elections, decision-making, and personalized services.
   - When it comes to compliance, this model streamlines how individuals access and use government services. It ensures that compliance processes are standardized and easily accessible to all.

These models of digital governance are like different tools in a toolbox. They help make government services and

rules more accessible and understandable for everyone. For compliance, they provide a framework for setting standards, sharing information, and ensuring that people can follow the rules effectively. In a world where rules and regulations can be complex and diverse, these models play a crucial role in standardizing how we interact with the government and follow the law.

PREVENTING CORRUPTION WITH THE SYNERGY OF E-GOVERNANCE AND STANDARDIZATION

The fight against corruption and bribery is an ongoing challenge for governments worldwide. One significant avenue through which corruption can flourish is when the law remains silent on a particular issue, thereby leaving room for interpretation. This ambiguity can lead to officers exploiting these gaps for personal gain, often by imposing unreasonable fees or levying penalties in the guise of unclear mandates. It is within this context that standardization of compliance plays a pivotal role in curbing corruption. Nevertheless, the true game-changer in this battle is the integration of digital governance, which not only streamlines processes but also introduces an additional layer of transparency in all interactions between government representatives and the governed.

- **Clarity and Prevention of Corruption**

  The absence of clear legal directives can open doors to corruption. Officers, in the absence of specific guidelines, might manipulate or misinterpret the law to their advantage, causing undue hardship to the public. However, when compliance standards are standardized and made explicit, it leaves little room for misinterpretation. A well-defined framework ensures that all stakeholders understand their roles, responsibilities, and limitations. This clarity acts as a significant deterrent against corruption, as it leaves little room for exploiting ambiguities in the law.

- **A Transparency Catalyst**

  The digitization of government processes and communication not only makes them more efficient but also inherently transparent. The benefits of this transparency cannot be overstated.

  Here's how digital governance augments the prevention of corruption:

  - **Accessibility:** Digital platforms make government services and information readily accessible to the public. Citizens can access relevant information, rules, and regulations with ease, reducing the scope for misinformation and corrupt practices.
  - **Accountability:** Digital records and transactions leave a digital trail that is difficult to tamper with. This accountability ensures that officials are held responsible for their actions, reducing the likelihood of corrupt behaviour.
  - **Reduced Discretion:** Digital systems can be designed to minimize discretionary powers. This reduces opportunities for corruption as officials have less latitude to manipulate outcomes for personal gain.

  - **Real-time Monitoring:** With digital governance, it becomes possible to monitor government activities in real-time. This prevents corrupt practices from going unnoticed and unaddressed.

CONCLUSION

The battle against corruption is a shared responsibility for governments across the globe. Standardizing compliance and embracing digital governance stand out as indispensable strategies in this noble endeavour. Together, they form a formidable partnership that not only acts as a barrier against corruption but also nurtures the vital trust between those who govern and the governed. By establishing a transparent, standardized, and technology-driven system, we are collectively forging a path towards a governance landscape that is both more accountable and less susceptible to corruption, thereby benefiting society as a whole.

In the dynamic and often complex realm of regulations, where legal standards can vary significantly, digital governance shines as a potent instrument for implementing compliance standards. This approach not only addresses the imperative of standardization but also ensures that compliance is pursued willingly, openly, and with the agility to adapt to evolving circumstances. Digital governance provides individuals and organizations with the tools and confidence they need to navigate the intricacies of compliance, ultimately reducing the risk of inadvertent non-compliance and the associated liabilities. It's a testament to our commitment to a fair and ethical governance, one that paves the way to a more just and accountable society for all.

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ARTICLE

Decoding The SBO Chain: An Insightful Analysis

In the Companies Act, 1956 there were no provisions in respect of the significant beneficial owner. Section 90 of the Companies Act, 2013 has been enforced to identify such individuals, who directly or indirectly along with or without direct interest, substantially holds beneficial interest over the Company and whose name is not entered in the register of members as the holder of such shares.

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INTRODUCTION

The basic nature of 'Company' as per the Companies Act, 2013 is that of a separate legal entity apart from its members, and the management of the Company is administered by the Board of Directors of the Company. Historically, the Board of Directors and the Company were more concerned about their own shareholders and at the most the immediate holding Company or ultimate holding Company. Companies in India since the inception of Companies Act have been run by Board of Directors with certain powers, functions and rights assigned to shareholders.

In the Companies Act, 1956, there were no provisions with respect to significant beneficial owners. Section 90 of the Companies Act, 2013 has been enforced to identify such individuals, who indirectly along with or without direct interest, substantially holds beneficial interest over the Company and whose name is not entered in the register of members as the holder of such shares.

The provisions of Section 89 of Companies Act, 2013 are equivalent to Section 187C of the Companies Act, 1956 which contemplate the disclosure regarding holding of the beneficial interest in the shares by a person whose name is not entered in the Register of Members.

OBJECTIVE OF SECTION 90 AND IDENTIFYING SBO

Various changes have been brought about in laws of foreign countries as well as on global platforms to identify natural persons who substantially or ultimately own interest in the artificial legal entities holding the shares in a Company. Some of the key reasons of bringing about these changes both globally as well as in the Indian laws include:

- **Ensuring Transparency and good governance:**

  Companies themselves being artificial legal entity and further being held by artificial legal entities continue to proliferate at an unprecedented pace. Owned through a complex web of holdings and cross-holdings, these entities are owned by natural persons at end of the spectrum; rendering the entire ownership structure opaque. Thus, it becomes imperative to identify the individuals behind such companies so as to hold them accountable for the various aspects of corporate functioning. The entire concept of identifying the significant beneficial owner stems from the need to strengthen governance frameworks.

- **Prevention of misuse of Corporate Vehicle:**

  Corporate vehicles can be used as a garb to pursue activities like money laundering, Benami Transactions, corruption or Tax Evasion by mere entry on books without declaring ownership. However, complex structure of holding and subsidiary companies, associate companies and fellow subsidiaries, joint ventures & LLPs and other form of organizations is the need of the business.

  The structure of "group of companies" has evolved over the years and has its own requirements and necessities to serve. The purpose is not always to camouflage or prevent disclosure of the ultimate

natural person but to serve larger business interests. In case of joint ventures, where only one of the businesses from the entire company is involved – the same may requisite the need for demerger – and hence creating a layer of subsidiaries. The complex structure of group of companies is also used for separating different businesses or different locations of business or even different partners in the business.

But the key to good governance is disclosure and companies have been known to disclose their groups on their letterheads or websites. Recently, Securities Exchange Board of India (SEBI) also has requested Exchanges to solicit information about Grouping of listed companies.

- **Soliciting detailed information of significant owners and ownership**

  The intention of the introduction of Section 90 is to collect the information about such structures and to know the Individual behind the entire corporate structure.

  The provisions in respect of disclosures of Related Parties and transactions with related parties in financial statements require that on an annual basis the ultimate holding, fellow subsidiaries, subsidiaries and associate entities are disclosed but that does not lead to the information about the end natural person behind the structure requisitioning a new mechanism of disclosures of the Significant Beneficial ownership which has been put in place in Companies Act, 2013 in the shape and form of section 89 and 90.

- **Compliance with FATF**

  These provisions are a part of India's commitment to the Financial Action Task Force (FATF) wherein India has been a member since 2010. The requirements of FATF in India are taken care of by Ministry of Finance, Department of Economic Affairs. The FATF takes global actions to handle money laundering, terrorist and proliferation financing. FATF also researches and finds out different ways in which money is laundered and terrorism is funded, promotes global standards to mitigate risks, and assesses whether countries are taking effective action. As a part of recommendations given by them in 2012, the countries were required to have in place systems to enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and facilitate international cooperation.

  This has led to the amendment in the Companies Act, 2013 to start with and in the LLP Act recently. These changes in law have created a system of tracking down and having transparency about the Beneficial Owner of a legal entity.

COMPANIES ACT LEGISLATION: SECTION 90

Section 90 of the Companies Act read with the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules) prescribe twin tests to find an individual who would qualify as Significant Beneficial Owner (SBO) of the reporting company:

- Objective test: 10% shareholding at the reporting company level with a mandatory indirect shareholding alongwith possible direct shareholding of the said SBO and majority holding through the ownership chain.
- Subjective test: SBO having the right to exercise or actually exercising "significant influence" or "control" in any manner other than through direct holding alone.

KEY CONCEPTS

"Control" means control as defined in clause (27) of section 2 of the Companies, Act, 2013

"Partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 or a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

"Registered Owner" means a person whose name is entered in the register of members of a Company as the holder of shares in that Company but who does not hold beneficial interest in such shares.

"Reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of Section 90 of the Act.

"significant beneficial owner" in relation to a reporting company means an individual referred in Section 90(1) who acting alone or together, or through one or more persons or trust possesses one or more of the following rights or entitlements in such reporting company namely:

i. Holds indirectly, or together with any direct holdings, not less than 10% of the shares;

ii. Holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;

iii. Has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a FY through indirect holdings alone, or together with any direct holdings;

iv. Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.

"Significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

"beneficial interest in a share": For the purposes of section 89 and 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to:

i. exercise or cause to be exercised any or all of the rights attached to such share; or

ii. receive or participate in any dividend or other distribution in respect of such share.

'ALONE' OR 'ACTING TOGETHER' OR 'PERSON ACTING IN CONCERT'

If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.

The onus to comply or make a declaration under section 90 (1) lies on the Individual and while discharging said responsibility, the individual needs to satisfy himself that he is acting alone or together. While giving the declaration individual needs to specify the nature of his interest and other particulars and when he specifies the nature of interest, he may examine, whether said interest is the only interest or he owns some other interest together with anyone else. In order to determine whether he is acting alone or together one must give full attention to the "common intent or purpose of exercising any rights or entitlements or exercising control or significant influence". The main test here is "Common Intent or purpose of exercising rights, etc., which may be proved by analyzing the various factors such as intent or the agreement as the case may be.

This point in respect of acting together or acting in concert has to be analyzed based on the definitions provided in the SBO Rules and not to be borrowed from other regulations like SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SEBI Takeover Code").

UBO VS. SBO

The Companies Act, 2013 specifically deals with the SBO and does not have provisions for Ultimate Beneficial Owner and this difference needs to be understood before further elaborating on the mechanism to find or determine the individual behind the curtains of the artificial legal entity holding the shares of an Indian Company.

In this context, it is important to note that a Company may have a Significant Beneficial owner or may not have as well as there can be more than 1 significant beneficial owner. In respect of Ultimate Beneficial Ownership it would be a different case, as there will be only one person who ultimately owns the interest in any corporate.

> Section 90 of the Companies Act read with the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules) prescribe twin tests to find an individual who would qualify as Significant Beneficial Owner (SBO)

SHARES FOR THE PURPOSE OF DETERMINATION OF SBO

For the purposes of determination of SBO, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as *'shares'*. The shares are to be considered only at the level one i.e., shares of the reporting Company as for understanding the majority stake going up requires a majority of equity shares. There have been debates and discussions as to how to calculate the percentages in respect of the convertible shares. There are two methods of determining and quantifying the percentage shares viz: On arithmetic basis i.e., based on the value of each of the security and then finding out the percentages or on diluted basis.

DETERMINATION OF SBO

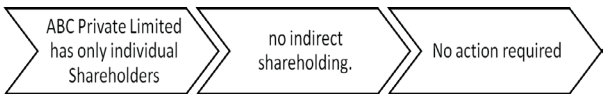
Following are the ways of determining and considering an owner as a significant beneficial owner:

A. Directly (Not to be considered as SBO)

An individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely:

i. the shares in the reporting company representing such right or entitlement are held in the name of the individual;

ii. the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company.



B. Indirectly (Twin Test)

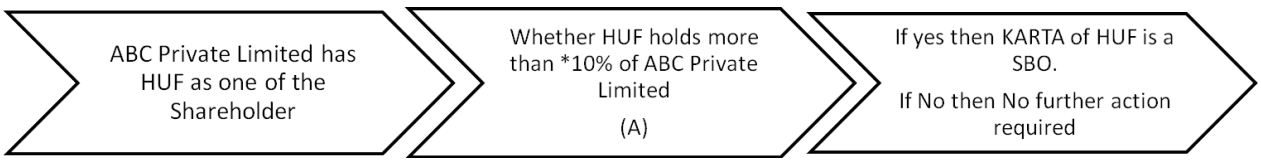
An individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -*

i. COMPANY (IES) / BODY CORPORATE(S) AS SHAREHOLDER(S): where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual,

a) holds majority stake in that member; or

b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

ii. HUF AS SHAREHOLDER(S): where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;

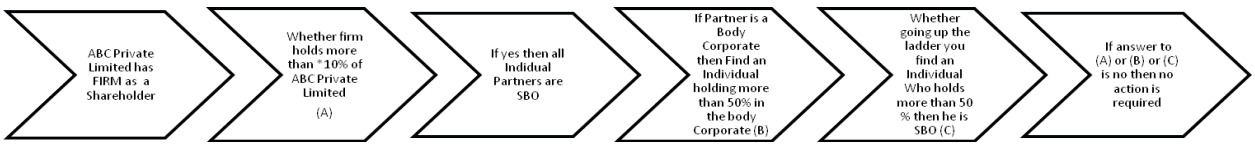


iii. FIRM AS SHAREHOLDER(S): where the member of the reporting company is a partnership entity (through itself or a partner), and the individual, -

a) is a partner; or

b) holds majority stake in the body corporate which is a partner of the partnership entity; or

c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

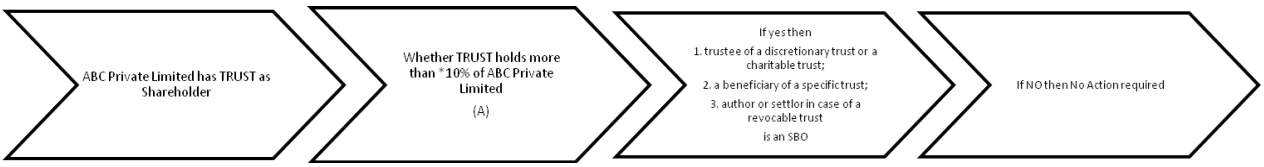


iv. TRUST AS SHAREHOLDER(S): where the member of the reporting company is a trust (through trustee), and the individual,-

a) is a trustee in case of a discretionary trust or a charitable trust;

b) is a beneficiary in case of a specific trust;

c) is the author or settlor in case of a revocable trust.



v. where the member of the reporting company is,-

a) a pooled investment vehicle; or

b) an entity controlled by the pooled investment vehicle,

based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-

(A) is a general partner; or

(B) is an investment manager; or

(C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

Where the member of a reporting company is,

(i) a pooled investment vehicle; or

(ii) an entity controlled by the pooled investment vehicle,

based in a jurisdiction which does not -fulfill the requirements referred to in clause (v) above, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv)*, as the case may be, shall apply.

COMPLIANCE REQUIREMENTS

(A) In case SBO is identified: Sub section (1) of section 90:

As per Section 90 (1) of the Companies Act 2013, read with Rule 2(h) and 3 of Companies (Significant Beneficial Owners) Rules, 2018, every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than ten percent, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company, shall make a declaration to the company in e-form BEN-1, specifying the nature of his interest and other particulars, within Thirty days

of acquiring such significant beneficial ownership or any change therein.

Every significant beneficial owner shall file a declaration in **Form No. BEN-1** to the Company in which he holds the significant beneficial ownership within thirty days in case of any change in his significant beneficial ownership.

Where any declaration is received by the Company, it shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it.

The Company shall also maintain a register of significant beneficial owners in **Form No. BEN-3.**

There has to be a mechanism in place with the Significant beneficial Owner as well as the Company for understanding the changes in the Significant Beneficial Ownership since the provisions of Section 90 specifically state that the SBO shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed. In this situation, any kind of change in the particulars which are already declared needs to be declared again which imposes a lot of responsibility over the SBO.

(B) In case SBO is not identified

As per the provisions of section 90(4A), the Company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section. This might be the first step before the Company invokes the provisions of Section 90 (5) of issues a notice. The issuance of Notice under Sub Section 5 has lot of further requirements and effect on the shares in question.

A Company shall give notice seeking information in accordance with under sub- section (5) of section 90, in **Form No. BEN-4**.

A Company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe:

a) to be a significant beneficial owner of the Company;

b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

c) to have been a significant beneficial owner of the Company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the Company as required under this section.

In the process of issuance of notice under section 90(5), there would be a requirement of authorisation and passing of resolution by the Board of Directors since the provision mentioned in the subsection require the Company to give notice.

There has been a recent amendment by way of a notification wherein Companies are required to designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.

This person has not been given a duty or right to issue notice under Sub Section 5 and therefore the designated person has a specific role of furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.

RESPONSIBILITY OF THE COMPANY

The Company has to undertake the following actions as per the provisions of the applicable sections and rules:

a) Maintenance of Register : **Form BEN-3**

b) Filing of Return within 30 days from Declaration : **Form BEN-2**

c) Taking ***necessary steps to identify*** an individual who is a SBO in relation to the company and require him to comply with the provisions of this section.

d) ***Notice to member/other person***, if reasonable cause/known to be SBO in **Form BEN – 4** – If no/ unsatisfactory reply apply to NCLT.

EXEMPTIONS

These rules shall not be made applicable to the extent the share of the reporting company is held by,

a) the authority constituted under sub-section (5) of section 125 of the Act;

b) its holding reporting company:

Provided that the details of such holding reporting company shall be reported in -Form No. BEN-2.

c) the Central Government, State Government or any local Authority;

d) (i) a reporting company, or

(ii) a body corporate, or

(iii) an entity,

controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,

f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

There can be a situation that after the analysis by SBO or by the Company there is no SBO who is traced and in such circumstances or in case the Company is exempt from complying the provisions of the Act as mentioned above, it would be prudent to have a noting of the same in the meeting of a Board of Directors of the Company. Also just like annual disclosures received from the Directors for their interest and non-disqualification, the Company may have a mechanism of noting the no change in SBO declaration even though this is not specifically mentioned in the rules or Section.

CONSEQUENCES OF NON-COMPLIANCE

If any person fails to make a declaration as required under sub-section (1) of section 90 of the Companies Act, 2013, he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

If a company, required to maintain register under sub-section (2) of section 90 of the Companies Act, 2013 and file the information under sub-section (4) of section 90 of the Companies Act, 2013 or required to take necessary steps under sub-section (4A) of section 90 of the Companies Act, 2013, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.

If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

As the penal provisions of this subsection are in terms of penalty therefore these offenses need to be adjudicated with the Registrar of Companies and the compounding of these offenses is not possible.

ROLE OF CS IN ENSURING COMPLIANCE

Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the Company.

The Company may designate Company Secretary as authorised officer as mentioned above in case there is a requirement to appoint Company Secretary.

Unless a person is designated as authorised officer as mentioned above, the Company Secretary, if appointed, shall be considered as authorised officer. This is a deeming provision and therefore there is a responsibility on the Company Secretary to be aware about the group structure as well as different beneficial interests in the shares of the Company.

CONCLUSION

Given the financial stakes involved for the SBO and the potential ramifications under other laws and rules, there is a very high-level of anxiety in the corporate world with regard to filing of an SBO declaration.

It is very important for the Government to now clarify any ambiguity in this regard or risk a negative impact on the investment climate in the country. Fear of the unknown is forcing companies to resort to legal opinions to support the positions taken by them. SBO Rules may prove to be a fertile ground for protracted civil litigation.

SBO – Navigating Through The Framework to Reveal The True Owners

Recently, it was observed by the Corporates and the professional community that MCA Central scrutiny Centre (CSC) has been sending advisory to all foreign subsidiaries to comply with the Significant Beneficial Ownership rules. Even though the rules have been effective from 2018, many Companies are still fumbling to understand and determine the applicability of the rules. Companies and their foreign holdings are often seen complaining about sharing extensive data about their shareholding patterns and ultimate beneficiary individuals citing restrictions implied on them by the virtue of confidentiality clauses in their shareholders agreements which could be breached by sharing sensitive information with external jurisdictions.

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INTRODUCTION

Recently, it was observed by the Corporates and the professional community that MCA Central scrutiny centre (CSC) has been sending advisory to all foreign subsidiaries to comply with the Significant beneficial Ownership rules. Even though the rules have been effective from 2018, many Companies are still fumbling to understand and determine the applicability of the rules. Companies and their foreign holdings are often seen complaining about sharing extensive data about their shareholding patterns and ultimate beneficiary individuals citing restrictions implied on them by the virtue of confidentiality clauses in their shareholders agreements which could be breached by sharing sensitive information with external jurisdictions. In order to counter such arguments, it is very important to understand the genesis of these requirements and also that it is not only Indian government which is asking for such data but all jurisdictions who are member states of the Financial Action Task Force (FATF) are required to collect and scrutinize such data from companies where ownership is not clearly visible through documentation available with the regulators. Member Countries are required to abide by the FATF recommendations in this respect and are peer reviewed for the processes followed by each country so that they are not tagged as a jurisdiction requiring monitoring or high-risk jurisdictions by the FATF which will affect the reputation of the country and in turn the financial inflow in the country.

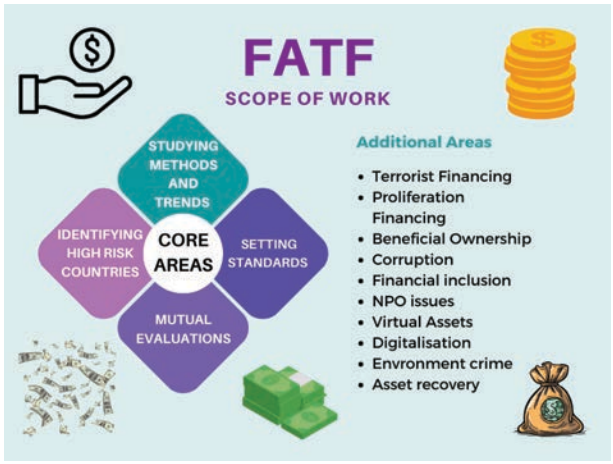
FIRST LET'S UNDERSTAND WHAT FINANCIAL ACTION TASK FORCE - FATF IS?

i) FATF and its Role

The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog.

FATF is an inter-governmental body whose main focus is to sets international standards to prevent illegal activities that can cause harm to the society at large. It brings together almost 200 major countries who have committed to abide by the recommendations made by FATF and cause a crackdown on the organised crime network including terrorism, corruption, drug trafficking, money laundering, arms trade, cybercrime etc. in their jurisdiction.

The FATF was established in 1989 and is based in Paris. Mr. T. Raja Kumar of Singapore is the President of the FATF from 1 July 2022 to 30 June



2024. Mr. Kumar succeeded Dr. Marcus Pleyer of Germany.

FATF conducts various researches to identify the mechanism used by crime syndicates and terrorists to launder money and raise , use and move funds for criminal activities. It develops standards to mitigate risk and also comments on the practices followed by member countries and assesses whether it is sufficient.[1]

ii) FATF Recommendations

After undertaking various researches and seeking public consultation on best practices to combat the abuse of the existing financial systems by criminals and terrorists, FATF released its recommendations to tackle the menace of financial crimes and money laundering and updates it from time to time.

FATF has released its recommendations 'International standards on combating Money Laundering and the financing of Terrorism and Proliferation' which was adopted by the FATF plenary in February 2012. The most recent update in it was made in Feb 2023. The FATF Recommendations are recognized as the global Anti-Money Laundering (AML) and Counter-Terrorist Financing (CFT) standard.

Part E – para 24 and 25 of the Standards which are reproduced below deal with the requirement of transparency and beneficial ownership of legal persons and arrangements.

*24. Transparency and beneficial ownership of legal persons * Countries should assess the risks of misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their misuse. Countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities, through either a register of beneficial ownership or an alternative mechanism. Countries should not permit legal persons to issue new bearer shares or bearer share warrants and take measures to prevent the misuse of existing bearer shares and bearer share warrants. Countries should take effective measures to ensure that nominee shareholders and directors are not misused for money laundering or terrorist financing. Countries should consider facilitating access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.*

*25. Transparency and beneficial ownership of legal arrangements * Countries should assess the risks of the misuse of legal arrangements for money laundering or terrorist financing and take measures to prevent their misuse. In particular, countries should ensure that there is adequate, accurate and up-to-date information on express trusts and other similar legal arrangements including information on the settlor(s), trustee(s) and beneficiary(ies), that can be obtained or accessed efficiently and in a timely manner by competent authorities. Countries should consider facilitating access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.*[2]

This requirement is the genesis of the rules and regulations framed and adopted by most countries including India to understand the 'Single Beneficial Owners' controlling the entities registered in its jurisdiction and the probable illicit use of its financial system by any beneficiary masked under layers of shell companies in various jurisdictions. So it's imperative to understand the importance of this data for curbing supply to the channels that probably fuel the nefarious aspirations of organized crime syndicates.

iii) Identification of 'jurisdictions which require increased monitoring' and 'high risk jurisdictions'.

One of the key responsibilities of FATF is to identify and flag from time to time and publish the names of jurisdictions which need increased monitoring, in June 2023 it has published such a list and named countries like Albania, Barbados, Burkina Faso, Cayman Island, Cameroon, Democratic Republic Of Congo, Croatia, Gibraltar, Haiti, Jamaica, Jordan, Mali, Mozambique, Nigeria, Panama, Philippines, South Africa, Sudan, Syria, Tanzania, Turkey, Uganda, UAE, Vietnam, Yemen a countries which need increased monitoring.[3]

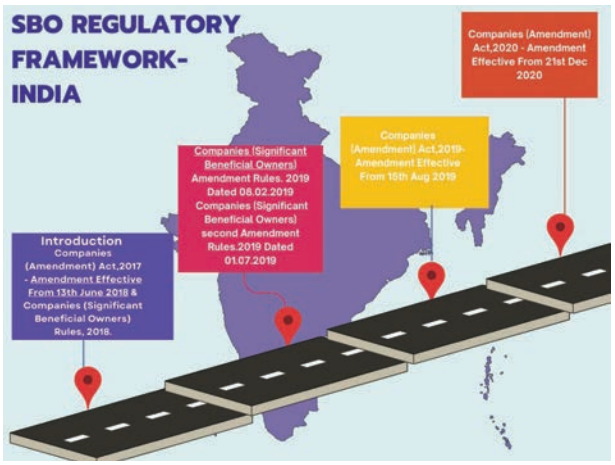
FATF also identifies and releases a list of high-risk jurisdictions based on the weak measures adopted to combat money laundering and terrorist financing (AML/CFT) and in the latest list released in June 2023. it has listed names of countries like North Korea, Iran and Myanmar[4].

SBO REGULATORY FRAMEWORK IN INDIA

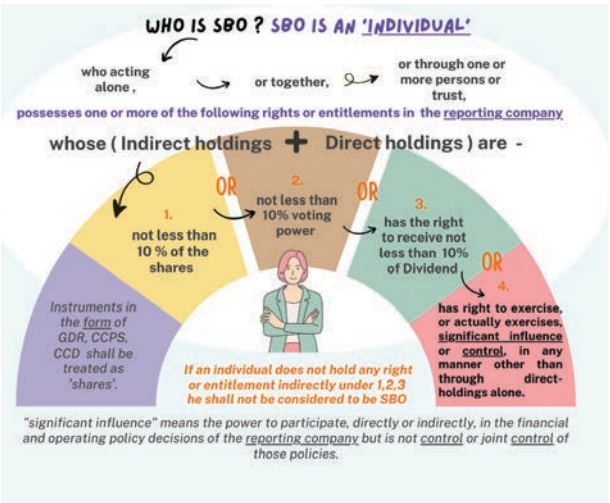
India is a member state of the FATF. In accordance with its commitment to crackdown on the money laundering and terrorism financing network, it had introduced the SBO compliance framework in 2017, however after ironing out many issues and removing interpretation difficulties of stakeholders on various aspects, the reporting could not be started until years later.

Finally, after many amendments, clarifications and consultations with commerce bodies, India has a preliminary framework to address the issue and support the world in the fight against financial crime. FATF is continuously conducting research and updating its recommended policies from time to time and expects its members to respond quickly with the updates, therefore we will see many changes in the coming days and India Inc will have to gear up for it.

i) Timelines of SBO rules notification in India

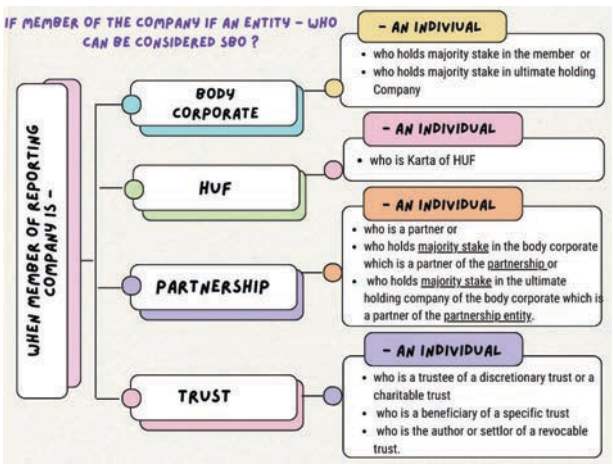


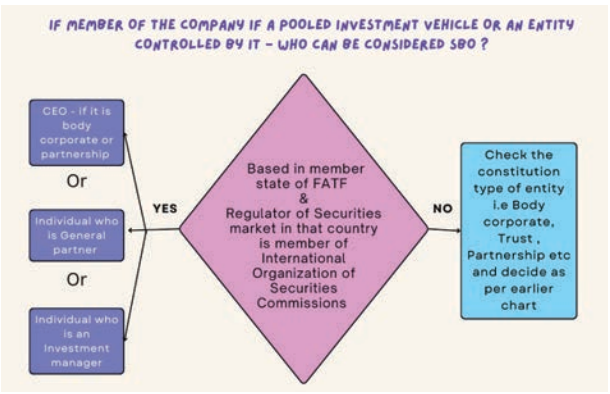
ii) So, Who is an SBO as per the rules ?



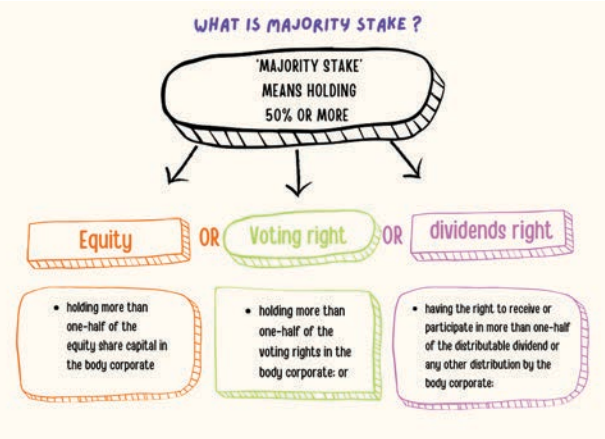
The expression '**acting together**' has been clarified in the rules to include individuals acting through any person or trust, with a common intent or purpose of exercising any right or entitlement or exercising control or significant influence over a reporting company pursuant to an agreement or understanding, formal or informal.

iii) What if Member of the reporting Company is an entity? How to identify SBO in such cases?



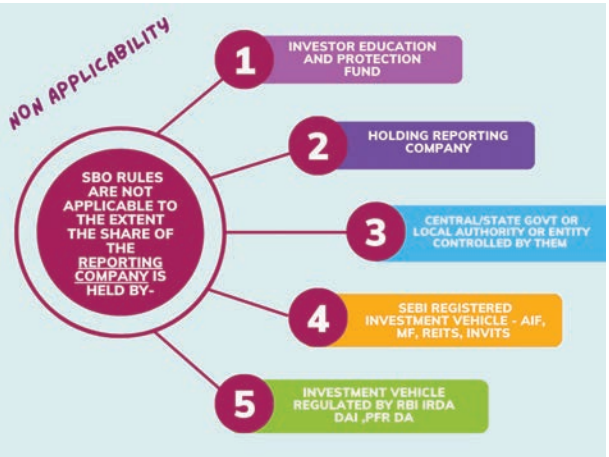


Who is a majority stake holder?



What compliances are required to be undertaken by Indian Companies ?

Non Applicability of SBO rules



CONSEQUENCES OF NOT DECLARING AN SBO OR DECLARING INCORRECT DATA

If any person fails to make any such declaration as required under the rules, he/she shall be liable to Fifty thousand Rupees and in case of continuous failure one thousand rupees for each such day of failure subject to a maximum of 2 lakhs Rupees.

> After undertaking various researches and seeking public consultation on best practices to combat the abuse of the existing financial systems by criminals and terrorists, FATF released its recommendations to tackle the menace of financial crimes and money laundering and updates it from time to time.

If any person/entity, wilfully furnishes any false, incorrect information or supresses any material information of which is aware in the declaration made by it under the SBO provisions then the provision of Section 447 – Punishment for Fraud is invoked and becomes applicable on the person. Therefore, it is advisable to thoroughly understand the provisions and then make the required declarations under these rules.[5]

CONCLUSION

While the intent of the law is noble, there are many interpretational challenges and unaddressed situations where deciding who is an SBO becomes difficult. It is said that change is the only thing that is constant and on the same principle we will be seeing many changes in the rules before the rules can effectively start doing the job for which they were implemented. But being a step in the right direction and with the support of the professional community surely the nuances of modern crimes, shady transactions, money laundering etc will be tackled sooner or later.

REFERENCES:

i. https://www.fatf-gafi.org/

ii. *The Fatf Recommendations International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation*

iii. *FATF Pubilcation - Jurisdictions under Increased Monitoring - 23 June 2023*

iv. *FATF Publication - High-Risk Jurisdictions subject to a Call for Action - June 2023*

v. *Section 90 (10) & (12) of the Companies Act 2013.*

Anomalies in Identification and Monitoring of Changes in SBO

The requirement for disclosure of Significant Beneficial Owner (SBO) is an attempt to identify that individual who has the power to control the decisions taken in any company through the non-individual shareholders in the company.

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INTRODUCTION

Money laundering is a menace for all growing economies and all countries aim at having world class mechanisms to combat this evil. One such mechanism is the requirement for identification of significant beneficial owner ("SBO") in all companies registered in India. The mechanism for identification of 'beneficial owner' was already in existence under Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 ("PMLA Rules") and it was implemented as a part of KYC check by banks. But the attempt made by the Ministry of Corporate Affairs ("MCA") to find out SBO at each company level, has created a lot of awareness among corporates and practising professional as it has created disclosure requirements to the MCA and continuous monitoring requirement on the part of corporates. In this article, we will try to deep dive into this concept and also see some probable challenges in continuous monitoring of this mechanism.

CONCEPT OF 'BENEFICIAL INTEREST' AND SIGNIFICANT BENEFICIAL OWNER (SBO) UNDER COMPANIES ACT, 2013

The requirement for disclosure of Significant Beneficial Owner (SBO) is an attempt to identify that individual who has the power to control the decisions taken in any company through the non-individual shareholders in the company.

The Companies Act, 2013 ("CA 2013") deals with two types of beneficial interest / ownership:

(i) One is the 'beneficial interest' owned by a 'beneficial owner' (who may or may not be an individual), which is regulated under Section 89 of CA 2013.

(ii) Another is the 'beneficial interest' owned by a 'significant beneficial owner' (who must mandatorily be an individual), which is regulated under Section 90 of CA 2013.

For the purpose of both Sections 89 and 90, the term 'beneficial interest' is defined in Section 89(10) as "*For the purposes of this Section and Section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—*

(i) exercise or cause to be exercised any or all of the rights attached to such share; or

(ii) receive or participate in any dividend or other distribution in respect of such share"

This means following are the characteristic features of beneficial interest:

(a) It is a right or entitlement of a person (individual or non-individual) in a share.

(b) It may be direct or indirect.

(c) It may be through any contract or arrangement or through any other mode.

(d) It may be of that person alone or of that person together with any other person.

(e) It may mean the right or entitlement to (1) exercise or (2) cause to be exercised, any or all of the rights attached to such share

(f) It may mean the right or entitlement to receive or participate in any dividend or other distribution in respect of such share

If there is any right of any person of above nature in the shares issued by any company, it means the person has beneficial rights in such shares. Such person may even be the registered owner of shares, whose name is entered in the register of members as owner of those shares. Conversely such person may be some other person who is not the registered owner of those shares but who has the above-mentioned type of rights or entitlement over those shares.

ARTICLE

ORIGIN OF SBO CONCEPT UNDER CA 2013

Section 90 was always a part of CA 2013 and it was notified with effect from 1 April 2014. However, earlier Section 90 stated that *"Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section."* At that time, it was the prerogative of the Central Government to investigate the beneficial ownership of any share in any company.

Thereafter, Section 90 was amended with effect from 13 June 2018 and Section 90 now reads as *"(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of Section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:*

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this Sub-Section."

This was a very important change through which the MCA started to run, as a campaign, the requirement to disclose SBO of each company. The Rules for identification of SBO were also notified as the Companies (Significant Beneficial Owners) Rules, 2018 ("SBO Rules") on 14 June 2018 but were kept on hold and were subsequently modified with effect from 8 February 2019.

Comparison of Section 90(1) with Section 89(10)

If we compare Section 90(1) with the definition of 'beneficial interest' given in Section 89(10), it appears that any individual who holds beneficial interests, of not less than 25% or such other percentage as may be prescribed in share of company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company is the SBO and he is required to make disclosure of his beneficial interest.

This creates an impression that even such shareholder who directly holds more than 25% shareholding in a company, in his own name registered in the register of members, might be considered as SBO and might be required to make disclosure. But this information would already be disclosed by companies in their Annual Returns being in filed in MGT-7 in the form of shareholders list. This is where the beneficial interest which may be held through the non-individual shareholders of a company might get missed off. Hence there was a need for defining a separate framework for identification of SBO in case of non-individual shareholders.

Therefore Section 90(1) lays down the principle of identification of SBO, i.e.:-

- Such individual may be acting alone OR
- Such individual may be acting together with one or more persons or trust, including a trust and persons resident outside India OR
- Such individual may be acting through one or more persons or trust, including a trust and persons resident outside India

IDENTIFICATION OF SBO AS PER SBO RULES

(1) Definition of SBO as per SBO Rules:-

The term 'SBO' is defined in Rule 2(1)(h) of SBO Rules as, *"significant beneficial owner" in relation to a reporting company means an individual referred to in Sub-Section (1) of Section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:*

(i) holds indirectly, or together with any direct holdings, not less than ten percent, of the shares;

(ii) holds indirectly, or together with any direct holdings, not less than ten percent, of the voting rights in the shares;

(iii) has right to receive or participate in not less than ten per cent, of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:

Anomaly - Who is SBO? The individual holding not less than 25% beneficial interest OR the individual holding not less than 10% beneficial interest?

The threshold mentioned in this definition of SBO in SBO Rules can be said to be deviating from the threshold limit laid down in Section 90(1), which speaks about holding beneficial interests, of not less than 25%. or such other percentage as may be prescribed. But the threshold of holding prescribed in Rule 2(1)(h) is not less than 10% Hence, a question arises that whether an individual who is holding beneficial interest of more than 10% but less than 25% is SBO and is he required to make disclosure of his beneficial interest?

If we see the Preamble of the SBO Rules, it says these Rules are notified *"in exercise of the powers conferred by Section 90 read with sub-section (I) of section 469 of the Companies Act, 2013..."* As per Section 469 of CA 2013, *"The Central Government may, by notification, make rules for carrying out the provisions of this Act."*

Hence, a view can be taken that although Section 90(1) requires only such individuals who hold beneficial interest of not less than 25% in a company to disclose, but since SBO Rules are issued in exercise of powers conferred upon Central Government by Section 90 as well as Section 469, these SBO Rules might prescribe something over and above what is prescribed under Section 90. Hence, the process of identification of SBO must be done as per the SBO Rules.

(2) Principles for identification of SBO

Rule 2(1)(h) lays down the principle of identification of SBO in line with Section 90(1), i.e.:-

- Such individual may be acting alone OR
- Such individual may be acting together with one or more persons or trust, including a trust and persons resident outside India OR
- Such individual may be acting through one or more persons or trust, including a trust and persons resident outside India.

And such individual must possess one or more of the rights or entitlements mentioned in Rule 2(1)(h).

Explanation I to this definition says that *"if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner."* Sub-clause (iv) mentions that right to exercise, or actually exercises, significant influence or control should be other than through direct holdings alone.

Hence, the essence of this SBO definition as per SBO Rules is that indirect holding or indirect right or entitlement is a MUST for an individual to be an SBO. Incidentally, he may have direct holdings too in the reporting company.

Therefore it becomes very important to understand what is meant by 'direct holding', so as to understand what is excluded from indirect holding?

Explanation II to this definition says that – *"For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely.'*

(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;

(ii) the individual holds or acquires a beneficial interest in the share of the reporting company under Sub-Section (2) of section 89, and has made a declaration in this regard to the reporting company."

This Explanation II clarifies that if an individual is holding the shares in his own name, then although he holds beneficial interest in those shares (as defined under Section 89(10), but for the purposes of Section 90(1), he will not be considered as SBO and hence there is no requirement to disclose under Section 90(1).

Another category of direct holding explained in this Explanation II is about individual holding beneficial interest under section 89(2). This section 89(2) says *"Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed."* Under Rule 9 of the Companies (Management and Administration) Rules, 2014, these particulars are prescribed to be disclosed by the registered owner of shares to the company in MGT-4 format and by the beneficial owner to the company in MGT-5 format, and the company is required to file e-form MGT-6 with MCA by attaching the declarations received in MGT-4 and MGT-5 formats.

Anomaly – Can an individual hold beneficial interest in shares which are not registered in his own name?

If we observe section 89(2), it says about a 'person' holding beneficial interest in shares. Section 2(42) of the General Clauses Act, 1897 defines that 'person' shall include any company or association or body of individuals, whether incorporated or not. Hence, the holder of beneficial interest as per Section 2(89) may be individual or any other entity. This scenario frequently exists in case of shares of a wholly owned subsidiary where for the purpose of maintaining minimum two shareholders[1] (in case of private company) or minimum seven shareholders (in case of public companies), the holding company needs to arrange nominee shareholders who become the registered owner of some minimal number of shares (generally 1 share) in the wholly owned subsidiary, for which beneficial ownership is held by the holding company.

However, the clause (ii) of Explanation II of SBO definition as per SBO Rules speak about an individual holding beneficial ownership and having filed the disclosures in MGT-4 and MGT-5 format. Hence a question arises that what can be such scenarios and whether such scenarios are valid under law?

Even before notification of Section 90 in CA 2013, there has been the Prohibition of Benami Property Transactions Act, 1988 which prohibits entering into any benami transaction. This transaction defined 'benami transaction' but exempts the below mentioned situations from being considered as 'benami transaction' when any property (including shares) are held by:

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

1. *Proviso to section 187(1) of CA 2013 permits a company to hold shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.*

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, Director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual;

Therefore, it can be said that if any individual is holding shares of a reporting company under any of the above-mentioned scenarios, then it can be considered as a valid transaction and such individual can hold beneficial interest in shares.

As per the Explanation II given in the definition of SBO under SBO Rules, in such scenarios, the individual in whose name the shares are registered and that individual who holds beneficial interest in the shares should give the declarations in MGT-4 and MGT-5 formats respectively to the company. Only then such holdings will be considered as direct holding and such individual will not have any actionable under Section 90 of CA 2013

(3) Who shall be the SBO in case of different categories of equity shareholders and complexities involved therein?

The Explanation III in Rule 2(1)(h) under SBO Rules provides guidance on who shall be the SBO in case of different categories of shareholders (members) of a reporting company. Further Explanation V in the definition of SBO states that *"For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.*

Since the manner of identification of SBO is given in the definition by way of Explanations, it is important to note that an explanation added to a statutory provision is not a substantive provision in any sense of the term. As the plain meaning of the word 'explanation' itself shows, it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Explanation cannot change the enactment and it cannot take away any right.[2]

2. *Sundaram Pillai Vs. VR Pattabiraman (AIR)1985SC 582*

> The essence of this SBO definition as per SBO Rules is that indirect holding or indirect right or entitlement is a MUST for an individual to be an SBO. Incidentally, he may have direct holdings too in the reporting company.

Hence it is important to understand these Explanations in the light of the principle of identification of SBO laid down in Rule 2(1)(h) of SBO Rules as well as in Section 90(1). Let us discuss some complexities involved in this identification process by taking different situations:-

(A) **In case the member of reporting company is a body corporate (incorporated in or outside India) other than LLP:**

As per clause (i) of Explanation III, if the member is a body corporate (whether incorporated or registered in India or abroad), SBO is that individual who,

(a) holds majority stake in that member; or

(b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member.

The term "majority stake" is defined in Rule 2(1)(d) of SBO Rules to mean:

(i) holding more than one-half of the equity share capital in the body corporate; or

(ii) holding more than one-half of the voting rights in the body corporate; or

(iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.

This indicates that in case a company / body corporate holds more than 10% shares in a reporting company, then the individual who holds more than 50% equity shares or voting rights or right to distribution in that member company / body corporate or its ultimate holding company is the SBO of the reporting company to the extent the shares held by such member company / body corporate.

Situation 1: A Pvt. Ltd. is the reporting company and 5% shares are held by B Pvt. Ltd. and 6% shares are held by C Pvt. Ltd. The majority stake in B Pvt. Ltd. and C Pvt. Ltd. is held by one single

individual, say Mr. X. Then a question arises whether Mr. X is an SBO for A Pvt. Ltd. or not?

If we see the opening words of Rule 2(1)(h), it says *"an individual .... who acting alone or together, or through one or more persons.... holds indirectly, ... not less than ten percent, of the shares..."*

In this situation, Mr. X holds indirectly, through not a single company, but through two companies, 11% of the shares of A Pvt. Ltd. Hence, even if B Pvt. Ltd. or C Pvt. Ltd. do not hold 10% shares in A Pvt. Ltd., still Mr. X will be considered as SBO through B Pvt Ltd & C Pvt. Ltd.

Situation 2: X Pvt. Ltd. is the reporting company and 5% shares are held by Y Pvt. Ltd. and 6% shares are held by Mr. Z. The majority stake in Y Pvt. Ltd. is held by none other than Mr. Z. Then a question arises whether Mr. Z is an SBO for X Pvt. Ltd. or not?

Again if we see the opening words of Rule 2(1)(h), it says *"an individual .... who acting alone or together, or through one or more persons.... holds indirectly, or together with any direct holdings, not less than ten percent, of the shares..."*

In this situation, Mr. Z holds indirectly only 5% shares but directly he holds 6% shares, and taken together he holds 11% shares of X Pvt. Ltd. Hence, even if Y Pvt. Ltd. do not hold 10% shares in X Pvt. Ltd., still Mr. Z will be considered as SBO through Y Pvt. Ltd.

Situation 3: In the above example if majority stake in Y Pvt. Ltd. was held by the spouse or any other relative of Mr. Z, then whether Mr. Z is an SBO for X Pvt. Ltd. or not?

In such situation, Mr. Z needs to determine whether his spouse or the other relative who is majority stakeholder in Y Pvt. Ltd. is a person acting together (as per Explanation V) with Mr. Z or not? If such person is a person acting together with Mr. Z, then Mr. Z will have to consider himself as SBO and will have to give disclosure to the reporting company, i.e., X Pvt. Ltd. in BEN-1 format. If Mr. Z feels that his spouse or the other relative is not a person acting together with him, then he may claim that he is not SBO in X Pvt. Ltd., but the onus of proving this will be on Mr. Z, in case MCA raises a question in future.

(B) In case the member of reporting company is HUF:

As per clause (ii) of Explanation III, if the member is a Hindu Undivided Family (HUF) (through Karta), the individual who is the Karta of the HUF is the SBO.

This appears quite clear that if HUF holds more than 10% shares in reporting company, then its Karta will be the SBO to the extent the shares are held by HUF. However there can be some complex situations as mentioned below:

Situation: A Pvt. Ltd. is a reporting company and one HUF holds 5% shares in A Pvt. Ltd. One of the co-parceners of the HUF holds 6% shares in A Pvt. Ltd. in his own name (directly). This raises a query that whether the Karta will be co-parcener in this case?

Again if we see the opening words of Rule 2(1)(h), then it says *"an individual .... who acting alone or together, or through one or more persons.... holds indirectly, or together with any direct holdings, not less than ten percent, of the shares..."*

As per Section 2(77) of CA 2013, two members of a HUF are considered as relatives. In this situation also, the Karta has to decide whether the co-parcener is a person acting together with him (as per Explanation V). If yes, then the Karta may declare to A Pvt. Ltd. by giving declaration in BEN-1 format that through the HUF and through that co-parcener, the Karta holds more than 10% shares in A Pvt. Ltd. If the Karta feels that he is not acting together with this co-parcener, then he may claim that he is not SBO in A Pvt. Ltd., but the onus of proving this will be on the Karta, in case MCA raises a question in future.

(C) In case the member of reporting company is partnership firm or LLP:

As per clause (iii) of Explanation III read with the definition of 'partnership firm' in Rule 2(1)(e) of SBO Rules, if the member is a partnership firm or LLP, then the SBO is that individual who-

(a) is a partner; or

(b) holds majority stake in the body corporate which is a partner of the partnership entity; or

(c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

Situation: X Pvt. Ltd. is reporting company and Y LLP holds more than 10% shares therein. Y LLP has two partners – Mr. A and ABC Pvt. Ltd. As per LLP Agreement of Y LLP, all decisions shall be taken only with the consent of ABC Pvt. Ltd. and Mr. A does not have any decision-making right. The majority stakeholder of ABC Pvt. Ltd. is Mr. D. There is no relationship between Mr. A and Mr. D. In this case, a question arises that Mr. A has no say of his own, with regard to the decisions done by Y LLP, will he still be considered as SBO of X Pvt. Ltd.?

In this case, the clause (iii) of Explanation III is very clear and unambiguous and it says an individual who is a partner of the LLP or partnership firm will be SBO. Hence, irrespective of whether Mr. A has any powers in Y LLP or not, he will be considered as SBO to the extent the shares of X Pvt. Ltd. are held by Y LLP.

(D) In case the member of reporting company is a trust:

As per clause (iv) of Explanation III, if the member is a Trust, then depending on the nature of the trust, below individuals shall be the SBO -

(a) in case of discretionary trust or a charitable trust – trustee is the SBO;

(b) in case of specific trust - beneficiary is the SBO;

(c) in case of a revocable trust - author or settlor is the SBO.

Situation: PQR Pvt. Ltd. is reporting company and ABC Trust, a discretionary trust holds more than 10% shares therein. The trustee of ABC Trust is a trustee company, and the majority stakeholder of that trustee company is Mr. A. Whether Mr. A will be considered as SBO?

Again if we see the spirit of the definition of SBO, then it says *"an individual .... who acting alone or together, or through one or more persons.... holds indirectly, ... holdings, not less than ten percent, of the shares..."*

In this case, although there is no individual who is a trustee of this trust, but all decisions on behalf of the trust are taken by the trustee company and the manner in which the trustee company will take decisions is in control of Mr. A, being the majority stakeholder. Hence, Mr. A will be considered as SBO to the extent the shares are held by the Trust in PQR Pvt. Ltd.

(E) In case the member of reporting company is a pooled investment vehicle or an entity controlled by it:

Situations where member is a pooled investment vehicle or entity controlled by it are covered under clause (v) of Explanation III and as per Explanation IV of Rule 2(1)(h). If such entity is based in a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, then the SBO in relation to the pooled investment vehicle shall be below individuals -

(A) a general partner; or

(B) an investment manager; or

(C) a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

As per the said Explanation IV, if the member of reporting entity, being a pooled investment vehicle or an entity controlled by it does not fulfil the above requirements, then depending on the nature of the entity, the SBO will have to be determined as explained in the above paras, i.e., as per clause (i) or (ii) or (iii) or (iv) of Explanation III, as the case may be.

Investment Vehicles regulated by RBI or SEBI

There can be other pooled investment vehicles or other investment vehicles holding shares in reporting company, such as mutual funds, Alternate Investment Fund (AIF), Real Estate Investment Trusts (REITs),

infrastructure Investment Trust (InVITs) which are regulated by SEBI or Investment Vehicles regulated by RBI, or Insurance Regulatory and Development Authority of India (IRDAI), or Pension Fund Regulatory and Development Authority.

As per Rule 8 of SBO Rules, to the extent shares of reporting company are held by any of these entities which are regulated by any of the above- mentioned regulators, there will be no SBO and no disclosure requirement under section 90(1).

(F) In case the member of reporting company is Government / Government entity or Investor Education & Protection Fund (IEPF):

Rule 8 of SBO Rules also exempts the applicability of SBO Rules to the extent the shares of reporting company are held by Central Government, State Government or any local Authority or a reporting company, or a body corporate, or an entity, which is controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and also to the extent shares are held by IEPF.

Hence in such cases where the shareholder is a Government company / Government / Government controlled entity and to the extent shares of the reporting company are transferred to IEPF as required under Section 124(6), there will be no SBO and no disclosure requirement under Section 90(1).

(4) SBO in cases of securities other than equity shares:-

Explanation VI of Rule 2(1)(h) of SBO Rules deals about situations where reporting company may have issued global depository receipts (GDRs), compulsorily convertible preference shares (CCPs) or compulsorily convertible debentures (CCDs). Explanation VI says that *"for the purpose of this clause, these instruments shall be considered as 'shares'"*

Anomaly 1 – There can be situations where the face value of CCPs or CCDs are not same as the face value of equity shares. In such cases, ignoring the aggregate value of these securities and simply aggregating the number or units of these securities issued and the number or units of equity shares issued may not give the correct picture about who is the SBO. In such situations, one needs to decide whether to aggregate the total value of these securities issued and the total value of equity shares issued and then arrive at who is the SBO, and accordingly the disclosure under section 90(1) may be made.

Anomaly 2 – A query arises that how to calculate the total number of shares in case the reporting company has issued non-convertible or optionally convertible preference shares (OCPs / NCPs)? This Explanation VI is silent about whether to treat them as shares or not for the purpose of this clause. However, as per Section 43 of CA 2013, all kinds of preference shares are also a kind of share, which will include even OCPs and NCPs. In such situations, one needs to decide that even if Explanation VI is silent, whether to aggregate the total value OCPs / NCPs issued and the total value of equity shares issued and then arrive at who is the SBO, and accordingly the disclosure under Section 90(1) may be made.

Anomaly 3 – Although Explanation VI says that *"for the purpose of this clause, CCPs, CCDs shall be considered as 'shares'"*, but these securities do not have any voting rights. Hence a query arises that how to make disclosure for these securities while preparing the disclosure under Section 90(1)? In such cases, a view may be taken that for these securities, disclosure maybe made by indicating only 'shares' category and not indicating anything in 'voting rights' category in the disclosure under Section 90(1), i.e., in BEN-1 format. Thereafter when these securities will get converted into equity shares, another disclosure be made wherein the proportion of shares as well as voting rights held through them may be i ndicated.

(5) SBO in cases where control or significant influence exists irrespective of shareholding:-

Section 90(1) as well as the definition of SBO in SBO Rules speak about a situation where an individual has:

(a) right to exercise, or (b) the actual exercising of

(i) significant influence or (ii) control

The term 'significant influence' has been explained in Explanation VI of Rule 2(1)(h) of SBO Rules as *""significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies."*

Section 90(1) says that the term 'control' is to be read as it is defined in Section 2(27) of CA 2013, i.e., as *""control" shall include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."*

Section 89(10) explains that the beneficial interest may be through any contract, arrangement or otherwise. The definition of SBO in Rule 2(1)(h) of SBO Rules say that this significant influence or control should be in any manner other than through direct holdings alone.

A combined reading of all these provisions indicates that there can be a situation where an individual may not be holding shares or voting rights or right to receive or participate in distributable dividend or other distribution of 10% or more in the reporting company, but still such individual may have significant influence or control through any contract, arrangement or otherwise in the reporting company. A very common example is the existence of such rights through a Shareholders Agreement, wherein the reporting company may or may not be a party to the agreement, and such agreement may or may not have been incorporated in the Articles of Association of the Company. In such cases also, such individual will be considered as SBO and he will have to disclose his beneficial interest to the reporting company under section 90(1).

These are the various methods by which SBO of a reporting company can be identified. The below checks need to be followed for identification of SBO:-

- While analysing whether an individual is SBO or not, there can be 2 approaches – Rule based approach and Principle based approach.
- The principles of "significant influence", "control" and "acting together", "acting through" must be checked over and above Rule based approach.
- In case of holding by LLP / partnership entity, all individual partners can be said to be "acting together".
- In case of holding by body corporate entity, the holding of majority stake by person acting together can be the deciding factor for identifying SBO.

As per Section 90(1) and as per Rule 3 of SBO Rules, the SBO has the obligation of disclosing his interest to the reporting company in BEN-1 format within 30 days of acquiring the significant beneficial ownership. Even thereafter, the SBO needs to keep monitoring any change and needs to make further disclosure, in the same BEN-1 format, within thirty days of any further change.

WHEN SHOULD SBO INTIMATE THE CHANGE TO REPORTING COMPANY

As per Section 90(1) and as per Rule 3 of SBO Rules, whenever there is any change, the SBO needs to give disclosure in BEN-1 format to the reporting company. This raises an anomaly that what should be considered as 'change'?

Anomaly – An anomaly arises that in which of the below mentioned situations further intimation in BEN-1 is to be given:-

(i) When the SBO ceases to be SBO OR

(ii) When there is some major change in indirect holding of shares of SBO but that individual continues to be the SBO OR

(iii) When there is some minor change in indirect holding of shares of SBO OR

(iv) When there is any change in direct shareholding of SBO OR

(v) When there is change in any other shareholder in the reporting company due to which there is a change in the contents of BEN-1 made earlier for eg:

  (a) Allotment of shares to any other shareholder OR

  (b) Transfer of shares held by any other shareholder in favour of any other person OR

  (c) When there is buy back of shares or reduction of share capital in reporting company or any change pursuant to scheme of arrangement OR

  (d) Even because of allotment of shares exercised under ESOP scheme.

(vi) When there is any such change in the ownership structure of the member non-individual entity.

This is the biggest anomaly in the entire mechanism of SBO as the wordings of Section 90(1) as well as Rule 3 is *'any change thereof / therein'*. Hence it is required to continuously monitor any change in any of the above kinds and make disclosure in BEN-1 wherever the context requires to disclose and take a conservative view and disclose wherever possible.

Another anomaly arises at the reporting company level after receipt of BEN-1 for intimation of change. As per Section 90(4) read with Rule 4 of SBO Rules, the reporting company needs to file the BEN-1 received with the MCA in e-form BEN-2. However, in e-form BEN-2, there is no specific point to mention the 'date of change'. This creates even more confusion with regard to the manner of filling the e-form BEN-2 in case of BEN-1 received for any change.

OBLIGATIONS OF REPORTING COMPANY

There are multiple obligations on the reporting company, which can be listed down as follows:-

(1) To file a return in e-Form BEN-2 with MCA in respect of BEN-1 received from SBO(s), within 30 days from receipt of such BEN-1. [Section 90(4) read with Rule 4 of SBO Rules]

It may be noted that if the reporting company has any holding company as its member, then if the holding company has filed e-form BEN-2, then the subsidiary may file e-form BEN-2 by mentioning the CIN of the holding reporting company, and the SBO of the holding company may not give a separate BEN-1 to such subsidiary. [Rule 8 of SBO Rules]

(2) If the reporting company is a listed entity, then to disclose the names of SBOs in the Quarterly Shareholding Pattern to be filed with stock exchanges where it is listed, under Regulation 31 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(3) To maintain a register of SBO in Form No. BEN-3 and to keep the Register open for inspection by members of the Company [Section 90(2) and (3) read with Rule 5 of SBO Rules.]

(4) Whenever there is any change in the structure of shareholding (or even change in CCPs or CCDs) in the reporting company, to identify if there might be a possible change in the contents of BEN-1 given earlier? If yes, then to send notice to such member in BEN-4 format. [Section 90(4A) and (5) read with Rule 2A of SBO Rules]

(5) To apply to NCLT if:-

(a) Where any person fails to give the information required by the notice in Form BEN-4, within 30 days from the date of sending BEN-4 (as prescribed under section 90(6)) OR

(b) Where the information given is not satisfactory.

within 15 days of expiry of the time specified in BEN-4, for order directing that the shares in question be subject to restrictions, including:

i. Restrictions on the transfer of interest attached to the shares in question;

ii. Suspension of the right to receive dividend or any other distribution in relation to the shares in question;

iii. Suspension of voting rights in relation to the shares in question;

iv. Any other restriction on all or any of the rights attached with the shares in question.

CONCLUSION

The entire concept of SBO introduced under Section 90 and SBO Rules is a very noble concept and aims to curb the practices of money laundering, round tripping of funds through a series of corporate entities and to bring to the surface the ultimate individual who has the power to take decisions in any company. The initial disclosure of SBO would have been done by most of the corporate entities since the time it was introduced. However, there are lot of anomalies in continuous monitoring of any change and further disclosures required to be done to the reporting company and to the MCA. Section 90 is under in-house adjudication mechanism of Registrar of Companies (ROC) and off late, ROCs have been sending show cause notices to various companies for disclosure lapses. If MCA can prescribe a more elaborate and comprehensive framework for intimating the changes in SBO and clarify what shall be considered as 'change', then it will help the corporate sector as well as MCA for effective monitoring of SBO on a continuous basis.

ARTICLE

Section 89 & 90 : Understanding the Spirit

Assessing beneficial ownership is akin to searching for a specific needle within a stack of identical needles. Attempting to delve deep into the concept of "Disclosure of Beneficial Ownership," which requires companies to publicly declare the true owner if a nominal owner exists. Beneficial ownership occurs when influential individuals or those in the public eye, instead of openly acknowledging themselves as the owners of the companies from which they derive profits, designate someone else as the nominal owner. This practice makes it challenging for authorities to identify the actual owner, allowing them to conceal their income and, in turn, evade taxes.

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INTRODUCTION

Assessing beneficial ownership is akin to searching for a specific needle within a stack of identical needles. This article delves into the concept of "Disclosure of Beneficial Ownership," which requires companies to publicly declare the true owner if a nominal owner exists. Beneficial ownership occurs when influential individuals or those in the public eye, instead of openly acknowledging themselves as the owners of the companies from which they derive profits, designate someone else as the nominal owner. This practice makes it challenging for authorities to identify the actual owner, allowing them to conceal their income and, in turn, evade taxes.

Beneath its facade, beneficial ownership conceals an underlying malevolence. The money saved is funnelled into the pockets of the wealthy, making them richer and financing various societal ills such as money laundering, corruption, bribery, terrorist financing, and various other illegal activities involving one or more companies. Any information about the beneficial owners serves to prevent these societal wrongs from occurring and, if already in progress, helps to control them. Therefore, possessing information on beneficial ownership is of utmost importance.

The significance of this lesson was underscored by the 2016 Panama Papers leak scandal, which exposed the identities of numerous affluent and prominent individuals who utilized offshore companies for illicit purposes, sparking public outrage. Access to information on beneficial ownership has now become a crucial requirement for international tax transparency and the fight against tax evasion and other financial crimes.

WHAT IS BENEFICIAL OWNERSHIP?

Beneficial ownership is the situation where a person enjoys the advantages of owning a company, fund, trust, etc., while the legal ownership title is held by someone else. This practice has been employed by celebrities and powerful individuals to safeguard their assets, shielding them from inclusion in their calculated net worth or taxable income, thereby increasing their financial gains.

Typically, beneficial owners strive to remain anonymous. This anonymity provides cover for a multitude of criminal activities that can occur beyond the scrutiny of law enforcement agencies, including tax evasion, corruption, money laundering, and terrorist financing. For example, money laundering may involve complex transactions that legitimize funds from illegal sources, such as drug trafficking or tax evasion, making them appear legal. An example would be a drug trafficker establishing a nightclub to launder proceeds from drug sales under the guise of ticket and alcohol sales, appearing legal on the surface. Therefore, it is essential to identify beneficial owners of various legal entities and structures to prevent misuse in a business context.

This is why entities like the Financial Action Task Force (FATF) and the Global Forum have incorporated criteria for beneficial ownership in their guidelines and conducted cross-jurisdictional assessments of the availability of beneficial ownership information within their systems. Determining how countries access information on beneficial ownership for various legal entities and structures is crucial in the battle against tax evasion, corruption, money laundering and terrorist financing. Not everyone desires to be recognized as the beneficial owner.

Many wrongdoers deliberately exploit the anonymity provided by corporate entities to obscure their identity, the true nature of accounts, and the source or use of funds or assets associated with these entities. This can be for classic tax evasion purposes or to evade authorities tracking the proceeds of individual or corporate crimes, such as money laundering, bribery or corruption. It can also serve to conceal state-sponsored terrorist activities.

HISTORICAL CONTEXT OF BENEFICIAL OWNERSHIP

Beneficial ownership, as previously mentioned, occurs when an individual possesses and directly enjoys the advantages of a particular company, even though, on official documents, they are listed as a nominal or dummy owner. The Panama Papers scandal triggered significant public discontent with this practice, prompting the Indian government to introduce measures requiring beneficial owners to reveal their true identities.

India was not the sole nation to respond to this issue; other countries also implemented various measures to uncover beneficial owners because it is a concealed malevolence that needs to be eradicated from society. For instance, certain tax havens notify the United States when their citizens establish shell companies within their jurisdictions, aiding in the regulation of their citizens' financial activities.

Beneficial ownership provides a practical and secure method of holding shares, especially for investors seeking ownership of securities without the responsibility of voting or involvement in corporate affairs.

THE COMPANIES (SIGNIFICANT BENEFICIAL OWNER) AMENDMENT RULES, 2019 AND WHAT IT MEANS

In response to scandals like the Panama Papers, the Indian government took necessary actions to prevent such occurrences and combat black money. They aimed to gather comprehensive information for investigations and joined global efforts to address tax evasion. The Base Erosion and Profit Shifting (BEPS) initiative enables India to track tax avoidance by offshore tax havens. In 2017, the Companies (Amendment) Act replaced provisions related to Significant Beneficial Owners in the Companies Act. The Ministry of Corporate Affairs introduced the Companies (Significant Beneficial Owners) Rules in 2018, which mandates:

- Individuals with a significant shareholding or substantial influence in a company must declare their interest.
- This rule applies to individuals acting independently or in concert, trusts, and persons residing in India or abroad.
- "Significant Influence" means owning at least 20 percent of voting power or involvement in business decisions in related companies.
- "Control" encompasses the ability to appoint directors or influence management decisions.

These declarations must be made within 90 days of the law's implementation or within 30 days of a change in beneficial ownership. Companies must maintain a registry of significant beneficial owners and file relevant information with the Registrar.

In 2019, the Ministry of Corporate Affairs issued an amendment to the Companies Act, enforcing the rules related to "Significant Beneficial Owners."

THE IMPLICATIONS THE ACT ON EXISTING TRANSACTIONS

The introduction of the "beneficial interest" concept in the Act has far-reaching consequences for existing transactions. Shares must now be viewed as a bundle of rights (voting, earning dividends, etc.), with each of these rights potentially allocated to different individuals. As a result, a single share can have multiple beneficial owners, necessitating a review of current shareholder agreements and voting arrangements to ascertain if they trigger filing requirements under Section 89 of the Act. Compliance with Significant Beneficial Owner (SBO) filings also becomes essential.

Key considerations include:

Structural Impact: The Act's transparency requirements may impact existing opaque structures. While the law prohibits sharing information with tax authorities, public access to SBO forms could raise concerns. This transparency may enable tax authorities to question the legitimacy of certain structures.

Due Diligence: Determining ownership becomes more complex due to the possibility of multiple beneficial interest holders. Diligence checks need to confirm the proper submission of declarations for all beneficial interests related to the share and verify the accuracy of SBO filings. Diligence checklists will also include a review of the SBO registry and related filings.

Documentation: Ownership representations should accurately reflect the "beneficial interest" concept to protect all aspects. Additionally, in cases with multiple beneficial interest holders, practical issues may arise during transfers, such as handling compensation and reporting under Exchange Control Regulations when non-residents own only a portion of the beneficial interest. Transaction documents should detail the scope of information to be recorded in SBO filings, and these reports should be included in post-closing transaction records.

Voting Arrangements: Voting arrangements may affect the creation of beneficial interests. The crucial distinction lies in whether the right generating interest is attached to the share or a mere contractual obligation. For instance, if shareholder A has the right to direct/exercise voting rights attached to shares held by shareholder B, A would be considered a beneficial interest holder in B's shares. Notably, veto rights or mere enabling provisions, like further assurances clauses, are less likely to establish beneficial interests, as they pertain more to contractual obligations rather than the creation of specific rights or concessions in favor of one shareholder. Veto rights typically grant blocking power but don't compel other shareholders to vote in a specific manner.

CHALLENGES TO THE ACTIONS TAKEN BY AUTHORITIES

Defining beneficial ownership introduces complexities, leading to downstream challenges. For instance, account names may differ from the actual beneficial owners, necessitating separate recording and storage of this data. Claims managers insist on merging cases with the same beneficial owner, which appears logical but can complicate case processing and payouts. When a case is valid, a single payment must be divided among multiple merged accounts.

However, Cyril Amarchand Mangaldas, an Indian law firm, has identified gray areas in the bill's applicability. Specifically, the rules do not address multi-layered hybrid structures with a company as the direct member and a trust as the ultimate holding entity. Moreover, the rules lack guidance on determining a significant beneficial owner when a discretionary trust has a non-individual trustee, creating uncertainties, especially for structures involving professional trustees or private trustee companies.

WHY DISCLOSURE OF BENEFICIAL OWNERSHIP MATTERS?

Public trust in organizations and markets hinges on an effective disclosure system that ensures transparency in the ownership and control structures of firms. Investor confidence in capital markets depends on the accurate disclosure of ownership and control structures, as well as the ultimate beneficial owner of publicly traded companies.

While significant investors with voting rights can promote long-term growth and firm success, there is a risk that controlling beneficial owners with substantial voting power may divert corporate assets and exploit opportunities for personal gain at the expense of minority investors.

Protecting these minority investors and ensuring equitable capital distribution is a vital concern in capital market regulation. The regulation aims to provide clarity on a company's substantial ownership, reveal the investment influence of major shareholders, and safeguard the rights of issuers and the public in the securities process.

In recent years, there has been a substantial increase in the need for beneficial ownership information, particularly to address anti-corruption legislation. Companies must now identify third-party intermediaries and contractors that may involve foreign government officials, as their involvement can raise concerns about bribery charges. Disclosure of beneficial ownership is crucial for transparency and compliance with regulatory requirements.

GLOBAL AUTHORITIES ON THE CASE

The Financial Action Task Force (FATF), an international organization responsible for guiding anti-money laundering and counter-terrorism financing efforts, is advising countries on beneficial ownership and urging Financial Institutions (FIs) to adopt a risk-based approach to customer interactions.

> The Act's transparency requirements may impact existing opaque structures. While the law prohibits sharing information with tax authorities, public access to SBO forms could raise concerns. This transparency may enable tax authorities to question the legitimacy of certain structures.

The FATF Recommendation outlines steps to address the transparency and beneficial ownership of legal entities, providing countries with suggestions to prevent the misuse of legal entities for illicit purposes. These recommendations include:

- Assessing potential risks associated with legal entities and legal arrangements.
- Ensuring transparency in legal entities and legal arrangements.
- Providing accurate and up-to-date essential and beneficial ownership information to competent authorities promptly.

These efforts signify a move toward accountability and the establishment of public records on the ultimate beneficial ownership of companies and institutions. However, enforcing these measures is challenging. Maintaining beneficial ownership data while dealing with increasingly complex global organizational systems is one of the major hurdles for FIs. Many challenges are related to data, including issues with data quality and data timeliness. Additionally, different countries have varying laws, and some places, like offshore tax havens, have obstacles in place to hinder the collection of beneficial ownership data, which criminals are quick to exploit.

EXEMPTIONS TO THE RULE

The rule does not require the disclosure of beneficial ownership for the following:

1. Shares held by Investor Education and Protection Fund;
2. Shares held by Holding reporting company;
3. Government Authority;
4. Mutual Funds;
5. Alternative Investment Funds (AIFs);
6. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs);
7. Investment vehicles regulated by RBI.

IDENTIFICATION OF BENEFICIAL OWNERS

Nature of shareholder	Who is the significant beneficial owner
Where a member is a company	• An individual who in his capacity or jointly with other individuals or through one or more persons or trust holds 10 percent or more of the share capital of the company; or • Exercise significant influence or control through other means; • If no natural person is identified, the person holding the position of senior managing official will be considered.
Where a member is a partnership firm	• An individual, who in his capacity or jointly with other individuals or trusts hold 10 percent or more of capital; or • Has entitlement of not less than 10 percent of profits of the partnerships; • If no natural person is identified, the person holding the position of senior managing official will be considered.
Where a member is a trust (through the trustee)	• Author of the trust, trustee or beneficiary holding more than or equal to 10 percent interest in the trust; or • A natural person exercising ultimate effective control over the trust through a chain of control of ownership.
A body corporate (incorporated or registered in India or abroad), other than an LLP	• The individual holds a majority stake in the member or the ultimate holding company of the member (whether incorporated or registered in India or abroad).
Hindu Undivided Family (HUF)	• The individual is the Karta (manager) of the HUF.
Partnership entity (through itself or a partner),	• The individual is – • A partner; • Holds the majority stake in the body corporate which is a partner of the partnership entity; or • Holds the majority stake in the ultimate holding company of the body corporate that is a partner of the partnership entity.
Trust (through a trustee)	• The individual is – • A trustee in the case of a discretionary or charitable trust. • A beneficiary in the case of a specific trust. • The author or settlor in the case of a revocable trust.

PROVISIONS

Following the implementation of the rule BEN-1, every Significant Beneficial Owner (SBO) or shareholder must submit a declaration within 90 days from the rule's applicability.

If a shareholder conceals information or submits inaccurate or incomplete details, the Company is required to initiate proceedings with the National Company Law Tribunal (NCLT) for necessary actions against the SBO.

Form	Purpose	Timeline
BEN-1	Declaration by the Significant Beneficial Owner.	Within 90 days from the Amendment Rule, 2019.
BEN-2	Return by the Reporting Company.	Within 30 days of receiving the BEN-1 declaration.
BEN-3	Register of Significant Beneficial Owner.	Ongoing maintenance by the Reporting Company.
BEN-4	Notice to Members.	As required by the Reporting Company.

PURPOSE OF ESTABLISHING RULES FOR DISCLOSING SIGNIFICANT BENEFICIAL OWNERS

Lawmakers' primary objective is to uncover the individuals who, though concealed behind the scenes, hold a controlling stake in the business.

Section 89 of the Act mandates that when shares of a company are registered in the name of someone who is not the true owner of those shares, both the registered owner and the beneficial owner must submit a notice to the concerned company. The company is then required to file a statement with the ROC (Registrar of Companies) disclosing this beneficial interest.

Furthermore, the provisions of Section 89 of the Companies Act, 2013 are designed to identify the actual

owners of shares in the company. This is particularly relevant for entities like Hindu Undivided Families and Partnership Firms that may not have members as individuals, as defined by the Act. These provisions enable them to maintain their interests on behalf of the respective parties.

To be effective, changes in the extractive sector should extend beyond mere disclosure of beneficial ownership. They should establish criteria for identifying inappropriate self-dealing or corruption in beneficial ownership arrangements and define the consequences of crossing that line.

BENEFICIAL OWNERSHIP NORMS ACROSS DIFFERENT COUNTRIES

In various countries, the concept of beneficial ownership is defined in diverse ways. For instance, in **Pakistan**, it is linked to direct or indirect financial interests, requiring beneficial owners to report returns on the benefits derived from their beneficial ownership positions.

Mongolia defines a beneficial owner as the actual owner of securities registered in the name of a nominee, entitled to enjoy the benefits of those securities.

Malaysia, the Securities Industry (Central Depositories) Act (SICDA) offers a comprehensive definition of beneficial ownership as the ultimate owner of deposited securities, enjoying all associated rights, benefits and obligations, without excluding any nominee. As a result, beneficial owners in Malaysia are not expressly required to update their ownership details.

On the other hand, only a significant shareholder who is also a beneficial owner is expected to notify a company of their interests and any changes. This principle applies to Hong Kong, China, which does not have explicit definitions for "beneficial ownership."

In the **Philippines**, a corporate officer must file a beneficial ownership report, even if they do not own any shares in the listed company. Companies in these regions provide information about their principal shareholders (not beneficial owners) in their annual reports, though there are variations in the implementation of these laws.

In **Pakistan**, the emphasis is on disclosing the shareholding structure. In China, Hong Kong, Indonesia, Malaysia, and Singapore, the rules and regulations require the disclosure of "deemed ownership," which encompasses both direct and indirect (beneficial) ownership.

In **Chinese Taipei**, listed companies must disclose their significant shareholders, defined as those owning 5 percent or more of the shares or being among the top 10 shareholders by shareholding in the annual report. If one of the top 10 shareholders is an institutional investor acting as a Director or Chief, the name of the investor and the names of its 10 largest shareholders and their respective percentages will be indicated.

Countries rich in natural resources must select beneficial ownership assessment rules that align with their political, legal, and industry realities for license grants.

In **Kenya**, the term "beneficial owner" is broadly defined as the natural person who ultimately owns or controls a legal entity or arrangement, as well as the individual conducting a transaction on their behalf. This definition encompasses not only ownership but also anyone with significant control over a legal entity. The amendment also requires the disclosure of the identity of the natural person(s) in control of the legal entity holding the company's shares. This necessitates a careful consideration of ownership agreements and structures, addressing both ownership and power, especially when a human individual may hold power rights on a contractual basis without enjoying ownership rights.

Several countries, starting with the United Kingdom in 2016, have established registers of beneficial ownership, some of which are accessible to the public. The European Union's adoption of the Fifth Anti-Money Laundering Directive in May 2018 requires all EU Member States to enact legislation establishing publicly accessible registers of beneficial ownership information by January 10, 2020.

CONCLUSION

In conclusion, the introduction of rules regarding Significant Beneficial Owners (SBO) in the 2019 amendment to the Companies Act marked a pivotal moment in enhancing corporate transparency and regulatory compliance. These rules were put in place to address the complexities of ownership structures, ensuring that individuals or entities with substantial influence and economic interests in companies are identified and disclosed.

The SBO regulations, as mandated by the Ministry of Corporate Affairs, have played a vital role in promoting accountability, deterring financial misconduct, and combatting practices such as money laundering. They have made it imperative for companies and their shareholders to adhere to stringent reporting requirements regarding SBOs.

The SBO regulations serve as a critical tool in safeguarding the integrity of corporate governance, providing a means to ascertain the true beneficiaries of corporate entities. Compliance with these rules is not only a legal requirement but also a moral and ethical imperative in the corporate world, furthering the goals of transparency and good governance. The 2019 amendment has, therefore, significantly contributed to the evolution of corporate regulation, reinforcing the importance of identifying and disclosing Significant Beneficial Owners in the pursuit of fair and responsible business practices.

Intricacies of SBO in the Context of Limited Liability Partnership

Section 89 of Companies Act, 2013 (Cos Act) mandates disclosure of beneficial interest by nominee and beneficial owner. Sub Section (10) of Section 89 of Cos Act lays down two principles for determining who has beneficial interest (a) person who exercises or causes to exercise any rights attached to shares (b) person who receives or participates in dividend or distribution in respect to such share. If there is any difference between member entered in register of member and person who has any of above right or entitlement, disclosure triggers under Section 89. However, if member is corporate body, Section 89 does not insist to go beyond the legal entity to find out who has beneficial interest.

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INTRODUCTION

Vide two notifications one dated 11 February 2022 and dated 27 October 2023 the compliances of significant beneficial owner (SBO) and disclosures of beneficial interest (BI), respectively, has been made applicable to all Limited Liability Partnership(s) (LLP). While making SBO and BI applicable to LLP, framework applicable to companies has been taken as a base and some minor modifications have been made and adopted. Though both company and LLP enjoy limited liability and are incorporated bodies, other features are completely different and hence adopting SBO framework applicable to Companies for LLP, gives rise to lot of ambiguities and anomalies. Both notifications are effective from their date of publication in official gazette and hence it is urgent and important for every LLP and its designated partners need to be aware about it.

FRAMEWORK UNDER COMPANIES ACT FOR SBO/ BI IN COMPANIES

Section 89 of Companies Act, 2013 (Cos Act) mandates disclosure of beneficial interest by nominee and beneficial owner. Sub Section (10) of Section 89 of Cos Act lays down two principles for determining who has beneficial interest (a) person who exercises or causes to exercise any rights attached to shares (b) person who receives or participates in dividend or distribution in respect to such share. If there is any difference between member entered in register of member and person who has any of above right or entitlement, disclosure triggers under Section 89. However, if member is corporate body, Section 89 does not insist to go beyond the legal entity to find out who has beneficial interest. Section 89 (10) predominantly relies upon exercise of rights attached to shares and dividend in respect of such shares. Please note that in LLP there is not concept of shares or share capital or dividend.

Section 90 of Cos Act goes to next level. It relies on beneficial interest term used in Section 89(10) and goes on to lift the veil of legal entities appearing in register of members to find out individual who has control of those entities. Section 90 (1) read with rule 2(1)(h) of Companies (Significant Beneficial Owner) Rules 2018 (SBO Rules) lays down 4 tests to identify who is individual significant beneficial owner (a) individual who holds not less than 10% shares (b) individual who holds not less than 10% voting rights in shares (c) individual who receives or participates in not less than 10% dividend or other distribution liked to shareholding (d) individual who has right or exercises significant influence or control. An individual may be exercising it directly or indirectly, alone, or together. Explanation I to VI to rule 2(1)(h) explain how to determine direct, indirect, and together. Explanation III and IV to rule 2(1)(h) explains how to determine indirect holding considering various types of shareholders appearing in register of members like company, firm, trust, HUF or pooled investment vehicles.

But again 3 out of 4 parameters directly depend on term share/ share capital. 'Share Capital' concept under Cos Act plays a very important role to determine who is owner or who has beneficial interest. Both voting rights and dividend rights are generally linked to how much paid-up share capital one holds in the company. While implementing concept of beneficial interest as a partner in LLP, regulator tries to rely on term contribution used in Limited Liability Partnership Act, 2008 (LLP Act).

ARTICLE

NOTIFICATION 11 FEBRUARY 2022

Section 67 of LLP Act, gives power to Central Government to make certain provisions of Companies Act 2013 (Cos Act) applicable to LLP with or without exception, modification and adoption. Accordingly on 11 February 2022, Ministry of Corporate Affairs has made certain Sections of Cos Act like Section 90, 164, 165, 167, 206, 252 and 439 applicable to LLP with some modifications. With the modified version, these Sections of Cos Act are already appliable to LLP from 11 February 2022.

While adopting Section 90 of Cos Act for LLP, following changes have been made –

For the word "shares" wherever it occurs, the word "contribution" shall be substituted;

For the word "company" wherever it occurs, the words "limited liability partnership" shall be substituted;

For the word "member" wherever it occurs, the word "partner" shall be substituted;

For the word "officer" wherever it occurs, the words "partner" or "designated partner" shall be substituted

As a result of that Section 90 (1) reads as follows for LLPs–

(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent. or such other percentage as may be prescribed, in contribution of a limited liability partnership or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of Section 2, over the limited liability partnership (herein referred to as "significant beneficial owner"), shall make a declaration to the limited liability partnership, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this Sub-Section.

There is no specific mention about applicability of Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules), however since Section 90 has been made applicable, it is presumed that corresponding rules will also become applicable with similar changes to LLPs.

NOTIFICATION DATED 27 OCTOBER 2023

Limited Liability Partnership Rules, 2009 (LLP Rules) have undergone amendment vide captioned notification and it has following important features –

1. Maintenance of Register of Partners with prescribed contents, timeline etc. became mandatory (Rule 22A)
2. Every person who does not hold beneficial interest in contribution needs to disclose who holds beneficial interest in contribution to relevant LLP. Similar obligation is casted on person who holds beneficial interest but is not entered as partner in LLP. (Rule 22B)
3. Every LLP is mandated to disclose details received above to MCA and every LLP has to authorise one of designated partner to be responsible for these compliances. If no such designated partner is authorised, all designated partners shall be deemed to be responsible for this compliance. (Rule 22B)

All existing LLPs need to maintain Register of Partners within 30 days from commencement of notification dated 27 October 2023, i.e., by 26 November 2023. All partners who do not hold beneficial interest in contribution and the persons who holds beneficial interest but are not registered partners are required to make disclosure to the LLP within 30 days from the date on which the name of partners is entered in the Register of Members. Since such beneficial interest would have already been in existence as on commencement of this notification, it is recommended to make disclosure to the LLP within 30 days from 27 October 2023, i.e., by 26 November 2023. Thereafter all existing beneficial interest disclosures needs to be disclosed by LLP to MCA within 30 days from the receipt of disclosures. As mentioned earlier, this compliance has become applicable to all LLPs from 27 October 2023.

INTRICACIES ABOUT SBO/ BI PROVISIONS IN LLP ACT –

Partner and Partners transferable interest

Section 5 of LLP Act allows only individual and body corporate to be partners in LLP. Therefore, there is no possibility of any trust, HUF, pooled investment vehicle or partnership firm getting admitted as partner. It is only that if any individual or body corporate is acting as partner on their behalf then compliance of disclosure of beneficial interest or significant beneficial owner would trigger.

Further Section 42 of LLP Act recognises that interest / right of partner to receive profits or any other distribution is transferable while retaining his status as partner. And therefore, if there were any such situation, disclosure under Rule 22B of LLP Rules or Section 90 of Cos Act would trigger.

Beneficial Interest and Significant Beneficial Owner

Interestingly term beneficial interest is not defined in LLP Act, and definition mentioned in Section 89(10) of Cos Act has also not been expressly made applicable to LLPs. But intention appears that term beneficial interest mentioned in Section 89(10) of Cos Act would be applicable to LLPs with similar changes like those mentioned in Section 90. This indicates that, for the purpose of LLP, beneficial interest means –

Beneficial interest in contribution includes, directly or indirectly, through any contract, arrangement or

otherwise, the right or entitlement of a person alone or together with any other person to –

1. Exercise or cause to exercise any or all the rights attached to such contribution; or
2. Receive or participate in any dividend or other distribution in respect of such contribution

As per combined reading of Section 89 and 90 (1) and definition of significant beneficial owner mentioned in rule 2(1)(h) of SBO Rules, significant beneficial owner in relation to LLP means an individual, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting limited liability partnership, namely:

(i) holds indirectly, or together with any direct holdings, not less than ten percent, of the contribution;

(ii) holds indirectly, or together with any direct holdings, not less than ten percent, of the voting rights in the contribution;

(iii) has right to receive or participate in not less than ten per cent, of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:

This adopted definition of 'beneficial interest' or 'significant beneficial owner' predominantly based on the presumption that:

a. Contribution under LLP Act has similar characteristics features like term share/ share capital under Cos Act;

b. The term 'significant influence' defined in rule 2(1)(h) of SBO Rules and term 'control' defined in Section 2(27) of Cos Act can be applied to LLP mutatis mutandis.

We will see how far this presumption is reliable.

One more point which we should keep in mind is, compliance of beneficial interest is not asking us to lift the corporate veil whereas SBO provision under Section 90 of Cos Act is expecting us to lift the corporate veil and see who the individual beneficial owner is. And therefore, compliances w.r.t. rule 22A or 22B of LLP Rules vs compliances arising out of 11 February 2022 is not same.

DISCLOSURE BASED ON CONTRIBUTION

Clause (i) of SBO definition says an individual who holds indirectly, or together with any direct holdings, not less than ten percent, of the contribution.

In LLP Act there is no requirement as to within how much time contribution committed in LLP agreement must be brought in by the partner. There are no provisions like Section 66 or 68 of Cos Act, which prescribes process if partner wants to withdraw contribution. And therefore,

> All existing LLPs need to maintain Register of Partners within 30 days from commencement of notification dated 27 October 2023, i.e., by 26 November 2023. All partners who do not hold beneficial interest in contribution and the persons who holds beneficial interest but are not registered partners are required to make disclosure to the LLP within 30 days from the date on which the name of partners is entered in the Register of Members.

it is not necessary that contribution committed in LLP agreement will come in specified time period or will stay in LLP. Off course, if LLP is unable to pay debts to creditors, creditors can insist upon partner to bring in contribution committed in LLP Agreement[1].

And therefore, question that arises is how do you determine % ? is it based on actual money/ equivalents contributed by the partner? or is it based on commitment made in LLP Agreement? Intention appears contribution committed in LLP Agreement should be the base.

VOTING RIGHT IN CONTRIBUTION

Clause (ii) for definition of Significant beneficial Owner refer 'not less than ten percent, of the voting rights in the contribution.'

For determining who is significant or otherwise beneficial owner, Cos Act predominantly relies upon share capital as a base. Under Cos Act, by virtue of Section 47 voting is based upon paid up equity share capital held by a shareholder. In certain cases, if dividend is not paid on preference shares, even they would get voting right. This voting right is based on how much paid-up capital a shareholder holds.

Similarly, by virtue of Table F provisions of Cos Act, payment of dividend is in proportion to the paid-up share capital held by a shareholder. Whereas in case of LLP, there is no concept similar to shares or capital or voting or dividend.

In LLP there is concept of contribution. The term 'contribution' is not defined in LLP Act, however Section 33 LLP Act explains that creditors can enforce obligation of partner to contribute the amount which is mentioned in LLP Agreement. That means contribution is kind of a guarantee to the creditors that partners will pay this much value in LLP. Neither profit distribution nor voting is dependent upon contribution. Rather there is no concept of ordinary or special resolution in LLP. Even if a particular partner holds 99% contribution, it does not mean he has equivalent right of voting or profit drawal. There is no co relation. And therefore, contribution value may or may not be the indicator of control or ownership

1. *Section 33 (2) of LLP Act*

or even influence. Therefore words "holds indirectly, or together with any direct holdings, not less than ten percent, of the voting rights in the contribution"[2] seems to be not serving the purpose, because there is no voting right in the contribution.

LLP Agreement is guiding document for decision making process as to how many partners consent will be required for a particular decision. If LLP Agreement is silent, provision of First Schedule to LLP becomes applicable[3] and if First Schedule is also silent, it can be done only with consent of all the partners. In fact majority occasions, LLP Act either prescribes consent of all[4] or majority partners[5] and there is no co relation between decision making parameters and contribution. And therefore, reference of voting right and linking it to contribution does not seem to be relevant.

DIVIDEND / DISTRIBUTION OF PROFITS

Clause (iii) for definition of Significant beneficial Owner refer to right to receive or participate in not less than ten percent, of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings (shareholding).

This clause refers to right to receive not less than 10% dividend which is based on his shareholding. There is no concept of dividend in LLP. Cos Act prescribes process of declaration of dividend[6] which is absent in LLP Act. Rights on profits of LLP will be dependent on LLP Agreement and if LLP Agreement is silent then every partner has equal right of profits[7].

Words 'any other distribution' in clause (iii) also refers to right arising out of indirect or direct holdings in LLP. If this clause is suitably worded in context of LLP Act it will help.

As of now, we will have to go by LLP Agreement and if any individual has any indirect right (without being partner) to receive more than 10% profits of LLP, he should make disclosure.

REFERENCE OF SIGNIFICANT INFLUENCE OR CONTROL IN CONTEXT OF LLP

Clause (iv) of SBO definition says – any individual who has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

Significant influence is defined at 2 places in Cos Act:-

Explanation to Sec 2(6) (definition of associate company)

The expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

Another definition is in SBO Rules - Explanation VI in the Rule 2 (1) (h) - definition of SBO:-

"significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies. For ascertaining significant influence in context of SBO, we have to rely on this definition.

Similarly control is defined under Section 2(27) of Cos Act, which is –

"Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."

Difference between control and significant influence is as follows:

Particulars	Control	Significant influence
Right or power[8]	Control is right.	Significant influence is power.
Is it about acting in concert (acting together)?	Yes, control can be alone or together with someone.	Doesn't appear to cover exercise of influence together with someone.
Is it via appointment of board?	Yes, right to appoint majority director is criteria to consider if there is control or not.	Significant influence does not cover right to appoint majority directors. But one may have right to appoint some Director(s).
Is it about policy making?	Control presupposes, if not right to appoint majority directors, a person should have control on management or policy.	Mere ability to participate in financial or operating policy decision will mean significant influence.

In case of LLP, there is no concept of Board of Directors. Rather there is no separation of management and ownership[9]. In LLP there is no shareholder/ director but there are partner and by default all partners have equal rights (unless otherwise agreed between partners

2. *Clause (ii) of Significant Beneficial Owner defined in sub rule 2(1)(h) of Companies (Significant Beneficial Owners) Rules 2018 as modified and adopted by MCA vide notification dated 11 February 2022 for LLP*
3. *Section 23 (4) of LLP Act*
4. *Shifting of Registered Office (Rule 17), Change of Name (Rule 20(1)), removal of auditor (Rule 24(18)), striking off name (Rule 37) etc. of LLP Rules 2009*
5. *Point no. 8 of Schedule I of LLP Act*
6. *Chapter VIII of Cos Act*
7. *Point no.2 in First Schedule to LLP Act*
8. *Generally right is inherent for example fundamental rights, and powers are bestowed by someone like power of director are only till the time he is on the Board.*
9. *LLP is essentially a partnership*

via LLP Agreement). And therefore, ability to appoint majority director is not relevant for determination of having control. And by default, every partner has a right to participate in policy decision making process and therefore irrespective of any contribution, right to profit or otherwise, every partner has joint control along with other partners on affairs of LLP. And therefore, if body corporate is acting as partner in LLP, disclosure of SBO will be necessary irrespective of what is contribution and what is profit right of that corporate partner in LLP.

If LLP Agreement provides that some partner(s) has all rights to take all decisions and other partner(s) have no rights, then it needs to be evaluated whether SBO disclosure is required for such corporate partner who does not have right to participate in decision making process.

WHAT IS THE COMPLIANCE REQUIREMENT UNDER RULE 22B WITH RESPECT TO BENEFICIAL INTEREST DISCLOSURES?

Latest notification of 27 October 2023 of MCA is expecting every LLP to disclose if any partner is not beneficially interested or is beneficially interested but not acting as partner. There are forms prescribed for these disclosures. Some examples where this disclosure will trigger are –

(a) LLP which is formed by corporate and for the compliance of minimum 2 partners some director or officer is admitted as partner but beneficial interest is of the corporate on whose behalf he holds economic interest.

(b) With respect LLPs where trustee acts partner in LLP on behalf of beneficiaries, trustee and beneficiary can make disclosure in the prescribed form arising out of Rule 22B.

(c) If Karta is acting as partner on behalf of HUF in LLP, Karta of HUF can make disclosure about his nominee status in relevant form.

In any LLP, if a body corporate is holding partner status, whether we need to look at who has majority stake in such body corporate and make disclosure under rule 22B? Corporate entity is a separate legal entity and that corporate entity has beneficial interest in wherever they invest and act as partner. Section 90 of Cos Act would deal with such situations and there would be disclosure requirements. However, for that purpose E-forms BEN 1,2,3,4 needs to be tweaked to take care of LLP structure. Though Section 90 has been made applicable to LLP from 11 February 2022 and SBO will have to make disclosure to LLP and then LLP to MCA, there is no enabling E-form for it. Current amendment of 27 October 2023 is about disclosure of beneficial interest and not about significant beneficial owner.

CONCLUSION

Disclosure of beneficial interest and significant beneficial owner are subject of national interest and every corporate or professional has to comply with it, otherwise there are serious consequences. While it is very clear that these compliances have been made applicable to LLP, these rules need to be overhauled looking at nuances of LLP eg. LLP does not have separation of management and ownership, LLP does not have concept of share capital or voting or dividend, LLP does not have concept of voting like companies it is rather partnership, LLP does not allow anyone to become partner apart from individual or body corporate. Compliance professional can look at the intent of regulator and try to comply looking at the intent. At the same time, to avoid any confusion in minds of stakeholders, MCA may come out with specific framework [rules and E-forms] with respect to SBO for LLP at the earliest.

Invitation For Research Papers In CS Journal – December 2023 Issue

We invite Research papers/ Manuscripts to publish in 'Chartered Secretary' with the objective of creating proclivity towards research among its members both in employment and practice. As research is an integral part the of scientific approach towards an issue for arriving at concrete solutions, in view of this it is essential to ensconce the research-oriented approach. Further, research is pervasive, i.e., it is not restricted to a particular field. Whether it is engineering, management, law, medicine, etc. without proper research, it is almost next to impossible to ascertain the solution of a problem.

Contributions may be sent on topics like Secretarial Practice, Auditing Standards, Company Law, Mercantile Law, Industrial Law, Labour Relations, Business Administration, Accounting, CG & CSR, Legal Discipline, and Digital Transformation & Artificial Intelligence or on any other subject and topic of professional interest.

Participants are requested to send their articles/ research papers with the following terms:

- The article/research papers should be original and exclusive for Chartered Secretary.
- It should be ensured that the article has not been/will not be sent elsewhere for publication.
- Article/ research papers should include a concise Title, Abstract name of the author(s) and address.

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

The length of the research paper should ordinarily be between 2,500 - 4,000 words. The research paper should be forwarded in MS Word format.

We look forward to your co-operation in making this initiative of the Institute a success.

Regards,

Team ICSI

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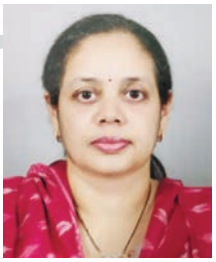
RESEARCH CORNER

- PLASTIC WASTE MANAGEMENT RULES IN INDIA – PERSPECTIVES ON OVERCOMING IMPLEMENTATION CHALLENGES

Plastic Waste Management Rules in India – Perspectives on Overcoming Implementation Challenges

As per the Annual Report 2020-21 on Implementation of PWM Rules, 2016, compiled by Central Pollution Control Board, estimated plastic waste generation during the year 2020-21 was approximately 41,26,997 TPA. The CSE Report on Managing Plastic Waste in India: Issues and Challenges of 2020 mentions that Industry reports that 60% of the plastic waste in India is recycled, which is much higher than the global average of plastic recycling of 20%.



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INTRODUCTION

In today's society, plastic is all pervasive. Right from items of personal use like plastic toothbrush and toothpaste in a plastic tube to plastic automotive components, there is hardly any aspect of our life, which has not been touched by plastic. Increasing plastic usage and consumption has resulted in phenomenal growth in the plastic industry, and plastic use is projected to triple, from 460 MT in 2019 to 1321 MT in 2060[1]. However, this has correspondingly resulted in an increase in plastic waste resulting in littering, mismanaged plastic waste, marine pollution and harmful effects on the environment.

During the year 2021-22, the demand for plastics in India was 20.89 million tonnes[2]. India's per capita per annum plastic consumption in FY 2021-22 was 15 kg as against that of USA (112 kg) and China (62.4 kg)[3]. Of this total plastic consumption, the packaging industry has the lion's share, where nearly 59% is used in different packaging items[4].

As per the Annual Report 2020-21 on Implementation of PWM Rules, 2016, compiled by Central Pollution Control Board, estimated plastic waste generation during the year 2020-21 was approximately 41,26,997 TPA[5]. The CSE Report on Managing Plastic Waste in India: Issues and Challenges of 2020[6] mentions that Industry reports that 60% of the plastic waste in India is recycled, which is much higher that the global average of plastic recycling of 20%. The report further goes on to state that the source of this data put forth by the industry is unclear and not supported by the reality of plastic waste littered across the country. Even assuming the data is correct, 40% of the plastic waste, estimated at 16,50,798 TPA is left untreated in landfills, which is a huge quantum of plastic waste. India is currently ranked 12th among the countries with mismanaged plastic waste and is expected to reach the 5th position by the year 2025[7]. From the data, it is clear that plastic waste management is an increasing cause for concern and needs immediate attention from all the stakeholders involved in the plastic value chain.

LEGAL FRAMEWORK FOR MANAGEMENT OF PLASTIC WASTE

Early development of Plastic Waste Management rules

The law related to environment in general is governed by an umbrella legislation, the Environment Protection Act, 1986 ("EPA 1986") and the rules made thereunder. The initial journey in the management of plastics in India started in the year 1998 when the Recycled Plastics Usage Rules were notified inviting public comments. Thereafter, the Plastics Manufacture, Sale and Usage Rules, 1999 were notified by the Ministry of Environment and Forests. This 1999 regulation was confined to manufacture of plastic carry bags or containers and there was no focus of policy makers on the disposal aspect of plastics or plastic packaging. Thereafter in the year 2011, the Ministry of Environment and Forests notified the Plastic Waste (Management and Handling) Rules, 2011. The term "Extended Producer Responsibility" was first defined in the plastic waste management framework as under:

"Extended Producer's Responsibility (EPR)" means the responsibility of producer or manufacturer of plastic carry bags and multi-layered plastic pouches or packages for the environmentally sound management of the product until the end of its life. This responsibility also applies to all manufacturers using such packaging.

The 2011 Rules recognised the need to address management of plastic packaging in addition to carry bags and containers. It also defined the terms Plastic Waste to mean:

"any plastic product such as carry bags, pouches or multi-layered packaging, which have been discarded after use or after their intended life is over.

It can be seen from the above that between 1999 and 2011, the focus of the plastic waste rules became more inclusive with coverage of recycling as well as all plastic packaging apart from carry bags and containers. The concept of EPR was also introduced in the rules, though the concept of producer was not defined.

Plastic Waste Management Rules, 2016

In 2016, with an intention to revamp different waste management systems, the new Plastic Waste Management Rules 2016 were notified on 18th March 2016. The 2016 Rules increased the scope of the plastic waste regulatory structure and recognised the different stakeholders involved in the plastic waste management framework. Some of the major changes in the 2016 Rules were as under:

1) The definition of plastic waste was amended to cover any plastic discarded after use or after the intended use is over, thus extending its scope.

2) The responsibility for waste management was extended from the municipal corporations for urban areas to Gram Panchayats for rural areas in recognition that plastic waste had spread to rural areas and needed to be managed properly.

3) The different stakeholders like producers, manufacturers, importers, brand owners were defined and included within the scope of applicability of the plastic waste rules. For the first time the role of waste generators was recognised in the rules.

4) A collect back or take back system was introduced as a part of responsibility of the Producers. Primary responsibility of plastic waste collection was that of Producers, Importers and Brand Owners. This bifurcation of parties ensured coverage of all legs of the production cycle – Producers (include manufacturer or importer of plastic), Importers and Brand Owners (seller of commodity under a brand label).

5) Definition of EPR was amended as under, to make it more inclusive:

   "Extended producer's responsibility" means the responsibility of a producer for the environmentally sound management of the product until the end of its life.

In 2016, with an intention to revamp different waste management systems, the new Plastic Waste Management Rules 2016 were notified on 18th March 2016. The 2016 Rules increased the scope of the plastic waste regulatory structure and recognised the different stakeholders involved in the plastic waste management framework.

6) One of the important provisions was regarding phasing out of manufacture / use of multi-layered plastic. However, in the year 2018, the provision was amended to cover multi-layered plastic which is non-recyclable / non energy recoverable / with no alternate use, resulting in dilution of the provisions.

7) The options for use of plastic waste for road construction, waste to energy plants, etc., that is re-use of plastic waste, were recognised.

8) Registration was introduced for Producers, Recyclers as well as Manufacturers with a provision for them to file an Action Plan (to be endorsed by Secretary in-charge of Urban Development).

Thus, the Plastic Waste Management Rules 2016 intended to focus on minimisation of plastic waste, source segregation, recycling of plastic waste, and inclusion of all stakeholders including generators (parties who create waste), manufacturers (parties who introduce waste in the market) and implementors (parties who operationalise the rules in practice) in the plastic waste management framework.

Recent amendments to the PWM Rules 2016

In the years 2021 to 2023, there has been substantial work done on plastic waste rules framework, with multiple amendments to the rules. A summary of the recent amendments is given below:

Amendment reference	Details of changes
Amendment dated 12-08-2021	Ban on manufacturing, import, stocking, distribution, sale and use of Single Use Plastic with low value and high littering potential w.e.f. 1st July 2022 Increase in thickness of plastic carry bags to encourage reuse.
Amendment dated 17-09-2021	Recycled plastic allowed for foodstuff as per prescribed standards by Food Safety and Standards Authority of India.

Amendment dated 16-02-2022	Schedule II was introduced with the Guidelines for Extended Producer Responsibility for Plastic Packaging. The guidelines specified the following: i) The Product coverage under the PWM Rules, 2016 was clarified to cover plastic packaging classified in four categories like Rigid packaging, Flexible packaging, Multi-layered packaging and Plastic Sheets & Carry bags. ii) The term Obligated Entities under the PWM Rules, 2016 was specified to include Producers, Importers, Brand Owners and Plastic Waste Processors. The term Brand Owner was defined to include online platforms and super markets. The registration obligations of all the obligated entities are specified in the guidelines. iii) The detailed EPR targets specified category wise for Producers, Importers and Brand Owners. For Producers & Importers - the targets are separately specified for EPR responsibility (for collection of plastic packaging) and Recycling responsibility (ensuring recycling of collected plastic packaging). The targets are also specified for minimum use of recycled content in plastic packaging applicable from FY 2024-25. In case where the Producer is unable to meet the obligation for minimum recycled content, the Producer would need to buy plastic credit certificates. In case of Brand Owners, targets are specified for EPR responsibility, Reuse responsibility, disposal and use of recycled plastic content. The Guidelines also provide for imposition of Environmental Compensation in case of non-fulfilment of EPR targets specified.
5th Amendment dated 06-07-2022	The definition of terms like bio-degradable plastics, importer, end-of-life disposal, Plastic Waste Processors, etc., were added to bring more clarity to the PWM Rules, 2016.
6th Amendment dated 27-04-2023	Clarity in labelling requirements for different types of packaging. Further clarity was provided in procedural requirements mentioned in Schedule II.

IMPLEMENTATION DATA RELATING TO PWM RULES 2016

The CPCB Annual Report for the year 2020-21[8] on Implementation of Plastic Waste Management Rules (As per Rule '17(4)' of PWM Rules, 2018) shows the following data on waste generation and processing in different states.

Sr. No.	State	Plastic Waste generated (TPA)	Plastic Waste processed (TPA)
1	Andaman & Nicobar Islands	492.34	83.70
2	Andhra Pradesh	39,626.45	NA
3	Arunachal Pradesh	3,755.90	150.00
4	Assam	58,765.00	9,490.00
5	Bihar	74,263.60	7,673.60
6	Chandigarh	13,107.00	1,544.15
7	Chhattisgarh	47,450.00	NA
8	Daman, Diu, Dadra Nagar Haveli	4,726.00	NA
9	Delhi	3,45,000.00	1,150.00
10	Goa	29,440.90	NA
11	Gujarat	3,37,693.96	65,420.00
12	Haryana	1,85,167.90	735.00
13	Himachal Pradesh	6,206.78	828.60
14	Jharkhand	20,263.40	9,185.20
15	Jammu & Kashmir	51,710.60	NA
16	Karnataka	3,68,080.00	14,400.00
17	Kerala	1,20,063.87	75,215.50
18	Lakshwadeep	523.00	NA
19	Madhya Pradesh	1,38,483.58	1,18,989.00
20	Maharashtra	3,11,254.00	1,98,368.00
21	Manipur	10,303.00	182.50
22	Meghalaya	191.00	NA
23	Mizoram	1,514.51	6.75
24	Nagaland	565.00	0.70
25	Odisha	51,269.90	48,545.00
26	Punjab	1,08,332.00	NA
27	Puducherry	12,754.00	4,812.00
28	Rajasthan	66,324.57	265.84
29	Sikkim	82.75	NA
30	Tamil Nadu	4,30,107.00	3,82,557.00
31	Telangana	4,72,675.00	NA
32	Tripura	61.65	57.50
33	Uttarakhand	18,647.70	12,173.00
34	Uttar Pradesh	3,75,950.00	10,252.00
35	West Bengal	4,17,925.00	1,47,095.00
		41,22,777.36	**11,09,180.04**

Source: Data-compilation based on CPCB Annual Report for FY 2020-21

The table indicates that the waste processed amounts to 26.90% of the total plastic waste generation.

The said CPCB Annual Report for the year 2020-21 further provides the following data regarding implementation of the PWM Rules 2016:

i) The estimated total plastic waste generation during 2020-21 is approximately 41,26,997 TPA, with maximum plastic waste generation in Telangana (12%), Tamil Nadu (10%) and West Bengal (10%).

ii) One alarming fact stated in the report is that per capita plastic waste generation has grown almost 2.5 times during the period between 2015-16 to 2020-21.

iii) In terms of data monitoring, in most of the states, the Urban Local Bodies (ULBs) have given their annual report on plastic waste monitoring to the SPCBs / PCCs, however capturing of information at the Village Panchayat level needs to be strengthened for getting a proper region wise picture of the status of plastic waste.

iv) The total quantum of plastic waste processed has been stated at 11,09,180 TPA. However, there is no uniformity of data provided by the states in this regard and the information collection needs to be strengthened to get a true picture of waste processing in the country.

v) There are 615 unregistered plastic manufacturing units and the total number of registered plastic manufacturing units amounts to 5939. This translates to ~ 9.5% of the total units being unregistered and unmonitored.

vi) In this report, the performance of States / UTs has been assessed and ranked on the basis of their overall performance in the areas of; a) Per capita plastic waste Generation; b) Number of Unregistered plastic units; c) Implementation of marking and labelling requirements; d) Action Plan for Plastic Waste Management; and e) Compostable plastic units. In this Environmental Performance Rating, the States of Maharashtra obtained the highest score followed by Odisha and Pondicherry.

Recommendations in CPCB Annual Report for better implementation

The said report has given the following recommendations for improving the implementation of rules:

i. Proper information flow from local bodies to the SPCBs/PCCs and further on to the CPCB. It should be ensured that complete information is provided at every level for a correct picture of implementation of the PWM rules.

ii. Ensure setting-up of collection, source-segregation & disposal system for plastic waste management by States / UTs in each and every ULB and Gram Panchayat / Village Panchayat.

iii. It should be ensured that no unregistered plastic manufacturing/recycling units remain in operation in the states. Bringing all units under registration will ensure proper monitoring and ensure that all units conform to the PWM Rules.

iv. Though this report does mention data on plastic waste sent for processing in terms of recycling, these details are reported sporadically by the States which does not give a complete picture of plastic waste processing in different parts of the country.

v. Increased engagement and co-ordination is required between SPCBs/PCCs and ULBs / GPs to ensure proper channelization of plastic waste for disposal or recycling and to ensure implementation of ban on single use plastics.

vi. Data provided by ULBs/GPs needs to be validated by random inspection by SPCBs/ PCCs to verify the validity of the data.

CHALLENGES IN IMPLEMENTATION OF PWM RULES, 2016

One of the biggest challenges that India faces with plastic waste management is the lack of public awareness on disposal of plastic waste[9]. As of today, though source segregation is mandated in the waste management rules (Solid Waste Management Rules 2016), it is practiced sporadically in some urban areas like Bangalore, Mumbai, Indore and other places. But such practice is an exception rather than the rule, which indicates ignorance of the general public of the importance of such practice.

Lack of an efficiently functioning solid waste management mechanism is another major challenge as this affects the separate collection of plastic waste. This results in contamination of plastic waste with other types of waste due to improper source segregation. As per data given on the UNDP website relating to Plastic Waste Management, India generates 15 million tonnes of plastic waste every year but only one fourth of this is recycled due to lack of a functioning solid waste management system[10].

In their paper, "Challenges and strategies for effective plastic waste management during and post COVID-19 pandemic"[11], Vanapalli K.R. et. al., have pointed out the need to incentivise recycling industry in India by incentivizing sustainable technologies. The authors have also suggested imposition of a separate tax on plastic waste with low recyclability, to promote use of homogenous plastic materials which can be recycled easily.

Center for Science and Environment (CSE), in their report, Plastic Recycling: Decoded[12], have highlighted the limitation of the informal sector's capacity to make investments in infrastructure and equipment for effective plastic waste recycling, due to which a symbiotic relationship has emerged between the formal sector and informal sector.

Challenges in terms of efficient recycling of mixed Plastic waste needs to be addressed by the Indian Recycling Sector. Improving the recovery and recycling of plastic waste volumes needs to be addressed by increased capital investment in the recycling sector by investing in technology and specialised equipment[13].

CONCLUSION AND SUGGESTIONS

It is evident that plastic waste is a burgeoning problem which needs to be addressed at all levels and by all the stakeholders involved. While the Government of India is putting in all efforts to provide for the legal mechanism to control and manage plastic waste in the country through its responsiveness to changes required in the PWM Rules, the effective implementation of these rules will require attacking problems at each stage of the plastic waste cycle at the same time so that we can see a visibly efficient plastic waste management infrastructure in the next 5-10 years. Different measures are needed to be taken both at the Upstream level (consisting of Manufacturers, Producers and Brand Owners, who have control over the product design) and Downstream level (consisting of the Consumers and Recyclers, tasked with the responsibility of waste segregation, collection, sorting, processing and recycling), so that all aspects of the challenges faced in effective plastic waste management are addressed at the same time. Some of the measures which can be explored are suggested below:

Upstream Measures:

1) **Incentives for reducing plastic packaging content–** It is suggested that a positive encouragement to the Upstream players, in the form of incentive to the upstream players is more likely push the players to ensure introduction of lower impact products in the market.

2) **Research and Innovation in alternative packaging or improved recycling technologies –** The current policy framework needs to encourage research in alternative packaging options as well as improved recycling technology which can recycle the mixed waste efficiently. Alternatives like tax breaks for R&D in recycling technology and alternative packaging as well as capital subsidy for encouraging investment in recycling can be explored.

Downstream Measures:

1) **Increase in Public awareness –** Steps for increase in consumer awareness need to be undertaken which will result in tackling of the root of the problem of unsegregated plastic waste. Introduction to Waste Management and its impact in the School Curriculum and engagement of the local NGOs to conduct awareness campaigns in colleges and offices can result in increased public awareness.

2) **Incentives for low value waste collection –** Low value and flexible packaging are largely used by brand owners and producers and it gets littered due to its non-collection by waste pickers as it is not sufficiently remunerative for collection[14]. As pointed out in the TERI report - Circular Economy for Plastics in India: A Roadmap, there is a lack of economic incentives that can encourage collection of low value waste and prevent the leakage of these low value plastic waste items into the environment. Alternative collection mechanism can be looked at by establishing collection centers at schools, colleges, malls and other public places, where people can deposit low value plastic waste.

3) **Integration of informal sector into the formal plastic waste management infrastructure –** Though Rule, 11(1)(c) of the Solid Waste Management Rules, 2016 [15] suggest about acknowledgement of the role of informal sector players in waste collection, there

is lack of a structured approach for such integration of informal sector in the formal plastic waste management value chain[16]. This link needs to be worked upon as the strong collection systems are already in place through the network of informal waste collectors.

4) **Incentives for upgradation of existing recycling centers –** As per research done by United Nations Human Settlements Programme, out of the 33% of waste processed, only 7% is handled by the formal sector[17]. Considering the informal sector is handling majority of the recycling, it is important to institute a mechanism for upgradation of infrastructure available for the informal recycling units, so that there is minimum impact on the environment and safer practices.

5) **Lack of proper data -** As pointed out in the CPCB Annual Report 2020-21, the data provided by ULBs/ GPs should be complete and uniform so that the impact of various policy measures on the plastic waste generation and processing can be properly mapped. The information flow can be improved by identifying and providing training to the concerned SPCB office with respect to the necessity and way of filling up the annual reports so that the same will be easily available.

The above measures may be considered for improving and strengthening the plastic waste management value chain. More than anything, all the stakeholders in the plastic waste value chain will be required to work in collaboration and co-operation with each other to improve the implementation of the PWM Rules, 2016.

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xv. *Rule 11 (1) (c) state policies and strategies should acknowledge the primary role played by the informal sector of waste pickers, waste collectors and recycling industry in reducing waste and provide broad guidelines regarding integration of waste picker or informal waste collectors in the waste management system.*

xvi. *Kapur-Bakshi, S., Kaur, M., and Gautam, S., 2021. Circular Economy for Plastics in India: A Roadmap. New Delhi: The Energy and Resources Institute*

xvii. *FICCI Report, Strategies for Sustainable Plastic Packaging in India : A USD 100 Billion Opportunity till 2030, 2020, https://ficci.in/spdocument/23348/FICCI-Accenture-Circular-Economy-Report1.pdf, Visited on 23-08-2022.*

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3

LEGAL WORLD

- SEVERN TRENT WATER PURIFICATION, INC v. CHLORO CONTROLS (INDIA)PVT LTD [SC]
- SHANKAR SUNDARAM v. AMALGAMATIONS LTD & ORS [NCLAT]
- THE NATIONAL SMALL INDUSTRIES CORPORATION LTD V. REKHA SHARMA RESOLUTION PROFESSIONAL [NCLAT]
- MATHOSRI MANIKBAI KOTHARI COLLEGE OF VISUAL ARTS v. THE ASSISTANT PROVIDENT FUND COMMISSIONER [SC]
- DELHI TRANSPORT CORPORATION v. MAHENDER SINGH[DEL]
- SIBY THOMAS v. SOMANY CERAMICS LTD [SC]
- ADITYA KHAITAN v. IL AND FS FINANCIAL SERVICES LTD [SC]
- RAHUL DILIP SHAH v. THE CATALYST TRUSTEESHIP LTD& ORS [DEL]
- INDIAN SUGAR MILLS ASSOCIATION v. COMPETITION COMMISSION OF INDIA & ORS [NCLAT]

Corporate Laws

Landmark Judgement

LMJ 11:11:2023

SEVERN TRENT WATER PURIFICATION, INC v. CHLORO CONTROLS (INDIA)PVT LTD [SC]

Appeal (Civil) No. 1351 & 1353 of 2008

C.K. Thakker & Tarun Chatterjee, JJ. [Decided on 18/02/2008]

Equivalent citations: (2008) 142 Comp Cas 81; (2008) 83 CLA 3;

Companies Act,1956- section 433- winding up of a company- rights of contributory and creditor to wind up a company- Supreme court explains the principle.

Brief facts:

The petitioner Severn Trent filed a winding up petition against Capital Controls India Private Limited (the company). The Company judge admitted the company petition. The Company as well as Chloro Controls (India) Private Limited opposed the admission of the Company Petition. The Company objected to the maintainability of the petition for winding up on several grounds. The learned Company Judge admitted the Company Petition.

On appeal, the Division Bench set aside the order of the Company Judge, holding that Severn Trent is not entitled to file a petition for winding up as a contributory, unless it is registered as a member in the register maintained by the company. It, however, remitted the matter on the question of maintainability in its capacity as a Creditor of the Company to the Company Judge for consideration. The Bench also observed that it would be open to the respondents to oppose the admission of the petition on all grounds, including that of premature advertisement by Severn Trent. Severn Trent being dissatisfied with order in appeal, filed the present SLP.

Decision: Dismissed.

Reason:

We have heard the learned counsel appearing on both the sides at considerable length. We have also given most anxious and thoughtful consideration to the rival submissions. Primarily, three questions arise for our consideration;

1. Whether a winding up petition filed by Severn Trent is maintainable in the capacity as a contributory?

It is abundantly clear that a contributory's right to present a winding up petition must be one either under clause (a) or under clause (b) of sub-section (4) of Section 439. It is nobody's case that clause (a) of Section 439(4) is attracted in the instant case. Hence, Severn Trent can only claim the right to present a winding up petition under clause (b) of sub- section (4) of Section 439 of the Act.

It is clear that the provisions of the Act must be complied with before presenting a winding up petition under Section 439(4)(b) of the Act. If a person intends to present a petition for winding up of a company as a contributory, he/it has to satisfy the Company Court that his/its case is covered by one of the eventualities contemplated by clause (b) of sub-section (4) of Section 439 of the Act.

In the context of Company Law, winding up of a body corporate is not the same thing as or equivalent to death of a member. An individual and a body corporate expressly have been treated separately which is clear from Sections 430, 431 and 432 of the Act. Under the scheme of the Act, every creditor may present a petition for winding up of a company, but every contributory cannot. A contributory to be eligible and qualified to present a winding up petition must be covered by sub-section (4) of Section 439 of the Act and the Legislature, in its wisdom, excluded certain categories of persons from being entitled to present a petition for winding up as contributory. As already held by us earlier, the provision is exhaustive in nature and its sweep cannot be extended by judicial interpretation. Upholding of argument of Severn Trent and conceding the right to present a petition for winding up of a Company though it cannot be said to be a contributory would, in our judgment, result in re-writing of the provision. A Court of law cannot adopt a construction which would result in amendment of a statute. The contention of the learned counsel for Severn Trent, therefore, must be rejected.

For the aforesaid reasons, we answer question No.1 in the negative and hold that a winding up petition filed by Severn Trent in the capacity as a contributory is not maintainable.

2. Whether a winding up petition filed by Severn Trent is maintainable in the capacity as a creditor?

In our opinion, however, it cannot be said that the Division Bench was in error in passing the impugned order and remitting the matter to the learned Company Judge to consider the question as to maintainability of company petition filed by Severn Trent as a Creditor of the Company. In this connection, our attention was invited to certain decisions. In our opinion, it would not be appropriate to express any opinion one way or the other since we are of the view that the Division Bench of the High Court was not wrong in allowing Severn Trent to argue that point before the learned Company Judge as that point did not arise before him earlier. We may, however, hasten to add that we may not be understood to have recorded a finding that the petition presented by Severn Trent is maintainable. We clarify that as and

when the matter will be taken up by the learned Company Judge, it will be open to the Company to raise a contention that no such petition as presented is maintainable in the capacity as a Creditor.

3. Whether a winding up petition filed by Severn Trent is liable to be dismissed at the threshold on the ground of premature advertisement by Severn Trent without the order of the Court as required by law?

So far as the third question is concerned, neither the learned Company Judge, nor the Division Bench has decided it. Before the learned Company Judge, no such contention appears to have been advanced by the Company. Before the Division Bench, it was argued that since there was premature advertisement by the Severn Trent without any order from the Company Court, there was 'abuse of process of the Court' by Severn Trent and the petition was liable to be dismissed only on that ground. Before us also, the above contention was reiterated by the learned counsel for the Company and in support thereof, case-law has been cited. The learned counsel for the Severn Trent, however, submitted that the advertisement was qualified, carefully worded and the facts stated therein were accurate. It was essentially a notice to creditors, contributories and other persons intimating about presenting of winding up petition and there was no mala fide intention or oblique motive in issuing the advertisement. We may only state that since the Division Bench of the High Court has remitted the matter to the learned Company Judge and granted liberty to the Company to oppose admission of the Company petition on all available grounds including the ground of 'premature advertisement', we need not express any opinion one way or the other. As observed by the Division Bench of the High Court, at the time the company petition will be taken up by the Company Judge for admission, it will be open to the Company or contesting respondent to oppose the admission on all grounds available.

For the aforesaid reasons, the appeal filed by Severn Trent Water Purification Inc. petitioner of the company petition, deserves to be dismissed and is hereby dismissed.

LW 76:11:2023

SHANKAR SUNDARAM v. AMALGAMATIONS LTD & ORS [NCLAT]

Company Appeal (AT) No. 325/2019 with connected appeals

M. Venugopal & Shreesha Merla. [Decided on 06/10/ 2023]

Companies Act,2013- section 241 and 242- oppression and mismanagement- whether applicant made a case for relief-Held, No.

Brief facts:

Challenge in these Appeals in Company Appeal (AT) No. 325/2019, and in Company Appeal (AT) No. 328/2019 respectively is to the common Impugned Order passed by the National Company Law Tribunal, Chennai Bench, by which common Order, the NCLT has dismissed both the Company Petitions, as devoid of merit.

The core issue involved in these appeals, which had a arduous path of litigation and finally come before the NCLAT is the oppression and suppression of minority shareholders and financial mismanagement of the company. The appellant is a minority shareholder.

Decision: Appeals dismissed.

Reason:

In the facts of the instant case, the Appellant is a minority Shareholder and the Company is not in a deadlock situation and having come to such a conclusion we are of the considered view that there is no case made out by the Appellant that there was any Oppression or Mismanagement as defined under Sections 241 and 242 of the Act and no direction can be given compelling the Respondents to purchase the Shares of the Appellant or for any buyout of shares. We are also conscious of the fact that the reliefs sought relates to shares that are subject matter of the Suits filed by the 24th Respondent and the Appellant before the Hon'ble Madras High Court in which the rights of the Parties are yet to be determined. The Appellant has filed C.S. 745/1999 seeking partition of the estate of his grandparents, which is subjudice. Though the powers of this Tribunal under the Sections 241 and 242 of the Act is wide, the over-all objective of these Sections must be kept strictly in view and the marginal note of the said Section of this Act shows that the purpose of the Order of the Court in this Section is to give relief 'in case of Oppression'. Since we do not regard either the remuneration being paid to the Respondents in the Subsidiary Companies, or the allegation of the Appellant that he was not made a Director in the Subsidiary Companies or that the expenses incurred towards the 24th Respondent regarding the 'stay' or 'education', or the investment of Rs. 16 Crores by TAFE in Amco Batteries or the sale of the Properties at Kotturpuram to the second Respondent, to be defined as an act of Oppression, detrimental to the affairs of the Company, the substratum for passing any Order under Sections 241 and 242, is not available. Hence, this Tribunal, in this factual matrix, is of the earnest view that directing for buyout of the shares would not be justified or legally permissible. Only when there is a case of complete deadlock in the Company on account of lack of probity in the management of the Company and there is no scope of efficiently running the Company as a commercial concern, there would arise a case for winding up on just and equitable ground. In the instant case, undisputedly the Respondent Companies, both the Holding and the Subsidiary Companies are not in a position of complete deadlock, but instead are running smoothly and profitably (table @ Para 18 herein). The material on record establishes that the Holding Company is a solvent Company and there is no documentary evidence on record to substantiate the plea of the Appellant that there was any complete lack of confidence against the majority Shareholders. To reiterate, any remuneration which is less than 11% of the net profits or even declaring a low dividend

does not amount to Oppression and mere dissatisfaction on behalf of the Appellant does not justify interference by this Tribunal. There is no functional deadlock leading to a situation where the Members are unable to co-operate in the management of the Company's affairs resulting in a paralysis kind of situation. Therefore, this Tribunal is satisfied that 'the just and equitable proposition' cannot be made applicable in this case, where there is no irretrievable breakdown in trust and confidence, leading to a 'functional deadlock'. In the absence of any contractual right to demand any proportional representation in the Board, an Order in this direction is not justifiable. Moreover, facts arising subsequent to the filing of the Petition cannot be relied upon and the validity of the Petition will be judged on the facts existing at the time of the presentation of the Petition.

This Tribunal is of the considered view that there are no substantial grounds for concluding that there was any 'Oppression or Mismanagement' and therefore, the question of passing any Order directing buyout of shares, bringing to an end any matter complained of, cannot be done in the facts of this case. There is no case made out by the Appellant to exercise any equitable jurisdiction to grant such relief. For all the foregoing reasons, these Appeals are accordingly dismissed.

LW 77:11:2023

THE NATIONAL SMALL INDUSTRIES CORPORATION LTD V. REKHA SHARMA RESOLUTION PROFESSIONAL [NCLAT]

Company Appeal (AT) (Insolvency) No. 841 of 2021

M. Venugopal & Ajai Das Mehrotra. [Decided on 16/10/2023]

Insolvency and Bankruptcy Code,2016- CIRP proceedings – moratorium started- encashment of BG by the secured financial creditor during the moratorium period- whether valid-Held, Yes.

Brief facts:

As per Clause 6 of the Agreement, raw material assistance was provided to the Corporate Debtor by the Appellant subject to furnishing of the Bank Guarantee in form of security. Initially, the raw material financial assistance against Bank Guarantee was sought for Rs.1 Crore which was later increased to Rs. 2.99Crores by executing a supplementary Agreement. In compliance of the two Agreements, 7 Bank Guarantees were submitted to the Appellant.

On an Application by the Operational Creditor M/s. Jasmeet Associates, the Corporate Debtor was admitted in CCIRP and the announcement regarding initiation of CIRP was made in the newspapers on 12.02.2020. The Appellant invoked the Bank Guarantees vide letter dated 14.02.2020.

On an application filed by the Resolution Professional, NCLT quashed the Notices issued by the Appellant regarding invocation of Bank Guarantees. Aggrieved by the said Order of the Adjudicating Authority, the present Appeal has been filed.

Decision: **Allowed.**

Reason:

The Appellant had also brought to the attention of this Tribunal to the Judgement of this Tribunal, wherein it was held that an irrevocable and unconditional `Bank Guarantee' can be invoked even during Moratorium period in view of the amended provisions under Section 14(3)(b) of the IBC, 2016. The relevant portion of the Order of this Tribunal in *IDBI Bank Ltd. Vs. Indian Oil Corporation Ltd., dated 10.01.2023*, is reproduced below for ready reference:

"13. Having regard to the ratio of the Hon'ble Apex Court in the aforenoted Judgments, and keeping in view the provisions of the Code, we are of the considered view that an irrevocable and unconditional Bank Guarantee can be invoked even during moratorium period in view of the amended provision under Section 14 (3) (b) of the Code. We are conscious of the fact that the Bank has not taken any steps with respect to the alleged fraud, if any, between IOCL and the Corporate Debtor. The findings of the Hon'ble Arbitral Tribunal have also attained finality. For all the foregoing reasons, this Appeal is dismissed accordingly. No order as to costs".

In the instant case also the Bank Guarantee is an irrevocable and unconditional one, and the said Judgement squarely applies to the facts of this case on all fours. In conclusion, as per the facts of this case, the Bank Guarantee, provided by the Respondent No. 2/ Bank is held to be covered by the exception provided in provisions of Section 14(3)(b) of IBC, 2016, and the Moratorium prescribed under Section 14(1) of IBC, 2016, shall not apply to its Encashment. In the result, this Tribunal, in the teeth of foregoing qualitative and quantitative discussions mentioned supra, sets aside the Impugned Order.

Industrial & Labour Laws

LW 78:11:2023

MATHOSRI MANIKBAI KOTHARI COLLEGE OF VISUAL ARTS v. THE ASSISTANT PROVIDENT FUND COMMISSIONER [SC]

Civil Appeal No.4188 of 2013

Hima Kohli & Rajesh Bindal, JJ. [Decided on 12/10/2023]

Employees Provident Fund and Miscellaneous Provisions Act,1952- interconnected establishments- merging them for coverage- Supreme Court explains and reiterates the principle.

Brief facts:

The undisputed facts on record are that the Society had initially set up 'Ideal Institute' in the year 1965 and later it set up 'Arts College' in the year 1985-86. Both the Institutes are being managed by the Society. It is also an admitted fact that the Ideal Institute employed 8 persons, whereas the Arts College employed 18 persons. Under the provisions of the EPF Act, if any establishment employs 20 or more persons, the same shall be covered under the provisions of the EPF Act for grant of various benefits thereunder to the employees working there, the EPF Act being a welfare legislation.

The issue which requires consideration in the present appeal is regarding the clubbing of two Institutions being run by the same Society i.e., Ideal Fine Arts Society. In case the two Institutions are interconnected, these can be clubbed for the purpose of coverage under the EPF Act.

Decision: Dismissed.

Reason:

Now coming to the facts of the case in hand, as had already been noticed above, both the Institutes are being run by the same Society. The Ideal Institute was set up in the year 1965, whereas the Arts College (the appellant) was set up in the year 1985-86. If the employees employed in both the institutes are added, the total number of employees would be 26, which will be sufficient for coverage in terms of Section 1(3)(b) of the EPF Act, which stipulates that an institute employing 20 or more persons is liable to be covered under the provisions of the EPF Act. It is also a fact not in dispute that both the institutes are being run in the same campus.

The mere fact that two Institutes, managed and controlled by the same management, offer different courses, or were established at different times is not relevant for their clubbing under the EPF Act. The fact that one of the institutes receives 100% grant-in-aid from the government while the other is receiving to the extent of 70%, is also not relevant. After coverage of the establishments, the benefits, as determined for the purpose of assessing dues under the EPF Act, have already been assessed by the Commissioner.

From a perusal of the material available on record and the settled position of law, it can be safely opined that there is financial integrity between the Society of the appellant as well as the Ideal Institute as substantial funds have been advanced to the Institutes by the Society. Further, both the Institutes are functioning from the same premises. For the reasons mentioned above, the appeal is dismissed. There shall be no order as to costs.

LW 79:11:2023

DELHI TRANSPORT CORPORATION v. MAHENDER SINGH[DEL]

W.P.(C) 17742/2005 & CM APPL. 28229/2017

Chandra Dhari Singh ,J. [Decided on 20/10/ 2023]

Industrial Disputes Act,1947- section 33- employee dismissed for prolonged unauthorised leave- approval for dismissal- tribunal refused to allow the approval of dismissal petition filed by the management- whether correct-Held, No.

Brief facts:

The respondent abstained himself from his without any prior permission or authorization from the petitioner. The authority concerned has treated the absence of the respondent from duty as misconduct under Para 4(1) and 19(e) of the Standing Orders governing the conduct of DTC employees (Standing Orders) and a show cause notice was issued to him as to why disciplinary action should not be initiated against him. After completion of the enquiry, the enquiry officer had held that the respondent is guilty of misconduct and recommended his removal from service. The disciplinary authority on the basis of the enquiry report confirmed his removal from the service of the petitioner.

The petitioner moved an application under Section 33(2) (b) of the Industrial Dispute Act ("I. D. Act") before the Industrial Tribunal for approval of the action of removal from services of the respondent. The Industrial Tribunal rejected the application of the petitioner on the ground that as per the Master Attendance Register (MAR), the absence of employees was subsequently treated as leave without pay. Aggrieved by the order dated 29th January, 2003, the petitioner has preferred the instant writ petition.

Decision: Petition allowed.

Reason:

After perusing the entire documents/records in the instant case, I find that oral enquiry and detailed investigation was held in this case by the enquiry officer and the respondent was given full opportunity of defending himself. It is also found that the enquiry was conducted and concluded strictly in accordance with rules and in no stage any principle was flouted. The Tribunal has refused to grant an approval of the order of removal of the respondent from service under Section 33(2)(b) of the I.D. Act only on the basis of MAR report and ignoring all other material on record. As per the discussions in the forgoing paragraphs, it is settled that the Tribunal shall not refuse the approval under Section 33(2)(b) if the proper opportunity of defence had been given to the workman in the disciplinary proceedings.

The conclusions regarding negligence and lack of interest can be arrived by looking into the period of absence more particularly, when same is unauthorized. Burden is on the employee to prove by placing relevant materials on record, that there was no negligence or lack of interest on his part. Clause (1) of Para 4 of Standing Orders shows that there is requirement of prior permission of leave and an exception is made only in the case of sudden illness of the employee. The non- observance of stipulated conditions renders the absence unauthorized.

The learned Tribunal proceeded in the instant case on the basis of note as "leave without pay" in MAR. Treating as leave without pay is not same as sanctioned or approved leave. It is prima facie evident that the enquiry was conducted in fair and legal manner and the punishment was in accordance with the statutory provisions. Prima facie, it was a case of passing punitive orders. There was not even a hint of unfair

labour practice, or victimization. The Tribunal unnecessarily ignored all the materials that were available before it and only relied upon one document i.e. MAR report.

That being the factual position, the learned Tribunal was not justified in refusing to accord approval to the order of dismissal/removal as passed by the employer. In view of the above facts and discussion, the impugned order cannot be sustained and therefore, the same is set aside. The approval under Section 33(2) (b) of I.D Act is hereby accorded for the dismissal/removal order passed by the petitioner against the respondent.

General Laws

LW 80:11:2023

SIBY THOMAS v. SOMANY CERAMICS LTD [SC]

Criminal Appeal No. of 2023 (@SLP (Crl.) No.12 of 2020)

C.T. Ravikumar & Sanjay Kumar,JJ. [Decided on 10/10/2023]

Negotiable Instruments Act,1881- section 141- cheque bouncing-vicarious liability of director- High court refused to quash the proceedings against a resigned partner- whether correct-Held, No.

Brief facts:

The appellant set up twin grounds to seek quashment of the complaint against him; firstly, that he had resigned from the partnership firm on 28.05.2013 whereas the cheque in question was issued on 21.08.2015 and secondly, that the complaint is devoid of mandatory averments required to be made in terms of sub-Section 1 of Section 141 of the NI Act, as relates him. The High Court found that the contention in regard to the maintainability of the complaint against the appellant, owing to his retirement from the partnership firm prior to the issuance of the cheque in question, is a matter of evidence and ultimately, the appellant would have to lead evidence and prove that fact. Consequently, it was held that the complaint could not be rejected qua the appellant at the initial stage in exercise of the powers under Section 482 Cr.PC.

Decision: Allowed.

Reason:

In the light of the dictum laid down in Ashok Shewakramani's case (supra), it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act would reveal that only that person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. In such circumstances, paragraph 20 in Ashok Shewa Ramani's case (supra) is also relevant. After referring to the Section 141(1) of NI Act, in paragraph 20 it was further held thus:

"20 On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between."

The upshot of the aforesaid discussion is that the averments in the complaint filed by the respondent are not sufficient to satisfy the mandatory requirements under Section 141(1) of the NI Act. Since the averments in the complaint are insufficient to attract the provisions under Section 141(1) of the NI Act, to create vicarious liability upon the appellant, he is entitled to succeed in this appeal. We are satisfied that the appellant has made out a case for quashing the criminal complaint in relation to him, in exercise of the jurisdiction under Section 482 of Cr.PC. In the result the impugned order is set aside and the subject Criminal Complaint stand quashed only in so far as the appellant, who is accused No. 4, is concerned. Appeal stands allowed as above. There will be no order as to costs.

LW 81:11:2023

ADITYA KHAITAN v. IL AND FS FINANCIAL SERVICES LTD [SC]

Civil Appeal Nos. 6411-6418 of 2023 (@ SLP (C) Nos. 4789-4796 of 2021)

J.K. Maheshwari & K.V. Viswanathan,JJ. [Decided on 03/10/2023]

Commercial Courts Act,2016- suit filed during the Covid period- delay in filing written statement- HC refused to condone the delay – how to construe the exemption from limitation order of the SC- whether rejection correct-Held, No.

Brief facts:

The present appeals challenge the judgment of the High Court at Calcutta. By the said judgment, the High Court had dismissed the said applications and consequently denied the applicants/defendants prayer to take on record their written statements. According to the High Court, the applications cannot be allowed as the period of 30 days to file the written statements had expired on 08.03.2020. The High Court has held that the order dated 23.03.2020 passed by this Court in Suo Motu Writ Petition (C) No. 3 of 2020 [In Re: Cognizance for Extension of Limitation],

which is to be effective from 15.03.2020 would not enure to the benefit of the applicants/defendants since the limitation period for filing the written statements had expired on 08.03.2020.

Decision: Allowed.

Reason:

In the above background, the only question that arises for consideration is, was the High Court justified in rejecting the application for extension of time dated 20.01.2021 and in not taking the written statements on record?

As has been set out hereinabove, while summons was served on 07.02.2020, the 30 days period expired on 08.03.2020 and the outer limit of 120 days expired on 06.06.2020. The application for taking on record the written statements and the extension of time was filed on 20.01.2021. Applying the orders of 08.03.2021 and the orders made thereafter and excluding the time stipulated therein, the applications filed by the applicants on 19.01.2021 are well within time. The judgment passed by the High Court, for the reasons set out herein above, needs to be set aside. The principle underlying the orders of this Court dated 08.03.2021, 27.04.2021 and 23.09.2021, in In Re: Cognizance for Extension of Limitation, albeit those orders being passed, subsequent to the impugned order, would enure to the benefit of the applicants-defendants. For the reasons stated above, the Appeals are allowed and the written statements filed on 20.01.2021 are directed to be taken on record.

LW 82:11:2023

RAHUL DILIP SHAH v. THE CATALYST TRUSTEESHIP LTD& ORS [DEL]

CS (COMM) 108/2022 & I.A. 2620/2022

Rekha Palli,. [Decided on 20/10/2023]

Injunction – plaintiff holding 26% shares in D3- D3 availed loan from D1 and D2- plaintiff pledged his shares as collateral security towards guaranteeing the loan repayment- Da defaulted in repayment-D1&2 invoked the pledged shares- whether invocation valid- Held, Yes.

Brief facts:

The Plaintiff claims to own 32,82,720 equity shares amounting to 26% of the total paid up capital of the defendant no.3. The defendant no.1 and the defendant no.2 are companies and are registered with the Securities Exchange Board of India as a Debenture Trustee and as a Category III Alternative Investment Fund and a Portfolio Manager.

The defendant no.3 entered into a 'Debenture Trust Deed'(hereinafter referred to as the 'DTD') for a loan of Rs. 75,00,00,000/- with the defendant no.1. In order to secure the debt of the defendant no.3 under the DTD, the plaintiff, acting as the promoter and managing director of defendant no. 3, agreed to pledge his 26% shares in the company under an 'Unattested Share Pledge Agreement' (hereinafter 'SPA').

As the defendant no.3 failed to clear its due payments, the defendant no.1 and 2 issued Invocation Notices to the defendant no.3 invoking the pledge created by the plaintiff under the SPA over his shares as also the pledge subsequently created over the shares of Nova. These pledged shares were thereafter transferred to Demat accounts of the defendant no.1.

Aggrieved by the invocation notice the plaintiff filed the present suit. The present application under Section 151 CPC has been filed by the plaintiff seeking ad interim directions permitting the plaintiff to exercise its voting rights in respect of 32,82,720 equity shares claimed to be owned by the plaintiff in the defendant no. 3 company in the proposed meeting of the equity shareholders of the defendant no. 3 scheduled on 27.10.2023.

Decision: Injunction refused.

Reason:

It is evident that the parties had agreed that as long as there was no ''Event of Default'', it was the pledgor, i.e. the plaintiff, who alone was entitled to exercise all voting rights and other consequential rights pertaining to the pledged shares, except the right to sell, transfer, assign or encumber these shares. It was further agreed between the parties that after the occurrence of an ''Event of Default'', the debenture trustee i.e. defendant no.1, would be authorised to exercise voting rights in respect of these pledged shares.

In the present case, it is an admitted case of the parties that after the ''Event of Default'' occurred in February, 2022, the defendant no.1 has, in accordance with clause 2.3.1 of the SPA, been exercising all voting rights in respect of the shares pledged by the plaintiff. The plaintiff's plea that the position has now changed and there is no continuing ''Event of Default'' has already been rejected hereinabove and, therefore, I am unable to appreciate as to how in the light of clause 2.3.1, the plaintiff can be permitted to urge that the defendant no.1 is not entitled to exercise voting rights qua these pledged shares which already stand invoked in February, 2022 itself.

In the light of the aforesaid clauses of the SPA, I have no hesitation in holding that the amendment to the DTD executed on 22.04.2023, would not come in the way of exercise of rights which had already accrued in favour of defendant no. 1 upon the occurrence of ''Event of Default'' in February, 2022. The plaintiff being a pledgor, who is guilty of default as per clauses 16 (j) and (h) of the SPA, cannot be permitted to urge that because his interests are likely to be adversely affected on account of the proposed composite scheme of arrangement, he should be granted the right to vote against this scheme of arrangement in the meeting of equity shareholders scheduled on 27.10.2023.

Before I conclude, I may also deal with the decision in Vistra ITCL (India) Limited (supra) on which heavy reliance was placed by the plaintiff to contend that during the existence of a pledge, the general rights or ownership rights in the property remain with the pledgor. It has therefore been urged that as the pledged shares are yet to

be sold, the pledge continues and therefore, it is the plaintiff only who can exercise the voting rights qua these shares. Having considered the said decision, I find that in the said case, the Court was not dealing with the case like the present one, where the parties had entered into a specific agreement thereby agreeing that the rights which the pledge/ defendant no. 1 had acquired after the occurrence of an 'Event of Default' would not be effected by any subsequent event. The plaintiff having voluntarily agreed that once an 'Event of Default' occurs, it is the defendant no. 1 which will have the voting rights, cannot be now permitted to urge that these rights continue to vest in him. I may also note that as per the terms of the agreement, on account of the plaintiff having been declared a wilful defaulter by the Yes Bank Limited and his no longer being a Director of defendant no. 3, the 'Events of Defaults' in terms of the DTD continue to subsist as on date and therefore, the rights of voting rightfully vest with defendant no.1.

LW 83:11:2023

INDIAN SUGAR MILLS ASSOCIATION v. COMPETITION COMMISSION OF INDIA & ORS [NCLAT]

Competition Appeal (AT) No. 86 of 2018 with connected appeals

Rakesh Kumar & Alok Srivastava.[Decided on 10/10/2023]

Competition Act,2002- cartelisation in sugar industry- CCI holding the appellants liable and passed order against them imposing penalty- while passing the order prescribed rules/procedure were not followed- whether order deserves quashment- Held, Yes.

Brief facts:

The batch of appeals which are captioned above are being considered and disposed of by this common judgment. These appeals have been filed by the Appellants assailing the judgment of the Competition Commission of India (in short "CCI") being aggrieved by the Order dated Impugned Order passed by the CCI in case nos. 21, 29, 36, 47, 48 and 49 of 2013. It was submitted before the Bench regarding a basic shortcoming in the impugned order, which weas whether the CCI followed the principle of natural justice as required under sub-section (1) of section 36 of the Competition Act, 2002 during hearings in the matter. This plea was supported by the learned counsels for certain other appellants. In the light of these submissions, and in the interest of fairness and justice, this bench felt it necessary to consider this question first before continuing to hear the appeals on merits, if found necessary at that stage.

In brief, the case leading up to these appeals was an order dated 18.9.2018 was passed by the CCI imposing penalties on some ethanol producers after finding them guilty of allegations of bid-rigging and cartelization, which was done without defining the 'relevant market' and on the basis of sketchy evidence. As a result, the appellants filed appeals under section 53(B) of the competition Act challenging the common order dated 18.9.2018, whereby they have been found guilty in indulging in rigging and cartelization and imposed penalties on the Appellants individually. The appellants aggrieved by the Impugned Order filed appeals which are now under consideration of this bench.

Decision: Appeals allowed.

Reason:

We are of the view that if the contention of the Appellants regarding non-adherence to the principle of natural justice in the hearings and passing of the Impugned Order is held to be correct, it would render the Impugned Order infirm, and therefore null and void, and it may not then be necessary to hear the case on merits.

We note that in the present case the non-compliance to the principle of natural justice is not due to some legal, compelling reason or public interest, but solely due to a faulty, and irrational procedure followed by the Competition Commission which has certainly meant prejudice to the appellants as they were imposed penalty on the basis of such a procedure being followed by CCI.

We are, therefore, of the view that the delay of about 13 months in the pronouncement of the Impugned Order so that only three members could sign and authenticate it instead of five members who heard the case on all the dates leads to two infirmities in the Impugned Order. The first infirmity that the same "coram" of members, who heard the matter, did not sign the order was a major infirmity. It was compounded by the fact that there was inordinate delay in the pronouncement of the final order. In such a situation, we are inclined to hold the opinion that the Impugned Order was not pronounced by following the spirit of the principle of natural justice as was required by section 36 of the Competition Act, 2002.

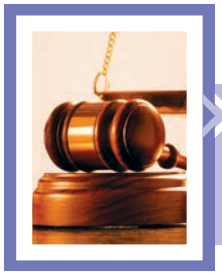
We are, therefore, of the clear view that the Impugned Order does not comply with the requirement of adherence to the principle of natural justice for the reason that the "coram" of CCI that heard the final arguments did not pass the necessary orders within reasonable period of time, and by the time, the orders were pronounced in the case, one member was not present in at least four later hearings and two members had demitted office and therefore they did not participate in the decision making nor sign and authenticate the final order. Thus the delay in pronouncing the impugned order also resulted in serious infirmity in that 'one who hears must decide' was not followed in letter and spirit. Further, we are also of the opinion that CCI should have afforded an opportunity of oral hearing to the opposite parties after the "Supplementary Investigation Report" was received from the DG, and before pronouncing the final Impugned Order on 18.9.2018. We thus find that the Impugned Order does not satisfy the basic tenet of adherence to the principle of natural justice which was ingrained in section 36 of the Competition Act. On these grounds, we set aside the Impugned Order.

4

FROM THE GOVERNMENT

- THE COMPANIES (AMENDMENT) ACT, 2020, SECTION 1 (29 OF 2020)
- THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) SECOND AMENDMENT RULES, 2023
- THE LIMITED LIABILITY PARTNERSHIP (THIRD AMENDMENT) RULES, 2023
- THE COMPANIES (MANAGEMENT AND ADMINISTRATION) SECOND AMENDMENT RULES, 2023
- THE COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2023
- GUIDELINES FOR BUSINESS CONTINUITY PLAN (BCP) AND DISASTER RECOVERY (DR) OF QUALIFIED RTAS (QRTAs)
- EASE OF DOING BUSINESS AND DEVELOPMENT OF CORPORATE BOND MARKETS – REVISION IN THE FRAMEWORK FOR FUND RAISING BY ISSUANCE OF DEBT SECURITIES BY LARGE CORPORATES (LCs)
- AMENDMENT TO THE GUIDELINES ON ANTI-MONEY LAUNDERING (AML) STANDARDS AND COMBATING THE FINANCING OF TERRORISM (CFT) /OBLIGATIONS OF SECURITIES MARKET INTERMEDIARIES UNDER THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 AND RULES FRAMED THERE UNDER

- EXTENSION IN TIMELINE FOR COMPLIANCE WITH QUALIFICATION AND EXPERIENCE REQUIREMENTS UNDER REGULATION 7(1) OF SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013
- RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 – REG.
- REQUIREMENT OF BASE MINIMUM CAPITAL DEPOSIT FOR CATEGORY 2 EXECUTION ONLY PLATFORMS
- LIMITED RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015
- CENTRALIZED MECHANISM FOR REPORTING THE DEMISE OF AN INVESTOR THROUGH KRAs
- BANKING REGULATION (AMENDMENT) ACT 2020 - CHANGE IN NAME OF CO-OPERATIVE BANKS
- CLARIFICATION REGARDING SHIFTING OF BRANCHES/OFFICES/EXTENSION COUNTERS WITHIN THE SAME CITY, TOWN OR VILLAGE BY DISTRICT CENTRAL CO-OPERATIVE BANKS (DCCBs) AND GUIDELINES ON CLOSURE OF BRANCHES AND EXTENSION COUNTERS BY DCCBs
- JOINING THE ACCOUNT AGGREGATOR ECOSYSTEM AS FINANCIAL INFORMATION USER
- REVIEW OF FINANCIAL INFORMATION PROVIDER (FIP) UNDER ACCOUNT AGGREGATOR FRAMEWORK
- REVIEW OF INSTRUCTIONS ON BULK DEPOSITS FOR REGIONAL RURAL BANKS (RRBs)
- NON-CALLABLE DEPOSITS - MASTER DIRECTION ON INTEREST RATE ON DEPOSITS
- FRAMEWORK FOR COMPENSATION TO CUSTOMERS FOR DELAYED UPDATION/ RECTIFICATION OF CREDIT INFORMATION
- STRENGTHENING OF CUSTOMER SERVICE RENDERED BY CREDIT INFORMATION COMPANIES AND CREDIT INSTITUTIONS
- RESERVE BANK OF INDIA (FINANCIAL STATEMENTS - PRESENTATION AND DISCLOSURES) DIRECTIONS, 2021: PRESENTATION OF UNCLAIMED LIABILITIES TRANSFERRED TO DEPOSITOR EDUCATION AND AWARENESS (DEA) FUND
- APPOINTMENT OF WHOLE-TIME DIRECTOR(s)
- MASTER DIRECTION – RESERVE BANK OF INDIA (NON-BANKING FINANCIAL COMPANY – SCALE BASED REGULATION) DIRECTIONS, 2023
- AMENDMENT TO THE MASTER DIRECTION (MD) ON KYC
- REVERSE REPO TRANSACTIONS - REPORTING IN FORM 'A' RETURN
- PROMPT CORRECTIVE ACTION (PCA) FRAMEWORK FOR NON-BANKING FINANCIAL COMPANIES (NBFCs) – EXTENSION TO GOVERNMENT NBFCs
- GOLD LOAN – BULLET REPAYMENT – PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBs)
- STATUS OF MARCH 31, 2024 FOR GOVERNMENT TRANSACTIONS THROUGH INTEGRATION WITH E-KUBER



Corporate Laws

01 The Companies (Amendment) Act, 2020, section 1 (29 of 2020)

[Issued by the Ministry of Corporate Affairs [File No.1/3/2020-CL.I] dated 30.10.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the 30th day of October, 2023 as the date on which the provisions of section 5 of the said Act shall come into force.

INDER DEEP SINGH DHARIWAL
Joint Secretary

02 The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

[Issued by the Ministry of Corporate Affairs [F. NO. 1/21/2013-CL-V] dated 27.10.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by section 29 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. Short title and commencement. - (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.

   (2) They shall come into force on the date of publication in the Official Gazette.

2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014 (hereinafter referred to as the said rules) rule 9 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rules shall be inserted, namely: -

   "(2) Every public company which issued share warrants prior to commencement of the Companies Act, 2013 (18 of 2013) and not converted into shares shall, -

   (a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and

   (b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.

   (3) In case any bearer of share warrant does not surrender the share warrants within the period referred to in sub-rule (2), the company shall convert the such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund established under section 125 of the Act."

INDER DEEP SINGH DHARIWAL
Joint Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

03 The Limited Liability Partnership (Third Amendment) Rules, 2023

[Issued by the Ministry of Corporate Affairs [F. No. Policy-01/2/2021-CL-V-MCA-Part (2)] dated 27.10.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of section 79 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby makes the following rules further to amend the Limited Liability Partnership Rules, 2009, namely: -

1. Short title and commencement- (1) These rules may be called the Limited Liability Partnership (Third Amendment) Rules, 2023.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Limited Liability Partnership Rules, 2009 (hereinafter referred to as the said rules), after rule 22, the following rules shall be inserted, namely:-

   "22A. Register of Partners.- (1) Every limited liability partnership shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership:

   Provided that in the case of limited liability partnership existing on the date of commencement of the Limited

Liability Partnership (Third Amendment) Rules, 2023, shall maintain the register of partners in Form 4A within thirty days from such commencement.

2. The register of partners shall contain the following particulars, in respect of each partner, namely:-

(a) name of the partner; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or Corporate Identification Number; Unique Identification Number, if any; father or mother or spouse's name; occupation; status; Nationality; name and address of nominee;

(b) date of becoming partner;

(c) date of cessation;

(d) amount and nature of contribution (indicating tangible, intangible, movable, immovable or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed) with monetary value; and

(e) any other interest, if any,

(3) The entries in the register maintained under this rule shall be made within seven days pursuant to any change made in the contribution amount, or in name and details of the partners in the Limited Liability Partnership agreement, or in cases of cessation of partnership interest.

(4) If any rectification is made in the register maintained under this rule by the Limited Liability Partnership pursuant to any order passed by the competent authority under any law, the necessary reference of such order shall be indicated in the respective register and for reasons to be recorded in writing.

INDER DEEP SINGH DHARIWAL
Joint Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

04 The Companies (Management and Administration) Second Amendment Rules, 2023

[Issued by the Ministry of Corporate Affairs [F. No. 01/34/2013 CL-V (Pt-III)] dated 27.10.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

1. Short title and commencement.-(1) These rules may be called the Companies (Management and Administration) Second Amendment Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014, in rule 9, after sub-rule (3), the following sub-rules shall be inserted, namely:-

"(4) Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.

(5) For the purpose of sub-rule(4), the company may designate-

(i) a Company Decretary, if there is a requirement of appointment of such Company Secretary under the Act and the rules made thereunder; or

(ii) a Key Managerial Personnel, other than the company secretary; or

(iii) every Director, if there is no Company Secretary or Key Managerial Personnel.

(6) Until a person is designated as referred under sub-rule (4), the following persons shall be deemed to have been designated person;

(i) Company secretary, if there is a requirement of appointment of such Company Secretary under the Act and the rules made thereunder; or

(ii) every Managing Director or Manager, in case a Company Secretary has not been appointed; or

(iii) every Director, if there is no Company Secretary or a Managing Director or Manager.

(7) Every company shall inform the details of the designated person in Annual return.

(8) If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.

INDER DEEP SINGH DHARIWAL
Joint Secretary

05 The Companies (Incorporation) Third Amendment Rules, 2023

[Issued by the Ministry of Corporate Affairs [F. No. 1/13/2013-CL-V, Vol. IV] dated 20.10.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1)]

In exercise of the powers conferred by section 3, section 4, sub-sections (5) and (6) of section 5, section 6, sub-sections (1) and (2) of section 7, sub-sections (1) and (2) of section 8, sub-sections (2), (3), (4), (5) and (9) of section 12, sub-sections (3), (4) and (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17,

section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. These rules may be called the Companies (Incorporation) Third Amendment Rules, 2023.

   (2) They shall come into force with effect from 21st October, 2023.

2. In the Companies (Incorporation) Rules, 2014, in rule 30, in sub-rule (9), -

   (i) the words "and may include such order as to costs as it thinks proper" shall be omitted;

   (ii) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed."

MANOJ PANDEY
Joint Secretary

06 Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Qualified RTAs (QRTAs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-TPD-1/P/CIR/2023/173 dated 20.10.2023]

1. Qualified RTAs (i.e. RTAs having more than 2 Crore folios) are systemically important institutions as they, inter-alia, provide infrastructure necessary for the smooth and uninterrupted functioning of the securities market. As part of the operational risk management, these QRTAs need to have high level of resiliency to provide essential facilities and perform systemically critical functions uninterruptedly in the securities market.

2. In view of the above, based on consultation with Technical Advisory Committee (TAC) of SEBI, it has been decided to issue guidelines for strengthening overall resiliency, the procedures at / governance of QRTAs for handling disruption, augmentation of systems and practices to achieve better Recovery Time Objective ("RTO") and Recovery Point Objective ("RPO"), and to improve overall preparedness by conducting periodic announced / unannounced drills. Hence, QRTAs are required to comply with the following framework for BCP and DR:

3. Organizational Resilience and Documentation

   3.1. QRTAs shall have in place Business Continuity Plan (BCP) and Disaster Recovery Site (DRS) so as to ensure continuity of operations, maintain data and transaction integrity.

   3.2. The manpower deployed at DRS/ Near Site (NS) shall have the same expertise as available at PDC in terms of knowledge/ awareness of various technological and procedural systems and processes relating to all operations such that DRS/ NS can function at short notice, independently. QRTAs shall have sufficient number of trained staff at their DRS so as to have the capability of running live operations from DRS without involving staff of the PDC.

   3.3. All QRTAs shall constitute an Incident and Response team (IRT) / Crisis Management Team (CMT), which shall be chaired by the Managing Director (MD) of the QRTA or by the Chief Technology Officer (CTO), in case of non-availability of MD. IRT/ CMT shall be responsible for the actual declaration of disaster, invoking the BCP and shifting of operations from PDC to DRS whenever required. Details of roles, responsibilities and actions to be performed by employees, IRT/ CMT and support/outsourced staff in the event of any Disaster shall be defined and documented by the QRTA as part of BCP-DR Policy Document.

   3.4. The Technology Committee of the QRTAs shall review the implementation of BCP-DR policy approved by the board of the QRTA on a quarterly basis.

ROHIT SARAF
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

07 Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/172 dated 19.10.2023]

1. Regulation 50B of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) read with Chapter XII of the NCS Master Circular[2] on 'Fund raising by issuance of debt securities by large corporates' (LC Chapter), inter-alia, mandates LCs to raise a minimum 25% of their incremental borrowings in a financial year through issuance of debt securities which were to be met over a contiguous block of three years from Financial Year (FY) 2022 onwards.

2. Taking into account prevailing market conditions and representations from market participants, the framework for fund raising by issuance of debt

securities by LCs is revised as specified in further paragraphs.

3. Applicability of the framework:

3.1. This framework is applicable with effect from April 01, 2024 for LCs following April-March as their financial year. This framework is applicable with effect from January 01, 2024, for LCs which follow January-December as their financial year.

Explanation 1: The term "Financial Year" here would imply April-March or January-December, as followed by an entity. Thus, FY 2025 shall mean April 01, 2024 - March 31, 2025 or January 01, 2024 - December 31, 2024, as the case may be.

3.2. The framework shall be applicable for all listed entities (except for Scheduled Commercial Banks), which as on last day of the FY (i.e. March 31 or December 31):

a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised Stock Exchange(s) in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations);

and

b) have outstanding long term borrowings of Rs.1000 crore or above.

Explanation 2: 'Outstanding long term borrowings' for the purpose of this framework shall mean any outstanding borrowing with an original maturity of more than one year but shall exclude the following:

i. External Commercial Borrowings;

ii. Inter-Corporate Borrowings involving the holding company and/ or subsidiary and/ or associate companies;

iii. Grants, deposits or any other funds received as per the guidelines or directions of Government of India;

iv. Borrowings arising on account of interest capitalization; and

v. Borrowings for the purpose of schemes of arrangement involving mergers, acquisitions and takeovers.

and

c) have a credit rating of "AA"/"AA+"/AAA ", where the credit rating relates to the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in.

Explanation 3: In case a listed entity has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered for the purpose of this framework.

PRADEEP RAMAKRISHNAN
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

08 Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/SEC-FATF/P/CIR/2023/0170 dated 13.10.2023]

1. Please refer to the Master Circular reference number SEBI/HO/MIRSD/MIRSD-SEC-5/P/CIR/2023/022 dated February 03, 2023 and amendments thereto dated June 16, 2023 on the captioned subject issued by the Securities and Exchange Board of India (SEBI).

2. The Government of India has notified Prevention of Money-laundering (Maintenance of Records) (Second Amendment) Rules, 2023, which is published in the Official Gazette on September 4, 2023 (Notification G.S.R. 652(E)). The said amendments came into force on the date of its publication i.e. with effect from September 4, 2023.

3. In view of the afore-referred amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 and to further enhance the effectiveness of the AML/CFT framework, certain provisions of the aforesaid Master Circular shall stand modified as mentioned below: -

3.1. In Paragraph 6, the following paragraph shall be inserted at the end, namely:-

If the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, financial groups shall be required to apply appropriate additional measures to manage the ML/TF risks, and inform SEBI.

3.2. After paragraph 7A and before paragraph 8, the following paragraph "7B" shall be inserted, namely: -

7B. Financial groups shall be required to implement group wide programmes for dealing with ML/TF, which shall be applicable, and appropriate to, all branches and majority owned subsidiaries of the financial group as under:

a. Policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management;

b. The provision, at group level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. This shall include information and analysis of transactions or activities which appear unusual (if such analysis was done);

Similar provisions for receipt of such information by branches and subsidiaries from these group level functions when relevant and appropriate to risk management; and

c. Adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

SAPNA SINHA
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 Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/168 dated 10.10.2023]

1. Regulation 7 of SEBI (Investment Advisers) Regulations, 2013, as amended vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, specifies the qualification and experience requirements for investment advisers and provides that an individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice shall comply with the enhanced qualification and experience requirements specified in regulation 7(1) within a period of three years, i.e., by September 30, 2023.

2. Based on the representations received from various stakeholders and in view of the emerging landscape of the domain of investment advice, the first proviso to regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013 has been amended with effect from September 30, 2023, vide the SEBI (Investment Advisers) (Amendment) Regulations, 2023 dated October 09, 2023. Accordingly, it is now specified that the timeline to comply with the enhanced qualification and experience requirements under regulation 7(1) is extended to September 30, 2025.

3. BSE Administration & Supervision Limited is directed to bring the provisions of this circular to the notice of its members and also disseminate the same on its website.

4. 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 7(1) SEBI (Investment Advisers) Regulations, 2013, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

5. This circular is available on the SEBI website at www.sebi.gov.in under the categories "Legal → Circulars" and "Info for → Investment Advisers".

SRISHTI AMBOKAR
Deputy General Manager

10 Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg.

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2023/167 dated 07.10.2023]

1. SEBI Master Circular dated July 11, 2023 on compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 by listed entities ("Master Circular") inter-alia relaxed the applicability of regulation 36(1)(b) of the LODR Regulations for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till September 30, 2023 (section VI-J of the Master Circular).

2. MCA, vide General Circular No. 09/2023 dated September 25, 2023, has extended the relaxation from sending physical copies of financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs conducted till September 30, 2024. SEBI has also received representations to extend the relaxations mentioned at para 1 above.

3. In view of the above, it has been decided to extend the relaxations mentioned at para 1 above till September 30, 2024.

4. It is reiterated that the listed entities shall ensure compliance with the conditions stipulated at para 5.1 and 5.2 of section VI-J of chapter VI of the Master Circular while availing the relaxations provided above.

5. 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 101 of the LODR Regulations and the relaxations contained herein are subject to the provisions of the Companies Act, 2013 and rules made thereunder.

6. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

RAJ KUMAR DAS
Deputy General Manager

11 Requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/POD-III/CIR/2023/165 dated 06.10.2023]

1. SEBI vide circular No.SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/86 dated June 13, 2023 had prescribed the regulatory framework for Execution Only Platforms (EOP) for facilitating transactions in direct plans of schemes of Mutual Funds through their technology or digital platforms. An EOP for facilitating transactions in direct plans of schemes of Mutual Funds, means any digital or online platform which facilitates transactions such as subscription, redemption and switch transactions in direct plans of schemes of Mutual Funds.

2. Any entity desirous of operating as an EOP can obtain registration under one of the following two categories:

   a. Category 1 EOP: Entities desirous of operating as Category 1 EOP are required to obtain registration from AMFI and shall act as an agent of AMC(s) and can provide service to investors and other intermediaries. Category 1 EOPs shall follow the guidelines specified by AMFI in consultation with SEBI. Category 1 EOPs are not required to maintain any deposit with AMFI for operating as an EOP.

   b. Category 2 EOP: Category 2 EOPs are required to obtain registration as a Stock Broker in terms of SEBI (Stock Brokers) Regulations, 1992 under the EOP segment of Stock Exchanges. Category 2 EOPs shall operate as an agent of investor and provide services to investors directly and shall not act as an aggregator of the transactions in direct plans of schemes of Mutual Funds. They shall follow various requirements applicable to stock brokers, including maintenance of deposit with the stock exchange.

3. SEBI vide Circulars No. SMD/SED/RCG/270/96 dated January 19, 1996, No. MRD/DoP/SE/Cir-07/2005 dated February 23, 2005 and No. CIR/MRD/DRMNP/36/2012 dated December 19, 2012 had prescribed the requirement of Base Minimum Capital (BMC) deposit for stock brokers trading on stock exchange. BMC is the deposit given by the member of the stock exchange against which no exposure for trades is allowed.

4. In this regard, it has been decided that the members of stock exchanges functioning only in EOP segment (Category 2 EOP) shall maintain a sum of Rs. 10 Lakhs with the stock exchange as BMC deposit. However, for members having registration of more than one segment on the same stock exchange, the BMC deposit requirement shall not be additive for such number of segments and shall be the highest applicable BMC deposit, across various segments.

5. The SEBI circulars specified at paragraph 3 above, stand modified suitably. All other relevant provisions with respect to BMC Deposit shall continue to remain applicable.

6. The provisions of this circular shall be implemented immediately.

7. Stock exchanges are directed to:

   a. take necessary steps and put in place necessary systems for the implementation of the above;

   b. make necessary amendments to the relevant bye-laws, rules and regulations, wherever applicable, for the implementation of the above; and

   c. bring the provisions of this circular to the notice of market participants (including investors) and also disseminate the same on their website.

8. This circular is being 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.

9. This Circular is available on SEBI website at www.sebi.gov.in.

HRUDA RANJAN SAHOO
Deputy General Manager

12 Limited relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/P/CIR/2023/0164 /dated 06.10.2023]

1. Regulation 58(1)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations") provides that a listed entity shall send a hard copy of the statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not so registered.

2. SEBI, vide Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020, relaxed the aforesaid provisions pursuant to relaxations by the Ministry of Corporate Affairs (MCA) vide Circular dated May 5, 2020. Thereafter, further extensions were granted by SEBI pursuant to MCA relaxations vide:

   a) Circular no. SEBI/HO/CFD/CMD2/CIR/P/2021/11 dated January 15, 2021, till December 31, 2021;

   b) Circular no. SEBI/HO/DDHS/P/CIR/2022/0063 dated May 13, 2022 up to December 31, 2022 and

   c) Circular no. SEBI/HO/DDHS/RACPOD1/CIR/P/2023/001 dated January 05, 2023 up to September 30, 2023.

3. MCA vide circular dated September 25, 2023, has, inter-alia, extended the relaxation from dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) up to September 30, 2024.

4. Consequently, it has been decided to relax, up to September 30, 2024, the requirements of regulation 58 (1)(b) of the SEBI Listing Regulations.

5. This Circular shall come into force with immediate effect.

6. Stock Exchanges are advised to bring the provisions of this circular to the notice of all entities with listed non-convertible securities and disseminate on their websites.

7. The 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 101 of the SEBI Listing Regulations.

PRADEEP RAMAKRISHNAN
General Manager

13 Centralized mechanism for reporting the demise of an investor through KRAs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/0000000163 dated 03.10.2023]

1. It has been decided to introduce a centralized mechanism for reporting and verification in case of the demise of an investor and thereby smoothen the process of transmission in securities market. This circular spells out the operational norms including the obligations of regulated entities, including registered intermediaries that have interface with 'investors' / 'account holders' (used interchangeably) who are natural persons.

2. Listed companies wanting to provide the beneficial access to such a centralized mechanism to their investors[1] holding securities in physical form, are eligible to establish connectivity with KRA through their RTAs.

Obligation of Intermediary – verification of the death certificate

3. Upon receipt of intimation about the demise of an investor from a joint account holder(s) or nominee(s) or legal representative or family member (hereinafter, collectively referred to as 'notifier(s)', the 'concerned intermediary'[2] shall obtain the death certificate along with the PAN from the notifier and carry out the following steps;

   a. Verify the death certificate (to be completed by the next working day of its receipt)

      i. Online viz. the website of the issuing Government authority, or

      ii. Offline: OSV ('Original Seen and Verified') process by intermediary

      The intermediary shall treat the OSV of the death certificate accompanied with the PAN of deceased investor, received electronically along with the credentials of the notifier (including his / her PAN) and the validation report from an Investor Service Centre (ISC) of the Stock Exchange or Depository (MII)[3], to be on par with its own OSV.

   b. Record and retain self-certified copy of proof of identity, relationship with deceased and contact details of the notifier.

4. If the concerned intermediary, after receiving information about the demise of the investor from the notifier or after inferring[4] the same, does not have access to or is not in a position to obtain the death certificate, then it shall carry out the following steps;

   a. Intimate[5] the investor, notifier(s), or the nominee(s) that the KYC status of the investor has been flagged off as "On Hold" and require them to furnish the death certificate of the concerned investor.

   b. Upon receipt of the death certificate, the intermediary shall follow the steps as per paragraph 3 above.

Obligation of intermediary - Updation of records in the KRA system by the Intermediary

5. After verification of the death certificate, the concerned intermediary shall (on the same day of verification):

   a. Submit a 'KYC modification request' to the KRA that "information on death of investor received; death certificate verified" and also upload the relevant documents[6]

   b. Block[7] all debit transactions in the account / folios of the deceased investor.

It is noted that for joint accounts, the specified mode of operation should be adhered to, and if the account is operated on Either OR Survivor, or Anyone or Survivor, etc. (i.e. modes other than joint mode), the account operation in such mode shall continue.

S. MANJESH ROY
General Manager

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14 Banking Regulation (Amendment) Act 2020 - Change in Name of Co-operative Banks

[Issued by the Reserve Bank of India vide RBI/2023-24/79 DoR.REG/LIC. No.55/07.01.000/2023-24 dated 30.10.2023]

Pursuant to the notification of the Banking Regulation (Amendment) Act (No. 39 of 2020), Sections 49B and 49C of Banking Regulation Act, 1949 ('BR Act') are applicable to Co-operative Banks. In terms of Section 49B, the Central Registrar of Cooperative Societies (CRCS)/Registrar of Cooperative Societies (RCS) shall not signify its approval to the change of name of any co-operative bank unless the Reserve Bank certifies in writing that it has no objection to such change. Further, in terms of Section 49C, no application for the confirmation of the alteration of bye-laws of a co-operative bank shall be maintainable unless Reserve Bank certifies that there is no objection to such alteration.

2. Accordingly, it has been decided to issue guidelines with regard to the procedure to be followed for any change in name by a Co-operative Bank as enclosed in Annex -1.

Commencement

3. These guidelines will come into effect from the date of issue of this circular.

MANORANJAN PADHY
Chief General Manager

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15 Clarification regarding Shifting of Branches/ Offices/Extension Counters within the same city, town or village by District Central Co-operative Banks (DCCBs) and Guidelines on Closure of Branches and Extension Counters by DCCBs

[Issued by the Reserve Bank of India vide RBI/2023-24/78 DoR.REG/LIC. No.54/19.51.052/2023-24 dated 30.10.2023]

Pursuant to the amendment to the Banking Regulation Act (No.39 of 2020) dated September 29, 2020, District Central Co-operative Banks (DCCBs) are permitted to open new place of business/install ATMs or shift the location of such offices only after obtaining prior approval of the Reserve Bank of India (RBI). Accordingly, guidelines for opening of new place of business by District Central Co-operative Banks (DCCBs) – Section 23 of the Banking Regulation Act, 1949 (As Applicable to Co-operative Societies) were issued vide Circular DOR.REG.No.63/19.51.052/2022-23 dated August 11, 2022.

2. In this regard, RBI has been receiving references seeking clarifications on shifting of branches within the same locality and closure of un-remunerative branches by District Central Co-operative Banks (DCCBs).

3. On examination of the matter, it has been decided to issue requisites clarifications regarding Shifting of Branches/Offices/Extension Counters within the same city, town or village by DCCBs and Guidelines on Closure of Branches and Extension Counters by DCCBs, as enclosed in Annex - 1.

Commencement

4. These guidelines will come into effect from the date of issue of this circular.

Applicability

5. This circular is applicable to all District Central Co-operative Banks.

MANORANJAN PADHY
Chief General Manager

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16 Joining the Account Aggregator Ecosystem as Financial Information User

[Issued by the Reserve Bank of India vide RBI/2023-24/77 DoR.FIN. REC.53/03.10.123/2023-24 dated 26.10.2023]

Please refer to the Master Direction – Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

2. It has been observed that certain entities, which are eligible to join Account Aggregator (AA) ecosystem as Financial Information Provider (FIP), have onboarded as Financial Information User (FI-U) only. Consequently, such entities are accessing financial information from other FIPs but are not providing the financial information held by them. As such, with a view to ensure efficient and optimum utilisation of the AA ecosystem, it has been decided that regulated entities of the Bank joining the AA ecosystem as FI-U shall necessarily join as FIP also, if they hold the specified financial information and fall under the definition of FIP.

3. The Master Direction – Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016, is being modified accordingly.

R. LAKSHMI KANTH RAO
Chief General Manager

17 Review of Financial Information Provider (FIP) under Account Aggregator Framework

[Issued by the Reserve Bank of India vide RBI/2023-24/76 DoR.FIN. REC.52/03.10.123/2023-24 dated 26.10.2023]

Please refer to the paragraph 3(1)(xi) of Master Direction – Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016 defining the term 'Financial Information Provider'.

2. As per National Pension System (NPS) architecture, Central Recordkeeping Agency (CRA), registered under section 27 of the Pension Fund Regulatory and

Development Authority (PFRDA) Act, 2013, acts as an interface between the different intermediaries in the NPS system. CRAs hold information pertaining to the subscribers including the balances under NPS. Accordingly, and as suggested by the PFRDA, it has been decided to replace 'Pension Fund' with 'Central Recordkeeping Agency' as the financial information provider in the AA ecosystem.

3. The Master Direction – Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016, is being modified accordingly.

R. LAKSHMI KANTH RAO
Chief General Manager

18 Review of Instructions on Bulk Deposits for Regional Rural Banks (RRBs)

[Issued by the Reserve Bank of India vide RBI/2023-24/75 DoR.SPE. REC.50/13.03.00/2023-2024 dated 26.10.2023]

Please refer to Para 3 (a) (i) of Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016 dated March 3, 2016, in terms of which "Bulk Deposit" means:

i. Single Rupee term deposits of Rupees two crore and above for Scheduled Commercial Banks (excluding Regional Rural Banks) and Small Finance Banks.

ii. Single Rupee term deposits of Rupees fifteen lakhs and above for RRBs.

2. On a review, it has been decided to enhance the bulk deposit limit for Regional Rural Banks. Accordingly, "Bulk Deposit" for Regional Rural Banks would now mean Single Rupee term deposits of Rupees one crore and above. The relevant sections of the Master Direction as amended are indicated in the Annex.

3. All other instructions in this regard shall remain unchanged.

SUNIL T. S. NAIR
Chief General Manager

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19 Non-Callable Deposits - Master Direction on Interest Rate on Deposits

[Issued by the Reserve Bank of India vide RBI/2023-24/74 DOR.SPE. REC. No 51/13.03.000/2023-24 dated 26.10.2023]

Please refer to the instructions contained in Section 7 of the Master Direction (MD) on Interest Rate on Deposits dated March 03, 2016 and Master Direction - Reserve Bank of India (Co-operative Banks - Interest Rate on Deposits) Directions, 2016 dated May 12, 2016. In terms of these instructions, banks have been permitted to offer domestic term deposits (TDs) without premature withdrawal option, provided that all TDs accepted from individuals for an amount of Rupees fifteen lakh and below shall have premature-withdrawal-facility. Further, the banks have also been permitted to offer differential rate on interest on TDs based on non-callability of deposits (i.e., non-availability of premature withdrawal option) in addition to tenor and size of deposits.

2. On a review, it has been decided that (i) the minimum amount for offering non-callable TDs may be increased from Rupees fifteen lakh to Rupees one crore i.e., all domestic term deposits accepted from individuals for amount of Rupees one crore and below shall have premature-withdrawal-facility and (ii) these instructions shall also be applicable for Non-Resident (External) Rupee (NRE) Deposit / Ordinary Non-Resident (NRO) Deposits.

3. Accordingly, the relevant sections of the Master Direction have been amended as indicated in the Annex.

4. All other instructions shall remain unchanged.

Applicability

5. This circular is applicable to all Commercial Banks and Co-operative Banks.

6. These instructions shall come into force with immediate effect.

SUNIL T S NAIR
Chief General Manager

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20 Framework for compensation to customers for delayed updation/ rectification of credit information

[Issued by the Reserve Bank of India vide RBI/2023-24/72 DoR.FIN. REC.48/20.16.003/2023-24 dated 26.10.2023]

Please refer to para 4 of the Statement on Developmental and Regulatory Policies released with the Bi-monthly Monetary Policy Statement 2023-24 on April 6, 2023, wherein it was announced, inter alia, that a compensation mechanism will be put in place for delayed updation/ rectification of credit information by the credit institutions (CIs) and credit information companies (CICs).

2. Accordingly, in exercise of the powers conferred by sub-section (1) of section 11 of the Credit Information Companies (Regulation) Act, 2005 (CICRA, 2005), the Reserve Bank of India directs CICs and CIs to implement the compensation framework for delayed updation/rectification of credit information by CIs and CICs as detailed below:

(a) Complainants shall be entitled to a compensation of ₹100 per calendar day in case their complaint is not resolved within a period of thirty (30) calendar days from the date of the initial filing of the complaint by the complainant with a CI/ CIC.

Explanation:

(i) Section 21 (3) of CICRA, 2005 provides that a complainant may request a CIC or CI to update the credit information by making an appropriate correction, addition or otherwise, and on such request the CI or CIC shall take steps to update the credit information within thirty (30) days after being requested to do so.

(ii) Rule 20 (3) (c) of CIC Rules, 2006 provides that the CI shall forward the corrected particulars of the credit information to the CIC or complainant within a period of twenty-one (21) days from the date when the CI was informed of the inaccuracy in the credit information.

(iii) The combined reading of Section 21(3) of CICRA, 2005 and Rule 20 (3) (c) of Credit Information Companies Rules, 2006 provide the CI and the CIC, collectively, an overall limit of thirty (30) days to resolve/ dispose of the complaint. In effect, this would mean that a CI would get twenty-one (21) days and CICs would effectively get the remainder of nine (9) days for complete resolution of the complaint.

R. LAKSHMI KANTH RAO
Chief General Manager

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21 Strengthening of customer service rendered by Credit Information Companies and Credit Institutions

[Issued by the Reserve Bank of India vide RBI/2023-24/73 DoR.FIN. REC.49/20.16.003/2023-24 dated 26.10.2023]

Please refer to para 4 of the Statement on Developmental and Regulatory Policies released with the Bi-monthly Monetary Policy Statement 2023-24 on April 6, 2023, wherein it was announced that a comprehensive framework will be put in place for strengthening and improving the efficacy of the grievance redress mechanism and customer service provided by the Credit Institutions (CIs) and Credit Information Companies (CICs).

2. Accordingly, in exercise of the powers conferred by sub-section (1) of section 11 of the Credit Information Companies (Regulation) Act, 2005 (CICRA, 2005), the Reserve Bank of India directs CICs and CIs to implement the directions as detailed below:

2.1. Intimation of access to Credit Information Report and updation of credit information with Credit Information Companies

(a) CICs shall send alerts through SMS/ email to customers when their Credit Information Report (CIR) is accessed by the Specified Users (SUs) as defined in sub-section (l) of section 2 of CICRA, 2005, wherever mobile number/ email ID details of the customers are available. The alerts shall be sent by CICs only when the CIR enquiry reflects in the CIR of the customer.

(b) CIs shall send alerts through SMS/ email to customers while submitting information to CICs regarding default/ Days Past Due (DPD) in existing credit facilities, wherever the mobile number/email ID details are available.

(c) To enable sending of alerts through SMS/ email, the Uniform Credit Reporting Format for reporting credit information by CIs to CICs has been modified as detailed in Annex (Item 1).

(d) CIs are advised to organise special awareness campaigns to sensitise their customers about benefits of submission of their mobile numbers/ email IDs.

R. LAKSHMI KANTH RAO
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

22 Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021: Presentation of unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund

[Issued by the Reserve Bank of India vide RBI/2023-24/71 DOR. ACC.47/21.04.018/2023-24 dated 25.10.2023]

The 'Notes and Instructions for compilation' given in Annex II to the Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 (Master Direction) require commercial banks to present all unclaimed liabilities, where the amount due has been transferred to the Depositor Education and Awareness (DEA) Fund established under the DEA Fund Scheme, 2014, under 'Schedule 12- Contingent Liabilities - Other items for which the bank is contingently liable'.

2. To ensure consistency in presentation of financial statements, it is advised that all co-operative banks shall present all unclaimed liabilities (where the amount due has been transferred to DEA Fund) under "Contingent Liabilities – Others".

3. Further, all banks shall specify in the disclosures1 in the notes to accounts to the financial statements that balances of the amount transferred to DEA Fund are included under 'Schedule 12 - Contingent Liabilities - Other items for which the bank is contingently liable' or 'Contingent Liabilities - Others,' as the case may be.

Applicability

4. These instructions are applicable to all commercial and cooperative banks for preparation of financial statements for the financial year ending March 31, 2024 and onwards.

5. The Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 stands updated to reflect these changes.

USHA JANAKIRAMAN
Chief General Manager

23 Appointment of Whole-Time Director(s)

[Issued by the Reserve Bank of India vide RBI/2023-24/70 DOR.HGG.GOV.REC.46/29.67.001/2023-24 dated 25.10.2023]

Please refer to paragraph 10 and 11 of our instructions DOR.GOV. REC.8/29.67.001/2021-22 dated April 26, 2021 on 'Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board'.

2. Given the growing complexity of the banking sector, it becomes imperative to establish an effective senior management team in the banks to navigate ongoing and emerging challenges. Establishment of such a team may also facilitate succession planning, especially in the background of the regulatory stipulations in respect of tenure and upper age limit for Managing Director and Chief Executive Officer (MD&CEO) positions.

3. To address these issues and challenges, banks are advised to ensure the presence of at least two Whole Time Directors (WTDs), including the MD&CEO, on their Boards. The number of WTDs shall be decided by the Board of the bank by taking into account factors such as the size of operations, business complexity, and other relevant aspects. In compliance to these instructions, banks that currently do not meet the minimum requirement as above are advised to submit their proposals for the appointment of WTD(s) under Section 35B(1)(b) of the Banking Regulation Act, 1949, within a period of four months from the date of issuance of this circular. Those banks which do not already have the enabling provisions regarding appointment of WTDs in their Articles of Association may first seek necessary approvals under Section 35B(1)(a) of the Act ibid, expeditiously, so as to be in a position to comply with the requirements under these instructions. While ensuring compliance to the above instructions, careful consideration shall also be given to meet the requirements under other applicable statutory/regulatory provisions.

SCENTA JOY
Chief General Manager

24 Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023

[Issued by the Reserve Bank of India vide RBI/DoR/2023-24/105 DoR.FIN.REC.No.45/03.10.119/2023-24 dated 19.10.2023]

The Reserve Bank of India, having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the Reserve Bank to regulate the financial system to the advantage of the country and to prevent the affairs of any Non- Banking Financial Company from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such NBFCs, and in exercise of the powers conferred under sections 45JA, 45K, 45L and 45M of the Reserve Bank of India Act, 1934 (Act 2 of 1934) and section 3 read with section 31A and section 6 of the Factoring Regulation Act, 2011 (Act 12 of 2012), hereby issues to every NBFC, in supersession of the Non-Banking Financial Company–Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016 and Non-Banking Financial Company–Systemically Important Non- Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023 (the Directions), hereinafter specified.

J P SHARMA
Chief General Manager

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25 Amendment to the Master Direction (MD) on KYC

[Issued by the Reserve Bank of India vide RBI/2023-24/69 DOR.AML.REC.44/14.01.001/2023-24 dated 17.10.2023]

Please refer to the Master Direction (MD) on KYC dated February 25, 2016, as amended from time to time, in terms of which Regulated Entities (REs) have to undertake Customer Due Diligence (CDD), as per the process laid out therein, for their customers.

2. In this regard, on a review, it has been decided to amend the MD on KYC to:

   (a) Update certain instructions considering amendments to the PML Rules vide Government notifications dated September 4, 2023 and October 17, 2023;

   (b) Update Annex II of the MD considering the changes to Government of India Order related to Unlawful Activities (Prevention) Act (UAPA), 1967, vide corrigendum dated August 29, 2023;

   (c) Update Annex III of the MD by replacing the Government of India Order dated January 30, 2023, related to Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMD Act, 2005) with the Government of India Order dated September 1, 2023 (which has been issued by the Government in suppression of the earlier WMD Act Order dated January 30, 2023), on the matter;

   (d) Update certain instructions in accordance with the FATF Recommendations;

   (e) Add a new Section 55A, on FCRA, in the MD on KYC; and

   (f) Update certain other instructions post review.

The changes carried out in the MD in this regard are provided in Annexure.

3. Accordingly, the relevant Sections of the MD on KYC are hereby amended to reflect the changes furnished in Annexure. The amended provisions in the MD shall come into force with immediate effect.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

26 Reverse Repo transactions - Reporting in Form 'A' Return

[Issued by the Reserve Bank of India vide RBI/2023-24/68 DoR.RET.REC.43/12.01.001/2023-24 dated 16.10.2023]

Please refer to Form A Return in the Master Direction - Reserve Bank of India [Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR)] Directions - 2021 (updated as on September 25, 2023) regarding the reporting of Reverse Repo transactions by Commercial Banks.

2. In order to bring uniformity in reporting of Reverse Repo transactions in the Form A Return by various banks, it is clarified that the banks should adhere to the following practice for presentation of Reverse Repo transactions in the above return:

A. Reverse Repo transactions with the banks should be reported as under:

   i. For original tenors up to and inclusive of 14 days

      a) Item III(b) of Form A (i.e. Money at call and short notice) and;

      b) Memo item 2.1 of Annex A to Form A (i.e. under Inter Bank Assets)

   ii. For original tenors more than 14 days

      a) Item III(c) of Form A (i.e. Advances to banks) and;

      b) Memo item 2.1 and 2.2 of Annex A to Form A (i.e. under Inter Bank Assets)

B. Reverse Repo transactions with non-banks (other institutions) for all tenors should be reported under Item VI(a) of Form A [i.e. Loans, cash credits and overdrafts under Bank Credit in India (excluding inter-bank advances)].

BRIJ RAJ
Chief General Manager

27 Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs) – Extension to Government NBFCs

[Issued by the Reserve Bank of India vide RBI/2023-24/67 Ref. No.DoS.CO.PPG/SEC.05/11.01.005/2023-24 dated 10.10.2023]

Reserve Bank of India introduced PCA Framework for NBFCs on December 14, 2021. The Framework has since been reviewed and it has been decided to extend the same to Government NBFCs (except those in Base Layer) with effect from October 1, 2024, based on the audited financials of the NBFC as on March 31, 2024, or thereafter.

TARUN SINGH
Chief General Manager

28 Gold Loan – Bullet Repayment – Primary (Urban) Co-operative Banks (UCBs)

[Issued by the Reserve Bank of India vide RBI/2023-24/66 DOR.CRE.REC.42/07.10.002/2023-24 dated 06.10.2023]

Please refer to the circular UBD.BPD.(PCB).Cir.No.25/13.05.001/2014-15 dated October 30, 2014, in terms of which UCBs were permitted to extend gold loans up to ₹2.00 lakh with bullet repayment option, subject to certain conditions.

2. Reference is also invited to para 5 of our circular DOR.CRE.REC.18/07.10.002/ 2023-24 dated June 8, 2023 wherein it is stated that incentives to UCBs meeting the Priority Sector Lending (PSL) targets shall be announced separately. Accordingly, as announced vide para 3 of Statement on Developmental and Regulatory Policies dated October 6, 2023, it has been decided to increase the monetary ceiling of gold loans that can be granted under the bullet repayment scheme, from ₹2.00 lakh to ₹4.00 lakh for those UCBs who have met the overall PSL target and sub targets as on March 31, 2023 and continue to meet the targets and sub-targets as prescribed at para 2 of our circular dated June 8, 2023, ibid.

3. The limits prescribed above are effective from the date of this circular. All other provisions of the aforesaid circulars remain unchanged.

MANORANJAN MISHRA
Chief General Manager

29 Status of March 31, 2024 for Government transactions through integration with e-Kuber

[Issued by the Reserve Bank of India vide RBI/2023-24/65 CO.DGBA.GBD.No.S646/42-01-029/2023-2024 dated 03.10.2023]

The 'e-Kuber' which is the Core Banking Solution platform of RBI for Government and other payments does not process any Government transactions on Global holidays (which are 26th January, 15th August, 2nd October, all 2nd and 4th Saturdays of a month and on all Sundays). It is observed that March 31, 2024 falls on a Sunday. The office of Controller General of Accounts, Government of India has advised that in order to account for all the Government transactions relating to receipts and payments in the financial year 2023-24 itself, it has been decided that March 31, 2024 (Sunday) be marked as a working day for the Government transactions so that all the Government transactions through integration with e-Kuber are processed on March 31, 2024 and accounted for in the financial year 2023-24 itself for arriving the cash balance of Government of India as on March 31, 2024.

2. Also, the luggage files from banks for transferring the data related to Government transactions to RBI would also be accepted by e-Kuber system on March 31, 2024 for accounting of the same in the account for the financial year 2023-24.

INDRANIL CHAKRABORTY
Chief General Manager

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NEWS FROM THE INSTITUTE

Institute News

MEMBERS RESTORED DURING THE MONTH OF SEPTEMBER 2023

SL. NO	NAME	MEMB NO	REGION
1	CS YASHASVI MOHANRAM	ACS - 16506	SIRC
2	CS RAJESH KUMAR DHAYAL	ACS - 57504	NIRC
3	CS KIRTIDEV J KHATRI	ACS - 6417	WIRC
4	CS AMIT MEHTA	ACS - 12922	NIRC
5	CS VRUDHI RAJESH RAIMUGIA	ACS - 64417	WIRC
6	CS GARGI SETH	ACS - 22430	WIRC
7	CS SANDEEP SETH	ACS - 14635	WIRC
8	CS SHAILESHKUMAR R GEDIYA	ACS - 59929	WIRC
9	CS ABHISHEK PAWAN DHOOT	ACS - 22288	WIRC
10	CS JIGNESH JASHVANTLAL BRAHMBHATT	FCS - 6337	WIRC
11	CS ASLAM	ACS - 47452	NIRC
12	CS P M VASUDEV	ACS - 8509	SIRC
13	CS SATISH JOSHI	ACS - 30167	NIRC
14	CS NEHA GUPTA	ACS - 42634	WIRC
15	CS V NAGARAJ	ACS - 19497	SIRC
16	CS RAHUL SHARMA	ACS - 60751	WIRC
17	CS KOMAL SURI	ACS - 56595	NIRC
18	CS JAYDEEP SETH	ACS - 49836	EIRC
19	CS PANKAJ SHARMA	ACS - 35606	NIRC
20	CS VINAY DHANAKA	ACS - 26575	NIRC
21	CS LATA KUMARI	ACS - 21070	NIRC
22	CS SEEMA SHARMA	ACS - 34224	SIRC
23	CS AITHE MAHENDHAR	ACS - 31069	SIRC
24	CS ISHARATHUNNISA BEGUM	ACS - 46233	SIRC
25	CS NIMISH DEEPAK PADIA	ACS - 26747	WIRC
26	CS ARVIND KUMAR SHUKLA	ACS - 23813	NIRC
27	CS S BASKARASUBRAMANIAN	FCS - 4605	SIRC
28	CS M GUNASEKARAN	ACS - 12061	SIRC
29	CS RIYA	ACS - 61422	EIRC
30	CS RAJINDER KUMAR	FCS - 7581	NIRC
31	CS SAROJ OMNATH PANDEY	ACS - 23298	WIRC
32	CS KRATIKA JAIN	ACS - 34040	WIRC
33	CS HARSH SINGRODIA	ACS - 63551	SIRC
34	CS SARA SANCHETI	FCS - 2619	WIRC
35	CS NISHA KHANDELWAL	ACS - 23766	WIRC
36	CS DINESH VIJAY	FCS - 7174	NIRC
37	CS VATSAL VINIT PARIKH	ACS - 42687	WIRC
38	CS PRIYA JHALANI	FCS - 11329	NIRC
39	CS AHMED MUNSHI RIAZ	FCS - 3057	NIRC
40	CS B K SUBASH	ACS - 18989	SIRC
41	CS CHARUTA DINESH SHIRKE	ACS - 24611	WIRC
42	CS REKHA S JAGDALE	FCS - 4097	WIRC
43	CS NIDHI AJIT MEHTA	ACS - 23409	WIRC
44	CS AGRIMA GOYAL	ACS - 37283	WIRC
45	CS PALAK MIDDHA	ACS - 37861	SIRC
46	CS KANISHEK VARDHEN	ACS - 27298	NIRC
47	CS MITESH DHIRAJLAL HARIA	ACS - 16575	WIRC
48	CS VIKRAM MANOHAR MUNJE	FCS - 3647	WIRC
49	CS SABAREESHAN CHITTUR KALYANAKRISHNAN	ACS - 3922	SIRC
50	CS CHANDRAMANI PANDA	ACS - 21611	SIRC
51	CS V RAMAKRISHNAN IYER	ACS - 20337	SIRC
52	CS MANJUNATH E	ACS - 27500	SIRC
53	CS AHMED RAZA KHAN	ACS - 14160	WIRC
54	CS SONAL SURESHCHANDRA CHECHANI	ACS - 29283	WIRC
55	CS MANISH KUMAR SUROLIA	ACS - 44350	NIRC
56	CS SHISHIR AGARWAL	ACS - 21868	WIRC
57	CS H RAJARAM	ACS - 4774	WIRC
58	CS ARPIT GANGWANI	ACS - 51464	NIRC
59	CS TEJAL MAHESHBHAI VARDE	ACS - 63253	WIRC

60	CS KALYANI RAJENDRA VAZE	ACS - 51412	WIRC
61	CS L P DEOSTHALEE	ACS - 18427	WIRC
62	CS V. KRISHNAMACHARI	ACS - 15742	NIRC
63	CS BHARTI AGARWAL	ACS - 42416	EIRC
64	CS PRATIK CHAUDHARY	ACS - 34960	EIRC
65	CS HARINI PEMMASANI	ACS - 63835	SIRC
66	CS VISHAL ANAND P	ACS - 49617	SIRC
67	CS MONIKA AGGARWAL	ACS - 67734	NIRC
68	CS RAJEEV SRIVASTAVA	ACS - 49637	SIRC
69	CS K VISWANATHAN	ACS - 6848	SIRC
70	CS CAUVERY RAWAL	ACS - 39903	NIRC
71	CS VYANJANA KIRITBHAI PANDYA	ACS - 15652	WIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF SEPTEMBER 2023

SL. NO	NAME	MEMB NO	COP NO	REGION
1	CS MINAL DUDEJA	ACS - 44912	17242	NIRC
2	CS RUPAL VENKTESH MARDA	ACS - 61178	26209	WIRC
3	CS ANJALI GUPTA	ACS - 49251	20813	NIRC
4	CS KEERTHANA GOPAL	ACS - 64187	24065	SIRC
5	CS KHUSHBOO	ACS - 59130	23340	NIRC
6	CS TEJASWI AGARWAL	ACS - 64373	24455	EIRC
7	CS PRIYANKA SANDESH LOHE	ACS - 55956	21131	WIRC
8	CS TEJ KUMAR JAIN	ACS - 12076	11274	NIRC
9	CS MADHURI VITTHAL SHELAR	ACS - 57377	25185	WIRC
10	CS NIDHI SHARMA MITRA	FCS - 10138	22509	NIRC
11	CS SHANMUGA PRIYA BANDEPALLI MALLIKARJUNA	ACS - 53050	24291	SIRC
12	CS NEHA MAHAJAN	ACS - 27469	13742	NIRC
13	CS THAYALAN	FCS - 4847	25513	SIRC
14	CS AJAY KACHER	ACS - 38966	25592	NIRC
15	CS SONAM AGARWAL	ACS - 59919	22576	EIRC
16	CS SEJAL TAPAN GAJJAR	ACS - 42510	21524	WIRC
17	CS SWETA AGARWAL	ACS - 48870	19339	EIRC
18	CS MANISH KUMAR SINGH	ACS - 50969	18611	NIRC
19	CS SANDEEP SINGH	ACS - 45393	16608	NIRC
20	CS SUDIPTA MUKHERJEE	FCS - 10892	23165	WIRC
21	CS ANSHIKA DUA	FCS - 8139	7721	NIRC
22	CS POONAM	ACS - 37303	24827	NIRC
23	CS SHRASHTI NEMA	ACS - 63908	24983	WIRC
24	CS ADITI ABROL	ACS - 53213	23870	NIRC
25	CS VAIBHAV SUHAS VELANKAR	FCS - 11448	17041	WIRC
26	CS ATIKA AGARWAL	ACS - 43670	16199	NIRC
27	CS SAKSHI BHAWSAR	ACS - 64774	25089	WIRC
28	CS KANJIRATHINKAL VINCENT VIJU	ACS - 46588	17005	SIRC
29	CS PRATEEK BHANSALI	FCS - 10407	12606	NIRC
30	CS DOLLY PRASAD	ACS - 49842	21450	EIRC
31	CS SUDHAKAR KHIRAI	ACS - 60479	24389	WIRC
32	CS ADIT NITIN BHUVA	ACS - 29660	10999	SIRC
33	CS GANESH SHENOY	ACS - 36260	26534	SIRC
34	CS SAKSHI SRIVASTAVA	ACS - 40567	25872	NIRC
35	CS SHIVANSHI MISHRA	ACS - 67166	25071	WIRC
36	CS SAKSHI TOMAR	ACS - 48936	26289	NIRC
37	CS ALOK KHAITAN	ACS - 64861	25763	EIRC
38	CS SUPRIYA KABRA	ACS - 38656	14711	EIRC
39	CS DINKY RAJU JAIN	ACS - 59546	24718	WIRC
40	CS CHHAYA SAXENA	ACS - 65474	24791	NIRC
41	CS GUNJANBEN NAYANKUMAR SHAH	ACS - 33883	14628	WIRC
42	CS MEENAKSHI PANWAR	ACS - 68207	25662	NIRC
43	CS PRADEEP SINGH	ACS - 64474	25806	NIRC

LIST OF PEER REVIEWED UNITS

The List of Peer Reviewed Units is updated on ICSI Website from time to time and can be accessed at https://tinyurl.com/PRList2023

We request members to visit the list for their reference and records.

Peer Review Secretariat

ICSI

NEW ADMISSIONS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link https://www.icsi.edu/member

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

CS Virendra Kumar Jain (30.06.1929 – 25.05.2023), a Fellow Member of the Institute from Patna.

CS T P Nair (16.05.1928 – 14.09.2023), an Associate Member of the Institute from Thiruvananthapuram.

CS Ramarao Srinivasan (30.07.1967 – 22.09.2023), a Fellow Member of the Institute from Bengaluru.

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

May the departed souls rest in peace.

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

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

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- Has a membership base of over 15000

ELIGIBILITY : A member of the Institute of Company Secretaries of India (ICSI) is eligible for the membership of the CSBF.

HOW TO JOIN : By making an online application using the link **https://stimulate.icsi.edu/** alongwith one time subscription of ₹10,000/-.

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- ₹10,00,000 in the event of death of a member under the age of 60 years
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- Upto ₹50,000 per child on time (upto two children) for education of minor children of a deceased member upto the age of 60 years.
- Upto ₹75,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

DONATION : The donation to CSBF can be made online at link **www.icsi.in/ ICSIDonation**

CONTACT : For further information / clarification, please write at email id **csbf@icsi.edu** or contact on telephone no. 0120-4522000

For more details please visit https://www.icsi.edu/csbf/home/

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

VISION
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THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
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Documents downloadable from the DigiLocker Platform

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon'ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the Digilocker anytime, anywhere.

How to Access:

- Go to https://digilocker.gov.in and click on Sign Up
- You may download the Digilocker mobile app from mobile store (Android/iOS)

How to Login:

- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your Documents digitally:

Members can download their digital ID Card / ACS / FCS / COP certificate(s) by following the steps given below:

1. Log in to https://www.digilocker.gov.in website
2. Go to Central Government and select Institute of Company Secretaries of India
3. Select the option of ID card / Membership Certificate / Practice Certificate
4. For ID Card, enter your membership number e.g. ACS 12345 / FCS 12345.
5. For membership certificate, Enter your membership and select ACS / FCS from drop down.
6. For COP certificate enter your COP number e.g. 12345 and select COP.
7. Click download / generate.
8. The ID Card / Membership certificate / Practice Certificate can be downloaded every year after making payment of Annual Membership fees.

CHARTERED SECRETARY

Advertisement Tariff

(With Effect from September 2018)

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12 Insertions	₹ 5,10,000	₹ 1,53,000

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4 Insertions	₹ 90,000	₹ 27,000
6 Insertions	₹ 1,32,000	₹ 39,600
12 Insertions	₹ 2,55,000	₹ 76,500

PANEL (QTR PAGE) (COLOURED)		
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EXTRA BOX NO. CHARGES	
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For Others	200

MECHANICAL DATA		
Full Page - 18X24 cm	Half Page - 9X24 cm or 18X12 cm	Quarter Page - 9X12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor
CHARTERED SECRETARY
Mail to : cs.journal@icsi.edu
Ext. 0120-4082123

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NOTIFICATIONS AND CIRCULARS

CENTRAL TAX NOTIFICATIONS

NOTIFICATION NO. 52/2023-CENTRAL TAX DATED 26TH OCTOBER, 2023

This notification seeks to make amendments (Fourth Amendment, 2023) to the CGST Rules, 2017,

Source:https://taxinformation.cbic.gov.in/view-pdf/1009923/ENG/Notifications

CENTRAL TAX (RATE) NOTIFICATIONS

NOTIFICATION NO. 12/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 11/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009893/ENG/Notifications

NOTIFICATION NO. 13/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 12/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009894/ENG/Notifications

NOTIFICATION NO. 14/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 13/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009895/ENG/Notifications

NOTIFICATION NO. 15/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 15/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009896/ENG/Notifications

NOTIFICATION NO. 16/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 17/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009897/ENG/Notifications

NOTIFICATION NO. 17/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 01/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009898/ENG/Notifications

NOTIFICATION NO. 18/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 02/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009899/ENG/Notifications

NOTIFICATION NO. 19/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 04/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009900/ENG/Notifications

NOTIFICATION NO. 20/2023-CENTRAL TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 05/2017-Central Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009901/ENG/Notifications

INTEGRATED TAX NOTIFICATIONS

NOTIFICATION NO. 05/2023- INTEGRATED TAX DATED 26TH OCTOBER, 2023

This notification seeks to notify supplies and class of registered person eligible for refund under IGST Route.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009924/ENG/Notifications

INTEGRATED TAX (RATE) NOTIFICATIONS

NOTIFICATION NO. 15/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 8/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009902/ENG/Notifications

NOTIFICATION NO. 16/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 9/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009903/ENG/Notifications

NOTIFICATION NO. 17/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 10/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009904/ENG/Notifications

NOTIFICATION NO. 18/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 12/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009905/ENG/Notifications

NOTIFICATION NO. 19/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 14/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009906/ENG/Notifications

NOTIFICATION NO. 20/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 01/2017-Integrated Tax (Rate) dated 28.06.2017

Source: https://taxinformation.cbic.gov.in/view-pdf/1009907/ENG/Notifications

NOTIFICATION NO. 21/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 02/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009908/ENG/Notifications

NOTIFICATION NO. 22/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 04/2017-Integrated Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009909/ENG/Notifications

NOTIFICATION NO. 23/2023- INTEGRATED TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 05/2017-Integrated Tax (Rate) dated 28.06.2017

Source: https://taxinformation.cbic.gov.in/view-pdf/1009910/ENG/Notifications

UNION TERRITORY TAX (RATE)

NOTIFICATION NO. 12/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 11/2017-Union territory Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009911/ENG/Notifications

NOTIFICATION NO. 13/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 12/2017-Union territory Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009912/ENG/Notifications

NOTIFICATION NO. 14/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 13/2017-Union territory Tax (Rate) dated 28.06.2017.

Source: https://taxinformation.cbic.gov.in/view-pdf/1009913/ENG/Notifications

NOTIFICATION NO. 15/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 15/2017-Union territory Tax (Rate) dated 28.06.2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009914/ENG/Notifications

NOTIFICATION NO. 16/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 17/2017-Union territory Tax (Rate) dated 28.06.2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009915/ENG/Notifications

NOTIFICATION NO. 17/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 01/2017-Union Territory Tax (Rate) dated 28.06.2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009916/ENG/Notifications

NOTIFICATION NO. 18/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 02/2017-Union Territory Tax (Rate) dated 28.06.2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009917/ENG/Notifications

NOTIFICATION NO. 19/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 04/2017-Union Territory Tax (Rate) dated 28.06.2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009918/ENG/Notifications

NOTIFICATION NO. 20/2023-UNION TERRITORY TAX (RATE) DATED 19TH OCTOBER, 2023

This notification seeks to amend Notification No 05/2017-Union Territory Tax (Rate) dated 28.06.2017.

Source:https://taxinformation.cbic.gov.in/view-pdf/1009919/ENG/Notifications

PRIMA FACIE OPINION OF THE DIRECTOR (DISCIPLINE) UNDER THE COMPANY SECRETARIES ACT, 1980.

The fundamental principles governing the conduct of a professional are integrity; professional independence; professional competence; objectivity; ethical behaviour; conformance to technical standards; and confidentiality of information acquired in the course of professional work. Professional ethics concerns one's conduct of behaviour and practice when carrying out professional work.

"ETHICS CANNOT BE TAUGHT AND BOUGHT, IT COMES FROM WITHIN"

One most common and important issue is the conflict that may arise between the employer's interest and the interest of a member to uphold his professional values and the broader public interest. A member must have courage of conviction to express candidly his considered professional opinion to his employer in order to safeguard his professional values and broader public interest.

Chapter V of the Company Secretaries Act, 1980 deals with the provisions of Misconduct. The procedures to deal with the Misconduct cases are specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (as amended) (the Rules).

Professional and Other Misconduct

The expression *"professional and other misconduct"* is defined under Section 22 of the Company Secretaries Act, 1980 (the Act).

Pursuant to Section 22 of the Act, the expression *"professional or other misconduct"* shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

First and Second Schedule

The First and the Second Schedule to the Act contains professional and other misconduct in relation to Company Secretaries. The first Schedule is divided into four parts and the Second Schedule is divided into three parts.

***Prima facie* opinion of the Director (Discipline)**

The Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct. After registration of complaint received under Section 21 of the Act, the Director (Discipline) or an officer authorized by him, shall within sixty days of the receipt of a complaint, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that member (the respondent) at his professional address.

The Respondent shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director (Discipline), forward a written statement in his defence. On receipt of the written statement, if any, the Director (Discipline) may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director (Discipline), forward his rejoinder on the written statement.

On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director (Discipline) may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate.

If no reply is sent by the respondent within the time allowed or by the complainant within the time allowed, the Director (Discipline) shall presume that the respondent or the complainant have nothing further to state and take further action as per the Rules.

The Director shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form his *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct or both under the First Schedule or the Second Schedule or both.

Where the Director (Discipline) is of the opinion that a member is guilty of professional or other misconduct mentioned in the First Schedule to the Company Secretaries Act, 1980, he shall place the matter before the Board of Discipline which is constituted by the Council of the Institute under Section 21A of the Company Secretaries Act, 1980; and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule to the Company Secretaries Act, 1980 or in both the Schedules, he shall place the matter before the Disciplinary Committee which is constituted by the Council of the Institute under Section 21B of the Company Secretaries Act, 1980.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

Where the Board of Discipline or the Disciplinary Committee, as the case may be, directed the Director (Discipline) to further investigate the matter, the Director (Discipline) shall further investigate the case and shall place his Further Investigation Report for consideration before the Board of Discipline or Disciplinary Committee, as the case may be.

Where the Board of Discipline or the Disciplinary Committee disagreed with the prima facie opinion of the Director (Discipline) that the member is guilty of professional or other misconduct, the case will be closed and the Order will be passed.

Where the Board of Discipline agreed with the *prima facie* opinion of the Director (Discipline) that the member is not guilty of professional or other misconduct, the case will be closed, and the Order will be passed.

Where the Board of Discipline or the Disciplinary Committee, as the case may be, agreed with the *prima facie* opinion of the Director (Discipline) that the member is *prima facie* guilty of professional or other misconduct, a copy of prima facie opinion of the Director (Discipline) along with the relevant document relied upon will be sent to parties asking them to submit written statement on the same and rejoinder thereon.

Where the Board of Discipline or the Disciplinary Committee, as the case may be, finds that a member is guilty of professional or other misconduct, it shall afford the member an opportunity of being heard before making any order against him.

The Director (Discipline), the Board of Discipline or the Disciplinary Committee, as the case may be, shall follow the Company Secretaries Act, 1980 and such procedures as may be specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (as amended).

Appellate Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) are vested with the powers of civil court for the purposes of an inquiry under the provisions of the Company Secretaries Act, 1980, and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; and (c) receiving evidence on affidavit.

CASE STUDY

1. A complaint of professional or other misconduct has been filed against the Respondent who is a Company Secretary in Practice. The Complainant was Director, Shareholder and Chief Executive Officer of a company. Since its inception, the company had seven shareholders including two foreign nationals with 99.9% equity and remaining five Indian nationals with one share each. The position and status of seven shareholders and members was continued in the company for the financial year 2012-13 and 2013-14 and the Annual Returns for respective years were also filed with ROC. Certain non-compliances and filing of documents with the forged signature have come to the notice of the Complainant. The Complainant vide emails and letters pleaded to the Director/s and to the Board of the company to act and resolve the same, but they did not act upon.

2. The Complainant had written an email enumerating and listing out various non-compliances, malpractices frauds in the company and concluded that "*If these sort of mal practices in the company, I will have only option left is to resign from the company...*". However, no formal resignation letter was submitted by the Complainant. The Complainant had received an email from CMD of the company stating that the Complainant is not authorized to call the Board Meeting for the company, as Board have accepted his Resignation. One FIR was also registered. The Complainant had filed another complaint of professional misconduct for certification of form DIR-12. The Complainant has also filed a petition u/s 397/398 of the Companies Act, 1956 before Hon'ble Company Law Board, subsequently transferred to the Hon'ble NCLT.

3. The Complainant has filed complaint against the Respondent who has certified form MGT-7 for the financial year 2015-16 for the company. The Complainant has alleged that the Respondent has certified the form without any due diligence. The Complainant has stated that the contents of the impugned form MGT-7 certified by the Respondent is contrary to the facts, provisions, and laws. The Annual Return for FY 2015-16 is filed by payment of penalty of late fees. However, the Annual Returns for earlier FY 2014-15 is not filed, and likewise for FY 2016-17 and after it is also not uploaded by the company and no mandatory returns e.g., of Income Tax, Sales Tax, VAT etc. were filed/ uploaded for any of the FY during this period that for FY 2015-16.

4. During the Police Investigation, it is found that the said Registered Office of the company is a residential premise and already sold by its owner. The new owner stays with his family and no office of company exists there. CEO of the company entered into a 'Leave & License Agreement' with the company offering his premises at a monthly license fee for residence-cum-office of the company. As per MOA/AOA of the company, all original documents, records are supposed to be available all time at its Registered Office. It implies that the Registered Office as mentioned in the uploaded form MGT-7 is untrue, false, and misleading to the authorities.

5. The Complainant has alleged that the reason for not holding AGM of the company as mentioned in form MGT-7 is 'Dispute and Pending matter at CLB/ NCLT, which cannot be a reason for not holding the AGM which was due. The Complainant has further stated that Hon'ble NCLT has not passed any order restraining the company from mandatory filing or from holding mandatory AGM or Board Meetings. The company had admitted that it has Secured & Unsecured Loan at the end of the Financial Year 2015-16. The Secured Loan admittedly was of Cash Credit facility enjoyed with Indian Overseas Bank.

6. The Complainant has also alleged that as per the impugned form MGT-7, seven Board Meetings were

held during the financial year FY 2015-16. During the currency of the period, the company had three directors on the Board, and all were of Foreign Origin/ Nationality/ Citizens and did not have a mandatory Resident Director (an Indian Citizen). On this basis, the company should have been disqualified for any act of uploading of any Annual Return including form MGT-7. The Complainant has disputed the presence of on director in two Board meetings and contended that dates are false and fake.

7. The Respondent has attached a copy of Order pronounced by Hon'ble NCLT; an unsigned/ unstamped statement on plain paper depicting List of Shareholders for year ended 31st March, 2016 and a note on the letterhead. The Respondent in the note attached with the form MGT-7 has mentioned that he has certified the said form on the basis of the data provided by the Board of Directors of the company. Maintenance of records, registers, preparation of annual reports, holding and conducting the Board meetings and general meetings is the sole responsibility of the management of the company. Annual return for the year ending on 31st March 2016 has yet not been prepared due to pendency of the case before Hon'ble CLB/NCLT. The compliance of the provisions of law, rules regulations standards is the responsibility of the management. Examination of the Respondent is limited to the verification of procedure on test basis.

8. The Complainant has alleged that the Respondent has stated that he has failed to demonstrate as to how non-filing of returns under various acts by the company tantamount to negligence in certifying form MGT-7. The particulars of registered office of the company are pre-filled in form MGT-7 and the same has been mentioned as per details on MCA-21 Portal. The company is not restrained from keeping an email id or telephone number out of India; hence, the contact number and email id is of Tanzania based company. The purpose is that the company can be contacted also as the promoters of the company are based in Tanzania. Further, non-holding of AGM by the company is a matter of fact and has been mentioned in form MGT-7. The Respondent is not restrained from certifying the e-Form if the company has not held AGM. Non-holding of AGM by the company does not amount to professional misconduct by a Practicing Company Secretary in certifying form MGT-7.

9. The Complainant has stated that the Respondent has not carefully verified and vetted and diligently documents and the papers made available by the Promoter Directors. The Complainant was not aware about the appointment of the Respondent as Company Secretary of the company. The Complainant has never been approached and been asked to give his views and submission face to face or otherwise before certification of any documents and required before filing any documents at MCA as the Complainant was the resident director of the company.

10. The Respondent has contended that the Complainant has made a reference of secured and unsecured loan mentioned in form MGT-7 but he has not clarified what is the negligence on the part of the Respondent certifying the form if he has relied upon the management in absence of availability of the Audited Balance Sheet. The Complainant has not stated that the figures provided by the management and mentioned in form MGT-7 are incorrect figures. The particulars of the Board Meeting and Attendance were mentioned in form MGT-7 as per records maintained by the company and verified. If the company has not provided the records to other authorities, it does not mean that the facts relating to the Board Meeting are incorrect or that the Respondent was negligent in certifying the e-Form. The attachment of Hon'ble NCLT Order, a note on letterhead and list of shareholders were not to legitimize the misdeed/ fraud. Certification of form with these attachments do not amount to any professional misconduct. The letter demonstrates the fact about verification/ certification of documents and data.

11. The Respondent has submitted that while certifying form MGT-7, he had disclosed all material facts known to him report mis-statement known to him and invited attention for departure from the generally accepted procedure a observations/ qualifications. He had no intention to harm any person or make undue advantage to any person. He has further stated that he would take more caution and be more vigilant while certifying forms and documents in future and requested to take lenient view in the matter. The Respondent has admitted his mistake for 4 out of 6 allegations as mentioned in the *prima facie* opinion of the Director (Discipline) in certification of form MGT-7 of the company for the year 2015-16.

12. The Disciplinary Committee observed that the Respondent has failed to exercise due diligence in certification of form MGT-7 of the company for the year 2015-16 and mentioned the details and attendance of directors properly. The audited financial statements were not available, and the Respondent had relied only upon the information given by the management. It is also on record that the Respondent has submitted that he would be more cautious and be more vigilant, while certifying forms and documents in future and requested to take a lenient view in the matter.

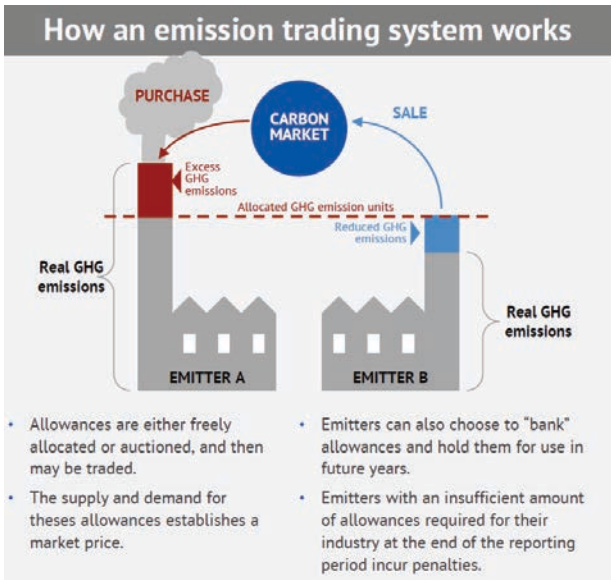
13. The Disciplinary Committee held the Respondent 'Guilty' of professional misconduct under Clause (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 and passed an order of 'Reprimand' and fine of Rs. 10000/- against the Respondent.

Carbon Credit Trading- An Overview

A carbon credit is a tradable instrument that is either allocated directly to an emitting source or offered for sale at an auction. Carbon credits are sold in carbon markets. These are divided into compliance (mandatory and regulated) markets and voluntary carbon markets (VCMs). The term "credit" is usually used in reference to the VCMs.

The Government permit each industry to emit certain amount of Carbon Dioxide or other greenhouse gases in the atmosphere. The organisation that achieves to release such gases in the limits lesser than the permitted threshold either has to purchase carbon credits from the organisations that have been issued the Carbon Credit Certificates.

On the contrary, the organisation that emits greenhouse gases in excess of the permitted threshold either has to purchase Carbon Credit Certificates from the organisations that have been issued the Carbon Credit Certificates- thereby offsetting their excess emissions, or are levied with penalties by the government. The process of carbon credit trading is provided in the diagram below.



Source: *Carbon Credits.com*

The Ministry of Power notified the Carbon Credit Trading Scheme, 2023, to develop the domestic carbon market as the country aims at decarbonising the economy and has committed to cut emissions by 45% from the 2005 levels by 2030.

According to the scheme, the central government shall constitute the National Steering Committee for Indian carbon market which will monitor the functions of Indian carbon market and recommend to Bureau to issue carbon credit certificate, among other functions.

The Grid Controller of India Limited shall be the registry, while the Central Electricity Regulatory Commission shall be the regulator for the trading activities under the Indian carbon market. The Commission shall register the power exchanges and approve the carbon credit certificate trading in the Indian carbon market, from time to time. This scheme assigns a value, known as a carbon credit, to every ton of carbon dioxide equivalent (TCO2e) reduced or avoided, providing a structured framework for the country's carbon market.

Under the new Scheme, industries will play a significant role in contributing to India's emission reduction goals. The Ministry of Power will set up designated consumers, including numerous energy-intensive industries, and assign them carbon emissions target to meet. Previously, these targets were in the form of energy efficiency goals.

REFERENCES:

1. https://energy.economictimes.indiatimes.com/news/renewable/carbon-credit-understanding-the-concept-its-evolution-and-implications/99064759#:~:text=Carbon%20Credits%20Certificate%20is%20the,greenhouse%20gases%20from%20the%20atmosphere.
2. http://www.indiaenvironmentportal.org.in/content/475326/carbon-credit-trading-scheme-2023/

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

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BEYOND GOVERNANCE

Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to cs.journal@icsi.edu latest by 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

(i) Certificate of Appreciation.

(ii) His/Her name will be published in the next issue of the Journal.

(iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/ students are to send the answers of Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.

This case study has been divided in two parts-Part A and Part B

M/s ABC Limited (hereinafter referred as "the reporting company") is a company incorporated under the Companies Act, 2013 (hereinafter referred as "the Act") having registered office in Delhi. In order to ensure compliance in accordance with the provisions of section 90 of the Companies Act, 2013 dealing with declaration w.r.t. "Significant Beneficial Owner" ("SBO"), Mr. C, Company Secretary of the company, went through the Register of Members. He found the cases to whom notice for filing BEN-1 shall be served as sub-section (4A) of section 90 of the Act mandates every company to take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section. In exercise of the obligation cast upon the company under sub-section 5 of section 90 of the Companies Act, 2013, Notice (Form BEN-4 ,Rule 6 of SBO Rules), for the same was served to them by Mr. C for seeking information w.r.t. Significant Beneficial Ownership for the shares held in the reporting company.

Part 1

Case 1: Mr. A is holding 12% equity shares in the reporting company. He is holding majority stake (60%) in XYZ Limited which is holding 5% share in the reporting company. Mr. A argues that he needs not file declaration of SBO as Mr. A's direct holding is not a part of SBO. Moreover, the holdings of the XYZ Limited in the reporting company is less than 10%. Therefore, he does not qualify for SBO testing under section 90 of the Act.

Decide

Case 2:

There is a corporate shareholder LMN Limited which is holding 10% equity shareholdings in the reporting company. Mr. R is holding 40% equity in LMN Limited. Mr. R is also the preference shareholder of LMN Limited holding 50% Compulsory Convertible Preference Shares in it. These preference shareholders will entitle him to 20% equity shares in LMN Limited on conversion.

On receiving notice for filing declaration in FORM BEN-1, it was replied that the provisions are not applicable to him as he is not majority stakeholder in LMN Limited, a corporate member of the reporting company. His preference shareholding cannot be counted for the purpose of SBO till the time of their conversion into equity shares.

Decide

Case 3

FTQ Limited is the corporate shareholder of the reporting company holding 13% equity stake in it. Mr. S holds 80% Optionally Convertible Debentures in FTQ Limited which if converted will entitle him to majority equity stake in FTQ Limited. Mr. S argues that provisions

of SBO are not applicable to optionally convertible debentures.

Decide

Part 2

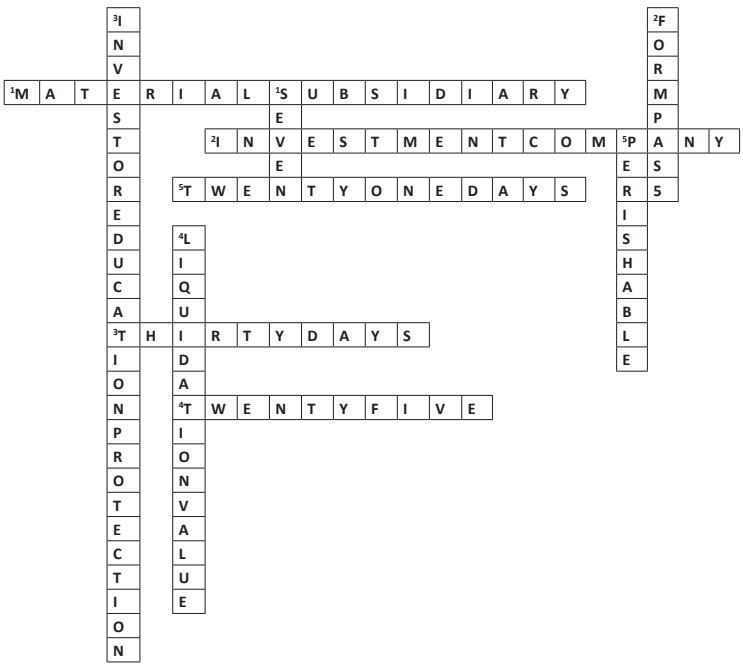
Case

On their failure to file declaration of SBO in FORM BEN-1, the company secretary filed a petition under section 90(7) of the Companies Act, 2013. He applied to the Tribunal for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares as Mr R and Mr A failed to give the reporting company information required by the notice (Form BEN-4) within the time specified therein; An application was filed by Mr. R and Mr. A under Rule 11 of the NCLT Rules, 2016. It was stated in the application that the company alone is empowered to apply to this bench under section 90(7) of the Companies Act, 2013. It was submitted that the company acts through its Board of Directors and in the present case the company secretary has not taken any approval from the Board of Directors to file the present petition. The applicant further goes on to state that there is no Board resolution nor has any delegated authority to present the petition in question. It was also submitted that the company acts through the Board of Directors and section 179 of the Companies Act,2013 empowers the Board of Directors to exercise all such powers and to do all such acts and things that a company is authorized to exercise and do. Therefore, applicant (Mr R and Mr A) sought to declare the petition as not maintainable and dismiss the same at the outset as the same has been filed without authority under law.

Decide

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.

CROSSWORD PUZZLE – OCTOBER 2023 ANSWERS



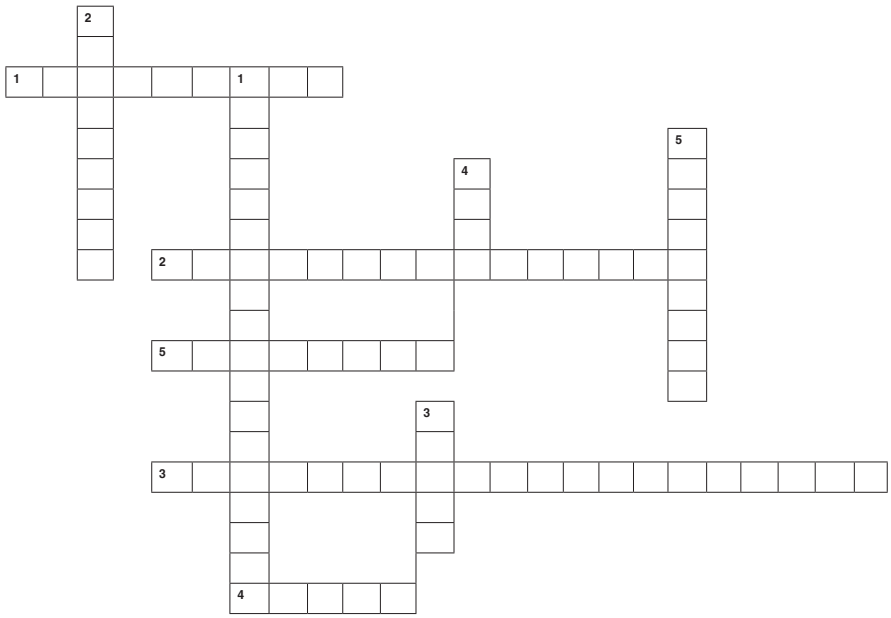
Winners - Crossword October 2023

1st CS Paridhi Garg - ACS-37983

2nd CS Harshad Narsinhbhai Patel - ACS-44439

3rd CS R. Ramnath - ACS-6753

CROSSWORD PUZZLE – COMPANY LAW - NOVEMBER 2023



ACROSS

1. Under Companies Act, a company proposing to issue a red herring prospectus shall file it with the Registrar at least _____prior to the opening of the subscription list and the offer.

2. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed _____rupees.

3. Under IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of _____days from the resolution process commencement date.

4. Under SEBI (Buy-Back of Securities) Regulations, 2018 A copy of the resolution passed at the general meeting under subsection (2) of section 68 of the Companies Act shall be filed with the Board and the stock exchanges where the shares or other specified securities of the company are listed, within _____ working days from the date of passing of the resolution.

5. Under Companies Act , 2013 Every company shall file a return in _____of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details.

DOWNWARDS

1. Under Section 33 of Companies Act, 2013, no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an _____

2. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 The liquidator shall file the list of stakeholders with the Adjudicating Authority within _____days from the last date for receipt of the claims.

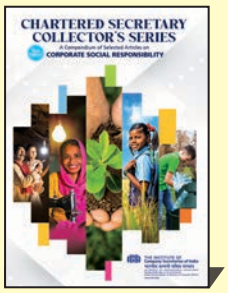
3. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in _____of the Schedule I.

4. Under SEBI LODR 2015, the listed entity shall give at least _____days in advance prior intimation to stock exchange about the meeting of the board of directors in which matter related to financial result is to be considered.

5. Under Insolvency and Bankruptcy Code, 2016, From the date of appointment of the interim resolution professional, the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand _____.

BOOK REVIEW

"Chartered Secretary Collector's Series A Compendium of Selected Articles on Corporate Social Responsibility"



Published by: The Institute of Company Secretaries of India

Price: Rs. 500/-

Pages: 338

The First Edition of the book titled "Chartered Secretary Collector's Series, A Compendium of Selected Articles on Corporate Social Responsibility" is based on the provisions of section 135 of the Companies Act, 2013 read with Schedule VII and Companies (Corporate Social Responsibility Policy) Rules, 2014 as well as various FAQs were issued by the Ministry of corporate Affairs. The book covers selected 36 Artiles on the subject matter of CSR relating to section 135 read with the relevant applicable provisions thereto as published in the Chartered Secretary Journal of the ICSI since 1st April, 2013 and covers the excellent articles on the subject matter contributed by the various learned authors, includes CS Ramaswami Kalidas, CS Vinod Kothari, Dr. S.D.Israni, etc.

If the Company meets the criteria for CSR eligible Companies under section 135(1) the professional and corporates of such companies needs to be aware about the requirement for Compliances specifically of sub section (5) and (6) of section 135 and consequence for non-compliance is liable for huge penalty on the Company and its officer in default as provided under sub section (7) and (8) of section 135. It may be considered that after amendment of section 135 w.e.f. 22nd January, 2021, it requires through time bound compliance of the entire section 135, Schedule VII and the Rules made their under and needs to take specific care while preparing the Boards' Report and filing of the Form CSR-2 as well as hosting the CSR policy on the website of the Company, requirements for Impact Assessment for eligible CSR project has also become mandatory.

In view of the Sustainable Development Goals (SDGs) which needs to be achieved by 2030 in India and India's National Development Goal is "Sab Ka Sath Sab ka Vikas" (meaning development with all, and for all). Various programmes have been announced by the Government such as Swachh Bharat", make in India, Skill India, Digital India, Atma Nirbhar Bharat, etc. which are being implemented very seriously with the support of the Corporates under the CSR activities conducted by them throughout the country.

Now the concept of listing of Non -for Profit Organisation under a separate Segment on the BSE Ltd. and NSE Ltd. has been implemented and 28 Non -for Profit Organisation have already been listed at BSE and NSE. Further that for monitoring of CSR activities new consent of the Social Auditor has also been introduced by the SEBI through the SEBI (ICDR) Regulations, 2018, therefore, the Compliances relating to CSR law and rules made their under, being taken very seriously by the Government and also monitoring the CSR activities and expenses incurred by the Corporate towards the CSR obligations as well as cross check the activities conducted through the implementing agencies which also needs to register themselves by filing of the Form CSR-1 at the portal of MCA and any non-compliances being heavily penalised by the Registrar of Companies as the Adjudicating Authorities.

In this context the Institute's idea for creating a "Chartered Secretary Collector's Series" on the CSR Topic is very relevant and useful for the Corporate and CSR professional, Social Auditor as it has bundle of important articles authored and published in the Chartered Secretary from time to time has been consolidated at a single place and published in the Book for easy and updated reference to the readers.

The Articles covered in this book deals and covers the requirement for applicable compliances under the law and rules made their under as amended and the relevant circulars, FAQs issued by the Govt. from time to time. I also observed that the articles covered in this book are very balancing and provides view of the Govt. Department, society, corporates and then discus the various aspects, therefore, the book is found to be really a comprehensive book which covers the entire aspects of the crucial matters relating to CSR, with the gist of the very important interpretation made by the authors, which clarifies the status of law its applicability under the Companies Act etc.

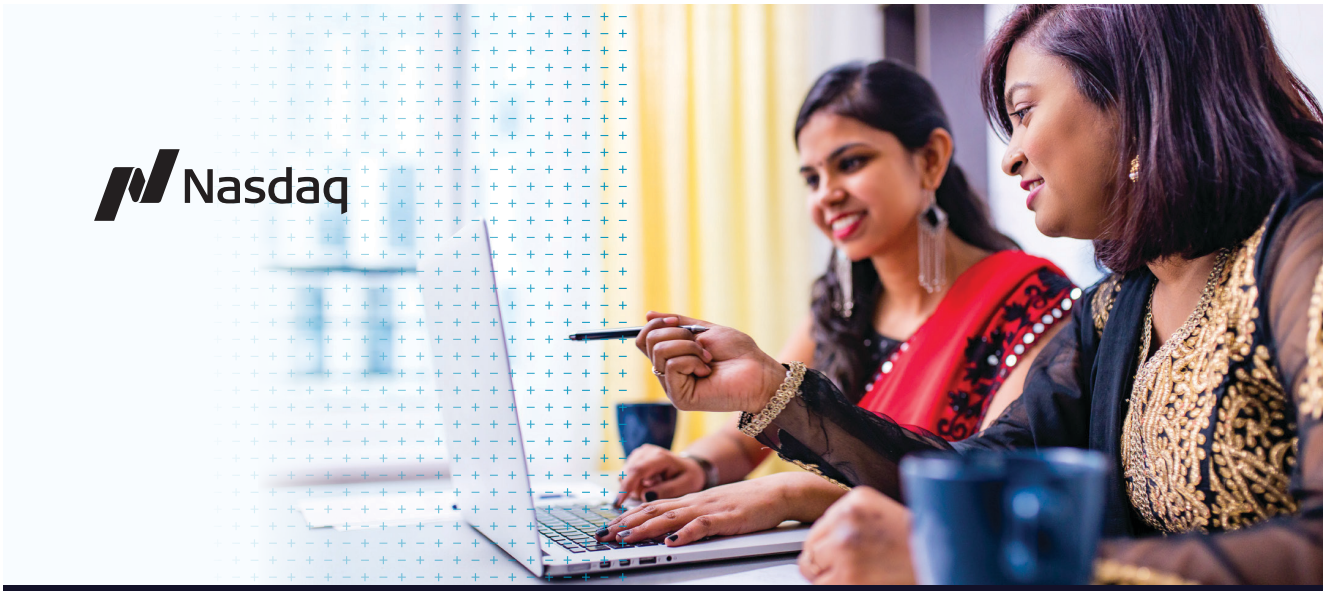
The Publication Department of the ICSI has made hard work which justify the subject and precisely covered all the aspects of CSR as authored by the learned authors of various articles are placed which has provide adequate clarity and enhanced the utility of the books for the corporate, consultants, counsels, social auditors, and judicial forums which may be relevant in the further coming days for the proper understanding of the subject matter.

I overall consider that this book is unique and useful for the Government Departments, Adjudicating Authorities, Inspection officers, Corporates, its Directors and Key Managerial Personnels. It is also helpful to the CSR committee, Board of Directors etc. for the source of updated knowledge with interpretation.

The ICSI Publication Team is complimented and appreciated for this book and I wish them for many other new Chartered Secretary Collector's Series on further new topics of importance.

CS (Dr.) D.K. Jain

Member of the Editorial Advisory Board



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