



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**Vision**

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

**Motto**

सत्यं वद। धर्मं चर। इष्टको धेद त्पुते. बोलेवे इगु धेद इव।

**Mission**

"To develop high calibre professionals  
facilitating good corporate governance"

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# ICSI Global Connect

International Newsletter for Governance Professionals



**Company Secretary**

Mastering Global Corporate Governance



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# PRESIDENT MESSAGE



Dear Professional Colleagues,

ॐ सर्वेभवन्तुसुखिनः  
सर्वेसन्तुनिरामयाः ।  
सर्वेभद्राणिपश्यन्तुमाकश्चिद्दुःखभाग्भवेत ।  
ॐ शान्तिःशान्तिःशान्तिः ॥

**May all sentient beings be at peace,  
may no one suffer from illness,  
May all see what is auspicious, may no one suffer.  
Om peace, peace, peace.**

The above shloka sourced from the ancient scriptures is much more than an opening statement in the ongoing times. With the world grappling with the pandemic and facing challenges unprecedented, hope of peace, comfort and a better future is what works as a silver lining in the otherwise cloudy sky.

As professionals, although the first and foremost expectation is of a calm demeanor, an optimistic attitude and a zeal entirely unaffected by external scenarios; yet the ongoing circumstances have impacted us in ways more than one. While the health and safety of our own self and our loved ones has been our top priority, stability and continuity in our professional arena stands right on the next rung of our priority ladder. With most of us being home bound in the times of pandemic, what has been most resourceful is the support extended by technology and artificial intelligence in accomplishing tasks which would have otherwise been rendered impossible in the light of physical unavailability at the right places.

The past year witnessed a paradigm shift in the manner, mode and methodology of the conduct of not just operations in the

corporate sector but also in the ways in which the masthead of good governance was held high. The simplest of Board Meetings and the most complicated General Meetings were conducted undertaking distinctive approaches and with apt regulatory support.

But what has amazed me the most is the journey that we all have taken together towards learning. The growth of intellect, the development of a better understanding, the erudition of the entirely unique pedagogies has always been in hindsight as well as foresight. To me, that is what makes all of us true professionals, irrespective of our territorial bases, the laws governing us or the circumstances facing. Our unwavering faith in a better tomorrow and an unflinching desire for preparedness is what makes my heart swell with pride.

The idea behind the fabrication of an international newsletter under the aegis of ICSI Global Connect was to build synergies beyond the national boundaries and bring about a common thought and approach towards learning.

With the support received on the first edition and the same being imitated on further, it gives me immense delight to share the second edition of the ICSI Global Connect for the period January-March, 2021. While fully commending the efforts of the contributors of this edition, I firmly believe that this publication shall act as a true game changer for the governance scenario in the times to follow.

Although the circumstances may seem grim, but it is our combined efforts that shall help us sail through these times of tribulations. For as we have always said and believed,

Together we can. Together we will.

With warm regards,

**CS Nagendra D. Rao**

President

The Institute of Company Secretaries of India



# CHAIRMAN MESSAGE



Dear Professional Colleagues,

At the outset, I would like to extend my deepest sympathy to everyone around the world who has suffered through the worst health crisis of our times. I also express my heartfelt gratitude to all those who are unceasingly working at the forefront in the fight against it.

Covid-19 pandemic has throttled the world and exposed the utter fragility of even the most advanced countries. It has not just been a health catastrophe; the fallout is also seen in the social, economic and developmental aspects of the future. This unprecedented challenge has significantly changed the focus and narrative of governance. With technology becoming an important driver in the global economic landscape, Company Secretaries are assuming the bigger responsibility as governance professionals.

The ideation of ICSI Global Connect was to accentuate the growth trajectory of Company Secretary Professionals for the new wave of Governance and it gives me immense pleasure to welcome you to the second issue of the newsletter.

The first issue, released in December, 2020, was aimed at connecting with Company Secretaries and Governance

Professionals across the globe. It highlighted the tightening of regulatory regimes in different economies of the world ensuring more transparency and better ease of doing business. The overwhelming positive response to it encouraged us to invest in more energy for creating the second dynamic edition.

This issue will bring forth the importance of a more comprehensive governance framework in the era of technology and apprise the legion of Company Secretaries with the right digital and business acumen.

As His Holiness the Dalai Lama says "It is under the greatest adversity that there exists the greatest potential for doing good, both for oneself and others". Let us all act in solidarity and find all possible prospects of resuscitating the world.

**CS Ashish Garg**  
Immediate Past President &  
Chairman, International Affairs Committee, The ICSI  
and President, CSIA



*Recent Regulatory  
Developments  
around the World*





## Recent Regulatory Developments around the World

# Singapore Resumption of Register of Registrable Controllers (RORC) e-Service in BizFile

Companies, foreign companies and limited liability partnerships in Singapore are required to maintain a register of registrable controllers (RORC) either at their registered office address or the office of their authorised filing agent since 31 March 2017.

The entities are now required to lodge registrable controllers' information in the central register of controllers by 30 June 2021, failing which the defaulting entities may face a fine of up to S\$ 5,000. Entities that are exempted from maintaining RORC as per the Fourteenth and Fifteenth Schedule of the Companies Act & Sixth Schedule of the Limited Liability Partnerships Act are also required to notify ACRA that they are exempted by indicating so in the RORC filing page. There is no extension of time provisions for RORC filings.

The BizFile+ e-Service to file RORC information was launched in September 2020, but was subsequently suspended. The filing service has resumed with effect from 1 February 2021. Entities that had previously lodged their RORC information with ACRA last year in BizFile+ are not required to lodge this information unless there are any changes to the RORC information.

Companies and LLPs may lodge their RORC information with the Accounting and Corporate Regulatory Authority (ACRA), Singapore's registrar of companies, via BizFile+, ACRA's online filing portal. The filings can be made either by companies themselves using their corppass, or through their Registered Filing Agent (RFA). There is no fee payable for lodging such RORC information with ACRA.

If there are any changes or updates in future, entities (or their authorised RFA) must update the ACRA's central RORC within 2 business days.

Registrable controllers in common parlance are also known as the beneficial owners. They are defined as persons holding significant interest (more than 25% ownership directly

or indirectly), or significant control (such as the ability to appoint or remove a majority of directors) over the entity.

Entities are required to send a notice to their shareholders and directors/managers/partners to obtain confirmation that they are registrable controllers or whether they are aware if anyone else is a controller. For most of the entities, the controllers are usually its shareholders/partners.

If such a potential controller to whom notice has been issued, does not respond within 30 days from the date of the notice, the latest available particulars of such potential controller held by the company/LLP has to be entered into entities' RORC with a note stating that the particulars have not been confirmed by the controller.

It is recommended that entities send an annual notice to all their shareholders and directors to verify and confirm if they are the controllers; or if they are aware of any other persons being controllers of the entity.

The implementation of central RORC by ACRA is part of the regulator's on-going efforts to uphold and enhance Singapore's reputation as a trusted financial hub. It also aims to further enhance the transparency of ownership and control of corporate entities and hence increasing trust in Singapore's regulatory mechanism.

It is also important to note that Information in the ACRA central RORC will not be public information and hence not accessible by members of the public. It will only be made available to law enforcement agencies to administer or enforce the laws under their purview (e.g. investigation of money laundering offences).

For more information, please visit:

<https://www.acra.gov.sg/compliance/register-of-registrable-controllers>

## *Singapore Further Extension of Duration of Alternative Arrangements for Conduct of Meetings*

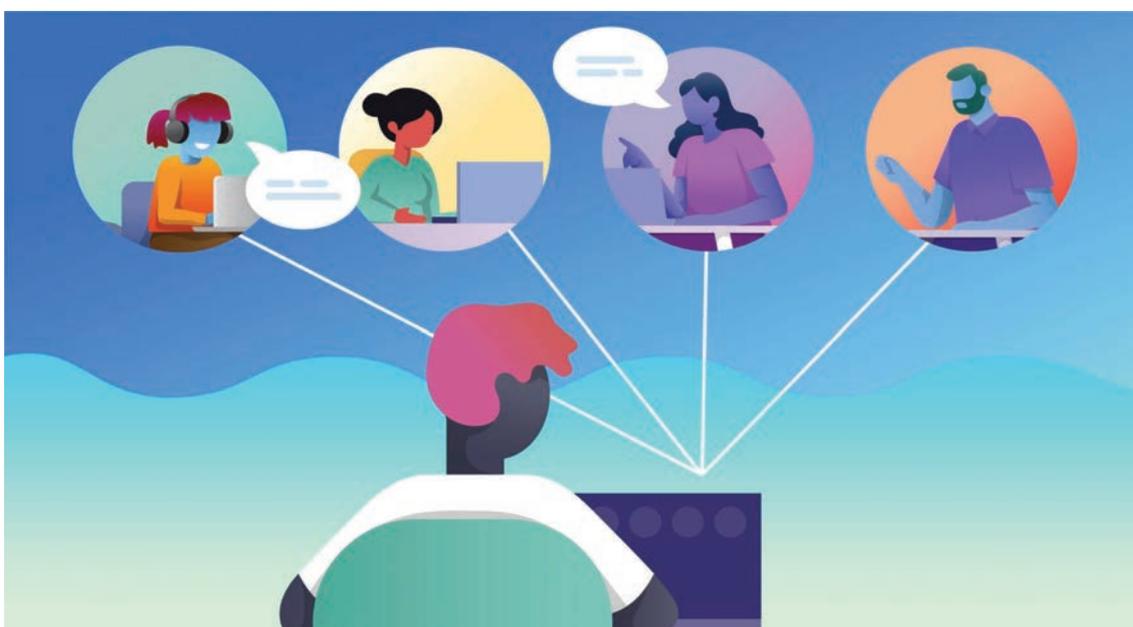
The Ministry of Law announced the extension of the duration of the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts and Debenture Holders) Order 2020 (the "Meetings Order") beyond 30<sup>th</sup> June 2021. This will provide entities with greater legal certainty to plan their meetings, and the option to hold virtual meetings to minimise physical interactions, amid the continuing COVID-19 situation.

The Ministry of Law had earlier announced that the Meetings Orders would apply for the period starting on 27<sup>th</sup> March 2020 and ending on 30<sup>th</sup> June 2021. The Meetings Order will now extend beyond 30<sup>th</sup> June 2021, until it is revoked or amended by the Ministry of Law. Accordingly, until such time, issuers may continue to utilise the Checklist issued by ACRA, MAS and SGX RegCo to guide entities on the conduct of their general meetings.

To provide certainty to entities organising meetings, the Ministry of Law will give at least 6 months' advance notice before the alternative arrangements cease to be available. This is to cater to entities who have relied on the Meetings Order to make early preparations for meetings, before the end date is announced.

Please click on the following links for more information:

- Ministry of Law press release (6 April 2021)
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) (PDF, 34KB)
- Checklist on the conduct of General Meetings during Elevated Safe Distancing Period



# UAE Continuing to Update Residence, Tourist Visas

The UAE is continuing to update and enlarge the scope of available residence and tourist visas, by introducing a range of new and innovative types of visas, according to the needs of various segments of the community.

These updates are also in line with the progress achieved by the UAE in the area of global competitiveness and are expected to attract more investors, entrepreneurs, talents and scientists, as well as boost the country's status as an international tourism destination.

Since the start of 2021, the UAE introduced three new updates to residence and tourist visa, which are a Remote work Visa, a multi-entry tourist visa for all nationalities, and a resolution enabling foreign students to bring their families to the country.

Moreover, the UAE recently introduced a medical treatment visa, a five-year residency visa for retirees according to specific conditions, and a 10-year golden residency system.

In January 2021, the UAE Cabinet approved an amendment to its residency laws allowing foreign university students to bring their families to the UAE, as long as they can afford suitable accommodation and have the financial means to support them.

During a meeting of the UAE Cabinet a virtual employment permit was approved, the first of its kind in the region, enabling foreigners to enter the country without sponsors, stay for one year, and work remotely according to specific conditions.

At the same meeting, a multi-entry tourist visa was approved for all nationalities, which boost the UAE's tourism sector and its status as one of the best destinations for tourism in the world. This visa will allow tourists to enter the country multiple times within a period of five years for a duration of up to 90 days for each visit, renewable for a similar period.



Source: <https://wam.ae/en/details/1395302922903>



## Recent Regulatory Developments around the World

# UAE Allows Full Foreign Ownership of Commercial Companies

President His Highness Sheikh Khalifa bin Zayed Al Nahyan has issued a decree overhauling foreign ownership rules of commercial companies, as part of the government's ongoing efforts to ensure a conducive legislative environment and open up economy to all nationalities.

The decree, which introduces significant amendments to the UAE Federal Law No. 2 of 2015 on Commercial Companies, annuls the requirement for commercial companies to have a major Emirati shareholder or agent, providing full foreign ownership of onshore companies. Under the new amendments, businesses can now be fully established by non-Emiratis of all nationalities, with companies now having a maximum of one year to comply with the amended law from the time its articles become effective. This can be extended under a decision by the cabinet as proposed by the Minister of Economy.

The decree, in addition, supersedes the UAE Federal Law No. 19 of 2018 on Foreign Direct Investment (FDI Law). It also includes certain provisions and regulations related to limited liability and joint stock companies aimed at attracting foreign capital and further boosting the local economy.

The decree grants relevant local authorities a set of powers, including setting a specific percentage of Emiratis in the capital allocation and boards of directors of companies, approving requests to establish companies -except for joint stock companies- and identifying fees & charges according to the policies adopted by the UAE Cabinet.

Significant changes include that firms wishing to become joint stock companies can, after the approval of relevant authorities, sell no more than 70 pct of the company, instead of the current 30 pct, through IPOs.

The decree authorizes the cabinet to set up a committee that includes representatives of the relevant authorities with a view to proposing activities of "strategic impact" and the measures required to licence companies that operate in such areas. Upon the recommendation of the committee, the Cabinet will stipulate what activities shall be considered of strategic impact and the required measures for licensing such companies.

Electronic voting at general assembly meetings are now permitted under the new amendments.

The decree empowers the Securities and Commodities Authority to establish the controls and procedures required for evaluating in-kind shares and the names of stakeholders attending the general assembly meetings of companies. It also allows the appointment of board members who have the expertise and are not stakeholders, without stipulating a specific percentage, as well as the dismissal of a chairman or any other board members if a judicial judgement is issued against them for committing fraud or misuse of power.

The decree enables stakeholders to sue a company in civil court over any failure of duty that results in damages.

Concerning capital increases or decreases in public companies, the decree enables the company to approve its capital increase through issuing bonds and converting them into shares.

The decree is reflective of the UAE's forward-looking vision to open up its economy by creating a favourable legislative environment that will keep pace with the changes taking place across global economy and supporting companies operating in the country.



## UAE Federal Government Public Debt Strategy 2021-2023



H.H. Sheikh Hamdan bin Rashid Al Maktoum, Deputy Ruler of Dubai and Minister of Finance, has highlighted the importance of approving the Federal Government Public Debt Strategy 2021-2023, as it will have a significant impact on elevating the UAE's global competitiveness standing and improving macroeconomic management.

The strategy, he said, will stimulate the country's financial and banking sector; provide financing alternatives for government development projects; and establish a bond market in the local currency.

Sheikh Hamdan said, "The strategy supports the UAE's efforts to attain a competitive economy, and enhance financial planning for the federal government.

"It also helps lay the foundation for public debt operations management, and achieve financial sustainability – by enhancing investor confidence in the national economy. This contributes to strengthening the country's standing in global competitiveness indices to be the best country in the world by the UAE Centennial 2071."

**COVID-19**

**ECONOMIC  
CRISIS**

## *UK Government Extends Business Support Measures*

The UK Government has extended temporary insolvency measures providing further support to businesses during the pandemic and helping them recover, till the end of June 2021.

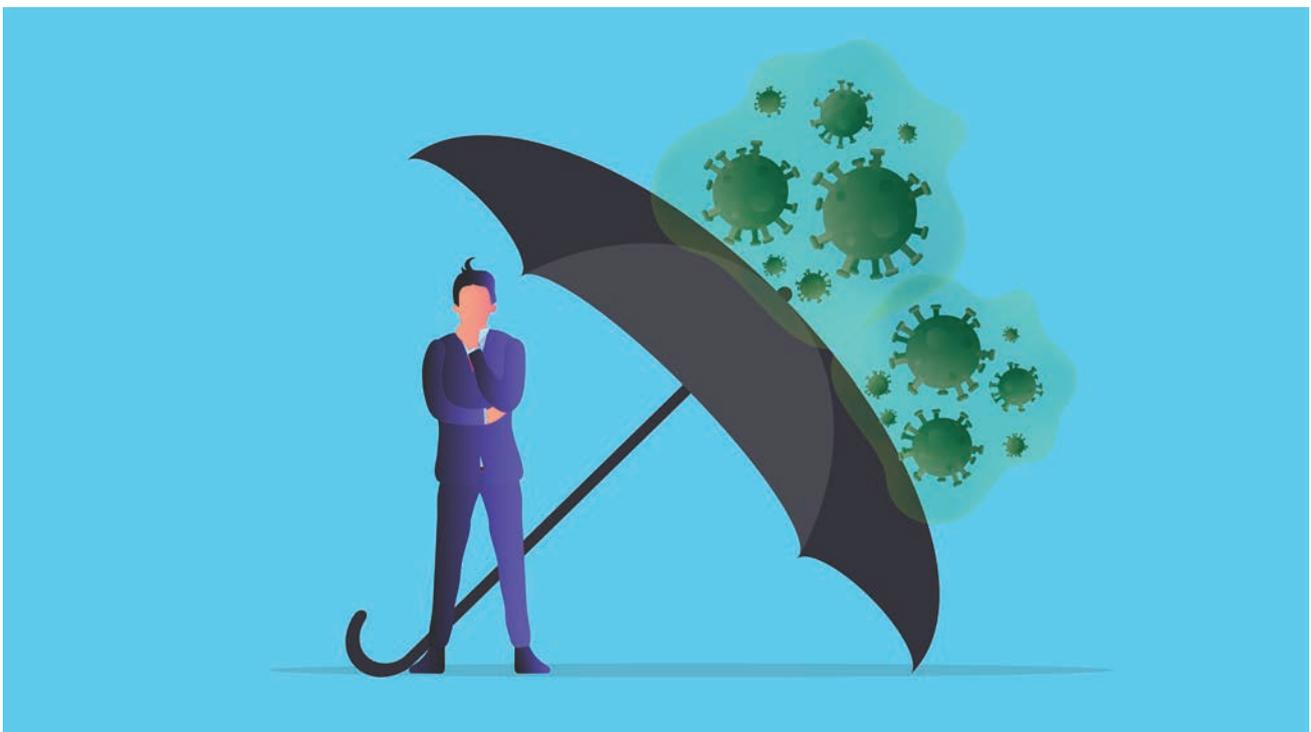
The measures were introduced in the Corporate Insolvency and Governance Act in March 2020, including protecting businesses from aggressive creditor enforcement and removing personal liability on company directors, and have been previously extended on a number of occasions.

The measures being extended till the end of June 2021:

- Statutory demands and winding-up petitions will continue to be restricted to protect companies from

creditor enforcement action due to debts related to coronavirus (COVID-19).

- Small suppliers will not have to continue to supply a business in insolvency. However, larger suppliers will not be able to cease their supply or ask for additional payments while a company is going through a rescue process.
- Entry into a moratorium will remain relaxed and a company will be able to enter a moratorium if they have been subject to an insolvency procedure in the previous 12 months. These measures will be extended until 30 September 2021



Source: <https://www.gov.uk/government/news/government-extends-business-support-measures>



# *Legal & Regulatory Updates from India*





ज्ञान-विज्ञान विमुक्तये

## *University Grants Commission recognizes Company Secretary Qualification as equivalent to Post Graduate Degree*



The University Grants Commission has recognized Company Secretary Qualification as equivalent to Post Graduate Degree based on representations submitted by The Institute of Company Secretaries of India.

This recognition will leverage the Company Secretary Profession across the globe, giving the members of the Institute an opportunity to pursue Ph.D. in Commerce and Allied Disciplines.

To keep pace with the changing dynamics of global governance framework, the Institute has carefully designed and benchmarked the Company Secretary Course content. In accordance, the profession has evolved and has gained its due recognition in different jurisdictions world over.

Besides this, ICSI also has a full-fledged academic and research wing that enhances the acumen and expertise of its members and students and encourages them to undertake research in crucial areas like Corporate Governance; Company Law; CSR; Tax Laws; Securities Laws; Capital Market; Finance; Accounting; Economic and other Commercial Laws etc.

The academia in the country has hence acknowledged

the Company Secretaries in the field of teaching / training and are also inviting them as guest faculty in Universities / Colleges / Academic Institutes.

Thanking the University Grants Commission, CS Nagendra D Rao, President, The ICSI said, "This recognition will open up another world of opportunities for Company Secretaries. Such recognitions reaffirm the fact that with the increasing focus on good governance, the demand for Company Secretaries, as skilled professionals, is both ubiquitous and inevitable.





सत्यमेव जयते

# *Ministry of Corporate Affairs*



INSOLVENCY  
AND  
BANKRUPTCY  
CODE

Ministry of Corporate Affairs  
Insolvency and Bankruptcy Board of India  
notifies the Insolvency and Bankruptcy Board  
of India (Pre-packaged Insolvency  
Resolution Process) Regulations, 2021

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 promulgated on 4<sup>th</sup> April, 2021 provides for pre-packaged insolvency resolution process (PPIRP) for corporate debtors classified as micro, small and medium enterprises. The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (PPIRP Regulations) on 9<sup>th</sup> April, 2021 to enable operationalisation of PPIRP.

The PPIRP Regulations detail the Forms that stakeholders are required to use, and the manner of carrying out various tasks by them as part of the PPIRP. These provide details and manner relating to:

- a. Eligibility to act as resolution professional, and his terms of appointment;
- b. Eligibility of registered valuers and other professionals;
- c. Identification and selection of authorised representative;
- d. Public announcement and claims of stakeholders;
- e. Information memorandum;
- f. Meetings of the creditors and committee of creditors;
- g. Invitation for resolution plans;
- h. Competition between the base resolution plan and the best resolution plan;
- i. Evaluation and consideration of resolution plans;

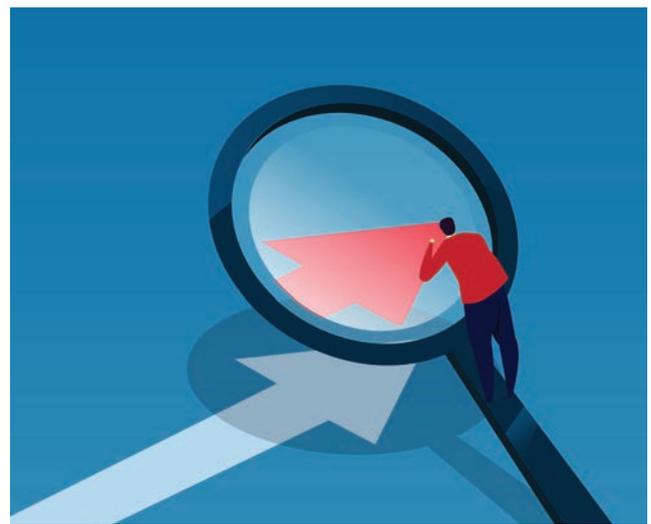
- j. Vesting management of corporate debtor with resolution professional;
- k. Termination of PPIRP.

The PPIRP Regulations come into force from 9<sup>th</sup> April. These are available at [www.mca.gov.in](http://www.mca.gov.in) and [www.ibbi.gov.in](http://www.ibbi.gov.in).



**Pre-Packaged Insolvency  
Resolution Process for MSMEs**

### Ministry of Corporate Affairs Finance Minister Smt. Nirmala Sitharaman launches Central Scrutiny Centre and IEPFA's Mobile App to leverage digital solutions to achieve Prime Minister's vision of 'Digitally Empowered India'



Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman on 25<sup>th</sup> March, 2021 had virtually launched Central Scrutiny Centre (CSC) and Investor Education and Protection Fund Authority's (IEPFA) Mobile App - two tech-enabled initiatives by Ministry of Corporate Affairs. These initiatives leverage to strengthen the Prime Minister's vision of 'Digitally Empowered India'.

Announcing the launch of new initiatives, Smt. Sitharaman said, "Digital India is a campaign launched by the Government of India in order to ensure that the Government's services are made available to citizens electronically by making the country digitally empowered in the field of technology. These two initiatives would create a new corporate and investor friendly ecosystem. Going forward, MCA would bring in more tech-enabled services for ease of doing business and ease of living for the people."

The Finance Minister also said that the Ministry of Corporate Affairs has been engaged in a continuous journey of digitisation, automation and improvement, for the good of the society, the corporates, the economy and

the professionals.

Smt. Sitharaman further added that multiple initiatives have been taken by the MCA in past couple of years to promote Ease of Doing Business (EoDB) in India. The increase in number of incorporation of Companies in India even during the COVID-19 pandemic is the result of initiatives like introduction of integrated form SPICe+ & Agile Pro for incorporation of Companies, which has provided one stop solution to promoters desirous of setting up a business entity in India.

This year till February 2021, about 1.38 lakhs companies have been incorporated as compared to about 1.16 lakhs companies in the corresponding period of last year by Central Registration Centre, an increase of over 17%, Smt. Sitharaman added.

The Finance Minister said that the Central Scrutiny Centre will scrutinize certain Straight Through Process (STP) Forms filed by the corporates on the MCA21 registry and flag the companies for more in-depth scrutiny.

Smt. Sitharaman stated that MCA being one of the key primary sources of corporate data, is required to ensure that the data quality is uncompromised and free from flaws. With this objective in mind, the Ministry of Corporate Affairs has established a Central Scrutiny Centre, which will primarily scrutinise the filings made by the users under straight through processes, identify the data quality issues and irregularities, communicate the same to the concerned Registrar of Companies so that corrective steps can be taken to restore authenticity and correctness of data and it can be seamlessly shared with other regulators, if required.

The Finance Minister also launched the IEPFA Mobile App. During the launch the Finance Minister said, "The Mobile App aims at achieving the goal of financial literacy, spreading investors' awareness, education, and protection among investors. Our prime goal here is to push Ease of Living."

Smt. Sitharaman added that the Mobile App has been

developed for citizen engagement and information dissemination to promote awareness among investors. With this App, the Authority aims to achieve the goal of financial literacy, spreading investors' awareness, education, and protection among investors both in rural and urban areas.

Considering the dynamic nature of corporate compliance and regulatory ecosystem, the MCA will continue to upgrade the sampling mechanism, process workflow and technology to address the needs of stakeholders and promote EoDB in India, the Finance Minister said.

The IEPFA App will have the facility of tracking the status and progress of the IEPF claim refund process. Moreover, it also provides a mechanism for investors and common citizens to report on the suspected fraudulent schemes. Currently, the app is available on Android based devices and can be downloaded from Play Store.





## *Ministry of Corporate Affairs MCA amended Companies Act 2013 to mitigate blow by COVID-19 pandemic*



The Ministry of Corporate Affairs (MCA) has taken various measures to address the impact COVID-19 pandemic on corporates by making amendments in the Companies Act, 2013, Rules made thereunder and by issuing various circulars from time to time.

The details of such measures taken by the Ministry are available at <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/feb/doc20212941.pdf>

Source: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1696538> .

# Ministry of Corporate Affairs

## MCA21 Version 3.0 to be launched in Fiscal 2021-22

During the fiscal 2021-22, the Ministry of Corporate Affairs (MCA) will launch data analytics driven MCA21 Version 3.0. This Version will have additional modules for e-Adjudication, e-Consultation and Compliance Management. MCA21 system is the first Mission Mode e-Governance project of Government of India.

MCA21 V3 Project is a technology-driven forward looking project, envisioned to strengthen enforcement, promote Ease of Doing Business, enhance user experience, facilitate seamless integration and data exchange among Regulators. The project will have Micro-services architecture with high scalability and capabilities for advanced analytics.

Aligned with global best practices and aided by emerging technologies such as AI and ML, MCA21 V3 is envisioned to transform the corporate regulatory environment in India. The key components of MCA21 are:

- **e-Scrutiny:** MCA is in process of setting up a Central Scrutiny Cell which will scrutinise certain Straight Through Process (STP) Forms filed by the corporates on the MCA21 registry and flag the companies for more in depth scrutiny.
- **e-adjudication:** E-adjudication module, has been conceptualised to manage the increased volume of adjudication proceedings by Registrar of Companies (RoC) and Regional Directors (RD) and will facilitate end to end digitisation of the process of adjudication, for the ease of users. It will provide a platform for conducting online hearings with stakeholders and end to end adjudication electronically.
- **e-Consultation:** To automate and enhance the current process of public consultation on proposed amendments

and draft rules etc., e-consultation module of MCA21 v3 will provide an online platform wherein, proposed amendments/draft legislations will be posted on MCA's website for external users comments and suggestions pertaining to the same in a structured digital format. Further, the system will also facilitate AI driven sentiment analysis, consolidation and categorization of stakeholders' inputs and creation of reports on the basis thereof, for reference of MCA.

- **Compliance Management System (CMS):** CMS will assist MCA in identifying non-compliant companies/LLPs, issuing e-notices to the said defaulting companies/LLPs, generating alerts for internal users of MCA. CMS will serve as a technology platform/solution for conducting rule based compliance checks and undertaking enforcement drives of MCA wherein e-notices will be issued by MCA for effective administration of corporates.
- **MCA Lab:** As part of MCA21 V3, a MCA LAB is being set up, which will consist of corporate law experts. The primary function of MCA Lab will be to evaluate the effectiveness of Compliance Management System, e-consultation module, enforcement module, etc. and suggest enhancements to the same on an on-going basis. The Lab will help MCA in ensuring the correctness of results produced by these key modules in view of the dynamic corporate ecosystem.

Additionally, MCA21 V3 will have a cognitive chat bot enabled helpdesk, mobile app interactive user dashboard enhanced user experience using UI/UX technologies, and seamless data dissemination through APIs.

# Ministry of Corporate Affairs

## MCA revises threshold for paid up capital and turnover for Small Companies

The definition under the Companies Act, 2013 for Small Companies has now been revised by increasing their thresholds for Paid up capital from “not exceeding Rs 50 lakh” to “not exceeding Rs 2 crore” & Turnover from “not exceeding Rs 2 crore” to “not exceeding Rs 20 crore” [click here for NOTIFICATION](#). This is expected to benefit more than two lakh companies in terms of lesser compliances, lesser filing fees and lesser penalties (in the event of any defaults).

Small companies are the backbone of our corporate world. They represent the Entrepreneurial aspirations & Innovation capabilities of lakhs of citizens. They contribute to employment and GDP in a very substantial manner. The Government has always been committed to taking measures which create a more conducive business environment for such law abiding companies, including reduction of compliance burden on such companies.

Some of the benefits of reduction in compliance burden for over 2 lakh companies as a direct consequence of the revised definition are as under:

- No need to prepare Cash flow statement as part of financial statement.
- Where other companies require providing details of remuneration to directors and key managerial personnel, small companies are required to provide details of the only aggregate amount of remuneration drawn by directors in its Annual Return.
- Mandatory rotation of auditor not required.
- An Auditor of small companies is not required to report on the adequacy of the internal financial controls and its operating effectiveness in the auditor's report.
- Hold only two board meetings in a year.
- Annual Return of the company can be signed by the Company Secretary, or where there is no company secretary, by a single director of the company.
- Lesser penalties for Small Companies.
- Lesser filing fees for Small Companies.



Source: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1694835>

Fast track mergers

## Ministry of Corporate Affairs MCA amends One Person Companies (OPCs) rules

Fast track mergers extended to Startups  
and other small companies



As a measure which directly benefits Startups & Innovators in the country, especially those who are supplying products & services on e-commerce platforms, and in order to bring in more unincorporated businesses into the organized corporate sector, the incorporation of One Person Companies (OPCs) is being incentivized by amending the Companies (Incorporation) Rules to allow OPCs to grow without any restrictions on paid up capital and turnover, allowing their conversion into any other type of company at any time, reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days and also allowing Non-Resident Indians (NRIs) to incorporate OPCs in India.

In addition, the fast track process for mergers under the Companies Act, 2013 have now been extended to also include mergers of Startups with other Startups and with Small companies, so that the process of mergers & amalgamations is completed faster for such companies.

The amendments to the Rules governing OPCs will cover the following, w.e.f 1<sup>st</sup> April 2021 click here for NOTIFICATION 1 & NOTIFICATION 2.

- Previously NRIs were not allowed to incorporate OPCs. Now any natural person, who is an Indian citizen, whether

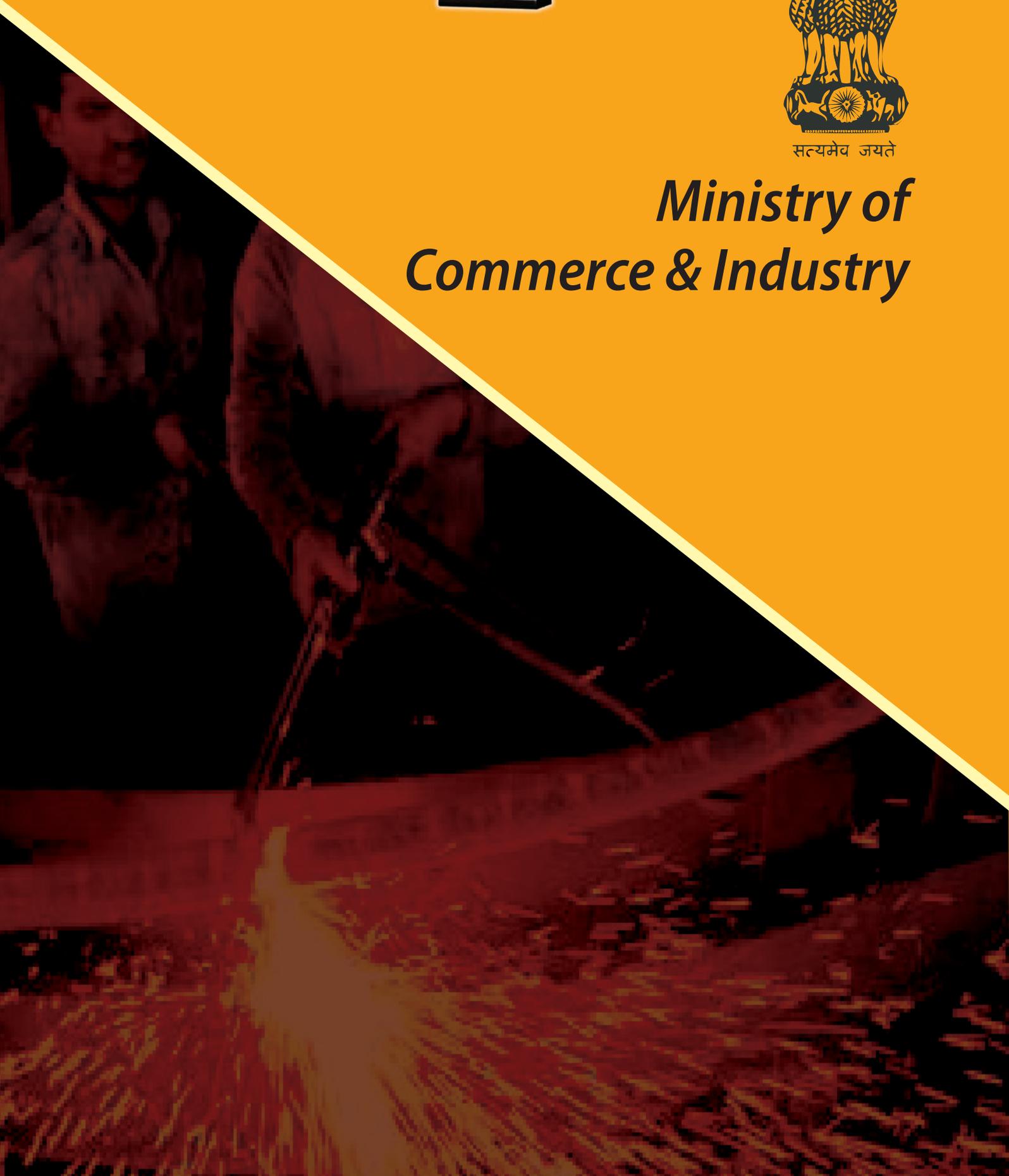
resident in India or otherwise would be allowed to form an OPC.

- For being considered as a resident in India, the residency period has been proposed to be reduced to 120 days from 182 days for NRIs.
- Rule relating to voluntary conversion, unless OPC has completed two years from the date of being incorporated, is proposed to be omitted with effect from 01.04.2021. Conversion of One Person Company into a Public company or a Private company shall be permitted anytime. A One Person company may be converted into a Private or Public Company other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or minimum of seven members and three directors as the case may be.
- Similarly the limitation of Paid up capital & turnover presently applicable for OPCs (paid up share capital of fifty lakhs rupees and average annual turnover during the relevant period of two crore rupees) is being done away with so that there are no restrictions on the growth of OPCs in terms of their paid up capital & turnover.
- Rationalization of e-forms applicable for OPCs by omitting e-Form No.INC-5 and modification of e-form INC-6 (application for conversion from OPC to a Private company or a Public company and also Private company to OPC or)
- Amendment notification issued on 01.02.2021.



सत्यमेव जयते

# *Ministry of Commerce & Industry*



### *Ministry of Commerce & Industry Copyright (Amendment) Rules, 2021 notified; Amendments will bring the existing rules in parity with other relevant legislations; New rules will encourage accountability and transparency*

The Government of India has notified Copyright (Amendment) Rules, 2021 vide Gazette notification under reference G.S.R. 225(E) dated 30<sup>th</sup> March, 2021. In India, the copyright regime is governed by the Copyright Act, 1957 and the Copyright Rules, 2013. The Copyright Rules, 2013 were last amended in the year 2016.

The amendments have been introduced with the objective of bringing the existing rules in parity with other relevant legislations. It aims to ensure smooth and flawless compliance in the light of the technological advancement in digital era by adopting electronic means as primary mode of communication and working in the Copyright Office. A new provision regarding publication of a copyrights journal has been incorporated, thereby eliminating the requirement of publication in the Official Gazette. The said journal would be available at the website of the Copyright Office.

In order to encourage accountability and transparency, new provisions have been introduced, to deal with the undistributed royalty amounts and use of electronic and traceable payment methods while collection and distribution

of royalties. To reinforce transparency in working of copyright societies a new rule has been introduced, whereby the copyright societies will be required to draw up and make public an Annual Transparency Report for each financial year.

The amendments have harmonised the Copyright Rules with the provisions of Finance Act, 2017 whereby the Copyright Board has been merged with Appellate Board. The compliance requirements for registration of software works have been largely reduced, as now the applicant has the liberty to file the first 10 and last 10 pages of source code, or the entire source code if less than 20 pages, with no blocked out or redacted portions.

The time limit for the Central Government to respond to an application made before it for registration as a copyright society is extended to one hundred and eighty days, so that the application can be more comprehensively examined.





## Legal & Regulatory Updates from India

### Ministry of Commerce & Industry

*Government measures increase FDI inflows in the country; India Attracts total FDI inflow of US\$ 72.12 billion during April, 2020 to January, 2021; Computer Software & Hardware emerged as top sector with 45.81% of total FDI Equity inflow Japan leads the list of Investor countries with 29.09% of the total FDI Equity inflows during January, 2021*



The Measures taken by the Government on the fronts of FDI policy reforms, investment facilitation and ease of doing business have resulted in increased FDI inflows into the country as India has attracted total FDI inflow of US\$ 72.12 billion during April to January, 2021. It is the highest ever for the first ten months of a financial year and 15% higher as compared to the first ten months of 2019-20 (US\$ 62.72 billion).

The trends show that the FDI equity inflow grew by 28% in the first ten months of F.Y. 2020-21 (US\$ 54.18 billion) compared to the year ago period (US\$ 42.34 billion). In terms of top investor countries, 'Singapore' is at the apex with 30.28% of the total FDI Equity inflow followed by U.S.A (24.28%) and UAE (7.31%) for the first ten months of the current financial year 2020-21.

Japan has been leading the list of investor countries to invest in India with 29.09% of the total FDI Equity inflows during January, 2021, followed by Singapore (25.46%) and the U.S.A. (12.06%).

The Computer Software & Hardware has emerged as the top sector during the first ten months of F.Y. 2020-21 with 45.81% of the total FDI Equity inflow followed by Construction (Infrastructure) Activities (13.37%) and Services Sector (7.80%) respectively.

As per the trends shown during the month of January, 2021, the consultancy services emerged as the top sector with 21.80% of the total FDI Equity inflow followed by Computer Software & Hardware (15.96%) and Service Sector (13.64%).

These trends in India's Foreign Direct Investment are an endorsement of its status as a preferred investment destination amongst global investors



Source: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1709654>

## *Ministry of Commerce & Industry Foreign Trade Policy 2015-2020 extended for 6 months till September 2021*

The Union Commerce and Industry Ministry on 31<sup>st</sup> March, 2021, announced extension of the Foreign Trade Policy (FTP) of Government of India. The present Policy which came into force on 1<sup>st</sup> April 2015, was for 5 years and was extended thereafter upto 31<sup>st</sup> March, 2021. In view of the unprecedented situation arising out of COVID-19, the Government has decided to continue benefits under various export promotion schemes by extending existing Foreign Trade Policy by another six months i.e. up to 30<sup>th</sup> September, which will provide continuity in the policy regime. Similar extension is made in the related procedures, by extending validity of Handbook of Procedures.

Exemption from payment of IGST and Compensation Cess on the imports made under Advance/EPCG Authorisations and by EOUs etc. has also been extended up to 30.09.2021.

Similarly, validity period of the Status Holder Certificates is also extended. This will enable the Status Holders to continue to avail the specified facilities/benefits.

A notification for extending the Foreign Trade Policy 2015-20 and a Public Notice for extending the validity of the existing Handbook of Procedures 2015-20 has been issued.



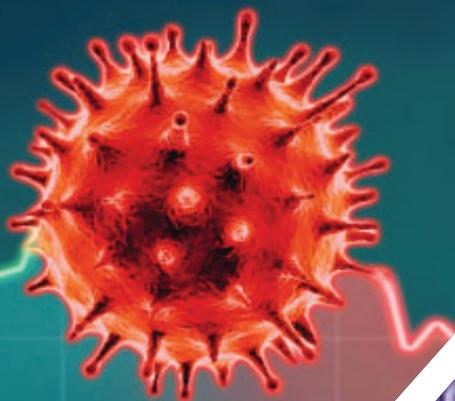


## *Ministry of Commerce & Industry India's Trade Performance during COVID-19 Period*

India's overall (merchandise and services) export was US\$ 394.96 billion during 2020-21 (April-January) as compared to US\$ 443.24 billion during 2019-20 (April-January), i.e. a negative growth of 10.89%. During 2020-21 (April-January), India's overall import was US\$ 400.84 billion as compared to US\$ 514.57 billion during 2019-20 (April-January), i.e. a negative growth of 22.10%. India's overall trade deficit was US\$ 5.88 billion during 2020-21 (April-January) as compared to US\$ 71.33 billion in 2019-20 (April-January), with a high reduction of trade deficit of US\$ 65.45 billion.

In order to increase the production and exports of Pharma, Agriculture, Automobile, and Defence items and to re-energize India's trade performance, some of the key steps taken are:

- A comprehensive "Agriculture Export Policy" to provide an impetus to agricultural exports is under implementation.
- Product specific Export Promotion Forums (EPF) for eight high potential agri- products i.e. Grapes, Mango, Banana, Onion, Rice, Nutri-Cereals, Pomegranate, Floriculture and Plant material have been created to promote export of identified products in a focused manner.
- Subsidy is provided under Operation Greens scheme for transportation of fruits and vegetable through Kisan Rail.
- Trade Infrastructure for Export Scheme (TIES), Market Access Initiatives (MAI) Scheme and Transport and Marketing Assistance (TMA) have been launched to promote trade infrastructure and marketing.
- Assistance to the exporters of agricultural products is made available under the export promotion schemes of Agricultural and Processed Food Products Export Development Authority (APEDA), Marine Products Export Development Authority (MPEDA), Tobacco Board, Tea Board, Coffee Board, Rubber Board and Spices Board.
- Production-Linked Incentive (PLI) Scheme for 13 sectors- 3 sectors in March, 2020 and 10 sectors in November, 2020 with an outlay of Rs 1.97 lakh crore has been launched to provide a major boost to manufacturing. These sectors are (i) Automobiles and Auto Components, (ii) Pharmaceuticals Drugs, (iii) Specialty Steel, (iv) Telecom & Networking Products, (v) Electronic/Technology Products, (vi) White Goods (ACs and LEDs), (vii) Food Products, (viii) Textile Products: MMF segment and technical textiles, (ix) High efficiency solar PV modules, and (x) Advanced Chemistry Cell (ACC) Battery (xi) Medical devices (xii) Large scale electronics manufacturing including mobile phones (xiii) Critical Key Starting Materials (KSMs) /Drug intermediaries and Active Pharmaceutical Ingredient (API).
- Scheme for promotion of Bulk Drug Parks to provide grant-in-aid to 3 Bulk Drug Parks has been launched for creation of Common Infrastructure Facilities (CIF).
- Export authorisation procedures have been streamlined through introduction of online procedures and portals for promotion of exports of Indian defence products.
- A scheme for export promotion of Indian Defence Equipment manufactured in India has been rolled out.
- Subject to strategic considerations, domestically manufactured defence products are promoted through Lines of Credit/Funding; Defence Lines of Credit (LOCs) are extended to sovereign governments to enable buyers in those countries, to import goods and services from India.
- A new category of capital procurement "Buy Indian-IDDM (Indigenously Designed, Developed and Manufactured"



- has been introduced in Defence Procurement Procedure (DPP) - 2016 to promote indigenous design and development of defence equipment.
- The 'Make' procedure of capital procurement has been simplified. There is a provision for funding of 90% of development cost by the Government to Indian industry under Make-I category. In addition, there are specific reservations for MSMEs under the 'Make' procedure. Separate procedure for 'Make-II' category (Industry funded) has been notified under Defence Procurement Procedure 2016 to encourage indigenous development and manufacture of defence equipment.
  - The Government of India has enhanced FDI in Defence Sector up to 74% through the Automatic Route for companies seeking new defence industrial license and up to 100% by Government Route.
  - Foreign Trade Policy (2015-20) has been extended by one year i.e. upto 31-3-2021 due to the COVID-19 pandemic situation.
  - Interest Equalization Scheme on pre and post shipment rupee export credit has also been extended by one year i.e. upto 31-3-2021.
  - A new Scheme, Remission of Duties and Taxes on Exported Products (RoDTEP), has been launched.
  - Common Digital Platform for Certificate of Origin has been launched to facilitate trade and increase FTA utilization by exporters.
  - Promoting and diversifying services exports by pursuing specific action plans for the 12 Champion Services Sectors.
  - Promoting districts as export hubs by identifying products with export potential in each district, addressing bottlenecks for exporting these products and supporting local exporters/manufacturers to generate employment in the district.
  - Active role of Indian missions abroad towards promoting India's trade, tourism, technology and investment goals has been enhanced.





*Ministry of Commerce & Industry  
Government working on Atmanirbhar  
Niveshak Mitra portal to digitally  
facilitate investors*

*“Invest India” focussing on sector-specific investor targeting and development of new partnerships to enable sustainable investments in India*



In order to further strengthen efforts to promote domestic investments, the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry is in the process of finalising a dedicated digital portal “Atmanirbhar Niveshak Mitra” for handholding and facilitation, information dissemination, and facilitation of domestic investors. The portal is in testing phase and the final version will be ready for launch by 15th May 2021. The webpage will also be available in regional languages and mobile App in due course.

The portal will have a dedicated digital investment promotion and facilitation team at Invest India which will facilitate domestic investors to directly connect or request meetings with the Invest India experts and discuss their specific investment/ doing business related matters. It will digitally support investors throughout their doing business journey in India and help them getting all the information starting from finding an investment opportunity to exploring incentives & taxes applicable to their businesses,

information and assistance for doing business in India, sources of funding, information on raw material availability, training, management requirement and tender information. This is one of the most significant digital initiative being undertaken to target the specific investor interests and ensure swift clearances & approvals throughout their doing business journey.

**Special features of the Atmanirbhar Niveshak Mitra portal will be:**

- Daily updates on Policies and New Initiatives by Central and State Government will be made available on the portal.
- One on one Meetings & Discussions with the Invest India experts which will ensure adequate facilitation to domestic investors and issue resolution.
- AI based Chat Bot for resolving queries.
- One-stop-shop to access all MSME portals like Champions portal, MSME Samadhaan, MSME Sampark etc.
- Know more about the Approvals, Licenses & Clearances applicable to your business.
- Explore Incentives & Schemes across different sectors and states and do an apple-to-apple comparison.
- Information on Manufacturing Clusters and Land Availability.
- Search Investment Opportunities across different sectors, subsectors, and states.



As on 4<sup>th</sup> March 2021 Invest India investment specialists have facilitated 2,34,399 business requests from domestic companies. Facilitation of domestic investors is a key focussed area in Invest India, and this includes all investors. Currently several domestic companies have a dedicated relationship manager and are under active facilitation with indicative investments of INR 31,725 crores and actual investments of INR 9,375 crores generating a potential indicative employment of 77,213.

- Examine the Doing Business in India Procedures (Step by Step solution).
- Information and assistance on Bonded Manufacturing Scheme in India.
- Know more about the Applicable taxes & Taxation System in India.
- Information on Export Promotion Councils and B2B platforms of chambers of commerce.
- Connect to various Stakeholders on single platform like Central Ministries, Industry Associations, State Departments.
- Information on all Central and State Tenders by linking to tender portal of Government of India.
- Information on all states their policies, know your approvals, departments, and key officials etc.
- Linking platform to other initiatives like National Single Window, Startup India, ODOP, PMG, NIP, etc.

This Project is under the “Invest India” agency which was set up in 2009 as a non-profit venture under the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India.

As far as Global Investors support is concerned, Invest India has facilitated 29,812 global business requests from 162 countries. The team has been working with 1,384 companies out of which dedicated RMs have been assigned to 601 facilitation cases. Total indicated investments from global companies is USD 153.7 Billion out of which USD 28.75 Billion are actual investments. The companies have indicated 29,91,626 employment and have given actual employment to 3,38,685 as on 4<sup>th</sup> March 2021. Invest India has been acknowledged by UNCTAD for providing gold quality service to investors.

As the national investment promotion and facilitation agency, “Invest India” focuses on sector-specific investor targeting and development of new partnerships to enable sustainable investments in India. In addition to a core team that focuses on sustainable investments, Invest India also partners with substantial investment promotion agencies and multilateral organizations. Invest India also actively works with several Indian states to build capacity as well as bring in global best practices in investment targeting, promotion and facilitation areas.



## *Ministry of Commerce & Industry Incentives to Foreign Companies*

The Government of India is making continuous efforts under Investment Facilitation for implementation of Make in India action plans to identify potential investors. Support is being provided to Indian Missions abroad and State Governments for organising events, summits, road-shows and other promotional activities to attract investment in the country under the Make in India banner. Investment Outreach Activities are being carried out for enhancing International co-operation for promoting FDI and improve Ease of Doing Business in the country.

Recently, in addition to ongoing schemes, Government has taken various steps to boost investments in India. These include the National Infrastructure Pipeline, reduction in Corporate Tax, easing liquidity problems of NBFCs and Banks, trade policy measures to boost domestic manufacturing. Government of India has also promoted domestic manufacturing of goods through public procurement orders, Phased Manufacturing Programme (PMP), Schemes for Production Linked Incentives of various Ministries.

Keeping in view India's vision of becoming 'Atmanirbhar' and to enhance India's Manufacturing Capabilities and Exports, an outlay of INR 1.97 lakh crore has been announced in Union Budget 2021-22 for PLI schemes for 13 key sectors for a period of 5 years starting from fiscal year (FY) 2021- 22. These 13 sectors includes already existing 3 sectors named (i) Mobile Manufacturing and Specified Electronic Components, (ii) Critical Key Starting materials/Drug Intermediaries & Active Pharmaceutical Ingredients, and (iii) Manufacturing of Medical Devices and 10 new key sectors which have been approved by the Union Cabinet recently in November 2020. These 10 key sectors are:

- (i) Automobiles and Auto Components,
- (ii) Pharmaceuticals Drugs,
- (iii) Specialty Steel,
- (iv) Telecom & Networking Products,
- (v) Electronic/Technology Products,
- (vi) White Goods (ACs and LEDs),
- (vii) Food Products,
- (viii) Textile Products: MMF segment and technical textiles,
- (ix) High efficiency solar PV modules, and
- (x) Advanced Chemistry Cell (ACC) Battery.

The PLI schemes will be implemented by the concerned Ministries/ Departments and will be within the overall financial limits prescribed.

Further, with a view to support, facilitate and provide investor friendly ecosystem to investors investing in India, the Union Cabinet on 3<sup>rd</sup> June, 2020 has approved constitution of an Empowered Group of Secretaries (EGoS), and also Project Development Cells (PDCs) in all concerned Ministries/ Departments to fast-track investments in coordination between the Central Government and State Governments, and thereby grow the pipeline of investible projects in India to increase domestic investments and FDI inflow.



## *Ministry of Commerce & Industry Single Window Approval System for Industries*

The Central Government is working on setting up a Single Window System for clearances and approvals of industry in the country. Despite the presence of several IT platforms for investing in India such as in departments of the Government of India and State Single Window Clearances, investors need to visit multiple platforms to gather information and obtain clearances from different stakeholders. To address this, the creation of a centralized Investment Clearance Cell which would provide end-to-end facilitation support, including pre-investment advisory, information related to land banks and facilitating clearances at Central and State level was proposed and the same is also a Budget Announcement 2020-21.

The cell is being planned as a One-stop digital platform to obtain all requisite central and state clearances/ approvals required to start business operations in India. The Investment Clearance Cell will be a National Portal that integrates the existing clearance systems of the various Ministries/ Departments of Govt. of India and of State Governments without disruption to the existing IT portals of Ministries and will have a single, unified application form. This will eliminate the need for investors to visit multiple platforms/ offices to gather information and obtain clearances from different stakeholders and provide time-bound approvals and real time status update to investors.



## Ministry of Commerce & Industry Industrial parks and industries in the country



Industrial Park Scheme-2002, applicable for any undertaking which develops and operates, or, maintains and operates, an Industrial Park for the period beginning 1<sup>st</sup> day of April, 1997 and ending 31<sup>st</sup> day of March, 2006, was notified by the Department for Promotion of Industry and Internal Trade on 1<sup>st</sup> April, 2002.

Data on Industrial Parks that have been established and functional in different States of the country during the last three years is not centrally maintained. However, Department for Promotion of Industry and Internal Trade has built one centralized system of industrial park information which is available

at Industrial Information System (IIS) and the details are being updated by the concerned States at regular intervals. A list of States/UT-wise number of Industrial Parks/Estates/ Clusters/Nodes entered on Industrial Information System

(IIS) is available at this link. Industrial park information is also available in the link "Industrial Information System" on the website of DPIIT ([dipp.gov.in](http://dipp.gov.in))

During the last three years, Department for Promotion of Industry & Internal Trade has accorded final approval for setting up of one National Investment & Manufacturing Zone (NIMZ) namely Hyderabad Pharma City NIMZ in Rangareddy district of Telangana.

Setting up of Industrial Park and Industries in different States comes under the purview of the concerned State Government itself. However, Central Government provides support to the States through its scheme/programmes, once the proposal to develop the parks/clusters/industries



in a particular region is received from the concerned State Government.



*News from  
the Institute*

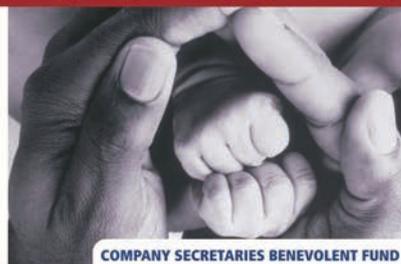




# Support

## News from the Institute

Safeguarding and caring for your well being



COMPANY SECRETARIES BENEVOLENT FUND

**Saathi Haath Badhana**

साथी हाथ बढ़ाना

Considering the very grim phase the country is facing due to the phenomenal surge in Covid-19 pandemic and in order to support its stakeholders, the Company Secretaries Benevolent Fund w.e.f 1<sup>st</sup> May, 2021, has enhanced the medical reimbursement limits for those affected by Covid 19. The Members and/or their declared dependents who have tested Covid positive from a government/ICMR authorized testing centre (only RT-PCR or Rapid Antigen Test result to be accepted) and have incurred expenses related to treatment for Covid in a hospital (private/government/military) or under home quarantine/isolation (on production of original bills), shall be eligible for reimbursements, with enhanced limits as under:

<b>For Life members of CSBF</b>	: Limit enhanced from Rs.75,000/- (Rupees Seventy Five Thousand Only) to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) for self and their declared dependents.
<b>For Life members of CSBF who have not completed 3 years of subscription (for self and their declared dependents); and for Company Secretaries who are non-members of CSBF (for self only)</b>	: Limit enhanced from Rs.50,000/- (Rupees Fifty Thousand Only) to Rs.1,00,000/- (Rupees One Lakh Only).

As per the existing Bye Laws of the CSBF, the Annual Income criteria for deserving cases (that is Annual Income up to Rs. 7.5 Lakhs during the previous Financial Year) shall remain the same.



## Important decisions taken by the Council of the ICSI at its meeting held during 26<sup>th</sup> & 27<sup>th</sup> March, 2021

1. Allowing 10th passed students to provisionally register to CS Executive Entrance Test (CSEET).
2. Board of Discipline reconstituted for the year 2021 with the following members:
  - i) CS Deepak Kumar Khaitan, Presiding Officer
  - ii) CS Manish Gupta, Member
  - iii) CS Asish Mohan, Member
3. Disciplinary Committee reconstituted for the year 2021 with the following members:
  - i) CS Nagendra D Rao, Presiding Officer
  - ii) Shri Nalin Kohli, Member (Govt. Nominee)
  - iii) Ms. Meenakshi Datta Ghosh, Member (Govt. Nominee)
  - iv) CS Ranjeet Pandey, Member
  - v) CS B Narasimhan, Member
4. Extension for obtaining mandatory CPE credits for the FY 2020-21 by the members as per ICSI (Continuous Professional Education) Guidelines, 2019 Upto 30<sup>th</sup> June, 2021.
5. Introduction of "ICSI Award for Best PCS Firm".
6. Introduction of Employee Company Secretaries Identification Number (eCSTN) Amnesty Scheme, 2021.
7. Institution of Award for best Teachers under Commerce/ Law/ Management Disciplines in Universities and Higher Secondary Schools across India.
8. Extension of facility to appear in CSEET through Online (Remote Proctored) mode without viva voce till 31st December, 2021.
9. Allowing ROs, Diamond and Platinum Grade Chapters to conduct Corporate Leadership Development Program (CLOP) through Residential / Non-Residential mode till March, 2023, apart from CoE & CCGRT.



## FAQs on eCSIN Amnesty Scheme, 2021

1. Where can I find a copy of ICSI eCSIN Amnesty Scheme, 2021?

A Copy of the ICSI eCSIN Amnesty Scheme, 2021 may be viewed/downloaded from the ICSI eCSIN portal <https://stimulate.icsi.edu/ecsin/>

2. What are the essential features of the Amnesty Scheme?

The Amnesty Scheme would enable the members' to.

- Generate the eCSIN, if not yet generated;
- Rectify the eCSIN details recorded at the time of generation for appointment;
- Update information in the eCSIN generated ;
- Revoke eCSIN if employment already ceased;
- Any other practical difficulty.

3. How do I make an application/ online request under the Amnesty Scheme?

There is no formal application to be made under the scheme. The member shall login to the eCSIN portal and click on the Amnesty Scheme icon and select the eCSIN to be modified from the eCSIN register.

4. What are the opening and closing dates for the Amnesty Scheme?

The Amnesty Scheme window shall be open from 20th April, 2021 and shall close on 15th May, 2021.

5. Is there any limit on the number of eCSINs that can be modified/revoked under the Amnesty Scheme?

Yes, an active eCSIN can be modified only once under the scheme.

6. In how much time will the application under the Amnesty Scheme be processed?

The Scheme operates in the 'STP' mode. Accordingly, the

eCSIN data will be updated on realtime basis and Register of eCSIN shall be updated accordingly.

7. Will I get any confirmation about the modified eCSIN from the Institute?

Yes, the member will receive an auto confirmation mail upon successfully submitting the request.

8. Do I need to intimate the employer/Company about modifications in data associated with eCSIN?

It is advisable to intimate the employer/Company about the modifications done under this Scheme. However, the eCSIN details are available for verification by any stakeholder at the eCSIN portal.

9. Will I be able to re-modify the details under the Amnesty Scheme at multiple occasions?

No, a particular eCSIN can be modified only once.

10. What all details shall be open for rectification / modification under the Scheme?

The following details shall be open for rectification/ modification:

- Name of the Company
- CIN/PAN of the Company
- Any change in designation
- Consent letter date/ appointment date
- Cost to Company
- Contact details

11. Will I be provided any immunity from any misconduct proceedings for non-compliance with the eCSIN Guidelines if I apply for amnesty under the Scheme?

The active member of the Institute applying under the ICSI-eCSIN Amnesty Scheme, 2021 shall be granted



# eCSIN

immunity from the applicability of the provisions of the eCSIN Guidelines in respect of the eCSINs for which request under this Amnesty Scheme has been made and disciplinary proceedings shall not be initiated or entertained in this respect.

12. Will I be liable for misconduct proceedings for non-compliance with the eCSIN Guidelines if I do not apply under the Scheme?

On the conclusion of the Scheme, the Institute may initiate necessary disciplinary action under the Company Secretaries Act, 1980 read with First Schedule and Second Schedule to the Company Secretaries Act, 1980 against the members who have not availed this Scheme and have failed to comply with the provisions of the eCSIN Guidelines.

13. What is the fee for making an application under the Scheme?

No fees shall be charged for the purpose of this application.

14. Who can make an application under this Scheme?

An active member of the Institute who has failed to comply with the eCSIN guidelines and is willing to rectify the default or wants to rectify/modify the details of the existing eCSIN as permitted within the purview of the Scheme.

15. Will my data provided under the Amnesty Scheme be kept confidential?

Yes, the details uploaded by the members under this Amnesty Scheme shall remain confidential and not be construed as "information" under the Right to Information Act, 2005

16. I am exempted under the eCSIN guidelines, should I need to generate eCSIN now?

Members exempted under the eCSIN Guidelines, 2019, can voluntarily generate eCSIN for their current employment.

17. It is possible to reactivate the eCSIN, which has been revoked?

No, eCSIN once revoked/ceased cannot be reactivated. Member can modify/update detail of active eCSIN under this Scheme.

18. Can the Name and/or CIN of the company be altered in the eCSIN?

Only inadvertent typographical errors may be rectified to the extent that the identity of the company is not altered.

19. I resigned from a company in January, 2021 and now I am unemployed. I didn't generate eCSIN for my last employment. How to rectify this?

Members entering into or ceasing to be in employment on or after 1st October 2019, shall mandatorily be required to generate eCSIN for appointment and for cessation. Member can generate eCSIN now under eCSIN Amnesty Scheme for appointment and cessation both.

20. Whether I will be able to avail this Amnesty Scheme if any disciplinary proceeding by Disciplinary Directorate of ICSI is pending against me?

In such cases the member may avail the Amnesty Scheme but the immunity under this Scheme shall not be granted to members against whom any disciplinary proceeding for non-adherence to eCSIN Guidelines is pending at any stage before the Disciplinary Directorate of ICSI.

## ICSI implements New Training Structure under CS (Amendment) Regulations, 2020

The Institute of Company Secretaries of India (ICSI) implemented its New Training Structure on 3rd February, 2021, as per Regulation 46BA and 46BB under The Company Secretaries (Amendment) Regulations, 2020.

The new training structure will harness the soft skills and develop the core competencies of students, thereby creating a brigade of young professionals desired by the industry, regulators and other stakeholders.

Company Secretary and other entities after completion of their one month EDP.

- **Corporate Leadership Development Programme (CLDP):** After completion of the Professional Programme Examination and Practical Training, the students are required to undergo the Corporate Leadership Development Program (CLDP) for honing their Communication, Legal, Managerial and IT acumen.



To brief the stakeholders about the same, the Institute organised a webinar on 3rd February 2021, which was attended by thousands of CS students and members.

Informing about the new training structure, CS Nagendra D. Rao, President, The ICSI said, "While the Company Secretary Executive Entrance Test (CSEET) ensures a requisite level of aptitude in students, the Revamped Training Structure would ensure creating high

calibre Governance Professionals who would take the CS profession to new heights. Certain skills are indispensable to the CS Profession and the Company Secretaries are expected to possess these Legal, Managerial and Leadership skills as part of their professional attribute."

CS Devendra V. Deshpande, Vice President, The ICSI, CS Asish Mohan, Secretary, The ICSI and Dr S.K. Jena, Director - Training, The ICSI, also addressed the stakeholders and replied to the queries raised by them during the webinar.

### Highlights of the new training structure

- **One month Executive Development Programme (EDP) :** The Executive passed students are required to undergo One Month Executive Development Programme (EDP) that would equip them for the mandatory Practical Training in the industry / with Practising Company Secretary..
- **Practical Training :** The students are required to undergo a 21 months practical training, with Industry/Practising



# *ARTICLES*



## Cyber Security

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In this digital era when everything is accessed and operated through cyber space, security is the very important feature. Cyber security consists of “Cyber space” and “Security of Cyber”. So what is Cyber Space? Cyberspace refers to the virtual space that provides the infrastructure, electronic medium and related elements necessary for online global communication.

Broadly, cyber space includes:

- The internet and the world-wide web.
- The infrastructure and technology that connect the internet and the world- wide web. Such as telecommunications, internet access and internet service provision.
- The infrastructure which support data processing and data storage accessible through the internet and the world-wide web. Such as cloud computing services and the supporting infrastructure, such as data centres.
- Organization

So in fact Cyber security means security of cyber space and the security of entities that use or rely on cyber space.

So cyber securities questions to be addressed on securing the operations in cyberspace are:

- i From whom to protect?
- ii What to protect?
- iii How to protect?

Cyber-attack can be divided into following category.

1. Cybercrime,
2. Cyber terrorism,
3. Cyber warfare.
4. Cyber espionage such as hacktivism.

So various measures taken for protecting the cyber space used by organization from cyber-attack can be define as cyber security. There can be two (2) components of Cyber security:

1. Cyber Law: - Cyber law can be defined as set of laws to regulate human behaviour in the cyberspace. Cyber laws are technology intensive laws, advocating the use but not the misuse of technology.
2. IT security measures taken by organization.

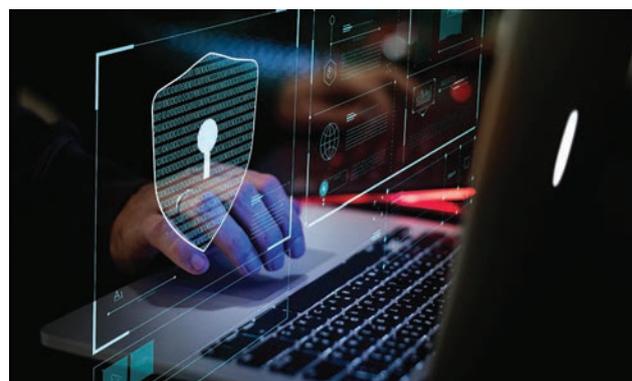
### Legal exposure to organization

Not having proper and adequate Cyber security may raises many legal concerns for business. Few examples are:.

- There are various laws in many international jurisdiction which mandated Companies to be “cyber secure”. Such as Data Protection, privacy law or through the tort of negligence.
- A state of cyber security maybe expressly or impliedly required by:
  - contract; or
  - due to professional obligations
- Achieving an appropriate state of cyber security may require the taking of measures that interfere with other legal rights. Such as employee monitoring and vetting may interfere with the right to privacy.

Further organizations are required to follow “Standard of Care”.

Main principal applies with respect to standard of care is as follows.



- The level of cyber security is what is reasonable in the circumstances, i.e. them or sensitive the information, the more care is needed.
- In case of assignment of contract/rights to third parties, still organization has to follow the reasonableness standard.

The main question is coming here that what is meaning of reasonable" standard?

Reasonableness standard is required to follow Best industry practice. The standard of care is also required to follow industry standards and guidance.

Organizations are also bound by the duties of confidentiality. Then there's off-shore legal risk too.

### Mitigation plan of legal exposure due to breach

Cyber Breach is great risk issue for corporate. Risk ranges from reputational to legal to business. Hacking of customers' confidential details, Compromise IP with competitor such as CRM details and proprietary processes. We have burning example of Sony Pictures and other organization

For securing the orgnisation, all the department organization should work in tandem. Role of Board, CEO, ICT, Legal, and HR are extremely important for creating right and adequate Cyber security environment.

Harvard Business Review ("HBR") article mentioned that "See Your Company through the Eyes of a Hacker."

As per HBR points out, when suggesting that companies should make security part of their mission:

The prevailing approach to security is compliance-focused, cost-constrained, peripheral to the core business, and delegatable by C-suite leaders. Working on a team like that isn't fun inside any enterprise, and it loses against 21st-century adversaries who know that it's more fun to be a pirate than to join the Navy. Any defense is only as good as the people doing the defending. The new model of security needs to be about mission and leadership, ensuring that we have the best defenders up against the best attackers. Security is no longer delegable, and the mission of security teams must be synonymous with the mission of the company.



The major takeaway from HBR article is:-

- Understand your major risks and how adversaries aim to exploit them
- Take inventory of your assets and monitor them continuously.
- Make security a part of your mission.
- Be active, not passive, in hunting adversaries on your network and removing them.

The GC100 suggested legal model based on a "defensive shield" for the company. It is designed to protect an organisation from regulatory actions and litigation.

As per GC 100 report

*"Organisations that track regulatory guidance, regulatory enforcement actions and court cases relevant to cyber security will be able to use their knowledge to construct a strong "defensive shield" against regulatory investigations and litigation arising from security breaches."*

Organization should understand the legal framework where they operations are and should apply best practice of cyber security standards. This will help organisations in reducing risk and will be able to respond quickly to Cyber breach.

It is evident from above discussion that no security around cyber space can be foolproof

Therefore, planning around quick response to Cyber breach is paramount. For this planning approach should be top down and Board of Directors should ensure to have right strategy and policy towards security compliance in the organization

## Board role in cyber security

Board has a primary duty towards organization to ensure compliances, minimize risk and enhance shareholders value. Cyber breach can be highly detrimental to the financial as well as reputational health of the organization. So it is Board one of the Primary duty is to ensure that Organization has robust Cyber Security policy and breach response plan. The capability must be built in-house to handle Cyber breach.



Board Upskilling is important. Board should know and understand the legislative requirement as well as contractual requirement. Board should have expertise on Board or as consultant which must be available as and when need arises. Cyber security should be part of Board Agenda and should have access to expertise.

The People and Culture aspects are also a big factor in breach of security. Emails are now a days configured on Mobile. Senior management use personal Wi-fi for doing office work from Home. It would be easier for hacker to attack on home computer or mobile. So proper training and creating an environment & culture of cyber security is paramount.

## Practical problem in enforcing Cyber Crime Laws

One of the main features of Cyberspace is Borderless territory, Interactive Virtual Environment, Unlimited accessibility. Anonymity is another features of Cyberspace. Netizens are faceless community.

Any illegal, wrongful or dishonest act committed in cyberspace would be covered under the cyber law provisions. Let us take an example of a person, X using his laptop, access a website based in India and purchases goods, after that he moves to a website based in UK and purchases goods, and once again, he moves to a website based in USA and purchased some goods. Suppose X has used a forged global credit card to make purchases in India, UK and USA. Here Mr X committed Cyber Crime and he should be dealt with Cyber criminal provisions. Now question is how to identify MR X? How to determine which country law would be applicable on him. The person whose credit card details are used to purchase is Citizen of Kenya. Now where he go to file the case? How the Kenyan Authorities will reach and identify this fraudster.

## Following are main impediment in resolving Cyber Crime and enforcing cyber Law

### Data unavailability

Data are required to identify the fraudster. Due to technology advancement law enforcement agency has to process larger amount of Data to distinguish and identified a specific user. Due to Data Privacy law, many times, law enforcement is not able to get required data during investigation.

Encryption is another tool used by fraudster/criminal to stop incriminating data from getting into the hands of law enforcement, whilst the use of crypto currencies such as Bitcoin allows criminals to deal in the proceeds of crime with a relative level of anonymity.



Lack of data required by law enforcement agency is detrimental to their work. Many time even investigation has to be discontinued.

### Location Unavailability and determination of jurisdiction

Technology advancement has also empowered criminal to hide their identity. Use of Encryption, Crypto currencies, dark web etc helping criminal to hide their physical location, infrastructure or payment trails or proceeds of crime.

This raises complex jurisdictional considerations and makes it difficult to determine who is responsible for conducting investigations.

### Cyber Crime involve more than one countries

In cross Border cyber crime, local laws of each countries involve is to be followed during investigation and prosecution of cybercrime. The law of countries may be different and while an act is categorized as crime in one country may not be categorized as crime in another country. So for law enforcement agency it is extremely challenging to decide which conduct is criminalised and how investigations may be conducted.

It also has the impact on the collection of electronic evidence and the monitoring of criminal activities online.

### International cooperation/ common legal framework to handle cyber crime

The lack of a common legal framework throughout the world presents significant challenges in handling cross border cybercrime.

The advancement of technologies such as Artificial intelligence can also be used by criminal in cybercrime.

### Conclusion

The cybercrime can be committed by fraudster/criminal sitting at in any place of the world and may pass national boundaries through Internet and World Wide Web. At the same time, he remains be anonymous, nameless and faceless person. As these activities takes place over the network they cause both technical and legal issues making the process of investigation and prosecution of crimes complex. In order to have an effective cyber security scheme globally, it is necessary to have an international harmonizing effort to coordinate and co-operate with different Nations.

It is need of hour :

1. to harmonize substantive law;
2. to align procedural laws and
3. to implement an effective system of international co-operation.



## Cost Reduction and Cost Control- A Financial Discipline

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The outbreak of pandemic Covid-19 has made every organization to seriously think about effectively managing their costs by reducing the same and deploying cost control measures. The major economies of the World have also started shifting their focus on to India with a view to have a backup manufacturing base in India as well – i.e. “China plus One”. All these global developments have led to a greater need for the Corporate to focus on Cost Reduction and Cost Control measures in order to be globally competitive.

In current competitive business environment that has impacted primarily every organization, the implementation of cost reduction and cost control measures have become imperative with a view to not only be price competitive and maximize profits but also for their respective survival. Every organization that wants to survive, maintain its consumers and grow must seek to improve on its product. Therefore, to not to exceed the budget and not to run at loss, while maintaining the quality of their products, organization needs to control and reduce their cost to the lowest minimum.

### Cost Reduction – a planned process

Cost reduction is a planned approach to cut the costs. Cost reduction involves a process of analysing various cost elements of an existing product or services by studying the



processes and the costs incurred on them by an organization, identifying the areas where the cost reduction programmes can be implemented and then working towards reducing the same to achieve the desired targets.

### Cost Control – monitoring against budget

Cost control is a process of establishing a standard and regulating the costs within the defined budget. It includes budgetary controls, standard and material costing.

### Cost Reduction and Cost Control Measures

The Corporate need to realign their cost structures, redefine their product costing and consequently pricing of their products or services in order to be competitive and generate the desirable profits. The cost reduction and control measures can be implemented by focusing on the under mentioned areas, indicative list of which is as under:

- Closely focus and conduct regular reviews of the business cash flows to ascertain the impact of decline in sales on inflow and corresponding expenditure commitments and accordingly adjust the spends & manage the costs;
- Review and redefine the business processes and timelines:
  - Combine the business processes by eliminating the duplicate and redundant functional activities carried on by different departments;
  - Evaluate the existing manual processes and need for automation;
  - Reduce the number of Management Reports and retain only the key reports thereby reduce the time, efforts and costs involved therein;
- Realign the organization structure with focus on improved inter departmental co-ordination, eliminate the redundant functions and encourage multitasking in the organization without compromising on quality and timelines of deliverables;
- Review costing of Products (and Services) and identify the ways to reduce costs including materials, labor, overheads and wastages;

- Review the Overheads with key focus on reducing major spends like Personnel, Advertising and Marketing(A&M), Travelling and Entertainment(T&E), Rent etc;
- Enforce Business Costs Control measures by redefining the budgets and closely monitoring the same;
- Defer the spends specially capital expenditures(Capex) upon review of Business and Capex plans and the projected cash flows;
- Review the cash flow projections to ensure that the debt raised to fund the Capex and interest thereon will be repaid out of the possibly reduced cash flows in view of lower sales due to pandemic impacted market;

### Participation in Cost Reduction and Cost Control Programs

The implementation of cost management initiatives requires serious and whole hearted support right from the top management to operational managers who need to implement the cost reduction and controls within their respective functional areas and then buy in of those measures by the users of the organization. The cross functional co-ordination and operational synergies are important for effective implementation of these programs.



### Conclusion

The organization that have been facing unprecedented declining top lines, consequent fall in profitability or even getting into a loss making situation and are struggling to adjust their cost models need to gear up fast by implementing the effective cost management measures that will vary for each organization. Thus cost reduction and cost control are key for ensuring financial discipline that is the need of the hour in view of pandemic effected global economies that are making serious efforts for their respective revival. These cost reduction and control measures also gain significance from India's perspective in order to make the Indian organizations more cost effective, price competitive and profitable so as to enable them to compete at global level and also to make India an undisputed price competitive alternative to China.



## Developments in the U.S. Foreign Corrupt Practices Act

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#### Overview of The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"):

The FCPA was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business. It applies to prohibited conduct anywhere in the world and extends to publicly traded companies and their officers, directors, employees, stockholders, and agents. The primary mandate of the FCPA is to prohibit U.S. companies and their employees from engaging in corrupt practices, irrespective of their location, within or outside the United States. The ambit of the FCPA is extremely wide, and includes multinational U.S. companies, foreign companies owning stake in U.S. companies, as well as subsidiaries and employees.

Prohibited conduct includes payments, offers, or promises made for the purpose of: (i) influencing any act or decision of a foreign official in his official capacity, (ii) inducing a foreign official to do or omit to do any act in violation of the lawful duty of such official, (iii) securing any improper advantage; or (iv) inducing a foreign official to use his influence with a foreign government or instrumentality thereof to affect



or influence any act or decision of such government or instrumentality. "Foreign official" is defined broadly under the FCPA and includes any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or anyone acting on behalf of such government or department. For example, foreign officials would include foreign military officers in charge of procurement contracts, ministry-level officials, and officers and employees of government-owned or government-controlled entities.

The Securities Exchange Commission ("SEC") and the Department of Justice ("DOJ") are jointly responsible for enforcing the provisions of the FCPA. The SEC's Enforcement Division has created a specialized unit to further enhance its enforcement of the FCPA. The SEC may bring civil enforcement actions against issuers and their officers, directors, employees, stockholders, and agents for violations of the anti-bribery or accounting provisions of the FCPA including levy of substantially high civil penalties and companies being subject to oversight by an independent consultant.

#### Updates in FCPA in 2020-21:

##### Resource Guide to FCPA

In July 2020, DOJ and SEC released the second edition of their Resource Guide to FCPA<sup>1</sup> ("2020 Guide"). The 2020 Guide revamped the first complete revision since the agencies' original edition released in 2012, and the first update since 2015. The 2020 Guide provides a helpful lay-person guidance provided by SEC and DOJ released in 2012 and incorporates recent developments.

Key highlights of the 2020 Guide are as follows:

- SEC and DOJ to coordinate resolution of investigations and prosecutions and consider the amount of fines, penalties and/or forfeiture paid to other federal, state, local or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct.
- Appointment of an independent corporate monitor as a component of resolution, whose purpose is to monitor

<sup>1</sup>: Criminal Division, U.S. Dep't of Justice and Enforcement Division, U.S. Securities and Exchange Comm'n, FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act (2020)



companies that does not have an adequate and effective compliance program and/or system of internal controls.

- The 2020 Guide noted the distinction between the statutes of limitations applicable to violations of the anti-bribery and accounting provisions. Violations of the Anti-Bribery provision are subject to the general five-year statute of limitations set out in 18 U.S.C. § 3282. On the contrary, violations of the accounting provisions are considered “securities fraud offenses” subject to the six-year statute of limitations in 18 U.S.C. § 3301.
- The 2020 Guide clarified the mens rea required for criminal violation of the accounting provisions. To be liable, a company or other actor must knowingly and willfully fail to maintain accurate books and recommendations or implement an adequate system of internal accounting controls.
- “Anything of value” may include, among other things, cash, computer equipment, medical supplies, and vehicles. Regardless of size, for a gift or other payment to violate the statute, the payor must have corrupt intent—that is, the intent to improperly influence the government official.
- “Knowing” includes willful blindness to the high probability of bribery. The term “willfully” is not defined in the FCPA, but it has generally been construed by courts to connote an act committed voluntarily and purposefully, and with a bad purpose. To be guilty, a defendant must act with a bad purpose, i.e., know generally that his conduct is unlawful.
- Agents include third party agents, consultants, distributors, joint-venture partners, and others.

- Although it is true that facilitating payments are not illegal under the FCPA, they may still violate local law in the countries where the company is operating. In addition, other countries’ foreign bribery laws, such as the United Kingdom’s, may not contain an exception for facilitating payments. Individuals and companies should therefore be aware that although true facilitating payments are permissible under the FCPA, they may still subject a company or individual to sanctions. As with any expenditure, facilitating payments may violate the FCPA if they are not properly recorded in an issuer’s books and records.
- The 2020 Guide provides more clarity and explains with examples how the prohibition applies even to the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order



to assist in obtaining or retaining business for or with, or directing business to, any person.

- The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 both contain provisions affecting whistleblowers who report FCPA violations. Sarbanes-Oxley prohibits issuers from retaliating against whistleblowers and provides that employees who are retaliated against for reporting possible securities law violations may file a complaint with the Department of Labor, for which they

would be eligible to receive reinstatement, back pay, and other compensation. SarbanesOxley also prohibits retaliation against employee whistleblowers under the obstruction of justice statute. Whistleblowers can submit information anonymously and SEC is committed to protecting the identity of a whistleblower to the fullest extent possible under the statute.

- Types of SEC resolutions are explained in the 2020 Guide.
- In a civil injunctive action, SEC seeks a court order enjoining the defendant from future violations of the laws charged in the action. Civil contempt sanctions, brought by SEC, are remedial rather than punitive in nature and serve one of two purposes: to compensate the party injured as a result of the violation of the injunction or force compliance with the terms of the injunction.
- Where a defendant has profited from a violation of law, SEC can obtain the equitable relief of disgorgement of ill-gotten gains and prejudgment interest and can also obtain civil money penalties pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act. SEC may also seek ancillary relief (such as an accounting from a defendant). Pursuant to Section 21(d)(5), SEC also may seek, and any federal court may grant, any other equitable relief that may be appropriate or necessary for the benefit of investors, such as enhanced remedial measures or the retention of an independent compliance consultant or monitor.
- Administrative proceedings provide for a variety

of relief. For regulated persons and entities, such as broker-dealers and investment advisers and persons associated with them, sanctions include censure, limitation on activities, suspension of up to twelve months, and bar from association or revocation of registration. For professionals such as attorneys and accountants, SEC can order in Rule 102(e) proceedings that the professional be censured, suspended, or barred from appearing or practicing before SEC.

### Recent caselaws post 2020 Guide

The SEC on October 22, 2020 announced charges against The Goldman Sachs Group Inc. ("GS") for violations of FCPA in connection with the 1Malaysia Development Berhad ("1MDB") bribe scheme, and as part of coordinated resolutions, it has agreed to pay more than \$2.9 billion, which includes more than \$1 billion to settle the SEC's charges. According to the SEC's order, beginning in 2012, former senior employees of GS used a third-party intermediary to bribe high-ranking government officials in Malaysia and the Emirate of Abu Dhabi. It was found that the bribes enabled GS to obtain lucrative business from 1MDB, a Malaysian government-owned investment fund, including underwriting approximately \$6.5 billion in bond offerings. This case demonstrated the importance for companies to have controls that are tailored to the risks presented by persons employed at all levels. It was held that Goldman Sachs violated the anti-bribery, internal accounting controls, and books and records provisions of the federal securities laws. GS agreed to a cease-and-desist order and to pay \$606.3 million in disgorgement and a \$400 million civil penalty, with the amount of disgorgement satisfied by amounts it paid to the Government of Malaysia and 1MDB in a related settlement.

The Securities and Exchange Commission on Jan 8, 2021 announced charges against Deutsche Bank AG for violations of the FCPA. As part of coordinated resolutions with the SEC and the Department of Justice, Deutsche Bank has agreed to pay more than \$120 million, which includes more than \$43 million to settle the SEC's charges. According to the SEC's order, Deutsche Bank engaged foreign officials, their relatives, and their associates as third-party intermediaries, business development consultants, and finders to obtain and retain global business. The order finds that Deutsche Bank lacked



sufficient internal accounting controls related to the use and payment of such intermediaries, resulting in approximately \$7 million in bribe payments or payments for unknown, undocumented, or unauthorized services. The order further finds that these payments were inaccurately recorded as legitimate business expenses and involved invoices and documentation falsified by Deutsche Bank employees. It was held by SEC Enforcement Division of FCPA that “While third parties can assist in legitimate business development activities, it is critical that companies have sufficient internal accounting controls in place to prevent payments to third parties in furtherance of improper purposes”. The SEC’s order found that Deutsche Bank violated the books and records and internal accounting controls provisions of the Securities Exchange Act of 1934. Deutsche Bank agreed to a cease-and-desist order and to pay disgorgement of \$35 million with prejudgment interest of \$8 million to settle the action. The SEC did not impose a civil penalty in light of the \$79 million criminal penalty paid in the criminal resolution.



## Conclusion

India has been ranked 86 amongst 180 countries on the Corruption Perceptions Index, 2020<sup>2</sup> which makes it moderately prone to corrupt practices being prevalent for businesses. Bilateral trade between India and the United States is about 3% of U.S. world trade. India is amongst the world’s fastest-growing large economies and is an important player in global economic<sup>3</sup> governance . In 2019, the United States was India’s largest goods export market (17% share), and third-largest goods import supplier (7%)<sup>4</sup> . Many of the

top companies in India are American such as Microsoft, Google, Intel, Johnson and Johnson etc. and many Indian companies have significant presence or business in the United States such as Tata Consultancy Services, L&T, Tech Mahindra, etc.; FCPA has a direct impact on such companies. Due to these factors, Indian companies will have to institute a culture of FCPA compliance across Indian subsidiaries, affiliates, and alliances by focusing on creating strong due diligence, internal audit departments, and training programs as well as policies and procedures.

FCPA is designed to prevent corrupt practices, protect investors, and provide a fair playing field. In resolving cases against companies, DOJ and SEC strive to avoid imposing duplicative penalties, forfeiture, and disgorgement for the same conduct. DOJ and SEC attempt to similarly credit fines, penalties, forfeiture, and disgorgement of foreign authorities resolving with the same company for the same conduct. Thus, SEC and DOJ are closely working together to enforce the provisions of FCPA in response to the everchanging business environment.

Sources:

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<sup>2</sup>: <https://www.transparency.org/en/cpi/2020/index/usa>

<sup>3</sup>: <https://fas.org/sgp/crs/row/IF10384.pdf>

<sup>4</sup>: <https://fas.org/sgp/crs/row/IF10384.pdf>

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