

CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS



UNION BUDGET 2023



CS Manish Gupta
President, ICSI



CS B Narasimhan
Vice-President, ICSI

**MULTIDISCIPLINARY
APPROACH TO
GOVERNANCE**





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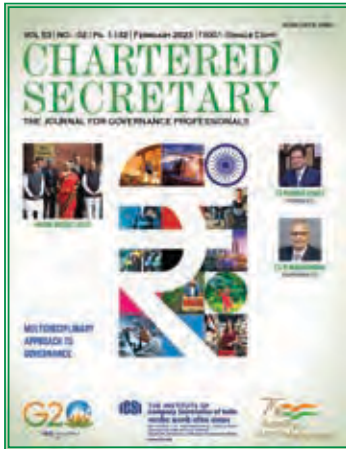
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- CS Manish Gupta

Vice-President

- CS B. Narasimhan

Members

(in alphabetical order)

- CS Ashish Karodia
- CS Dhananjay Shukla
- CS Dwarakanath C.
- CS Manoj Kumar Purbey
- CS Mohankumar A.
- CS NPS Chawla
- CS Pawan G. Chandak
- CS Praveen Soni
- CS Rajesh Chhaganbhai Tarpara
- CS (Ms.) Rupanjana De
- CS Sandip Kumar Kejriwal
- CS Suresh Pandey
- CS Venkataramana R.

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- CS Asish Mohan

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- T. K. A. Padmanabhan

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As the year 2023 moves forward to the month of February, I am delighted to share that the Institute's mantle has been handed over to new leadership under CS Manish Gupta, President, ICSI and CS B. Narasimhan, Vice-President, ICSI to represent the 14th Council and steer the Institute towards accomplishment of ICSI's various objectives, roles and responsibilities, for the next twelve months. Through this platform, I congratulate and welcome the newly elected President and Vice- President of the ICSI and the newly elected Council members to the Institute. I also congratulate the CS fraternity for electing the New Central Council, whose able leadership is all set for spearheading the Institute in the direction of a focussed growth, accomplishing the parameters of good corporate governance set by the Central Government and propelling the Institute further towards attainment of the futuristic goals of the profession and the Institute.

The 14th Council of the Institute took an oath to assiduously serve the Institute and subsequently the nation. The Institute has outshined itself in the previous years with its novel outlook, knowledge and technological advancement leading to the enhancement of professionals in various spheres. Scaling up to further heights, the Institute is aiming to leverage technology to the maximum with the optimum blend of Artificial Intelligence (AI) in bringing forth the Company Secretaries as the professionals having an exceptional edge over others. The new study material of the CS Executive Programme has been designed in an entirely unique avatar and has been launched digitally to facilitate the requisite skills in our students for gearing them up for futuristic roles and responsibilities.

The Union Budget 2023 has also captured the importance of inclusive development and while presenting the same in the Parliament, Smt. Nirmala Sitharaman, the Hon'ble Union Minister for Finance and Corporate Affairs said that this Budget hopes to build on the foundation laid in the previous budget, and the blueprint drawn for India@100. "We envision a prosperous and inclusive India, in which the fruits of development reach all regions and citizens, especially our youth, women, farmers, OBCs, Scheduled Castes and Scheduled Tribes," she said. I, on behalf of the Institute and all its stakeholders, welcome the Budget 2023-2024 as announced by the Hon'ble Finance Minister.

Further, my thoughts too resonate with that of the Hon'ble Finance Minister that in the 75th year of our Independence, Indian economy has been like a 'bright star'. The seven vital dimensions or the SAPTARISHI highlighted in the Budget; Inclusive Development, Reaching the Last Mile, Infrastructure and Investment, Unleashing the Potential, Green Growth, Youth Power, and Financial Sector; are all aimed at creating a technology-driven robust economy and the ICSI pledges to extend its unrefuted support in all such initiatives.

This issue of Chartered Secretary highlights multidisciplinary approach to governance through the contributions of various articles. The article titled 'Regulatory Sandbox: A Way of Innovative Revolution' highlights how Regulatory Sand box has become the buzzword for technology, industry and regulators nowadays. The article on 'Material Responsible Business Conduct and Sustainability Issues' emphasizes upon important aspects of Sustainability reporting which

includes identification of material sustainable issues or topics and how an organization can draw its action plan for future sustainable growth. The author's view on 'Digital Transformations & Artificial Intelligence–Future of Business' brings forth the importance of three separate technological concepts–Digitization, Digitalization and Digital transformation which are commonly thought to be a single activity and how AI will be instrumental in allowing the CS professionals to spend effective time not only on problem solving but also creative thinking.

Further through the article 'Direct Selling Rules 2021 and its Impact and Role of CS', the author brings the attention on nuances and applicability of Rules for Direct Selling Business in the form of Consumer Protection (Direct Selling) Rules 2021 for MLM or Direct Selling businesses. The article on 'Analysing Anti-Competitive Agreements and Cartels Under Competition Commission of India' very rightly magnifies the objective of Competition Law and policy to eliminate anti-competitive practices, including hardcore cartels, thereby enhancing consumer welfare and contributing to country's competitiveness. ESG being a trendsetter, an article titled 'Adopting ESG-Sensitive Lending Practices for Sustainable Finance' brings focus on how integrating sustainable development principles and goals has gained relevance and recognition in recent years, bringing out the need for widening the scope of Secretarial Audit & Compliance Management. The author through the article on 'Widening the Scope of Secretarial Audit & Compliance Management Regime' deliberates upon the need for re-vamping the SCMR (Secretarial Compliance Management Regime) to bring in more class of companies under SCMR. The paper on 'Issue and Allotment Confusion: Companies Act vs FEMA Regulations' opines for the need to remove ambiguity and setting the processes straight through the regulatory measures.

This issue of the Journal has an exclusive Research Paper on 'Reconsidering Cyber Security in the Digital Transformation Age' which contemplates on the robust role of Cyber security.

I hope this issue of our esteemed journal will generate significant cognizance in several vital areas of the profession.

Happy Reading!

CS Asish Mohan
(Editor-Chartered Secretary)

CHARTERED SECRETARY GREETINGS AND CONGRATULATES

CS MANISH GUPTA AND CS B. NARASIMHAN ON THEIR ELECTION AS
PRESIDENT AND VICE PRESIDENT RESPECTIVELY OF THE INSTITUTE FOR THE YEAR 2023-24



CS MANISH GUPTA, President, The ICSI

A fellow member of the ICSI, CS Manish Gupta is a Law Graduate and has a Master's Degree in Commerce. He has been associated with the profession for the last 22 years, as a Practicing Company Secretary.

He has been elected as the President for the year 2023 after being re-elected to the Central Council of the ICSI for the period 2023-2026. He was previously elected for the term 2019-2022 wherein he served as the Chairman on several Committees during the four years and as the Vice-President of the ICSI for the year 2022.

He was elected to the NIRC-ICSI for two consecutive terms in 2011-2014 and 2015-2018 and was unanimously elected as the Chairman of NIRC of ICSI for the year 2016.

CS Manish Gupta is a registered Insolvency Professional with the Insolvency & Bankruptcy Board of India and is empanelled as an Arbitrator with both BSE and NSE. He is also empanelled as Mediator/Conciliator under the provisions of the Companies Act, 2013 with various Regional Directors.

He specializes in handling complex assignments on Corporate Laws, Securities Laws, and Taxation Laws and is also a regular speaker at training programmes, seminars, and conferences, both in India and abroad.



CS B. NARASIMHAN, Vice-President, The ICSI

A Fellow Member of the ICSI, CS B. Narasimhan is a Post Graduate in Economics and has over 4 decades of experience in Corporate Law and Management with a special emphasis on the Capital Markets.

He has been elected for second term of 4 years from 2023-2026 and will be serving as the Vice-President for the year 2023. He was first elected to the Central Council of the ICSI in the year 2007 and was re-elected in the year 2011 for another term of 4 years. He was elected once again as a Central Council Member for the term 2019-2022 where he served as the Chairman on Several Committees as well as a member of the Disciplinary Committee for 7 years.

His areas of expertise include Corporate and Securities Management, Public Offering of Securities and all Corporate Actions associated with Listed companies.

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

He has been a speaker at various seminars and conferences both in India and abroad and has contributed a host of professional articles in leading Journals.

ELECTION OF ICSI PRESIDENT AND VICE-PRESIDENT FOR THE YEAR 2023-24



14th Council of the ICSI



CS Manish Gupta
President



CS B. Narasimhan
Vice-President

COUNCIL MEMBERS (in alphabetical order)



CS Ashish Karodia



CS Dhananjay Shukla



CS Dwarakanath C.



CS Manoj Kumar Purbey



CS Mohankumar A.



CS NPS Chawla



CS Pawan G. Chandak



CS Praveen Soni



CS Rajesh C. Tarpara



CS (Ms.) Rupanjana De



CS Sandip Kumar Kejriwal



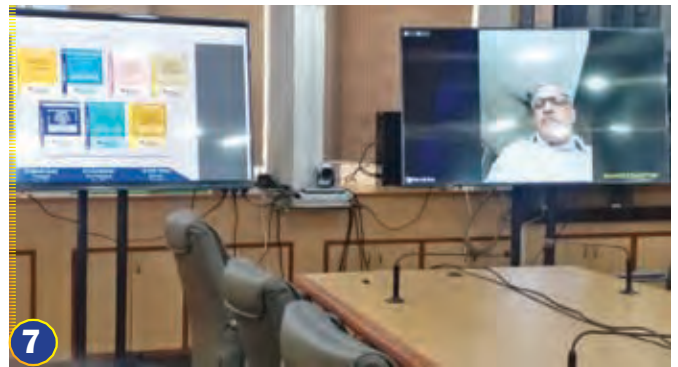
CS Suresh Pandey



CS Venkataramana R.



1. ICSI delegation led by CS Manish Gupta, President, The ICSI met Dr. Manoj Govil, Secretary, MCA, to discuss the challenges faced by the Professionals so as to provide necessary support to the stakeholders.
2. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Manoj Pandey, Joint Secretary, MCA to create better synergies in corporate spaces.
3. ICSI delegation led by CS Manish Gupta, President, The ICSI met Shri Inder Singh Dhariwal, Joint Secretary, MCA to explore areas of opportunity and to resolve the issues of professionals and other stakeholders.
4. - 5. ICSI delegation led by CS Manish Gupta, President, The ICSI met Dr. Sangeeta Verma, Acting Chairperson, Competition Commission of India, to discuss opportunities of collaborating in capacity-building programmes of both organisations.



6. - 7. CS Manish Gupta, President, The ICSI, CS B. Narasimhan, Vice-President, The ICSI & CS Asish Mohan, Secretary, The ICSI, launched the Study Material for ICSI Executive Programme (New Syllabus 2022) effective from February 1, 2023.
8. - 9. 10th batch of “Madhyastha Ek Vikalp: A Three Days Online Certificate Program on Commercial Arbitration” organised by ICSI-COE, Hyderabad from 20-22 January, 2023 Justice Challa Kodanda Ram, Former Judge of the High Court for the State of Telangana presided over as Chief Guest at the Inaugural Programme along with CS Venkataramana R, Central Council Member, ICSI.
10. Seminar on “Union Budget-2023 hosted by NIRC of ICSI. CS Jatin Garg, IRS, Joint Commissioner of Income tax was the Special Guest. The session was delivered by Dr. (CA) Girish Ahuja, Eminent tax Expert and Former Council Member, ICSI and CS Bimal Jain, Executive Director, A2Z Taxcorp LLP CS Suresh Pandey Central Council Member, ICSI was also present on the occasion.
11. SIRC conducted 2 days programme on 6-7th January 2023 wherein SIRC Memorabilia was released.
12. Inauguration of Rewari Study Circle of ICSI by CS Manish Gupta, President, The ICSI .



13. Cardiopulmonary Resuscitation (CPR) Training conducted for the employees at ICSI HQ & NOIDA Office by Medanta Hospital.

14. Customer Orientation Training organised for employees at Noida office of ICSI.

15.-21. ICSI Long Service awards for employees

74TH REPUBLIC DAY PAN INDIA CELEBRATIONS HELD ON 26TH JANUARY 2023







ICSI ACADEMIC CONNECT

ICSI and Rani Channamma University, Belagavi, Karnataka signed MoU on 11.01.2023.



ICSI and JECRC University, Jaipur, Rajasthan signed MoU on 17.01.2023.



ICSI and Kavayitri Bahinabai Chaudhari North Maharashtra University, Jalgaon, Maharashtra signed MoU on 17.01.2023.





**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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(Under the jurisdiction of Ministry of Corporate Affairs)

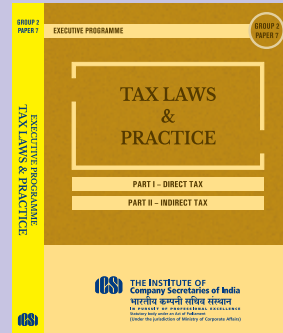
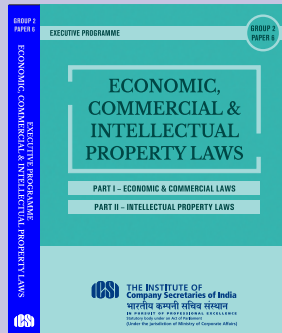
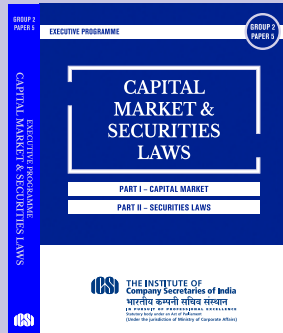
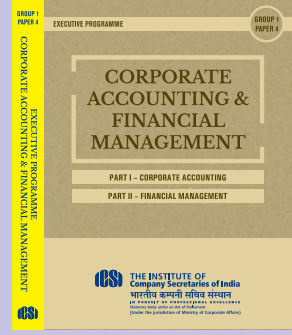
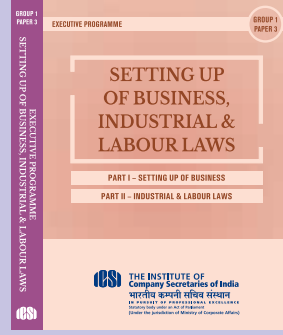
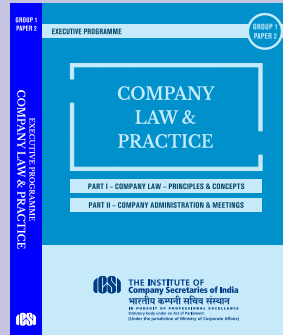
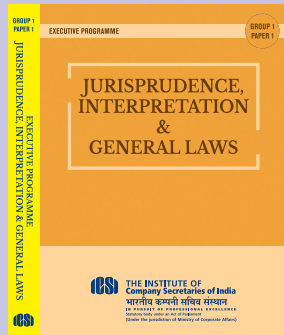


Vision
"To be a global leader in
promoting good
corporate governance"

Motto
सत्यं वद। धर्मं चर। *Speak the truth; abide by the law*

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

LAUNCH OF STUDY MATERIAL FOR EXECUTIVE PROGRAMME UNDER ICSI NEW SYLLABUS, 2022



<https://www.icsi.edu/students/new-syllabus-2022/studymaterial2023/executive-program/>

CS Manish Gupta
President
The ICSI

CS B Narasimhan
Vice President
The ICSI

CS Asish Mohan
Secretary
The ICSI

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**“Almost every successful person begins with two beliefs.
The future can be better than the present, and I have the power to make it so.”**
- David Brooks



Dear Professional Colleagues,

Just as the position and designation of the President is a first for me, penning down my thoughts and sharing them through the pages of this Journal - the Chartered Secretary which in itself holds a history and legacy of more than five decades comes to me as a first of many firsts.

Just as the celebration of Basant Panchmi marks the change of weather, the month of January brings about a transition in the leadership at all levels of our Pan India presence. And I feel extremely gratuitous for these new beginnings as I seek blessings of Goddess Saraswati, the bestower of wisdom, knowledge and thoughtful speech & action:

पावका नः सरस्वती वाजेभिर्वाजिनीवती। यज्ञं वष्टु धियावसुः॥
(Obeisance to Goddess Saraswati, who sanctifies, nourishes,
intelligently bestows opulence, may make our sacrifice successful
with knowledge and action.)

I do hope and pray that not only this year but the years to follow, we not only set our goals with the right intentions but also pursue our intended goals with complete commitment and utmost dedication.

Leading from the front: Being harbingers of change

As an ongoing custom, while each year, the persons holding the designation of the President as well as Chairpersons change, it is every four years that the entire Councils and Management Committees are formed. Such transition while is a result of a long and elaborate election process where the more-than-60000-strong

force of members place their faith in their chosen members to represent them and to undertake actions and initiatives which take their best interests into account.

As I begin my tenure as the President, I am reminded of an old quote which says that “A Leader is only as good as his followers”. But I believe that, “A leader can only be as good as those behind him and with him”. It is the entire Team, my esteemed members of the Central Council, the Office Bearers of the four Regional Offices and 72 Chapters across the Country, which shall have to work in total unison with a common thought and goal, that is, the achievement of the ICSI Vision and Mission.

As we all gear up to meet at the Leadership Meet - the details of which I shall be sharing with you through the pages of this very Journal, next month, along with the agenda charted out and initiatives lined up for the days and months to follow, I extend my best of the very best wishes to all the Teams across the length and breadth of this nation. As my predecessors have always said and I too agree,

“In togetherness shall we all achieve greatness.”

Union Budget 2023: The Saptrishis

To quote the verse cited by the Hon'ble Finance Minister, Smt. Nirmala Sitharaman,

दायित्वा करं धर्म्यं राष्ट्रं नित्यं यथाविधी।
अशेषान्कल्प येद्रज योगक्षेम आनंदितः

It is indeed a matter of great appreciation and lauding, both on my individual part as well as on the part of our Institute whose sole intent is to promote good governance, that the Union Budget for the Financial Year 2023 touches upon every area of human activity and national significance and lays greater emphasis and focus on the areas demanding such heightened importance. Just as the Saptrishis of the ancient times are extolled for their scholarly

contribution to the world of scriptures, the modern day Saptrishis - the seven priority areas are bound to make India shine while putting us on a higher global pedestal guiding us through the Amrit Kaal.

As an Institute, ICSI always takes pride in being the front-runner of Government Initiatives and partnering in the growth story of the country, the idea is to align our line of thought on these lines as well. It is with this thought that the Institute is launching schemes and initiatives to provide equal opportunity to the differently-abled members of the society according them the opportunity to hone their skills and gain employment with ease, focussing both on Inclusive Development and Reaching the Last Mile. Talking of Infrastructure and Investment and Green Growth, once accomplished, the ICSI Centres of Excellence shall not only be environment-friendly spaces of professional development but grounds of path breaking academic research, one which shall guide the course of policy making in the times to come. It is these entities along with other structures which shall also double up as Arbitration Centres to support the building of a sound and sturdy ecosystem of alternate dispute resolution.

The futuristic line of action of the ICSI shall definitely be focused on 'Unleashing the Potential', according greater power to the Youth strengthening them with academic intelligence and professional fervour. As far as the Financial Sector – the last Saptarishi is concerned - Two of the key sub-areas of this segment include - Improving Governance and Investor Protection in Banking Sector and Capacity Building in Securities Market. The ICSI intends to pursue similar goals at our end as well through its varied initiatives to cater to its Stakeholders' diversity.

Study Material - Making goals reality

The New Syllabus of 2022 ushered in a new era of practical approach, fulfilment of corporate needs with seasoned professionals and skill building of our students all in alignment with the New Education Policy of the Government of India.

As the document listed out the various subjects to be inculcated in each Programme and aspects in each subject, the next step demanded a more focused approach. And it is for the realisation of the dream document set out at the Golden Jubilee National Convention that I feel extremely pleased to announce and share the release of the Study Material of the ICSI Executive Programme under the New Syllabus.

I not only hope but am deeply assured that this set of 7 books shall add value to the knowledge base of the students while inculcating in them a genuine inquisitiveness and an insatiable hunger for learning.

On that note wishing all the students all the very best for their bright future!!!

Meetings and Gratitude

The three words of the sub-head seem gravely insufficient to express the true emotions feelings and a sense of extreme gratefulness that I have in my heart. As I take charge of the Institute and attempt to the best of my abilities to take it forward, the understanding is loud and clear - the Institute of Company Secretaries of India, our alma mater is nothing short of a legacy, one that grows with each passing day, one which is a result of the hard work, dedication, commitment and foresightedness of all those who have laid the foundations, all those who have preceded me and all the Teams who have stood with them in their support.

If the month gone by has been a celebration of the 74th Republic Day, it has been also a celebration of the longest Constitution in

the world, a legal document which stands at the core of governance and is a reminder of what we stand for - not only good but the presence of best governance. For as we all believe,

लोका वयं राष्ट्रस्य महतः

We are people of a Great Nation.

It is this very month that has accorded me the honour of having met Dr. Sangeeta Verma, Acting Chairperson, Competition Commission of India; Shri Manoj Govil, Secretary, Shri Manoj Pandey and Sh Inder Deep Singh Dhariwal, Joint Secretaries, Ministry of Corporate Affairs to have futuristic deliberations and raise the concerns and issues facing our members, other professionals and our stakeholders. I extend my heartfelt gratitude towards all these dignitaries for sharing their thoughts, their expectations and their best wishes giving us a wonderful kick start to this entire journey ahead.

Way Forward: Nimble Steps taking big leaps

Each council, undoubtedly when comes to table together, holds the best interests of all the members and students at heart. It is this commonality of thought of all the members that makes them sail through the most tumultuous of discussions and come out with concrete ideas, initiatives and solutions comfortably. The present Council, too, shall be no different in that sense. Although, the coming editions shall be giving me ample room to share the details of them all, I cannot help myself from giving a small peep into what lies in the future. We, at the ICSI, are intending to launch a few such initiatives which shall not only connect our stakeholders with us in a better manner but shall also equip our members to serve the corporate sector and the entire Economy in a better manner.

With this thought, the ICSI intends to launch an Outreach Programme for our Members attached both with the India Inc. as well as the Administrative Authorities under various Government Bodies, members of India Inc. holding senior managerial positions and designations as well as the Officials of Regulatory Authorities – all to create better synergies. As far as the governance front is concerned, keeping in view the dynamism of the corporate world, we wish to make attempts to further strengthen the existing framework by beginning the making of a new league of Standards for various other laws – the ICSI Compliance Standards. Another initiative that aims to accomplish the mission “to develop high calibre professionals facilitating good Corporate Governance”, is the PCS Induction and Refresher Course to build the knowledge base and skill set of our Governance Professionals.

On that note of hope and happiness,

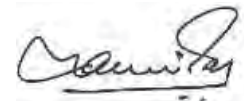
May we all achieve more than we fathom, more than we aspire and more than we expect, for as the ancient scriptures say,

वयं राष्ट्रे जागृयाम पुरोहिताः

We will keep the nation alive and awake

Happy reading !!!

Yours Sincerely



CS Manish Gupta
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF JANUARY, 2023

INITIATIVES FOR MEMBERS

MEETINGS AND GREETINGS

During the month, meetings were held with the following dignitaries:

- Shri Inder Deep Singh Dhariwal, Joint Secretary, Ministry of Corporate Affairs
- Shri Manoj Govil, Secretary, Ministry of Corporate Affairs
- Shri Manoj Pandey, Joint Secretary, Ministry of Corporate Affairs
- Dr. Sangeeta Verma, Acting Chairperson, Competition Commission of India

WEBINAR ON MCA21 V3 - COMPANY FORMS

The ICSI in furtherance of its attempts to provide assistance and guidance to members during the transition of Company forms from MCA-21 V2 to MCA-21 V3 organized a Webinar on **January 23, 2023**. The webinar focused on creating User awareness and preparedness pertaining to 56 MCA21 V3 Company Web Forms and was addressed by Technical Experts from the Ministry. Shri Manoj Pandey, Joint Secretary MCA led the Inaugural Address.

MANUAL ON CORPORATE GOVERNANCE CERTIFICATION

The SEBI LODR Regulations, 2015 provides that Compliance Certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance shall be annexed with the directors' report. The Certification of the Compliance of Corporate Governance casts a vital responsibility on the Professionals. Realizing the need for guiding the professionals, the Institute has come out with this publication "Manual on Corporate Governance Certification".

LAUNCH & CONDUCT OF TWO CRASH COURSES

Two Crash Courses in vital subjects such as IT Tools and Appeals & Drafting were launched exclusively for members of ICSI. The courses were delivered through 5 live web-based sessions of 2 hours each. More than 1000 members of ICSI registered across 2 crash courses to upskill and enhance their knowledge base in respective subject.

ONLINE MCQ BASED ASSESSMENT OF 12 CERTIFICATE COURSES

First attempt of online MCQ based assessment of 12 certificate courses was conducted on 13th and 14th January 2023. The compiled result of MCQ Based Assessment & Project Report will be declared on 25th February 2023.

ONLINE INTERACTION MEET WITH PROFESSIONALS

The Ministry of Corporate Affairs has launched second set of Company Forms covering 56 forms on MCA-21 V3 portal on January 23, 2023. The ICSI in coordination with MCA and

technical LTI team had organized online interaction meet with professionals to understand the practical difficulties faced by them and to provide resolution as well as user awareness after migration of Company Forms from MCA-21 V2 to MCA-21 V3 portal. The online interaction meetings were held on following dates:

- January 27, 2023
- January 28, 2023
- January 30, 2023
- January 31, 2023

JOINT PROGRAMME

The ICSI joined as Knowledge Partner in the seminar organized by PHD Chamber of Commerce on the topic "Search, Seizure and Arrest and Decriminalization under GST Act" on January 11, 2023.

SUGGESTED FORMATS

The Council of the Institute in order to facilitate the members in practice, has issued suggested formats which the members may adopt while certifying Net-worth and Paid-up Share Capital pursuant to Regulation 13(6) of the International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 and Regulation 8(5) of the International Financial Services Centres Authority (Insurance Web Aggregator) Regulations, 2022. The suggested formats are available at the website of the Institute.

SEMINAR ON THE UNION BUDGET 2023

The ICSI organized a seminar on the Union Budget 2023, hosted by the NIRC on February 2, 2023 at Hindi Bhawan, New Delhi in hybrid mode. CS Jatinder Garg, IRS, Joint Commissioner of Income Tax was the Special Guest and Dr. (CA) Girish Ahuja, Eminent Tax Expert & Former Council Member, ICSI and CS Bimal Jain, Executive Director, A2Z Taxcorp LLP were the Guest Speakers.

REPRESENTATIONS SUBMITTED

During the month, following representations were submitted with various Regulatory Authorities:

Purpose	Authority	Date
Request to authorize Company Secretary in Practice to act as professional advisor to MSMEs in various States	State Authorities on MSMEs	January 10, 2023
Request for amendment in sub-rule (9) of rule 30 of the Companies (Incorporation) Rules, 2014 related to costs levied by the Central Government (Powers delegated to the Hon'ble Regional Director) while approving the application for alteration of memorandum with regard to change of place of registered office from one State to another State	MCA	January 16, 2023
To suggest amendments in Section 77 of the Companies Act, 2013	MCA	January 16, 2023

HANDLING VARIOUS CS RELATED POSITIONS SUCH AS CS TRAINEE REQUIREMENT AND JOBS FOR CS MEMBERS AT VARIOUS GOVERNMENT OFFICES

Requests were received from various offices of the Ministry of Company Affairs/PSUs/Banks regarding the position of Company Secretary Trainees /Members from time to time and shortlisted Resumes of Members and Students were sent to them.

Company Secretary Trainees and Members Requirement at various

Government Offices/PSUs/Bank

Sl. No.	Department / Organization	Designation	Positions
1.	Engineering Projects (India) Limited	Company Secretary	1
2.	Gujarat Metro Rail Corporation	Asst. Company Secretary	1
3.	ICSI	CRC Executives	40
4.	IHB Limited	Company Secretary	1
5.	Intelligent Communication Systems India Ltd	Company Secretary	1
6.	IRCON International Limited	JGM / DGM	1
7.	Kerala Cashew Board Limited	Company Secretary	1
8.	Kerala State Drugs & Pharmaceuticals Ltd.	Company Secretary	1
9.	M.P. Building Corporation Limited	Company Secretary	1
10.	National Housing Bank	Regional Manager	2
11.	ONGC Petro additions Limited (OPaL)	GM/DGM	1
12.	MCA, Office of RD, Eastern Region, Patna	CS Trainee	1
13.	RoC office, MCA, Guwahati	CS Trainee	1
14.	RoC Office, MCA, Delhi	CS Trainee	1
15.	IRCTC, PSU, Govt of India	CS Trainee	1

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on 30th January, 2023)

Registered Users			Total no. of Vacancies	
Members	Students	Corporates	Jobs	Trainings
262	642	143	329	264

CAMPUS PLACEMENT PROGRAMME

The Campus Placement Programme of the Institute provides a unique opportunity to corporates to peruse the profiles of qualified young and experienced Company Secretaries, interview them and select those ones whoever suits their requirement. Campus Placement drive is a one-stop solution for corporates and members. Three Campus Placement drives had conducted in the month of January 2023 and more than 300 members had participated in these drives:

- Bombay Stock Exchange Limited
- Yes Bank
- NHLML, SPV of NHAI, Ministry of Road Transport & Highways, Govt. of India

ICSI BI-ANNUAL (SECOND) REGIONAL CONVOCATIONS FY 2022-23

The second Western Region Convocation for FY 2022-23 was held on January 5, 2023, at Birla Matushree Sabhaghar, New Marine Lines, Mumbai. Membership certificates were handed to 294 Associate members and 29 Fellow members. 10 meritorious students and 2 PMQ awardees were also felicitated on the occasion. Mr. Shivam Puri, CEO - Cipla Healthcare Limited was the Chief Guest on the occasion.

The second Southern Region Convocation for FY 2022-23 was held on January 8, 2023, at Vijnana Bhavan, University of Mysore, Manasagangothri, Mysuru. Membership certificates were handed to the 129 Associate members and 9 Fellow members. 2 meritorious students and 1 PMQ awardee were also felicitated on the occasion. Sh. Satish Meriga, IRS, Commissioner of Income Tax Appeal was the Chief Guest on the occasion and Sh. Nagaraja Gargeshwari, President & Whole Time Director, Automotive Axles Limited was the Guest of Honour on the occasion.

The second Eastern Region Convocation for FY 2022-23 was held on January 15, 2023, at Satyajit Ray Auditorium, Rabindranath Tagore Centre, Indian Council for Cultural Relations (ICCR), Ministry of External Affairs, Ho Chi Minh Sarani, Kolkata. Membership certificates were handed to the 65 Associate members and 18 Fellow members. 2 meritorious students were also felicitated on the occasion. Mr. Surajit Roy, Additional Director and Ex-Officio Additional Secretary, School Education, West Bengal graced the ceremony as the Chief Guest.

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

Webinars

Date	Topic
09.01.2023	Treatment of Claims under Liquidation
13.01.2023	Anatomy of IBC Cases -3
27.01.2023	EOI to Resolution Plan - A Journey
30.01.2023	Recent Amendments relating to Regulatory Fee

Workshops

Date	Topic
06.01.2023	Registration of Security Interest and Rights under IBC

07.01.2023	Moratorium & Ethical Practice for Insolvency Professionals
16.01.2023	Insolvency Law in the year 2022: Lessons and Way Forward (Series III)
21.01.2023	Corporate Restructuring and Interim Finance under IBC
30 – 31.01.2023	Labour Laws and its relevance under IBC

• **Roundtable**

Date	Topic
25.01.2023	Proposed changes to IBC - MCA notice dated 18 th Jan 2023

• **Interactive meet**

Date	Topic
05.01.2023	Let's connect: A platform for the IPs

• **Conclave**

Date	Topic
20.01.2023	Conclave of IBBI in association with Insolvency Professional Agencies (IPA) in Chennai (Joint Program – IBBI - IPA)

ICSI REGISTERED VALUERS ORGANISATION

• **50 Hours Online Education Course**

ICSI RVO commenced “50 Hours Educational Programme” from January 6, 2023. Announced another batch of “50 Hours Educational Programme” from 17th January, 2023.

• **Continuous Educational Programme (CEP)**

ICSI RVO has announced Continuing Professional Education Programme (CPE) on February 4, 2023 on the title - “Dealing with Subjectivity in Valuation”.

INITIATIVES FOR EMPLOYEES

• *Webinar on “Joint Pains at Workplace/Care + Precautions” by Dr. Reddy’s Foundation*

A webinar was organized on January 24, 2023 on the topic “Joint Pains at Workplace/Care + Precautions” by Dr. Reddy’s Foundation for the benefit of ICSI employees and pensioners. Dr. Anoop presented the webinar, which was well received by one and all including veterans of ICSI.

• *Cardiopulmonary Resuscitation (CPR) Training by Medanta Hospital*

A Cardiopulmonary Resuscitation (CPR) Training session was conducted by Medanta Hospital, Gurugram on January 27, 2023 at Noida Office for handling emergency situation. The CPR training included a basic life support training which will enable participants to promptly recognize several life-threatening emergencies, give high-quality chest compressions, deliver appropriate ventilations and helps them to use the AED apparatus in an effective manner. The purpose of the training was to double or triple the chances of survival in cardiac distress which would be helpful in saving someone’s life. It was attended by 60 employees.

• *Training Programme on “Customer Orientation”*

A training program titled “Customer Orientation” was conducted on January 31, 2023 for employees of the level of Deputy Director and below from the Directorates of

Membership, Training & Student services. The training session was conducted to improve the communication/response to Members and Students through Phone and mails. The programme was aimed to bring down the complaints and to reduce the response time from these Directorates. Mr. Anil Nagpal from Argyle HR Solutions undertook the Soft skills training programme. A total of 25 employees participated in the training session.

INITIATIVES FOR STUDENTS

STUDY MATERIAL UNDER NEW SYLLABUS 2022 LAUNCHED

The ICSI released its New Syllabus 2022 at the 50th National Convention of Company Secretaries at Kolkata on September 01, 2022. The New Syllabus 2022 focuses on the core areas of the Company Secretary Profession and to supplement the core areas it has laid due emphasis on ancillary, legal, managerial and other technical skills. In furtherance of the same, the Institute launched the Study Material for all subjects (both groups) under the ICSI Executive Programme (New Syllabus 2022) effective from 1.2.2023.

YUVOTSAV-2023

Yuvotsav-2023, a National Conference of Student Company Secretaries was organised on January 11-12, 2023 in Noida. Students from around 53 Regional and Chapter Offices participated in the event. Around 23 competitions were organized on January 11, 2023. Legal Puzzle, Elocution Competition, Debate Competition, Fashion show, Dance competition were some of the competitions which were organised during Yuvotsav-2023. Inaugural and Award Ceremony of Yuvotsav 2023 was held on January 12, 2023. Sh. Yogeshwar Dutt, Indian Wrestler, and Padma Shri award winner was the Chief Guest during the occasion. Prof. Nageshwar Rao was the guest of Honour. More than 500 students participated in Yuvotsav-2023 from across the country. **SIRO** was adjudged the **Best Region** and the ranking of the first 5 Best Chapters is as follows:

Best Chapters	Chapter Rank
Kochi	1 st
Mangaluru	2 nd
Nashik	3 rd
Hyderabad	4 th
Kozhikode	5 th

Yuvotsav-2023 is available at various social media handles of ICSI

YouTube ICSI : <https://youtu.be/pZq1Gd8jV30>

Facebook ICSI : <https://fb.watch/i4GZeuuYQI/>

Twitter ICSI : twitter.com/icsi_cs/status/1613408201743159300?s=20&t=3s43P7RdF6E8IqcWKY9tg

15 DAYS E-ACADEMIC PROGRAMME

The Institute introduced 15 days Academic program as applicable under modified training structure on the Institute’s LMS portal at anywhere and anytime mode. The Link of the same is: www.icsi.edu/media/webmodules/14092022_15dayeAcademicProgrammeonLMS1.pdf

LAUNCH OF 24 HOURS E-PDP ON INSTITUTE LMS PORTAL

The Institute has launched 24 Hours Professional Development programme (e-PDP) as applicable under earlier training structure at the Institute's LMS portal on anywhere and anytime basis. The link of the same is given below:

https://www.icsi.edu/media/webmodules/e-PDP_on_LMS.pdf

ICSI SAMADHAN DIWAS

Samadhan Diwas is an initiative by the ICSI towards on the spot solution of the grievances of the trainees and trainers. The ICSI successfully organized 24th Samadhan Diwas on Wednesday, January 16, 2023. Pending matters of students in the areas of Switchover from Old training to New Training Structure, registration in Classroom EDP, e-EDP, e-MSOP, issue of sponsorship letters for Practical Training, Exemption related matters in Practical Training and issues of Training Completion Certificate which were resolved. The students appreciated the efforts of the Institute for creating a platform for direct interaction with the ICSI officials.

FREE HALF DAY PROGRAMME FOR ICSI STUDENTS THROUGH REGIONAL AND CHAPTER OFFICES

ICSI is organizing free Half Day Programme for the students of ICSI (Every month) through its Regional and Chapter offices. These programmes will immensely help the students in improving and updating their academic knowledge. Besides, the focus will be also on soft skills and personality development of the students.

For details, click https://www.icsi.edu/media/webmodules/06092022_halfdayprogramme.pdf

ANNOUNCEMENT ON PAPER WISE EXEMPTION FOR JUNE 2023 SESSION OF EXAMINATION

The option for claiming paper wise Exemption on the basis of Higher Qualification (ICAI-cost /LLB) for Executive & Professional student(s) for June 2023 CS Exam will be activated in smash portal (<https://smash.icsi.edu>) after declaration of December 2022 Session of Examination Result.

FOUNDATION PROGRAMME RESULT FOR DECEMBER 2022 DECLARED SUCCESSFULLY

Result of Foundation CBE (RPM Mode) December 2022 which was scheduled in December 2022 (27-28 December 2022) was declared on January 18, 2023.

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

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

SCHEDULE OF ICSI CLASSES AT ROS/ CHAPTERS FOR JUNE 2023 SESSION OF EXAMINATION

Classes are being conducted by Regional/Chapter Offices for the students appearing in June 2023 Session of Examination. For details, click <https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>

CONCESSION IN FEES PAYABLE AT THE TIME OF REGISTRATION IN CS EXECUTIVE PROGRAM FOR STUDENTS WHO LOST THEIR PARENTS DUE TO ANY REASON, INCLUDING COVID19 PANDEMIC

As the COVID pandemic has engulfed the entire globe, it has affected many children in our country also who have lost their parents/or earning member of their family.

To curtail any financial distress on account of educational needs, the Institute has decided that such students may be supported for continuing their education by granting one time concession in fees. It has been decided that the students who have lost their *both parents or surviving parent or legal guardian/adoptive parents* due to any reason, including COVID-19 pandemic and who have taken registration/ or will be registering in CS Executive Programme between April 1, 2021 to March 31, 2022 will be given 100% concession in registration fee. For more details, visit

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

PROFESSIONAL PROGRAMME PASS CERTIFICATE OF ICSI IN DIGILOCKER

As per ongoing practice the Institute has been issuing Pass Certificate of Professional Programme to the students in Physical Mode. However, in its attempt to move towards digitization, the Institute decided to issue Professional Programme Pass Certificate online via DIGILOCKER. The said initiative was launched at the 50th National Convention of ICSI at Kolkata with the National e-Governance Division (NeGD), Ministry of Electronics and Information Technology (MeitY), Govt. of India and communicated to the students via Bulk-Email regarding initiative of the Institute and process how to download the same/Announcement uploaded at ICSI Website. The students who passed on or after June 2021 Session of Examinations can download their Professional Pass Certificate from DIGILOCKER.

FACILITATE STUDENTS TO RENEW THEIR REGISTRATION 3 MONTHS PRIOR EXPIRY OF REGISTRATION

As per the ongoing practice, students can renew their registration validity only after the expiry of their registration. However, in an attempt to ease the process and to avoid last minute hassle for students, the Institute decided to provide the renewal facility to the students 3 months before expiry of their registration and the same has been implemented from December 2022 onwards. Detailed announcement of the same has been uploaded at www.icsi.edu

COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

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

- CSEET (May 2023 session)**

CSEET May 2023 session will be held on May 6, 2023 through remote proctored mode. For details, please click here https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx
- CSEET classes (May 2023 session)**

CSEET Classes are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in May 2023. Details of Regional/Chapter offices conducting classes are available at the following link. <https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>
- Registration for CSEET Classes at the time of CSEET Registration**

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

Link to register https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx
- Exemption to Graduates and Post Graduates from appearing in CSEET and enabling them to take direct admission in CS Executive Programme**

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

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

To get exemption from CSEET on the basis of above qualification, such students shall be required to pay applicable exemption fees along with the requisite registration fees for the Executive Programme. For more details, please click https://www.icsi.edu/media/webmodules/granting_exemption_230621.pdf
- CSEET Reference book to be provided mandatorily to all students**

The Institute has decided that the Paper bound CSEET reading material will be sent to all the students registering for CSEET by post, for which ₹500 will be taken at the time of registration from the students registering for CSEET in addition to ₹1000 (CSEET Registration fee).
- CSEET Referencer will be provided on optional basis to all students at the time of CSEET registration**

CSEET Referencer will be provided optionally to all the students at the time of CSEET registration. Students are required to remit ₹1000 in addition to ₹1500.

- CSEET Guide – I** (Business Communication, Legal Aptitude and Logical Reasoning, Economic and Business Environment) and **CSEET Guide – II** (Current Affairs) containing MCQs have been released for the CSEET registered candidates.
- CSEET Reference Reading Material** for Business Communication, Legal Aptitude and Logical Reasoning, Economic and Business Environment and Current Affairs have been revised. The same is available at the weblink: <https://www.icsi.edu/reference-reading-material/>

STUDENT COMPANY SECRETARY, CS FOUNDATION E-BULLETIN AND CSEET COMMUNIQUE

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

ACADEMIC INITIATIVES

- Recorded Video Lectures:** ICSI has been recording video lectures of eminent faculties for the students of ICSI which help them to prepare for the examination. Students of the Institute can access recorded videos available on the E-learning platform by logging in to <https://elearning.icsi.in> Login credentials are sent to all registered students at email. After successful login, go to "My courses" or "My Communities" section, where you can find the recorded videos and other contents.
- Info Capsule:** A Daily update for members and students, covering latest amendment on various laws for the benefits of our members and students available at <https://www.icsi.edu/infocapsule/>

ICSI ACADEMIC CONNECT

ICSI signed Memorandum of Understanding (MoUs) under the ICSI Academic Connect Initiative with the following:

- Rani Channamma University, Belagavi, Karnataka on January 11, 2023.
- JECRC University, Jaipur, Rajasthan on January 17, 2023.
- Kavayitri Bahinabai Chaudhari North Maharashtra University, Jalgaon, Maharashtra on January 17, 2023.

IMPORTANT LINKS FOR STUDENTS

To facilitate and update the students, a list of important links at the website of the Institute has been compiled. Students can go through the links given below to get all important details:

- For Student Services related updates: https://www.icsi.edu/media/webmodules/Student_Services_links.pdf
- For Academic updates: https://www.icsi.edu/media/webmodules/Academic_links.pdf
- For Training related updates: https://www.icsi.edu/media/webmodules/Training_Links.pdf

Call for Articles

Call for Articles for publication in Chartered Secretary Journal – March 2023

“Embrace Equity: Leading change together”

The dedication of a certain day to be celebrated for a particular segment of the society is a portrayal of the fact that the position in the society, their rights and authority exercised demands greater focus. The beginning of celebration of the International Women’s Day is no different. The United Nations initiated the same with the intent of bringing the deliberation on gender equality to light.

Years later, the International Women’s Day is a celebration of hope, diversity, equitability and inclusivity. The idea is to celebrate women’s achievements, raise awareness about discrimination and take action to drive gender parity.

This year, as the emphasis of the Day goes deeper, the theme of ‘Embrace equity’ seems apt. to quote, “Equity isn’t just a nice-to-have, it’s a must-have. A focus on gender equity needs to be part of every society’s DNA.” On a practical note, a gender-responsive approach to innovation, technology and digital education can raise the bars of awareness immensely.

In view of the same and more, we are pleased to inform you that the March 2023 issue of Chartered Secretary Journal will be devoted to the theme “Embrace Equity: Leading change together”. The deliberations shall be taken across the following aspects:

- Activating Technology and Innovation for Gender Equality
- Expanding the role of Women: Boardrooms and Beyond
- Gender Equality in Tech Based Industries
- Clearing the Haze: Creating gender uniting platforms digitally
- Digital Transformation of Workplaces becoming instrumental in gender equality
- Embrace Equity: Bringing gender neutrality

And many more...

Members and other readers desirous of contributing articles may send the same latest by **Saturday, February 25, 2023** at cs.journal@icsi.edu for March 2023 issue of Chartered Secretary Journal.

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

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

Regards,

Team ICSI

Articles in Chartered Secretary Guidelines for Authors

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

Declaration-cum-Undertaking

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

Signature

1

ARTICLES



- UNION BUDGET 2023-24 - AN EXEMPLAR OF PROGRESSIVE AND INCLUSIVE APPROACH
- ANALYSING ANTI-COMPETITIVE AGREEMENTS AND CARTELS UNDER COMPETITION COMMISSION OF INDIA
- DIGITAL TRANSFORMATION & ARTIFICIAL INTELLIGENCE – FUTURE OF BUSINESSES
- DIRECT SELLING RULES 2021 AND ITS IMPACTS & ROLE OF CS
- WIDENING THE SCOPE OF SECRETARIAL AUDIT & COMPLIANCE MANAGEMENT REGIME
- MATERIAL RESPONSIBLE BUSINESS CONDUCT AND SUSTAINABILITY ISSUES
- ADOPTING ESG-SENSITIVE LENDING PRACTICES FOR SUSTAINABLE FINANCE
- REGULATORY SANDBOX: A WAY OF INNOVATIVE REVOLUTION
- ISSUE & ALLOTMENT CONFUSION – COMPANIES ACT VS. FEMA REGULATIONS

Union Budget 2023-24 - An Exemplar of Progressive And Inclusive Approach

The Union Budget 2023-24 presented by the Honourable Finance Minister based on the unique and innovative concept of '*Saptarishi*' i.e., the seven priorities- Inclusive Development, Reaching the Last Mile, Infrastructure and Investment, Unleashing the Potential, Green Growth, Youth Power and Financial Sector is futuristic and paves the way of holistic development.



CS Asish Mohan

Secretary, ICSI
secretary@icsi.edu

INTRODUCTION

Indian economy is marching ahead confidently on the trajectory of economic development, ensuring attainment of the vision for Amrit Kaal - *Opportunities for citizens with focus on the youth, and Growth and job creation, Strong and stable macro-economic environment* is manifested through the following noteworthy developments:

- Per capita income has more than doubled to ₹1.97 lakh in around nine years.
- Indian economy has increased in size from being 10th to 5th largest in the world in the past nine years.
- EPFO membership has more than doubled to 27 crore.
- 7,400 crore digital payments of ₹126 lakh crore has taken place through UPI in 2022.
- 11.7 crore household toilets constructed under Swachh Bharat Mission.
- 9.6 crore LPG connections provided under Ujjwala.
- 47.8 crore PM Jan Dhan bank accounts.
- Insurance cover for 44.6 crore persons under PM Suraksha Bima and PM Jeevan Jyoti Yojana.
- Cash transfer of ₹2.2 lakh crore to over 11.4 crore farmers under PM Kisan Samman Nidhi.

The ensuing paragraphs discusses about the seven priorities that have impeccably focused on all the crucial sectors of the Indian economy.

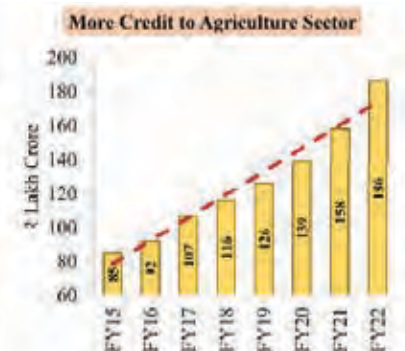
- Inclusive Development:** The inclusive development has laid emphasis on the following crucial elements- Agriculture and Cooperatives, Health, Education and Skilling. The mentioned elements have been discussed as under:
 - Agriculture sector:* This component focuses on creation of a Digital Public Infrastructure for Agriculture

to have an accessible, inclusive and information solution for farmers, launching of Atmanirbhar Bharat Horticulture Clean Plant Program to provide impetus to production of high value horticultural crops, making India a Global Hub for Millets under '*Sree Anna*' approach, establishing of Agriculture Accelerator Fund for fostering innovative start-ups in rural areas, Targeted funding to the extent of Rs.20 lakh crore in the form of agricultural credit to animal husbandry, dairy and fisheries sector and setting up of widely available storage capacity with the aim of increasing farmers remuneration by enabling sale at appropriate times.

It is to be noted that there has been an upward trend in agricultural credit to farmers during the period from FY2015 to FY2022 (please refer exhibit 1), a metaphor of sustained agricultural growth of agriculture sector.

Exhibit 1

Trend of Agricultural Credit



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

- Healthcare sector:* Recognising the significance of a healthy nation, numerous key initiatives have been announced in the Union Budget 2023-24, i.e., 157 new nursing colleges will be established, new programme to encourage research in Pharmaceutical sector will be launched, Sickle cell anaemia elimination mission to be commenced and joint public and private medical research to be strengthened through select ICMR labs.
- Education sector:* Espousing the tenets of National Education Policy, 2020, the Union Budget 2023-24, has made rapid strides towards building an edifice of wisdom through the following approaches-

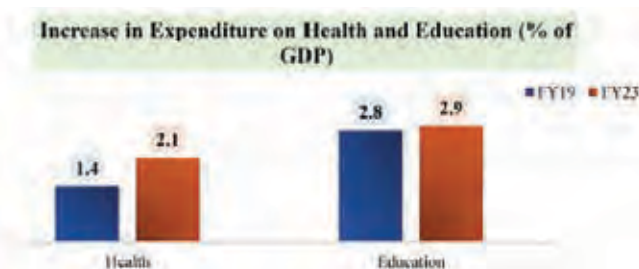
Revamped teachers' training via District Institutes of Education and Training, National Digital Library to be established for children and adolescents and States will be encouraged to establish physical libraries at Panchayat and ward levels.

The mentioned initiatives under education and skilling are in synchronisation with National Education Policy 2020.

The evidence of laying thrust on health and education sectors in terms of percentage of GDP spending is provided in exhibit 2.

Exhibit 2

**Increase in Expenditure on Health and Education
(% of GDP)**



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

Thus from the above exhibit it may be opined that the Government of India is striving towards building a healthy and literate India. Medical practitioners have

welcomed the enhanced allocation for the health sector and the initiative to establish 157 nursing colleges. They opined that these measures will provide fillip to the Indian healthcare milieu.

Higher allocation to health sector in this year's budget i.e., Rs.89,155 crore which is a hike of approximately 13 percent over Rs.79,145 crore allocated in 2022-2023 is an indication of futuristic approach of the Government. Further, with more emphasis on medical research, it paves the way for accomplishing universal health coverage.

Thus, the approach of inclusive development covered in the Union Budget has taken a giant leap towards development of agriculture, healthcare and education sectors of the Indian economy.

2. **Reaching the Last Mile:** Multiple sectors / industries stand benefitted under the mentioned approach. Initiatives announced like Pradhan Mantri PVTG (Particularly Vulnerable Tribal Groups), appointment of 38800 more teachers for 740 Eklavya Model Residential Schools, setting up of Bharat SHRI for digitization of ancient inscriptions etc. will definitely go a long way in ensuring that no one is left behind in the journey of economic development.

To provide more thrust on the objective of 'reaching the last mile', the Government has formed the ministries of AYUSH, Fisheries, Animal Husbandry and Dairying, Skill Development, Jal Shakti and Cooperation. The focus areas and measures announced under 'reaching the last mile' is provided in the exhibit 3.

Exhibit 3

Focus Areas and Measures Announced

Focus area	Measures announced
Aspirational Districts and Blocks Program	<ul style="list-style-type: none"> Launched the Aspirational Blocks Program covering 500 blocks for saturation of essential Government services across multiple domains such as health, nutrition, education, agriculture, water resources, financial inclusion, skill development, and basic infrastructure.
Pradhan Mantri PVTG Development Mission	<ul style="list-style-type: none"> To improve socio-economic conditions of the Particularly Vulnerable Tribal Groups (PVTGs), Pradhan Mantri PVTG Development Mission will be launched. This will saturate PVTG families and habitations with basic facilities such as safe housing, clean drinking water and sanitation, improved access to education, health and nutrition, road and telecom connectivity, and sustainable livelihood opportunities. An amount of Rs 15,000 crore will be made available to implement the Mission in the next three years under the Development Action Plan for the Scheduled Tribes.
Eklavya Model Residential Schools	<ul style="list-style-type: none"> In the next three years, centre will recruit 38,800 teachers and support staff for the 740 Eklavya Model Residential Schools, serving 3.5 lakh tribal students.
Water for Drought Prone Region	<ul style="list-style-type: none"> In the drought prone central region of Karnataka, central assistance of Rs 5,300 crore will be given to Upper Bhadra Project to provide sustainable micro irrigation and filling up of surface tanks for drinking water.
PM Awas Yojana	<ul style="list-style-type: none"> The outlay for PM Awas Yojana is being enhanced by 66% to over Rs 79,000 crore.
Bharat Shared Repository of Inscriptions (Bharat SHRI)	<ul style="list-style-type: none"> 'Bharat Shared Repository of Inscriptions' will be set up in a digital epigraphy museum, with digitization of one lakh ancient inscriptions in the first stage.
Support for poor prisoners	<ul style="list-style-type: none"> For poor persons who are in prisons and unable to afford the penalty or the bail amount, required financial support will be provided.

Source: https://www.indiaonline.com/article/budget-highlights/union-budget-priority-reaching-the-last-mile-1675239399782_1.html

3. **Infrastructure and Investment:** It is a widely known fact that investments have a strong multiplier effect. In this Union Budget, capital investment outlay has been increased sharply by 33 percent to Rs.10 lakh crore (\$122 bn), which is a whopping 3.3 percent of GDP. This massive capital investment outlay will assist in crowd-in private investments, increase growth potential, create job opportunities and will provide a cushion against global headwinds.

As an inclusive approach, the aforesaid measure has been complemented by continuation of the 50-year interest free loan to state governments for one more year to provide stimulus in infrastructure investment and to incentivize them for complementary policy actions, with a substantially enhanced outlay of Rs.1.3 lakh crore (\$16 bn).

The Union Budget has come out with an innovative approach of setting-up of Infrastructure Finance Secretariat to act as a catalyst for private investment in infrastructure. This secretariat will assist all stakeholders for more private investment in infrastructure, including railways, roads, urban infrastructure and power which predominantly relies on public resources.

Thus, it may be stated that the Union Budget has encompassed all those vital segments of the infrastructure sector thereby ensuring robust economic growth.

4. **Unleashing the Potential:** This priority of the Union Budget has broadly focused on science and technology, MSME sectors and social governance in the form of setting up of three specialized Artificial Intelligence (AI) centres in educational institutions to have AI based solutions in agriculture, health and sustainable cities, launching of National Data Governance Policy to enable access to anonymized data for research by Start-ups and sustainable cities, providing succour to MSME sector through Vivad se Vishwas I and Vivad se Vishwas II for reducing the stringency in execution of contract for MSMEs and, easier and standardized settlement scheme respectively.

The concept of Entity Digi Locker to be used by business enterprises and charitable trusts for enabling secure online storing and sharing of documents with the business environment, setting up of 100 labs for 5G services based application to tap employment potential and business opportunities, R&D grant for Lab Grown Diamonds (LGD) sector to bring down dependency by fostering domestic production, exemplary approach towards social governance is exhibited through the announcement mentioning launching of Phase 3 of E-Courts for effective administration of justice are precursor of creating a congenial ambience for the aforesaid sectors and edifice of social governance.

As a boost up measure to ease of doing business, a magnificent initiative of allowing business organisations that require Permanent Account Number (PAN) will be allowed to use PAN as common identifier for all digital systems of government agencies. Further, for removing the need for same information to different government

agencies, a system of 'Unified Filing Process' will be set-up. Such filing of information or return in simplified forms on a common portal, will be shared with other agencies as per filer's choice, which will play a catalytic role in ease of doing business.

5. **Green Growth**

Taking the cue from Hon'ble Prime Minister's vision for "LIFE", or lifestyle for environment to stimulate a movement of environmentally conscious lifestyle and India's journey towards 'panchamrit' and net-zero carbon emission by 2070 to usher in green revolution and economic metamorphosis. Keeping these pertinent points in view, the Union Budget 2023-24 has given birth to the concept of green growth.

The green growth approach has triggered a renaissance in the energy sector which is evident from the following points:

- Annual production of 5 MMT under the Green Hydrogen Mission to be targeted by 2030 to facilitate the transition of the economy to low carbon intensity and to reduce dependence on fossil fuel imports.
- Rs.35,000 crores (US\$ 42.7 billion) outlay for energy security, energy transition, and net zero objectives.
- Battery energy storage systems to be promoted to steer the economy on the sustainable development path.
- Rs.20,700 crores (US\$ 37.4 billion) outlay provided for renewable energy grid integration and evacuation from Ladakh.
- For encouraging behavioural change, a Green Credit Programme will be notified under the Environment (Protection) Act. This will incentivize environmentally sustainable and responsive actions by companies, individuals and local bodies, and help mobilize additional resources for such activities.

Setting up of 500 new 'waste to wealth' plants under GOBARdhan (Galvanizing Organic Bio-Agro Resources Dhan) scheme for promoting circular economy.

The initiative of green growth has thrown light on the need of afforestation through a unique and innovative approach called 'MISHTI', i.e., 'Mangrove Initiative for Shoreline Habitats & Tangible Incomes' for encouraging mangrove plantation along the coastline and on salt pan lands, wherever feasible, through convergence between MGNREGS, CAMPA Fund and other sources. Likewise, other measures - 'Amrit Dharohar', Coastal Shipping and Vehicle Replacement are impeccable initiatives towards preserving the Mother Earth.

6. **Youth Power**

For any nation, their youth is the asset, as they possess the potential to contribute substantially to the economic development of the nation, thereby enhancing its national

income and per capita income. The Union Budget 2023-24 has highlighted 'Amrit Peedhi' as a priority under the 'Saptarishi' in guiding India through the Amrit Kaal. In light of this, to attain the twin goals of youth empowerment and assist the 'Amrit Peedhi' to achieve their dreams, Government of India came out with National Education Policy, laid stress on skill development, embraced economic policies that can act as a vehicle for job creation and have created business opportunities.

As skill is an indispensable element of holistic career development, Pradhan Mantri Kaushal Vikas Yojana 4.0 has been announced to skill lakhs of youth within the next three years. Under this scheme, on-job training, industry partnership, and alignment of courses with needs of industry will be emphasized. The scheme will also cover new age courses for Industry 4.0 like coding, AI, robotics, mechatronics, IOT, 3D printing, drones, and soft skills.

In light of the diaspora of youth population across the country, the concept of youth power has come out with an integrated and innovative approach in tourism sector, wherein at least 50 destinations will be chosen through challenge mode and in addition to aspects such as physical connectivity, virtual connectivity, tourist guides, high standards for food streets and tourists' security, all the relevant aspects would be made available on an App to enhance tourist experience. Every destination would be developed as a complete package.

Sector specific skilling and entrepreneurship development will be merged to achieve the objectives of the 'Dekho Apna Desh' initiative which was launched as an appeal by the Prime Minister to the middle class to prefer domestic tourism over international tourism. For integrated development of theme-based tourist circuits, the 'Swadesh Darshan Scheme' was also launched. Under the Vibrant Villages Programme, tourism infrastructure and amenities will also be facilitated in border villages, thus, offering plethora of employment opportunities for youth in the tourism sector.

To promote the sale of ODOP (one district, one product), GI products and other handicraft products, the wonderful concept of 'Unity Mall' has been coined in this union budget. Under this concept, states will be encouraged to set up a Unity Mall in their state capital or most prominent tourism centre or the financial capital to make the mentioned initiatives a reality.

7. Financial Sector

The Union Budget 2023-24 has focused on the following key facets pertaining to the financial sector-

- Setting up of National Financial Information Registry:* To promote effectiveness in lending, encourage financial inclusion and increase financial stability.
- Establishing of a Central Data Processing Centre:* For quicker dealing with administrative work under the Companies Act, 2013.

This priority of the Union Budget has broadly focused on science and technology, MSME sectors and social governance in the form of setting up of three specialized Artificial Intelligence (AI) centres in educational institutions to have AI based solutions in agriculture, health and sustainable cities, launching of National Data Governance Policy to enable access to anonymized data for research by Start-ups and sustainable cities, providing succour to MSME sector through Vivad se Vishwas I and Vivad se Vishwas II for reducing the stringency in execution of contract for MSMEs and, easier and standardized settlement scheme respectively.

- Credit Guarantee Scheme for MSMEs:* As already discussed above, numerous measures have been taken up for strengthening MSME sector under a revamped scheme to enable additional collateral free credit of Rs.2 lakh crore.
- Reverence to women:* Launching of one-time new small savings scheme for a 2-year period with a deposit facility of up to Rs.2 lakh for women.
- Care for senior citizens:* Increased maximum deposit limit for senior citizens savings scheme from Rs.15 lakh to Rs.30 lakh.
- Other initiatives:* To promote business activities in GIFT IFSC and creating a legion of trained professionals in securities markets.

TAX MANAGEMENT

As per Economic Survey 2022-2023, Indian economy has bounced back after facing the pandemic and has fully recovered in FY 2022-23, as compared to many other nations. It is poised to return to its pre-pandemic growth trajectory in FY 2023-24. This year's Budget has been mainly customs centric, and the Budget also shows that the Government intends to promote domestic manufacturing, with special focus on Green mobility.

From custom perspective, to provide impetus to the domestic manufacturing and the domestic value addition, the Hon'ble Finance Minister has made changes in customs Duties mainly import duties of electrical kitchen chimneys, Heat coils, chemicals parts of mobile phones, television sets, and seeds of Lab Grown Diamonds (LGDs) etc. Putting a smile on the faces of the Jewellery industry, the Budget proposes to decrease the import duty on gold, silver, platinum, coin, and seed of LGDs. With the aim of making India, carbon neutral by 2070 becoming the government proposed to exempt Excise duty to that extent on blended CNG on which GST is paid. The Basic Customs Duty (BCD) has been exempted on Capital Goods used for manufacture of Lithium-ion cell for use in battery

of Electric Vehicles (EVs) etc. which further strengthens the vision of sustainable development.

From a GST angle, while not much changes have been proposed, as many amendments were already done by the GST Council in its meetings held in year 2022. The Government has also given effect to several decisions taken in the last meeting of the GST Council like decriminalization & compounding of certain offences, retrospective amendment to treat certain transactions (high sea sales, bonded warehouse sales etc.) as no supply since July 2017.

The scope for Online Information Database Access and Retrieval (OIDAR) service has been increased to be applicable to all un-registered persons irrespective of whether the same are being used for commerce, industry or any other business. Additionally, the words 'automated and involving minimal human intervention' have been deleted from the definition of OIDAR services. Both these amendments seem to aim at plugging the loophole wherein the service recipients were not paying taxes contending the above exceptions as excuses.

Moreover, the threshold of time limit of 3 years has now been prescribed for furnishing GSTR-1, GSTR-3B and GSTR-9/9C. Earlier, there was no time limit to furnish returns and a taxpayer could furnish belated returns with late fees and interest. However, the returns older than 3 years would be locked henceforth for filing. This may have an impact from litigation perspective as the time limit to initiate an assessment or audit would be impacted based on this amendment.



With reference to the Direct Tax, the following significant announcements have been made-

- Higher TDS limit of Rs 3 crore for cooperatives.
- Rebate limit increased to Rs 7 lakh in new income tax regime; No. of slabs reduced from seven to five.
- Only five per cent tax on individuals with annual income of Rs 9 lakh to only pay Rs 45,000 in tax.
- Salaried class and pensioner standard deduction increased to Rs 52,000.
- Highest tax rate 42.74 per cent brought down.

Thus, the changes in the indirect as well direct tax regime will provide solace to the tax payers. The new tax rates for direct tax are provided in the exhibit 4.

Exhibit 4
New Income Tax Rates

Total Income (Rs)	Rate (per cent)
Up to 3,00,000	Nil
From 3,00,001 to 6,00,000	5
From 6,00,001 to 9,00,000	10
From 9,00,001 to 12,00,000	15
From 12,00,001 to 15,00,000	20
Above 15,00,000	30

Source: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1895315>

WAY FORWARD

Indian economy is supported by strong macroeconomic fundamentals. The Central Government is on the trajectory of fiscal consolidation as the targeted fiscal deficit to be below 4.5% by 2025-26, fiscal deficit of 3.5% of GSDP (Gross State Domestic Product) permitted for States of which 0.5% is tied to power sector reforms. The fiscal deficit is expected to be 5.9% of GDP.

To finance the fiscal deficit in 2023-24, the net market borrowings from dated securities are estimated at Rs 11.8 lakh crore and the gross market borrowings to hover around Rs.15.4 lakh crore. The approach of 'Saptarishi' which has thrown light on all the significant sectors of the Indian economy as well as espoused the concept of national governance is to be extolled. To put in a nutshell, this Union Budget is like a polestar in the empyrean of economic and holistic development.

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Analysing Anti-Competitive Agreements and Cartels Under Competition Commission of India

“People of the same trade seldom met together, even for merriment and diversion; but the conversation ends in a conspiracy against the public or in some contrivance to raise prices”

(Adam Smith in ‘The Wealth of Nations’.)



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INTRODUCTION

Cartel or cartelization can be defined as collusion of companies to fix prices, manipulate bids or to share customers. The Competition Act, 2002, as amended by the Competition Act, 2007, prohibits any agreement which causes, or is likely to cause appreciable adverse effect on competition in markets India. Under the Competition Act, 2002 Section 2(c.) “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services; Consumers can choose either not to pay the higher price for some or all of the cartelized product that they desire, thus forgoing the product, or they pay the cartel price and thereby unknowingly transfer wealth to the cartel operators.

Cartels begin with agreements between companies not to compete on price, product or customer. In the long run

cartelization results in higher prices, poor quality and less or no choice for goods and services for consumers. Ultimately it results in injury to the consumers and to the economy.

Agreements that are explicit or implicit, to fix prices, to limit production and supply, to assign market share or sales quotas, or to involve in collusive bidding or bid-rigging in one or more markets are all aiming at creating Cartels. It shelters its members from full exposure to market forces, reducing pressures on them to control costs and to innovate. Thus, three major factors are necessary to establish a cartel:

1. The cartel must be able to raise price above the non-cartel level without inducing substantial increased competition from non-member firms.
2. The expected punishment for forming a cartel must be low relative to the expected gains.
3. The cost of establishing and enforcing a cartel agreement must be low relative to its expected gains.

Only if a cartel is expected to raise the price above the non-cartel level and keep it high do the firms join. An increase in price will bring about an increase in revenue only if the demand curve facing a cartel is inelastic. Cartel operators can go to great lengths to keep their agreements secret, showing that they fully realise that their conduct is harmful and unlawful. In some cases, they are explicit in their contempt for the competitive process.

Cartels are more likely to be formed in concentrated industries. They are also often found in smaller geographical areas, since market, being small is more likely to have few firms, who have a large share of the business. Globally, cartel members usually controlled over 90% of the market sales in the cartelized product. Cartelization also requires product homogeneity, as companies have more difficulty agreeing on relative prices when each company’s product has different qualities or properties.

This inter play between economics of Market and law of land is an interesting scenario. Competition Law determines how much is too much when Companies compete in an unfair manner thus reducing the benefits of ultimate consumers.

“True economic freedom cannot exist without effective Competition and Investment Regime”. To achieve this objective Government of India enacted the competition Act, 2002 which prohibits anti-competitive agreements, abuse of dominant position and regulates combinations.

The Framework of Competition Act 2002 has essentially four anchors:

1. Prohibition of Anti-Competitive Agreements [Section 3]

2. Prohibition of Abuse of Dominant Position [Section 4]
3. Regulation of Combination- Merger & Amalgamations, Takeovers etc. [Section 5 & 6]
4. Competition Advocacy [Section 49]

The anchors can be further sub-classified under two categories:

- a) Behaviour-Oriented- Deals with the past agreements between enterprises like anti-competitive agreements and abuse of dominant position.
- b) Structure-Oriented- Deals with future agreements between enterprises such as Merger & Amalgamation, Takeovers etc.

Anti-Competitive Agreement Prohibition: Section 3 (1) of the Act states that: **“No enterprise shall enter into any agreement with respect of production, supply, distribution, storage, acquisition or control of goods/provision of services, which causes or is likely to cause appreciable adverse effect on competition within India”**.

Thus, there are two essential requirements of Anti-Competitive Agreements:

- i. There should be an agreement.
- ii. Such agreement must cause or is likely to cause an appreciable adverse effect on competition in a relevant market in India. The relevant market may be a geographical or the market of a product.

ENTITIES THAT ARE COVERED UNDER ANTI-COMPETITIVE AGREEMENTS:

Subsection (1) identifies the entities that are included in this section. These include agreement between:

1. Enterprises
2. Association of Enterprises
3. Enterprise and Association of Enterprises
4. Persons
5. Association of persons
6. Person and Association of Persons
7. Person and enterprise
8. Association of person and enterprise
9. Association of enterprise and persons
10. Association of persons and association of enterprises

CATEGORIES OF ANTI-COMPETITIVE AGREEMENTS

These categories broadly include the following agreements, between two entities, engaged in trade of similar or identical goods or services:

1. That directly or indirectly leads to determination of purchase or sale prices;
2. That limits or controls production, supply, markets, technical development, investment or provision of services;

3. That shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
4. That directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition. Whether an agreement has an anti-competitive effect on the competition in India is to be decided by the Competition Commission of India. According to Section 19 of the Act, the parameters for judging or determining whether the agreement can have appreciable adverse impact on the competition include the following:
 5. Creation of barriers to new entrants in the market;
 6. Driving existing competitors out of the market;
 7. Foreclosure of competition by hindering entry into the market;
 8. Accrual of benefits to consumers;
 9. Improvements in production or distribution of goods or provision of services;
 10. Promotion of technical, scientific and economic development utilizing production or distribution of goods or provision of services.

III. TYPES OF ANTI-COMPETITIVE AGREEMENTS

There are two kinds of anti-competitive agreements viz.

1. Horizontal Anti-Competitive Agreements [Section 3(3)]
2. Vertical Anti-Competitive Agreements [Section 3(4)]

More specifically, section 3 of the Competition Act prohibits anticompetitive agreements that cause or are likely to cause an AAEC in India.

VI. HORIZONTAL VS VERTICAL ANTI-COMPETITIVE AGREEMENTS

Horizontal Anti-Competitive Agreement	Vertical Anti-Competitive Agreement
Section 3(3) of Competition Act 2002	Section 3(4) of Competition Act 2002
1. Horizontal Anti-Competitive Agreement is entered between enterprises or persons operating at the same level in the supply chain. Like agreements between manufactures, or agreements between distributors.	1. Vertical Anti-Competitive Agreement is entered between enterprises or persons operating at the different level of supply chain and relating to conditions under which parties may purchase, sale or resell certain goods or services. Like An agreement between ‘manufacturer and supplier’ or between ‘Producers and Whole-Sellers’ or between ‘Producers, Wholesalers and Retailers.’

<p>2. Horizontal Anti-Competitive Agreement is presumed to have an appreciable adverse effect on competition (Per se).</p>	<p>2. Vertical Anti-Competitive Agreement is subject to rule or reason-type approach. (i.e., need to be assessed for effect on competition) (Rule of Reason).</p>
<p>Types of Horizontal Anti-Competitive Agreements:</p>	<p>Types of Vertical Anti-Competitive Agreements:</p>
<ol style="list-style-type: none"> 1. Price-Fixing Agreements [Section 3(3)(a)] 2. Limiting Or Controlling Production And Investment [Section 3(3)(b)] 3. Market Allocation And Sharing [Section 3(3)(c)] 4. Bid Rigging Or Collusive Bidding [Section 3(3)(d)] 	<ol style="list-style-type: none"> 1. Tie-In Arrangement- Imposing a condition on the purchaser of goods, to purchase some other goods and thus selling goods which is not of purchaser's choice. For Example: Requiring a person to keep FD with the Bank while offering him a locker, Requiring a stabilizer to be bought along with the refrigerator. 2. Exclusive Supply Arrangement- An agreement restricting the purchase in course of trade from acquiring the goods of any other seller (e.g. restricting a purchaser in the course of his trade from dealing in any goods other than those of the seller). 3. Exclusive Distribution Arrangement- Agreement to limit or restrict the output or supply of any goods to any market or area (e.g. limiting/restricting supply of goods or allocate any area or market for the sale of goods). 4. Refusal To Deal- Restricting by any method any person/ classes of persons to whom goods are sold. 5. Resale Price Maintenance- Selling goods with the condition to resale at stipulated prices.

TYPES OF HORIZONTAL ANTI-COMPETITIVE AGREEMENTS:



TYPES OF VERTICAL ANTI-COMPETITIVE AGREEMENTS:



As a first step in establishing the existence of a cartel, the CCI must show that competitors had entered into an agreement to fix prices, limit or control supply, production, markets, technical development, investment or provision of services, share or allocate markets or rig bids. The Competition Act defines 'agreement' widely. The CCI has also clarified (in its decisional practice) that the existence of an anti-competitive agreement can be inferred from a number of 'coincidences' and 'indicia'. The CCI and the DG also have wide powers to collect evidence, including the power to search and seize documents, and to collect evidence through dawn raids, to establish the existence of a cartel.

Once a horizontal agreement is found to exist, it is presumed to cause an appreciable adverse effect on competition (AAEC) unless the agreement relates to an efficiency-enhancing joint venture.

This presumption is rebuttable. However, the CCI's decisional practice indicates that this burden is onerous.

A violation of section 3(3) of the Competition Act may not arise if two or more entities are part of the same group and therefore, the companies are able to demonstrate that they are a Single Economic Entity (SEE) with common economic objectives. According to the well-recognised SEE principle, where two (or more) entities, part of the same group are able to adequately demonstrate that they share common economic incentives and are under the common day-to-day control of either each other or a third common controlling enterprise, such entities cannot be said to compete with one another.

DEALING WITH ANTI-COMPETITIVE AGREEMENTS

After an inquiry if the commission finds that the agreement in question falls within the category of Section 3, it can pass any of the following orders as the case may be:

1. Direct the person, enterprise or association involved in the agreement to discontinue or re-enter such agreement.
2. Impose such penalties on person enterprise or association, as it deems fit. Such penalties shall not exceed ten percent of the average turnover for the preceding three financial years.
3. In cases of cartels the penalties mentioned above shall extend to each producer, seller, distributor, trader or service provider included in that cartel and the amount of penalty could extend upto either three times of its profit for each year of the agreement's continuance or ten percent, whichever is higher.
4. Direct for modification of the agreement to the extent and in the manner as may be specified in the order of the commission.
5. Payment of cost and issuing of directions to the enterprise to comply with the orders.
6. Pass any such order or direction as it may deem fit.

Agreements that are explicit or implicit, to fix prices, to limit production and supply, to assign market share or sales quotas, or to involve in collusive bidding or bid-rigging in one or more markets are all aiming at creating Cartels.

LENIENCY PROGRAMME BY CCI IN INDIA: LESSER PENALTY REGULATION

The CCI's leniency programme seeks to encourage cartel participants who admit to being involved in conduct that could result in contravention of the Competition Act to break rank and provide information against their fellow cartel members under the Lesser Penalty Regulations. Strong cartel sanctions also provide an incentive for cartel participants to defect from the secret agreement and provide information to investigators. The threat of very large fines against organisations for cartel conduct creates an incentive for them to defect from the cartel and to offer co-operation to the investigators in exchange for leniency in punishment. Similarly, the threat of strong sanctions against individuals provides added incentives for those individuals to "blow the whistle" on cartel conduct and to offer co-operation to government investigators in exchange for reduction or elimination of the punishment. To take advantage of these incentives, many countries now have formal "leniency programmes", under which an enterprise that is the first to offer co-operation in a cartel investigation is either excused from punishment or receives a lesser sanction.

As per the Competition Act, any member of a cartel (enterprise or individual) can file a leniency application with the CCI at any time prior to the DG submitting its investigation report to the CCI, seeking a reduction in penalty in exchange for 'full, true and vital disclosure' of information and evidence of substantial value (eg. regarding the existence of the cartel, its members and duration). The CCI is empowered to grant a reduction in penalty of up to 100 per cent to the first leniency applicant, up to 50 per cent to the second leniency applicant, and up to 30 per cent to any subsequent leniency applicant if the applicant provides additional valuable information that was previously unknown to the CCI. Similar to other mature jurisdictions, the benefit of CCI's leniency programme is only available for cartel violations and does not extend to abuse of dominance and vertical restraint violations.

In January 2017, the CCI issued its first order under the leniency regime in a case involving bid-rigging for tenders relating to the supply of fans to the Indian Railways (Brushless DC Fans). The CCI granted the leniency applicant a reduction in penalty of up to 75 per cent as:

- It was the first and only participant to accept the existence of a cartel;



- It was the first and only participant to submit adequate evidence to the CCI, hence revealing the modus operandi of the cartel; and
- It did so despite the application being made after the initiation of the investigation, and the CCI and DG already being in possession of some evidence against the cartel participants.

Shortly after this decision, the CCI amended the Lesser Penalty Regulations to streamline and strengthen its leniency programme (the Amendment). The Amendment expanded the scope of the Lesser Penalty Regulations by:

- Allowing individuals to approach the CCI with evidence on collusion;
- Abolishing the earlier upper limit on the number of leniency applicants who could benefit from the penalty waiver (i.e. three);
- Allowing the DG to disclose confidential information from a leniency application to the other members of the cartel for the purpose of investigation (subject to approval by the leniency applicant or, where the applicant has not agreed to such disclosure, the CCI); and
- Requiring the leniency applicant to furnish an estimate of the volume of affected business in India.

The leniency regime appears to have been a success, given that the CCI has investigated and passed a number of orders pursuant to leniency applications. Further, the CCI decisions under the leniency regime provide additional clarity on how the CCI determines reduction of penalty. For instance, in a case involving bid rigging between two broadcasting companies, Globecast and Essel Shyam Communications Ltd (ESCL), the CCI found that the parties had contravened section 3(3)(d) of the Competition Act by exchanging sensitive information related to bids for broadcasting of various sporting events such as cricket, Formula One and hockey. Importantly, the CCI granted a 100 per cent reduction in penalty to Globecast for submitting evidence that enabled the CCI to form a prima facie opinion regarding the existence of the cartel, including email correspondence in relation to the submission of bids in a concerted manner, sharing sensitive price information and a forensic report containing mirror images of confiscated

laptops and mobiles. While ESCL also furnished certain additional information to the CCI in its leniency application, it was granted only a 30 per cent reduction in penalty as its application was received after the initiation of the investigation.

BID-RIGGING AND PRICE-FIXING

Bid-rigging refers to agreements between competitors or enterprises engaged in identical or similar production or trading of goods or provision of services that have the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding. Bid-rigging is prohibited under the Competition Act and is presumed to cause appreciable adverse effect on competition (AAEC). In fact, section 3(3)(d) of the Competition Act is applicable to all existing and prospective bidders with respect to any tender, regardless of whether they were engaged in the business of manufacture or sale of the purported infringing product at the time of bidding. However, the allegation of an agreement to rig bids cannot be sustained in the absence of any evidence of collusion among participating bidders and non-participating companies, or that participating bidders had prior knowledge regarding non-participation of other companies.

The CCI has been proactive in examining bid-rigging cases, especially those involving public procurement. This is evident from the fact that the CCI has initiated investigations into potential bid-rigging on its own volition in multiple instances. The CCI may rely on smoking-gun or circumstantial evidence to establish bid-rigging, as direct evidence of bid-rigging is not always easily traceable. For instance, in concluding the existence of bid-rigging with respect to the operation and management of solid waste in *Pune*, the CCI relied on the existence of proxy bidders, as well as technical and price bids that were scanned and uploaded from the same IP address. The circumstantial evidence that the CCI has relied on in its past decisional practice include:

- The quoting of unusually higher rates than previous tenders;
- A heightened frequency of calls and SMSs exchanged between bidders prior to the bid;
- The exchange of sensitive information prior to the bid;
- Common mistakes in tender forms such as typographical errors;
- A common pattern in the bidders' price increment despite different costs of production, taxes and so on;
- Consecutive serial numbers for demand drafts;
- The quoting of identical freight charges;
- The total quantity tendered matching the total quantity collectively bid for by the bidders; and
- Similarity in documentation submitted for the bids along with call detail records, screenshots of messages, etc.

Further, the CCI dismissed a complaint alleging bid-rigging by bidders circulating price information related to previous successful bids via a WhatsApp group.

Price-fixing refers to an agreement between market participants to collectively raise, lower or stabilise prices to control supply and demand. Price-fixing is prohibited under the Competition

Act and is presumed to cause AAEC. Similar to bid-rigging, the allegation of an agreement to fix prices among competitors cannot be sustained in the absence of any evidence of collusion among them.

SHIFTING TREND IN DECIDING IMPLEMENTATION OF AN ANTICOMPETITIVE AGREEMENT

In a previous decision under the leniency regime, the CCI had clarified that it does not consider mere exchange of commercially sensitive information between competitors to be sufficient to establish contravention of section 3 of the Competition Act, in the absence of an agreement and its implementation. That said, in a recent decision involving five bearings manufacturers, the CCI adopted a different approach. The CCI found that five bearing manufacturers met to decide prices quoted to Original Equipment Manufacturers in the automotive bearings market. However, there was no evidence of any implementation of the exchanged information. The fact that the bearings manufacturers met to decide prices was considered sufficient by the CCI to establish a cartel violation. The CCI's view was that the information exchange compromised the parties' independence to quote rates that they would have quoted absent the coordination. While the CCI acknowledged that it was possible for the cartel not to have led to a collusive outcome, it did not consider 'implementation' of the arrangement to be necessary to establish the contravention. Therefore, the decision clarifies that the establishment of an anticompetitive agreement (without its implementation) would be sufficient to establish a cartel contravention under the Competition Act.

CENTRAL GOVERNMENT POWER TO EXEMPT

With all the above discussion underway one needs also remember that under Section 54 the Central Government may, by notification, exempt from the application of this Act for such a period as it may specify in notification. This exemption can be applicable to any class of enterprises in the interest of security of the State or public interest. Under any treaty, agreement or convention with any other country or countries any practice or agreement may be treated as exempted, and also for performance of any sovereign function on behalf of the Central Government or a State Government.

INTERPLAY BETWEEN CONSUMER PROTECTION AND COMPETITION LAW

Competition enforcement world over is predicated on two identifiable theories of harm. We proceed with a fundamental premise: both competition and consumer protection law embrace the interests of the consumer, albeit in different ways. It considers harm to consumers and harm to competition as pivotal. Anticompetitive agreements, particularly hardcore cartels, harm consumers in developed, as well as in developing countries. In addition, cartelized industry sectors lack competition which certainly reduces competitiveness in the long run and may have a negative impact on the overall performance of a country's economy. However, this dual association with consumer welfare and protection of competition often requires the competition regulator to re-prioritize enforcement

measures - at times in the interests of consumers and at times in the interests of business. The objective of competition law and policy is to eliminate such anticompetitive practices, including hardcore cartels, thereby enhancing consumer welfare and contributing to a country's competitiveness. Nonetheless, some question whether competition law enforcement in fact positively impacts economic growth in developing countries.

ADVISORY ROLE OF COMPANY SECRETARY

The Competition Secretary plays a vital role as adviser in Horizontal, Vertical, Conglomerate Mergers and Acquisitions. Understanding the basic objective of the CCI to eliminate practices having adverse effects on competition, and to promote and sustain competition for protecting consumer interest of consumers a Company Secretary can play a vibrant role. As per Section 35 of CCI Act, Company Secretary is authorized to present the case before the Commission. Company Secretary who is designated as "Compliance Officer" of the Company is responsible to advise the Board in the matter and ensure the compliance under this act. Whereas, Company Secretary who is in Whole Time practice, being an expert of Company Law will be in a better position to represent before the Competition Commission of India.

CONCLUSION

In conclusion we may say that the burden of proof to show an appreciable adverse effect on competition (AAEC) lies on the person who alleges that a particular joint venture is or likely to result in an AAEC. Cartels and anti-competitive agreements essentially represent agreements that harm competition in the market. However, uncovering the presence of cartels is a tedious task for regulatory authorities across the globe. Cartels are operations of utmost secrecy and the participating entities go to extreme lengths to escape the eye of the regulatory watchdog. Cartels often thrive in secrecy. A popular and widely adopted tool for cartel detection is the leniency policy, which grants a fine reduction (up to immunity) in exchange for the reporting of a cartel or significant cooperation with an investigation. CCI aims at protecting and sustaining competition by preventing practices having appreciable adverse effects on competition.

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Digital Transformation & Artificial Intelligence – Future of Businesses

Digitization and digitalization have been buzzwords. Lately, digital transformation has also become a popular phrase in business and technology circles. They are commonly thought to be different words for the same thing, but they are actually three separate technology concepts that have different implications for your business.



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INTRODUCTION

Since the advent of the digital age, digitization and digitalization have been buzzwords. Lately, digital transformation has also become a popular phrase in business and technology circles. They are commonly thought to be different words for the same thing, but they are actually three separate technology concepts that have different implications for your business. Let us take a closer look at each one.

DIGITIZATION, DIGITALIZATION & DIGITAL TRANSFORMATION

A1. Digitization:- It is the process of converting information from a physical / analogue format into a digital one by use of Computer Devices. Most business enterprises today have started digitizing their data for getting faster & accurate results after putting their adequate inputs.

A2. Digitalization:- It is a more in-depth transformation of a business model towards using digital processes rather than analogue ones. (e.g. - a company deciding to turn the handling and processing of all financial documents digital would be considered digitalization).

e.g. - A company can digitalise its business operations in the following way:-

Usage of	Name of Business Operations
ERP	For Supply Chain Management
CRM	For Sales Management
Digital Marketing	For Demand Generation

Usage of	Name of Business Operations
E-Commerce	For Demand Fulfilment
IOT based Devices	For Logistics Automation
RPA	At Production Plant
Cloud Functional Software	For Finance, HR & Marketing Efficiency
Video Surveillance	For Governance Practices Compliances
Conventional AI & Business Intelligence	For MIS Reporting System

However in case of Service Oriented Organisation, the above process may be different, depending the nature of exact business operations.

A3. Digital Transformation:-

Digital transformation is the process of streamlining a company's core operations and customer value propositions using emerging technologies. It is a systematic approach with comprehensive clear and integrated strategy that requires sufficient commitment from leadership, changes to culture, structure, processes, and governance, and implementation of proper check on solving the problems thereof in the complexities.

Digitalization is sometimes referred to as “digital transformation.” However, digital transformation is a broader concept that encompasses not just the digitalization process but also the organizational change that accompanies it. **This transformation is a journey that starts with identifying the processes which can be improved or replaced with digital solutions and then implementing those solutions to maximize their impact.**

Increasing usage of smart devices, improved connectivity, and demand for high-end-user experience are among the key aspects driving the digital transformation trend, taking services to the customer's doorstep. OECD states that **digital maturity goes hand in hand with performance.**

It is essential that companies should equip themselves with innovative and efficient digital tools. [e.g. - The strength of GAFAM proves every day how modern intranet platforms, and various management and communication tools are becoming indispensable parts of digital transformation and the success of any business].

A3.1 Factors driving needs for Digital Transformation:-

Following factors are driving needs for Digital Transformation.

1) Customer is Crucial:-

Seamless delivery of services, high-end-user experience, personalized product experience, transparency, and security stand at the core of customer satisfaction in today's fast-changing market trend.

With the help of Digital transformation strategies the organisation will be in a position to deliver the customer services quite efficiently and effectively. In this age of the Internet of Things, digital transformation is vital to stay ahead of the competition. Post-Covid, most of the customer bases have become reliant on digital technologies.

2) Continuous Improvement:-

A seamless innovation delivery channel built on alert principles is key to achieving continuous improvement. The channel should be so effective and be able to easily track changing market trends, test innovative products and facilitate fast feedback mechanisms to iterate products for enhancements. If one ignores the continuous refinement, the products will no longer be future-proof and the deliverables are at risk of becoming outdated.

3) Modernize Infrastructure:-

It is important to modernize legacy infrastructure to support digital transformation strategies. The world has become increasingly interconnected and given the digital transformation strategies which have fostered digital innovation, change is happening at a higher rate than ever before. These digital transformation trends are difficult to cope with and the companies which have their hands full rope in MSPs to execute digital transformation strategies. (e.g.- Microservice Architecture, APIs, and DevOps can be helpful in this regard for continuous integration and delivery resulting in shorter release cycles).

4) Operating Model:-

Nowadays, customers are in need of a hybrid experience, a combination of never-seen digital experience in terms of speed and convenience, and the personal look and feel of the product. This is possible by transforming the business in three different digital transformation technologies models:

- Digital as Business – At the management level.
- Digital as New Line of Business – At the next level a separate digital division to take care of digital activities.
- Digital Native – New set up with its own technology stack, focusing directly on customers.

These are the various types of digital business transformation models available. However, selecting the right one needs due diligence and expertise. There are many players in the market where the company (seeking digital transformation) can look for its actual needs.

5) Identify Viable Solutions:-

It is necessary to make sure not to miss out on anything in the process of executing the digital transformation strategy.

Even the things which one feel obsolete can make some crucial contribution. Identify and leverage the potential of all the minimum viable digital transformation solutions, and introduce them across the digital transformation services. Ensure to make the effective and best utilization of existing options too.

6) Leverage the Power of Data:-

Business organisations should realize the power of data and related tools and resources in driving business success. They have to think more about implementing data analytics practices to understand and monitor customer thinking patterns. This helps them produce the most relevant products that match customer needs. This will also help them gain key market insights that can further assist them in enhancing product offerings, and experience and deepening the customer relationship.

7) Improve Skillset:-

It is necessary that finance sector employees will need to upgrade their skill set to fulfil existing and changing operational demands. These needs have the potential to be catered to by digital transformation services. The drive for improved skillsets for the enterprise digital transformation will require necessary investment for change in operating culture, thinking patterns, the culture of learning, skillset training, and more across the teams.

8) Completely Digital-driven:-

Finally, the organization should possess all digital capabilities such as strategy, culture, relevant technologies, funding, skillset, and more that contribute to a complete digital transformation journey. The digital transformation strategy should also factor in the latest digital transformation trends and dole out a digital transformation framework that is based on customer requirements. Learn from the experiences, adopt the best available practices and develop a perfect digital strategy.

A3.2 Advantages of Digital Transformation:-

Using high-performing and innovative digital tools have many **advantages**, including, but not limited to:

- time optimization;
- faster time to market;
- increased return on investment;
- improved internal and external communication;
- information centralization;
- enhanced employee experience;
- boost digital adoption;
- customer retention and new sales.

A3.3 Types of Digital Transformation Tools :-**1. Collaborative Sets:-**

It allows to manage data, execute critical business functions, organize activities holistically across the organization, and prepare for the new digital era. (e.g. Microsoft World, Office 365 facilitates corporate communication, exchange,

information storage, and business activity management like Word, Excel, Teams, Outlook, and OneDrive, etc.)

2. Communication Tools:-

Good communication is a pre-requisite for the success of any company. Communication impacts the productivity and success of your employees and organization on a daily basis. Digital technologies are transforming the way employees work. **Employees are no longer constrained by the limits of a physical office.** Tools like **Skype, Zoom, and Google Chat** bring communication to the next level with video conferencing and face to face conversations.

3. New Generation Intranet Platforms:-

A next-generation intranet platform enables and propels the digital transformation process. Following are the important tools in this regard.

- Integrated Content Management
- Intelligent Global Search Engine
- Natively Mobile App
- Employee Social Advocacy Tool
- Fully Customizable Design
- Multilingual Interface
- Manageable Permissions and Governance
- Real-time Communication Functionality

New generation intranet platforms facilitate corporate communication both internally, by building strong team communities for employees to collaborate, and externally, by facilitating external social media sharing. When used effectively, human resources, internal communications, and IT departments have the ability to collect, store, and centralize all corporate information, significantly improve employee engagement, increase daily productivity, and build a strong corporate culture.

4. CRM Tools:-

CRM systems can play a significant role in the success of your digital transformation strategy. To stay competitive, one need to be able to keep up with customer's increasingly high expectations and advanced requirements, which can change from one day to the next. A CRM offers several benefits – it helps companies understand and address the needs of customers, automate tasks, shorten sales cycles, and increase retention – among others. (e.g. - Salesforce, Hubspot, or Freshdesk, which are widely used among sales and marketing teams). Also, when available, take advantage of artificial intelligence and its ability to more quickly provide insights and help to understand the target market.

Based on the data from your CRM, **one can develop an effective go-to-market strategy to meet your customers' expectations.**

Company Secretaries are required to take training in AI to be able to function effectively in a technological environment. Introduction of AI in the legal sector will never replace company secretaries but will alter the manner in which they provide services to their companies and clients.

5. CMS Tools:-

CMS software allows to create and manage digital content like websites and mobile apps. It is necessary to keep in mind, web content and presentation is critical in buyer's decision-making process. Successful websites are visually attractive, easy to navigate, provide targeted, relevant information, and answer frequently asked questions.

Some of the more well-known systems include *WordPress, Prestashop, or Drupal*. **Each has its own advantages in terms of functionality, ease-of-use, and pricing, compared to tailor-made-sites.** If one does not have a dedicated internal team to create and manage CMS, it can hire an expert agency dedicated to building ideal website and customer experience.

6. Cloud Storage:-

Cloud storage solutions are essential for organizations looking for scalability, rapid deployment, and superior information management. With cloud storage, there is no hardware so one can quickly remove or increase capacity on demand. Information is available globally from any system at any time, so one is not to be concerned with regional accessibility. Frontline workers, retail associates, frequent travellers, and many other types of mobile workers rely heavily on cloud storage solutions to access data without being restrained to a physical office.

Additionally, crisis situations like the worldwide COVID period, highlighted the importance of digitalization. Many organizations struggled to provide remote access to their employees, as they rely on local, physical storage solutions. With the rise of remote working, cloud storage solutions are indispensable for organizations that want to maintain business activity at all times and from anywhere.

Cloud storage solutions are also proven to deliver high security standards. Data security is of utmost importance to all businesses, especially now that many regulations like the **GDPR** compliances require companies to take extra security measures. (e.g. - Google Drive, OneDrive, and DropBox prove that they can deliver the same security standards than internal storage solutions).

7. Project Management Tools:-

Successful project management means greater efficiency, faster time to market, and beating the competition. It is

important to not only choose the right digital project management tool for organization, but also to ensure the tool is widely adopted.

An effectively utilized project management tool will help teams create and schedule tasks, stick to project timelines, track progress, increase efficiency and responsiveness, and provide holistic visibility for team members and managers. Ultimately, it will lead to more productive employees, successful projects, and happy customers.

To boost adoption of project management tools, one can set up email alerts or notifications whenever there is a change in project status, a team member completes a task, or help is requested. Sharing documents within the tool allows to address complicated workflows and tasks with several people in an instant, without having to go through mailbox or organize lengthy meetings.

e.g. - Some well-known project management solutions include *Jira*, *Trello*, *Monday*, and *Asana* Research are available with the various options and choose the one that fits one's needs best.

8. Recruitment Management Tools:-

Recruitment and onboarding have long term effects on corporate culture, performance, and profitability, and so it is important to invest wisely in the tools that facilitate these processes.

With a digital recruitment tool, one can easily identify and share resumes with team members and hiring managers. Comments, post interview feedback, and related work will enable the recruitment process that leading to informed and collective decisions. *TalentSoft* and *SmartRecruiters* are among the most relevant recruitment management tools today, that help HR and recruitment teams save time and helps in recruiting suitable candidates within the time span.

9. Digital Accounting Tools:-

It is one of the most important parts of any organization for efficiency, security, and accuracy. **Investing in finance and accounting team's digital tools and enablement** can help accelerate processes, mitigate risk, and save money.

[e.g. - *Sage*, *NetSuite*, and *SAP ERP* are widely adopted, but **when one is evaluating digital accounting tools, he can also look for external arrangement in the form of third party integrations**, cloud availability, etc.].

10. Payroll Management Tools:-

Payroll management is another time-consuming action that requires a lot of manual and repetitive work, but it can be done faster, more easily and accurately with the right tool in place.

When transforming a business one needs to include tools to automate various HR processes like the payroll and expenses processes. Tools like *Payfit*, *Workday*, and *Figgo* allow to centralize and manage employee absences, expenses, project hours, career development, and more.

ARTIFICIAL INTELLIGENCE

Artificial intelligence is one of the core technologies in digital transformation that is helping businesses scale up. It is now being integrated into and deployed across a variety of sectors, such as national security, healthcare, logistics, education and many more with its adoption.

B1. Definition of Artificial Intelligence (AI):-

Artificial intelligence is the ability of computers and machines to mimic the functions of the human brain. Typically, AI refers to the process of developing systems with the capabilities of human intelligence, such as the ability to learn from past experiences, reason, discover meaning, and generalize.

The four main types of Artificial Intelligence include –

- i. Reactive machines,
- ii. Limited memory,
- iii. Theory of mind, and
- iv. Self-awareness.

They together enable technologies such as **Natural Language Processing, Computer Vision, Facial Recognition, Machine Learning, and Deep Learning**. Most AIs with machine learning work as assistive technology, recommending the best actions to the organizations. As a result, they can maximize revenues, personalize processes, make accurate use of data, and provide better customer service.

B2. Role of AI in helping Organizations Accelerate Digital Transformation:-

Artificial intelligence is a *driving force* behind digital transformation, encompassing innovations such as Machine Learning, Natural Language Processing, Data Labelling Platforms and Predictive Analytics.

As a result of these technologies, organizations can analyse data to anticipate the future and suggest the most effective strategies. By using AI-driven automation, service providers can deliver reliable services with 24/7 support through chatbots. In addition, smart data analytics can personalize interactions, optimize workflows, and reduce support costs. With AI's ability to learn and improve with more data, it can also assist organizations in developing successful digital transformation roadmaps.

B3. Benefits of Digital Transformation Coupled With AI:-

Organisations is using Digital AI in many ways to innovate, improve, and scale up. AI is making a positive impact on member-based organizations and helping them accelerate their digital transformation.

1. Close Watch on Customers' Needs and Satisfaction:-

AI constantly analyses the data anticipating customer behaviour from it. By doing so, brands can create valuable content, boost revenue, and enhance customer experiences. Organizations can develop much more



accurate customers' profiles by using Big Data and AI analytics. The AI algorithms that track the behaviours and interactions of each customer further assist in determining which marketing strategies work best. These algorithms also optimize advertising campaigns, set the right pricing strategies, and drive more memberships.

2. Profitable Growth:-

AI is extremely fast and automatically analyses a vast amount of data in real-time to help improve decision-making. The use of AI increases revenue in various ways for any company. It allows businesses to **detect very weak areas** and generate accurate predictions about prospects, competitors, and market trends.

3. Effective Decision-Making:-

Once the AI solution is implemented in the operations, it starts processing data and analysing the trend to identify the best course of action which appear in the form of suggestions. Making decisions with AI is far more accurate than making decisions by humans, free of emotions and biases. Moreover, computers can execute complex decisions quickly, something that would take humans months to accomplish.

AI can help organizations in understanding their customers and tailor their marketing strategies accordingly. It analyses the CRM data to segment members by demographics and similar interests. It can also suggest improvements in the membership processes based on the feedback and experiences of the current members for retention and engagement.

4. Improved Productivity:-

Automating specific manual tasks through Artificial Intelligence enables organizations to become more productive. Artificial intelligence can increase productivity in several ways. They are able to collect information quickly, saving employees time so they can focus on their core missions. Additionally, they can perform complex

calculations, identify patterns and automate routine tasks, giving organizations a **competitive edge** in gaining insights to make informed decisions.

5. Exceptional Customer Service:-

In many cases, artificial intelligence can handle low-level communication steps, reducing employee stress. Chatbots, for instance, can handle the initial steps of customer support like gathering their name, account information, and the type of support they need. This information is then relayed to a human representative, who can take over from there if needed.

6. Enhanced Customers' Experience:-

Using AI-driven qualitative methods can help business organisations to identify what they are missing and what their customers want. In conjunction with data analytics, it also provides access to **real-time user data**. In this way, they can keep up with the changes in their behaviour and expectations and offer highly relevant content to improve their members' journey.

7. Increased Trust and Loyalty:-

Using Artificial Intelligence, businesses can offer hyper-personalized content and a comprehensive marketing strategy aimed at retaining customers through long-lasting relationships. The predictive analysis through AI processes data to provide valuable insights which enable them to know the pain points and retain them with effective strategies. All these transformative AI initiatives make them feel heard, which in turn gains their trust and loyalty to the organization.

8. Personalized Skill Training:-

With the use of AI in organizations, employees can learn new skills according to their capabilities, understanding, and intelligence. An **AI-powered training program** can be tailored to the needs of each employee by modifying the modules. AI offers a personalized learning path based on individual learning styles and progress. It involves

video tutorials, written materials, gamification, audio-guided presentations, or live training.

Insights gained through AI are also useful in developing predictive capabilities since they can reveal learner behaviour more deeply. Organizations can utilize the insights to develop content that is relevant, engaging, and tailored to each employee's needs.

C1. Initiative of Government of India:-

ARTIFICIAL INTELLIGENCE UNDER THE MINISTRY OF ELECTRONICS & INFORMATION & TECHNOLOGY

Considering the significant use & development of AI in various fields of businesses as well as in other areas, GOI under the "Ministry of Electronics & Information Technology" has constituted **Four** Committees consisting of Experts which will guide the GOI for absorption of AI in various departments / sections to reap the overall benefits of AI.

C1.2 Application of Artificial Intelligence:-

AI is positioned at the core of the next-gen software technologies in the market. It holds the potential to be a major driver of economic growth and social progress and can be exploited for the benefit of citizens and the country. AI has a huge potential to address the domestic problems in the areas such as, healthcare, retail, finance, Agriculture, Food, Water Resources, Environment and Pollution, Education, Specially Abled, Transportation, Energy, Public Safety, Disaster Management, Legal & Ethical Issues, etc.

C1.3 Use of AI by Income Tax Department, GOI:-

The Central Board of Direct Taxes (CBDT) has notified the Faceless Inquiry or Valuation Scheme, 2022 introducing artificial intelligence for the assessment proceedings under section 142 of the Income Tax Act.

Section 142(1) of the Income Tax Act 1961, empowers Income Tax authorities to issue a notice for making an assessment where return has been filed or if return has not been filed then to furnish the required information in the prescribed manner. As per the notification, "automated allocation" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources.

C1.4 Use of AI for CBIC:-

CBIC has decided to use artificial intelligence, data analytics and internet of things (IoT) to identify leakages arising from "frauds, tax evasion, gaming system, claiming wrong refunds, creating shell companies, colluding with the rare black sheep in the system".

COMPANY SECRETARY IN ARTIFICIAL INTELLIGENCE

A company secretary serves as a crucial link between the company and its shareholders, the Board of Directors, and

Government Authorities. Their role is to ensure that all the procedures of the Board are followed and reviewed regularly. The secretary commands a senior position in the value chain. He/ she acts as a morality seeker of the company. With the advancement of technology, company secretaries can spend less time on data processing. Instead of it, the introduction of Artificial Intelligence shall allow secretaries to spend effective time on problem-solving and creative thinking.

D1. Role of Company Secretary in the Use of Artificial Intelligence (AI):-

Presently, a company secretary is performing the task of collection of right data and information to place before the board. Further, the advisory role of the company secretary is complex and challenging which requires knowledge, opinion and judgement, critical analysis of the situation and these human traits are difficult to automate as it depends on the expertise of professionals.

The use of automated machines through social platforms helps in tracking facial expressions. AI proves to be useful while conducting Board Evaluations to assess the director's performance. Company Secretaries are required to take training in AI to be able to function effectively in a technological environment. Introduction of AI in the legal sector will never replace company secretaries but will alter the manner in which they provide services to their companies and clients. Company Secretaries are the face of corporate governance and this can never be automated as a whole. Due to the rapid progress of AI, company secretaries should look at it as great opportunity to enhance judgment/opinion/decision making/leadership skills and emotional intelligence rather than devoting much time on administrative and repetitive tasks.

CONCLUSION

Digital Transformation & Artificial Intelligence have been playing and will play a pivotal role in the furtherance of the business objectives in a big way, subject to the proper adoption and implementation thereof in the business organisation. It may be looked at by business owners a costly and disastrous affair, if the same is not properly adopted and implemented, but looking at the benefits, the business owners will have to take calculated risk & carry out the same, if they really want to compete in the business with their competitors in future.

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Direct Selling Rules 2021 and Its Impacts & Role of CS

The MLM model was not regulated in India till recently. On 28th December 2021, in order to alleviate the difficulties that were being faced in monitoring such schemes, Government of India passed Rules for Direct Selling Business in the form of Consumer Protection (Direct Selling) Rules 2021.



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INTRODUCTION

Many businesses have thrived in our country, over the last several years, and one such business which perhaps outshined other businesses during certain times, pertains to Multi Level Marketing (“MLM”), which is in fact a business that involves selling products to family and friends, and recruiting other people to do the same. It is also known by other terms ie “Network marketing”, “Direct marketing”, “Direct selling” etc.

HOW MLMs FUNCTION

The organisations that are into MLM usually sell their products or services through one-to-one sales, meaning sale directly to other people, from a person’s home, a customer’s home on online. If a person joins an MLM scheme, he could be referred to as an independent distributor, or participant or contractor. The business in MLM usually happens in 2 ways:

- By selling the MLM products directly to retail customers who are not involved in the MLM.
- By recruiting new distributors and earning commissions based on what they buy and their selling to retail customers.

Suppose a person starts MLM, the persons that he recruits and the people that they recruit, and so on, become his “sales network” or “downline”.

REGULATION FOR DIRECT SELLING

The MLM model was not regulated in India till recently. On 28th December 2021, in order to alleviate the difficulties that were being faced in monitoring such schemes, Government of India passed Rules for Direct Selling Business in the form of Consumer Protection (Direct Selling) Rules 2021 (“the Rules”).

APPLICABILITY OF THE RULES

- All goods and services bought or sold through direct selling.
- All models of Direct selling.
- All Direct selling entities offering goods and services to consumers in India.
- All forms of unfair trade practices across all models of Direct selling.

Existing Direct selling entities shall comply with the provisions of these Rules within 90 days from the date of publication of these Rules in the Official Gazette.

These Rules shall also apply to a Direct selling entity which is not established in India, but offers goods or services to consumers in India.

The direct sellers as well as the direct selling entities using e-commerce platforms for sale shall comply with the requirements of the Consumer Protection (e-Commerce) Rules, 2020.

Direct selling entity and direct sellers are prohibited from:

- (i) Promoting a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business;
- (ii) Participate in money circulation scheme in the garb of doing direct selling business.

To ensure compliance of these rules by direct selling entity and direct sellers, every State Government is to set up a mechanism to monitor or supervise the activities of direct sellers and direct selling entity.

PROHIBITION OF PYRAMID SCHEMES AND MONEY CIRCULATION SCHEMES

“Pyramid Scheme” means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment or action or performance of additional subscribers to the scheme, in which the subscribers enrolling further subscribers occupy a higher position and the enrolled subscribers a lower position, resulting in a multi-layered network of subscribers with successive enrolments.” – Rule 3(i) to the Rules.

“Money circulation scheme” means the schemes defined in clause (c) of section 2 of the Prize Chits and Money Circulation

Schemes (Banning) Act, 1978 (43 of 1978) – Rule 3(f) to the Rules.

The Rules also provide that no direct selling entity or direct seller shall–

- (a) Promote a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business;
- (b) Participate in money circulation scheme in the garb of doing direct selling business.

MANDATORY MAINTENANCE OF RECORDS AT REGISTERED OFFICE

Every direct selling entity is required to maintain at its registered office, either manually or electronically, all such documents as are required under any law for the time being in force, including the following documents or records, as may be applicable, namely:–

- (a) Certificate of Incorporation;
- (b) Memorandum of Association and Articles of Association;
- (c) Permanent Account Number and Tax Deduction and Collection Account Number;
- (d) Goods and Services Tax registration;
- (e) Goods and Services Tax Returns;
- (f) Income Tax Returns;
- (g) Balance Sheet, Audit Report and such other relevant reports;
- (h) Register of direct sellers;
- (i) Certificate of Importer-Exporter code (in case of imported goods);

The Direct selling industry in India is witnessing a huge growth, last few years. It is expected that the Rules will effectively regulate the Direct selling industry and would also bring clarity in the marketplace and would give impetus to the direct selling industry, which is already providing livelihood to over 70 lakh Indians, in which more than 50% are women.

- (j) License issued under the Food Safety and Standards Authority of India Act, 2006 (34 of 2006) for the purposes of manufacture or sale of food items;
- (k) License and Registration Certificate issued under the Drugs and Cosmetics Act, 1940 (23 of 1940) for the purposes of manufacture or sale of drugs, including Ayurvedic, Siddha and Unani drugs and Homoeopathic Medicines;
- (l) Certificate of Registration of Trademark.

DUTIES OF DIRECT SELLING ENTITIES

Direct selling entity has been defined as the principal entity which sells or offers to sell goods or services through direct sellers, but does not include an entity which is engaged in a Pyramid Scheme or money circulation scheme.

The Rules provide for certain duties cast upon Direct Selling Entities which inter alia include :-

- (i) **Incorporation** under the Companies Act, 2013 or if a partnership firm, be registered under the Partnership Act,



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- 1932, or if a limited liability partnership, be registered under the Limited Liability Partnership Act, 2008;
- (ii) Have a **minimum of 1 physical location** as its registered office within India;
 - (iii) Make **self-declaration** to the effect that Direct Selling Entity has complied with the provisions of the Direct Selling Rules and is not involved in any Pyramid Scheme or money circulation scheme;
 - (iv) Have a **prior written contract** with its direct sellers in order to authorize them to sell or offer to sell its goods or services, and the terms of such agreement shall be just, fair and equitable;
 - (v) Ensure that all its direct sellers have **verified identities and physical addresses** and issue identity cards and documents only to such direct sellers;
 - (vi) **Create adequate safeguards** to ensure that goods and services offered by its direct sellers conform to applicable laws;
 - (vii) **Be liable** for the grievances arising out of the sale of goods or services by its direct sellers.
 - (viii) Every direct selling entity to **provide the following information on its website** in a clear and accessible manner:
 1. Registered name of the direct selling entity;
 2. Registered address of the direct selling entity and of its branches;
 3. Contact details, including e-mail address, fax, land line and mobile numbers of its customer care and grievance redressal officers;
 4. A ticket number for each complaint lodged through which the complainant can track the status of the complaint;
 5. Information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism and such other information which may be required by the consumers to make informed decisions;
 6. Information on available payment methods, the security of those payment methods, the fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;
 7. Total price of any goods or service in single figure, along with its break-up price showing all compulsory and voluntary charges, including delivery charges, postage and handling charges, conveyance charges and the applicable tax;
 8. Provide correct and complete information at pre-purchase stage to enable buyers to make informed

purchase decisions. No direct selling entity shall adopt any unfair trade practice in the course of its business or otherwise, and shall abide by the requirements specified in any law for the time being in force.

OTHER DUTIES OF A DIRECT SELLING ENTITY

1. All products of a direct selling entity is to comply with the declarations to be made under the Legal Metrology Act, 2009.
2. Every direct selling entity should ensure to establish an adequate grievance redressal mechanism and display the current and updated name, contact details including telephone number, email address and designation of such officer on its website, and the details of its website shall also be prominently printed on the product information sheet or pamphlet.
3. The Grievance redressal officer must acknowledge the receipt of any consumer complaint within 48 working hours of receipt of such complaint and ensure to redress the complaint normally within a period of 1 month from the date of receipt of the complaint, and in case of delay of more than a month, reasons for the delay, and the actions taken on the complaint, is to be informed to the complainant in writing.
4. Every direct selling entity shall appoint a nodal officer who shall be responsible for ensuring compliance with the provisions of the Act and the Rules made there under, and to ensure compliance with any order, or requisition, made in accordance with the provisions of any other law for the time being in force or the Rules made thereunder.
5. Every direct selling entity shall establish a mechanism for filing of complaints by consumers through its offices or branches or direct sellers, either in person or through post, telephone, e-mail or website.
6. Every direct selling entity shall maintain a record of all its direct sellers, including their identity proof, address proof, e-mail and such other contact information.
7. Every direct selling entity shall, on the request in writing made by a consumer after the purchase of any goods or services, provide him with the information regarding any direct seller from whom such consumer has made a purchase, and such information shall include the name, address, e-mail, contact number and any other information which is necessary for making communication with such direct seller for effective dispute resolution.
8. Every direct selling entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
9. No direct selling entity shall, directly or indirectly, falsely represent itself as a consumer and post reviews about its goods or services or misrepresent the quality or features of any of its goods or services.

10. A direct selling entity which explicitly or implicitly vouches for the authenticity of the goods or services sold, or guarantees that such goods or services are authentic, shall bear the liability in any action related to the authenticity of such goods or services.
11. Notwithstanding the distribution system adopted by it, a direct selling entity shall monitor the practices adopted by its direct sellers and ensure compliance with these rules by means of legally binding contract with such direct sellers.
12. Every direct selling entity shall maintain a record of relevant information allowing for the identification of all direct sellers who have been delisted by the direct selling entity and such list shall be publicly shared on its website.
13. Every direct selling entity shall become a partner in the convergence process of the National Consumer Helpline of the Central Government.

OBLIGATIONS OF DIRECT SELLERS

“Direct seller” means a person authorized by a direct selling entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.

The Rules provide for certain obligation upon Direct Sellers which inter alia include :-

- (i) Have a prior written contract with the direct selling entity for undertaking sale of, or offer to sell, any goods or services of such entity;
- (ii) At the initiation of any sale representation, truthfully and clearly identify himself, disclose the identity of the direct selling entity, the address of place of business, the nature of goods or services sold and the purpose of such solicitation to the prospect;
- (iii) Make an offer to the prospect providing accurate and complete information, demonstration of goods and services, prices, credit terms, terms of payment, return, exchange, refund policy, return policy, terms of guarantee and after-sale service;
- (iv) Provide an order form to the consumer at or prior to the time of the initial sale, which shall identify the direct selling entity and the direct seller and shall contain the name, address, registration number or enrolment number, identity proof and contact number of the direct seller, complete description of the goods or services to be supplied, the country of origin of the goods, the order date, the total amount to be paid by the consumer, the time and place for inspection of the sample and delivery of goods, consumer’s rights to cancel the order or to return the product in saleable condition and avail full refund on sums paid and complete details regarding the complaint redressal mechanism of the direct selling entity;
- (v) Obtain goods and service tax registration, Permanent Account Number registration, all applicable trade

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registrations and licenses and comply with the requirements of applicable laws, rules and regulations for sale of a product;

- (vi) Ensure that actual product delivered to the buyer matches with the description of the product given;
- (vii) Take appropriate steps to ensure the protection of all sensitive personal information provided by the consumer in accordance with the applicable laws for the time being in force and ensure adequate safeguards to prevent access to, or misuse of, data by unauthorized persons.
- (viii) A direct seller shall not–
 1. Visit a consumer’s premises without identity card and prior appointment or approval;
 2. Provide any literature to a prospect, which has not been approved by the direct selling entity;
 3. Require a prospect to purchase any literature or sales demonstration equipment;
 4. In pursuance of a sale, make any claim that is not consistent with claims authorized by the direct selling entity.

Every direct selling entity and every direct seller shall ensure that–

- (i) The terms of the offer are clear, so as to enable the consumer to know the exact nature of offer being made and the commitment involved in placing any order;
- (ii) The presentations and other representations used in direct selling shall not contain any product description, claim, illustration or other element which, directly or by implication, is likely to mislead the consumer;
- (iii) The explanation and demonstration of the goods or services offered are accurate and complete, particularly with regard to price and, if applicable, to credit conditions, terms of payment, cooling-off periods or right to return, terms of guarantee, after-sales service and delivery;
- (iv) The descriptions, claims, illustrations or other elements relating to verifiable facts are capable of substantiation;
- (v) Any misleading, deceptive or unfair trade practices are not used;
- (vi) Direct selling is not represented to the consumer as being a form of market research;
- (vii) Direct selling shall not state or imply that a guarantee, warranty or other expression having substantially the same meaning, offers to the consumer any rights in addition to those provided by law, when it does not;
- (viii) The remedial action open to the consumer shall be clearly set out in the order form or other accompanying literature provided with the goods or service;

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- (ix) The presentation of the offer does not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant;
- (x) When after-sales service is offered, details of the service are included in the guarantee or stated elsewhere in the offer and if the consumer accepts the offer, information shall be given on how the consumer can activate the service and communicate with the service agent;
- (xi) Unless otherwise stipulated in the offer, orders shall be fulfilled within the delivery date proposed to the consumer at the time of purchase and the consumer shall be informed of any undue delay as soon as it becomes apparent or comes within the knowledge of the direct selling entity or the concerned direct seller;
- (xii) In cases of delay any request for cancellation of the order by the consumer shall be granted, irrespective of whether the consumer has been informed of the delay, and the deposit, if any, shall be refunded as per the cancellation terms proposed to the consumer at the time of purchase, and if it is not possible to prevent delivery, the consumer shall be informed of the right to return the product at the direct selling company's or the direct seller's cost as per the procedure for return of the goods proposed to the consumer at the time of purchase;
- (xiii) Whether payment for the offer is on an immediate sale or installment basis, the price and terms of payment shall be clearly stated in the offer together with the nature of any additional charges such as postage, handling and taxes and, whenever possible, the amounts of such charges;
- (xiv) In the case of sales by installment, the credit terms, including the amount of any deposit or payment on account, the number, amount and periodicity of such installments and the total price compared with the immediate selling price, if any, shall be clearly shown in the offer;
- (xv) Any information needed by the consumer to understand the cost, interest and terms of any other form of credit is provided either in the offer or when the credit is offered;
- (xvi) Unless the duration of the offer and the price are clearly stated in the offer, prices shall be maintained for a reasonable period of time;
- (xvii) A direct selling entity or direct seller shall not—
 1. Indulge in fraudulent activities or sales and shall take reasonable steps to ensure that participants do not indulge in false or misleading representations or any other form of fraud, coercion, harassment, or unconscionable or unlawful means;
 2. Engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, or to the goods or services being sold by itself or by the direct seller;
 3. Indulge in mis-selling of products or services to consumers;
 4. Use, or cause or permit to be used, any fraudulent, coercive, unconscionable or unlawful means, or cause harassment, for promoting its direct selling business, or for sale of its goods or services;
 5. Refuse to take back spurious goods or deficient services and refund the consideration paid for goods and services provided;
 6. Charge any entry fee or subscription fee.
- (xviii) Direct selling entity and a direct seller shall not induce consumers to make a purchase based upon the representation that they can reduce or recover the price by referring prospective customers to the direct sellers for similar purchases.

OPPORTUNITIES FOR COMPANY SECRETARIES


Company Secretaries should go through the provisions of these Rules in a detailed manner and try to understand the intricacies involved. With these new Rules in place, the direct selling business, which earlier had no regulation as such governing their activities, have now a set of Rules which can enable them to protect themselves from some scrupulous businesses, who, in the garb of such MLMs could defame the entire industry with their malpractices, like Pyramid Schemes or Money Circulation Schemes which are now banned under the new Rules. Company Secretaries have a huge role to play in educating such players about the provisions/duties/obligations that they need to comply under the new Rules.

Also a huge opportunity have been provided to Practising Company Secretaries in Rule 5(1)(g) of the Rules which stipulate that “Every direct selling entity shall get all information provided by it on its website certified by a Company Secretary”. In fact this provisions is an exclusive opportunity provided to the Practising Company Secretaries. The onus is on PCS now to educate themselves in detail about these Rules, and convince each Direct selling entity about the importance of these Rules.

CONCLUSION

The Direct selling industry in India is witnessing a huge growth, last few years. It is expected that the Rules will effectively regulate the Direct selling industry, and would also bring clarity in the marketplace and would give impetus to the direct selling industry, which is already providing livelihood to over 70 lakh Indians, in which more than 50% are women. It is upto the professionals to help sensitise these Rules and educate the direct selling entities and direct sellers, thereby ensuring that this sector complies with all the rules and regulations in true letter and spirit.

REFERENCES

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Widening The Scope of Secretarial Audit & Compliance Management Regime

The whole gamut of Secretarial Compliance Management Regime (SCMR) of Companies other than listed entities is based on Company's Paid up Capital, Turnover and outstanding loans or borrowings from banks or Public Financial Institutions. It is seen that Public Companies excluding listed ones having higher turnover and paid up capital have been brought under SCMR. Thus, those Private Limited Companies and small sized Public companies which are having less than rupees one hundred crore of bank borrowing had gone out of the SCMR. So, there is a need for re-vamping the criteria so as to bring in more class of companies under SCMR.



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INTRODUCTION

The implementation of Secretarial Audit (SA) and the Annual Secretarial Compliance Report was an important milestone for the Profession of Company Secretaries. It opened up new vistas for Practising Company Secretaries (PCS).

As for Companies, it was altogether a transformation with respect to adopting good corporate governance practices and thereby instilling confidence among the various stakeholders. It also boosted the overall confidence of the investors.

The whole gamut of Secretarial Compliance Management Regime (SCMR) of Companies other than listed entities is based on Company's paid up capital, turnover and outstanding loans or borrowings from banks or Public Financial Institutions. It is seen that public companies excluding listed ones having higher turnover and paid up capital have been brought under SCMR. However, those Private Limited Companies and small sized public companies which are having less than rupees one hundred crore of bank borrowing were kept out of the SCMR.

This article analyses the various provisions and guidelines applicable to SCMR and recommends widening the ambit of it. This writing has been divided into two parts. The first part is pertaining to SA and the second part is with respect to the certifications and compliance Reports.

SECRETARIAL AUDIT

The genesis of the SA can be traced to the Companies (Amendment) Act, 1988 which amended Section 161 of the Companies Act, 1956 (CA 1956). This amendment introduced the requirement of certification of annual return of listed Companies by a PCS.

Thereafter, Companies (Amendment) Act, 2000 amended Section 383A of the CA 1956. By this amendment, it was mandated that companies which had a paid-up share capital of Rs.10 lakh or more and which did not require to employ a Whole-time Company Secretary (WCS) had to obtain a Certificate from a PCS on an annual basis regarding the compliance of the various provisions of the Act. This certificate was to be attached with the Board's Report.

In 2002, Naresh Chandra Committee Report on Corporate Audit and Governance recommended introduction of Compliance Audit. Later in the year 2003, the Ministry of Corporate Affairs (MCA) introduced the Companies (Amendment) Bill, 2003, which introduced the concept of SA by giving powers to Central Government to order, at any time, the secretarial compliance audit (SCA) of the company for any period. Similarly, the Concept Paper published by MCA in 2004, contemplated to enact a new Company Law in which the concept of the SCA was included.

Later on, Corporate Governance Voluntary Guidelines, 2009 was released in December 21, 2009, which insisted on adoption of SA for public companies and private companies, particularly the bigger ones. Para V of the Guidelines stated that:

"Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the SA conducted by a competent professional. The Board should give its comments on the SA in its report to the shareholders."

Thereafter, the 21st report of the Parliamentary Standing Committee on Finance on the Companies Bill, 2009 also specified about SA. The extract from the said report is reproduced below:

"Para 7.8 of Chapter VII: Secretarial Audit may also be mandated for bigger companies, including all listed companies;

Widening The Scope of Secretarial Audit & Compliance Management Regime

as it, inter alia, provides necessary assurance to the investors that the affairs of the Company are being conducted in accordance with the legal requirements.”

At last, SA for bigger Companies has been notified from 1st April 2014 under the Companies Act, 2013 (the Act).

As the Public shareholders subscribe to the shares of listed entities and public companies, it is necessary that the interest of the public is protected from the impact of non-compliances of the various provisions of the Act and other Corporate Laws. Besides, this would insulate the directors and other stakeholders like employees, suppliers, banks and financial institutions from the ill effects of non-compliance.

Thus, Sub-section (1) of Section 204 of the Act provides that every listed company and a company belonging to other class of companies, as may be prescribed, shall annex with its Board's report made in terms of sub-section (3) of section 134 of the Act, a SA report given by a PCS, in such form, as may be prescribed.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules (CARMPR), 2014 prescribes that the following class of companies will be considered for the purpose of sub section (1) of Section 204 :

- Every public company having a paid up share capital of Rs. Fifty crore rupees or more; or
- Every public company having a turnover of two hundred fifty crore rupees or more;
- Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred Crore Rupees or more.

SECRETARIAL AUDIT BASED ON OUTSTANDING LOANS OR BORROWINGS FROM BANKS/FINANCIAL INSTITUTIONS

This requirement has been introduced by amending the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, with effect from 1st April, 2020.

This has been made applicable to both private and public companies regardless of any paid up capital limit. However, borrowing from 'banks or public financial institutions' are only covered under this category.

Nidhi Companies which are declared as Nidhi by Central Government can accept deposit from members only and these deposits are exempted under the Companies (Acceptance of Deposits) Rules, 2014. Therefore, those Nidhi Companies which are accepting deposits from members to the tune of Rupees 50 Crore or more should be brought under SA.



INCLUSION OF NBFCs AND NIDHI COMPANIES UNDER ' FINANCIAL INSTITUTIONS'

It is advisable to include Institutions like “ Non-Banking Financial Companies” (NBFCs) registered with Reserve Bank of India and Nidhi Companies having certain threshold limit of deposits in this category. It is seen that many companies do borrow from NBFCs also for short term working capital requirements.

Similarly, Nidhi Companies which are declared as Nidhi by Central Government can accept deposit from members only and these deposits are exempted under the Companies (Acceptance of Deposits) Rules, 2014. Therefore, those Nidhi Companies which are accepting deposits from members to the tune of Rupees 50 Crore or more should be brought under SA. This will help protect the interest of the depositors by timely reporting of the non-compliance of the Act.

SECRETARIAL AUDIT OF MATERIAL UNLISTED SUBSIDIARY

Regulation 24A(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) has been amended from February 2019 by stipulating that every listed entity and its material unlisted subsidiaries incorporated in India shall undertake SA and shall annex with its annual report, a SA Report given by a Company Secretary in Practice, in such form as may be prescribed. This will ensure the strengthening of the oversight of group companies of the listed entities.

The term 'Material Subsidiary' means a subsidiary, whose income or net worth exceeds ten per cent (10%) of the consolidated income or net worth, respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. (Regulation 16(1)(c) of LODR).

APPLICABILITY OF SA TO A PRIVATE COMPANY WHICH IS A SUBSIDIARY OF A PUBLIC COMPANY

According to the provisions of section 2(71) of the Act, “Public Company” means a Company which is not a Private Company. However, the proviso to the aforesaid definition provides that, “a company which is a subsidiary of a company, not being a

private company, shall be deemed to be public company for the purposes of the Companies Act, 2013 even where such subsidiary company continues to be a private company in its articles." So, it is clear from the above proviso that SA is also applicable to a private company which is a subsidiary of a public Company which falls under the aforesaid prescribed class of companies.

WIDENING THE SCOPE OF SECRETARIAL AUDIT

START-UP/TECH BASED LARGE SIZED PRIVATE LIMITED COMPANIES

India has emerged as the 3rd largest ecosystem for start-ups globally with over 77,000 DPIIT-recognized start-ups across 656 districts of the country as of 29th August 2022.

Indian Start up Ecosystem has seen exponential growth in past few years (2015-2022):

- 15X increase in the total funding of start-ups;
- 9X increase in the number of investors;
- 7X increase in the number of incubators.

As of 7th September 2022, India is home to 107 unicorns with a total valuation of \$ 340.79 Billion. Out of the total number of unicorns, 44 unicorns with a total valuation of \$ 93.00 Billion and 21 unicorns with a total valuation of \$ 26.99 Billion were born in 2021 and 2022 respectively. (Source. www.Investindia.gov.in)

This shows that there is a rapid growth of start-up Companies in India. It is seen that most of these companies are incorporated as Private Limited Companies. These companies remain as private limited till they plan for conversion into a public company aiming to have Initial Public Offering (IPO).

Private Equity/Venture Capital/Hedge Fund firms/High Net Worth Individuals invest in these Companies based on their future earning capacity, technological prowess and scope for easy scalability of the business. These Companies lose their start up status when the turnover in any financial year exceeds Rupees 100 Crore. There are large sized private limited Tech Companies whose turnover is more than Rupees 2000 to 3000 Crore.

But then, one of the biggest Edtech Companies in India filed the audited financial statements for the financial year 2020-21 in the month of September, 2022 that too after MCA had sent notices. It has been reported various lapses from such other companies as well. These lapses can be checked and reported on time if these large sized private Limited companies are brought under SA. The threshold paid up capital of Rupees Hundred Crore or more or Turnover of Rupees 500 Crore or more can be prescribed for these Companies to be eligible for attracting SA.

Further, these Companies command a very high equity premium in the market. In some cases, the premium amount for each share comes to even several thousands and Lakhs of

Rupees. So, in addition to the paid up capital, the "Security Premium Amount" should also be taken into account for determining the threshold limit of these companies for compliance regime. If only paid up capital alone is taken into account in such companies, it will not reflect the true size of the company.

CSR AUDIT

As per Section 135 of the Act, every company having met any of the below thresholds during the immediately preceding financial year, has to spend on CSR, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years:

- a) Net worth of INR 500 Crore or more, or
- b) Turnover of INR 1,000 Crore or more, or
- c) Net profit of INR 5 Crore or more.

These provisions are applicable to all the companies including public and private Companies. So, companies which are covered under section 135 of the Act but still they are not required to conduct SA. Therefore, there is a need to cover all those companies which are attracting section 135 of the Act and are not required to conduct SA for CSR Audit.

CSR spent of the Companies for the Financial Year 2020-21.

Table-1

Sl No.	Description	Status
1	Total number of Companies	8632
2	Total amount spent on CSR (INR Cr)	20359
3	State and UTs covered	37
4	Total number of CSR Projects	25373
5	Development States	29

Source: National CSR Portal- MCA.

Further, as the CSR spend is increasing year after year, it is required to ensure that companies genuinely spend the amount on the specified projects and programmes in conformity with the provisions of the Law. This can be made possible by introducing CSR Audit by a PCS.

COMPANIES ACCEPTING PUBLIC DEPOSITS

As per Chapter V of the Act, public and private companies can accept deposits from members and public companies from general public up to a certain percentage of its paid-up capital, free reserve and securities premium account subject to fulfilling other conditions. These deposit accepting companies, whether from members or public, should be brought under the ambit of SA so as to ensure that these companies do not raise the funds from members and public violating the provisions of the Law.

COMPANIES ISSUING NON-CONVERTIBLE DEBENTURES (NCDs)

Prior to the amendment made from 22nd January, 2021 in Rule 2A of the Companies (Specification of Definition Details)

Widening The Scope of Secretarial Audit & Compliance Management Regime

Rules, 2014, all companies issuing NCDs were treated as listed companies under Section 2(52) of the Act. After the said amendment, a company which has not listed its equity shares in a Stock Exchange and has issued on private placement basis NCDs in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008, shall not be treated as a listed entity.

However, those Companies which issue non-convertible debt instruments for an outstanding value of rupees five hundred Crore or more shall comply with the requirements of regulations 16 to 27 of the listing regulations which are relating to corporate governance.

So, in public interest, it is required to bring all those companies issuing NCDs or non-convertible debt instruments under SA regardless of any paid up capital limit or the quantum of the debt instruments.

PUBLIC COMPANIES HAVING LARGE NUMBER OF SHAREHOLDERS

There are many unlisted public companies having shareholders in several thousands and lakhs. These companies may not meet the turnover or paid up capital criterion as mentioned under CARMPR for conducting SA. Hence, these widely held companies having more than 10,000 shareholders need to be brought under SA so that the stakeholders of these Companies would extricate from the risk of non-compliance of the Laws.

COMPLIANCE CERTIFICATIONS/ REPORTS

ANNUAL RETURN CERTIFICATION (ARC)

Section 92(2) of the Act read with Rule 11(2) of Companies (Management and Administration) Rules, 2014 stipulates that the Annual Return of listed Company or a company having paid up capital of Rs.10 Crore or more or Turnover of Rs.50 Crore or more shall be certified by a company secretary in practice in a prescribed form stating that the Annual Return discloses the facts correctly and adequately and the company has complied with all the provisions of the Act or qualify the report in case of any non compliance is observed.

GAP IN ANNUAL RETURN CERTIFICATION

The concept of ARC was introduced in the Act replacing the requirement of a Compliance Certificate from a PCS under section 383A of the Companies Act, 1956. This section 383A was introduced for those companies which were not required to appoint a WCS. But when the ARC was introduced under the Act, the threshold limit of paid up capital for appointing a WCS in a Company was Rupees Five Crore which was further increased to Rupees Ten Crore vide Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020. Therefore, it is logical to bring down the threshold limit of ARC from Paid up Capital of Rupees 10 Crore to Rupees 5 Crore.

Similarly, it is seen that in a particular year the ARC has become applicable and subsequent year(s) this has become inapplicable as the system does not ask to attach the Form MGT-8 because the turnover has fallen below rupees 50 Crore.

It is required to mandate that once the ARC has become applicable, it will continue to apply in subsequent years as well regardless of the turnover falling below the threshold limit so as to maintain the compliance mechanism and documentation in an uninterrupted manner.

ANNUAL SECRETARIAL COMPLIANCE REPORT (ASCR)

Since the SA of listed entity/Companies does not cover the entire Guidelines and Notifications/ Circulars issued by SEBI, Regulation 24A(2) of SEBI (LODR) 2015, prescribes that all the listed entities shall submit an ASCR issued by a PCS on the compliance of all applicable SEBI Regulations and Notifications/Circulars/ Guidelines.. This report shall be submitted by the listed entity to the Stock Exchanges within 60 days of the end of each financial year.

COMPLIANCE CERTIFICATION OF SEBI'S CORPORATE GOVERNANCE REPORT

As per Schedule V, Clause E of SEBI LODR, Listed entity/ Companies need to obtain a Compliance certificate from either the Auditors of the listed Company or PCS regarding compliance of conditions of the corporate governance report which shall be annexed with the Boards' Report.

SHARE CAPITAL RECONCILIATION CERTIFICATIONS

a) Quarterly share Capital Reconciliation Certificate.

Regulation 76 of SEBI(Depositories and Participants) Regulations, 2018 stipulates the following;

- (1) Every issuer shall submit audit report on a quarterly basis, starting from September 30, 2003, to the concerned stock exchanges audited by a qualified Chartered Accountant or a PCS, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.
- (2) The audit report under sub-regulation (1) shall also give the updated status of the register of members of the issuer and confirm that securities have been dematerialized as per requests within twenty one days from the date of receipt of requests by the issuer and where the dematerialization has not been effected within the said stipulated period, the report shall disclose the reasons for such delay.
- (3) The issuer shall immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued, listed, and the capital held by depositories in dematerialised form.

b) Half yearly Share Capital Reconciliation Certificate

As per Regulation 40(9) of SEBI LODR, every listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate

from a PCS within thirty days from the end of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.

These are aimed at bringing transparency in the entire share issue management and preventing unfair practices in the issue and management of share Capital.

DUE DILIGENCE REPORT AND CERTIFICATION UNDER SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2021 SEBI (DESR)

As per the regulation 10(2) of SEBI (DESR), the Board of directors of the company, before considering the proposal of delisting, shall appoint a Peer Reviewed Company Secretary and provide the following information to such Company Secretary for carrying out due-diligence: -(a) the details of buying, selling and dealing in the equity shares of the company by the acquirer or its related entities during the period of two years prior to the date of board meeting which was held to consider the proposal for delisting, including the details of the top twenty five shareholders, for the said period;(b) the details of off-market transactions of all the shareholders mentioned in clause (a) for a period of two years; (c) any additional information, including the information mentioned in clauses (a) and (b) for a longer period of time, sought by the Company Secretary if the Company Secretary is of the opinion that the information provided under clauses (a) and (b) is not sufficient for providing the certification in terms of sub-regulation (3).

As per Sub-regulation (3), the Company Secretary shall carry out the due-diligence and submit a report to the Board of directors of the company certifying that the buying, selling and dealing in the equity shares of the company carried out by the acquirer or its related entities and the top twenty five shareholders is in compliance with the applicable provisions of securities laws including compliance with SEBI (DESR).

With this regulation, SEBI has brought about transparency in the delisting of equity shares.

CERTIFICATION OF NON-DISQUALIFICATION OF DIRECTORS.

Regulation 34(3) read with Schedule V Para C clause (10)(i) of the SEBI (LODR) stipulates that every listed entity/company has to include in the Annual report a certificate obtained from a company secretary in practice to the effect that none of the directors on the board of the entity/ company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/MCA or any such statutory authority.

WIDENING AMBIT OF COMPLIANCE CERTIFICATIONS

SECRETARIAL COMPLIANCE CERTIFICATION (SCC) OF SMALL COMPANIES

As per Section 2(85) of the Act, Small Company is a company other than a public company the paid up share capital of which

does not exceed 4 Crore of rupees and turnover of which as per profit and loss account for the immediate financial year does not exceed forty crore rupees. The threshold limit of the above paid up share capital and turnover has been revised with effect from 15th September, 2022 from 2 Crore and 20 Crore rupees respectively.

These small companies enjoy many exemptions under the Act and need not engage any professional for certification etc. Hence, the directors of these companies can face the risk of paying heavy fines and penalties for non-compliance of the provisions of the Act. The number of directors of these companies getting disqualified under section 164(2)(a) of the Act is increasing day by day.

So, it is appropriate to mandate a SCC from a PCS for small companies to ensure that they do comply with the provisions of the Act. This certificate can be attached with the Board's Report so that the directors can come to know of the status of the compliances.

PRIVATE/PUBLIC COMPANIES HAVING MORE THAN 25% PAID UP CAPITAL HELD BY NON PROMOTERS

It is seen that there are Private /Public Companies which are having substantial non promoter holdings. If a private/public Company which is having more than 25% non-promoter share holding regardless of any threshold limit, such companies should be mandated to obtain a SCC from a PCS with respect to the compliance of the provision of the Act so as to protect the interest of non-promoter shareholders.

CONCLUSION

In an era of increased shareholders' activism and change in the government policy of "minimum government and maximum governance", it calls for widening the ambit of SA and SCC so as to protect the interest of various stakeholders of these companies and to encourage them to go for adopting good corporate governance practices. Moreover, when robust investor protection measures are in place, it will boost the confidence of the investors which will, in turn, lead towards higher growth in the Corporate Sector and Economy.

REFERENCES:

1. Companies Act, 1956.
2. Companies Act, 2013.
3. SEBI (LODR) 2015.
4. Website. Investindia.gov.in
5. National CSR Portal-MCA.
6. SEBI (Depositories & Participants) Regulations, 2018.
7. SEBI (Delisting of Equity Shares) Regulations, 2021.
8. SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Material Responsible Business Conduct and Sustainability Issues

Environment, Social and Governance (ESG) issues and their impacts are not unknown. Everyone could be able to observe and feel the positive impacts, during COVID 19 pandemic, due to halt on different modes of transportations, low level of industrial operations and reduced movement of human beings across the globe, on environment, flora, and fauna. Situations of COVID 19 cannot and should not prevail always. Economic developments are bound to happen for the progress of the individuals, organisations, and nations across the globe. However, thrust on sustainable development besides economic progress are equally important and garnering importance worldwide. United Nations Sustainable Development Goals (SDG) and monitoring their progress has called for different nations to percolate the goals to corporate bodies and to report sustainability issues and monitor their progress as well.



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INTRODUCTION

One of the important aspects of sustainability reporting is identification of material sustainable issues or topics basing on which an organisation can draw its action plans for future sustainable growth of the organisation holistically. Identified material sustainable issue either throw challenges to the organisation at present or in future and impede the business growth or it may bring opportunities to the organisations thereby creating value for the business. Inference can be taken that identification of material sustainable issues or topics is pivotal point in the journey of business sustainability.

TOP TEN GLOBAL RISKS

World economic forum has recently released its Global Risk Report 2023. The report is underpinned by annual Global Risks Perception Survey, which brings together leading insights from over 1,200 experts across the World Economic Forum's (WEF) diverse network. It draws on the collective intelligence of the world's foremost risk experts, including the Global Risks Advisory Board and the Chief Risk Officers Community, as well as thematic experts from academia, business, government, the international community, and civil society. The Global Risks Report 2023 outlined below risk as top ten risks based on its severity for next two years. (*Source: Global Risk Report 2023, WEF*)

1. Cost of living crisis
2. Natural Disasters and extreme weather events
3. Geo-economic contraction
4. Failure to mitigate climate change
5. Erosion of social cohesion and societal polarisation
6. Large scale environmental damage incidents
7. Failure of climate change adoption
8. Widespread cybercrime and cyber security
9. Natural resource crisis
10. Large scale involuntary migration

These risks which are posing challenges across the globe can be in many ways reduced by working cohesively and consistently across the boundaries and designing mitigating strategy. Risks which are majorly affecting social and environmental aspects can be mitigated through implementation of strong governance and monitoring mechanism. Towards this end different frameworks, reporting standards and disclosure methodologies, on environment, social and governance matters, designed globally as well as nationally, have been the starting point to initiate work towards mitigating the global risks. All these frameworks and reporting standards have accentuated and given its emphasis to identify material sustainability issues of importance to the organisation.

GLOBAL FRAMEWORK AND MATERIAL SUSTAINABILITY ISSUES/TOPICS

Various global reporting standards and frameworks have mentions on material sustainable issues as under:

A. Global Reporting initiatives (GRI):

GRI is an independent, international organization that helps businesses and other organizations take responsibility for their impacts, by providing them with the global common language to communicate those impacts. GRI has mentioned about the material topics as under:

GRI Disclosure 3-1 provides the process to determine material topics as below.

- a. Describe the process it has followed to determine its material topics, including:
 - i. How it has identified actual and potential, negative and positive impacts on the economy, environment, and people, including impacts on their human rights, across its activities and business relationships.
 - ii. How it has prioritized the impacts for reporting based on their significance.
- b. Specify the stakeholders and experts whose views have informed the process of determining its material topics.

GRI Disclosure 3-2 List of material topics**GRI Disclosure 3-3 Management of material topics**

- a. Describe the actual, potential, negative and positive impacts on the economy, environment, and people, including impacts on their human rights;
- d. Describe actions taken to manage the topic and related impacts, including:
 - i. Actions to prevent or mitigate potential negative impacts;
 - ii. Actions to address actual negative impacts, including actions to provide for or cooperate in their remediation.

GRI Disclosure 201-2 Financial implications and other risks and opportunities due to climate change

Risks and opportunities posed by climate change that have the potential to generate substantive changes in operations, revenue, or expenditure, including:

- i. A description of the risk or opportunity and its classification as either physical, regulatory, or other;
- ii. A description of the impact associated with the risk or opportunity;
- iii. The financial implications of the risk or opportunity before action is taken;
- iv. The methods used to manage the risk or opportunity;
- v. The costs of actions taken to manage the risk or opportunity.

B. United Nations Sustainable Development Goals (SDG): On 25 September 2015, 193 countries of the UN General Assembly adopted the 2030 Development Agenda titled “*Transforming our world*”. The agenda contains 17 Goals, 169 associated targets and 232 indicators. Material concepts are captured at different parts of SDG. Few indicators on material topics in SDGs are as follows.

8.5 By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value

13.1 Strengthen resilience and adaptive capacity to climate related hazards and natural disasters in all countries.

C. Task Force on Climate-Related Financial Disclosures (TCFD): TCFC was created in 2015 by the Financial Stability Board (FSB) to develop consistent climate-related financial risk disclosures for use by companies, banks, and investors in providing information to stakeholders. Disclosure on material topics under TCFD are as mentioned below.

Governance disclosure – b) Describe management’s role in assessing and managing climate-related risks and opportunities.

Strategy disclosure – a) Describe the climate related risks and opportunities the organization has identified over the short, medium, and long term.

Strategy disclosure – b) Describe the impact of climate-related risks and opportunities on the organization’s businesses, strategy and financial planning.

Risk Management disclosure – a) Describe the organization’s processes for identifying and assessing climate-related risks.

Risk Management disclosure – b) Describe the organization’s processes for managing climate-related risks

Risk Management disclosure – c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization’s overall risk management.

D. Sustainability Accounting Standards Board (SASB): SASB is a non-profit organization, founded in 2011 to develop sustainability accounting standards. As of August 2022, the International Sustainability Standards Board (ISSB) of the IFRS Foundation assumed responsibility for the SASB Standards. The ISSB has committed to build on the industry-based SASB Standards and leverage SASB’s industry-based approach to standards development. SASB’s mention on material topics are as below.

- The entity shall discuss its processes, procedures, and practices to manage risks and opportunities associated with the rights and interests of communities in areas where it conducts business. Disclose the degree to which its policies and practices are aligned with the International Finance Corporation’s (IFC) Performance Standards on Environmental and Social Sustainability.
- The discussion shall include how practices apply to business partners such as contractors, sub-contractors, suppliers, and joint venture partners.
- The entity shall discuss its policies and procedures for managing environmental and social risks that may affect sourcing.

(Source: Respective Global frameworks)

SUSTAINABILITY JOURNEY SO FAR IN INDIA

The Ministry of Corporate Affairs (MCA), Government of India, released a set of guidelines in 2011 called the National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVEGs). This was expected to provide guidance to businesses on what constitutes

responsible business conduct. In order to align the NVGs with the Sustainable Development Goals (SDGs) and the 'Respect' pillar of the United Nations Guiding Principles (UNGP) the process of revision of NVGs was started in 2015. After, revision and updation, the new principles are called as the **National Guidelines on Responsible Business Conduct (NGRBC)**. The figure below depicts the sustainable journey and progress in India so far.

2009 Ministry of Corporate Affairs (MCA) comes out with the national Voluntary Guidelines on Corporate Social Responsibility (CSR)	2011 MCA issued the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011' (NVGs)	2012 SEBI mandates the top 100 listed companies by market cap to file Business Responsibility Report (BRR) based on NVGs in their annual report
2014 The Companies Act, 2013, mandated CSR Rules, came into force	2015 BRR extended by SEBI to the top 500 companies by market cap	2018 In order to align the NVGs with the emerging global concerns, the Sustainable Development Goals (SDGs), Committee on BRR was constituted by the Ministry of Corporate Affairs
2019 SEBI extended BRR to top 1000 companies by market cap	2020 Committee on BRR published report on BRR on 11 th August 2020 recommending new comprehensive framework on BRSR in line with global trends	2021 SEBI introduces BRSR in May 2021 applicable to top 1000 listed companies by market capitalisation voluntarily for FY 2021-22 and mandatorily from 2022-23

BUSINESS RESPONSIBILITY AND SUSTAINABILITY REPORTING (BRSR)

In line with global developments, the Securities and Exchange Board of India (SEBI), in its continued efforts to enhance disclosures on ESG standards, introduced new requirements for sustainability reporting by listed companies. The new reporting format named, Business Responsibility and Sustainability Report (BRSR), aims to establish links between the financial results of a business with its ESG performance. This can make it easier for regulators and investors, and allied stakeholders to obtain a fair estimate of overall business stability, growth and sustainability.

SEBI has mandated that the BRSR will be applicable to the top 1,000 listed entities (by market capitalisation) for reporting on a voluntary basis for FY2021–22 and on a mandatory basis from FY2022–23. BRSR is principle-based reporting and based on nine principles chalked out in National Guidelines for Responsible Business Conduct (NGRBC).

Principles under NGRBC

Principle 1	Businesses should conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable.
Principle 2	Businesses should provide goods and services in a manner that is sustainable and safe.
Principle 3	Businesses should respect and promote the well-being of all employees, including those in their value chains.
Principle 4	Business should respect the interest of and be responsive to all its stakeholders.
Principle 5	Businesses should respect and promote human rights.
Principle 6	Business should respect and make efforts to protect and restore the environment.
Principle 7	Business, when engaged in influencing public and regulatory policy should do so, in a manner that is responsible and transparent.
Principle 8	Business should promote inclusive growth and equitable development.
Principle 9	Business should engage with and provide value to their consumers in a responsible manner.

APPLICABILITY OF NGRBC AND BRSR

The NGRBC are designed to be used by all businesses, irrespective of their ownership, size, sector, structure, or location. It is expected that all businesses investing or operating in India, including foreign multinational corporations (MNCs) will follow these guidelines. Correspondingly, the NGRBC also provide a useful framework for guiding Indian MNCs in their overseas operations, in addition to aligning with applicable local national standards and norms governing responsible business conduct. Furthermore, the NGRBC reiterate the need to encourage businesses to ensure that not only do they follow these guidelines in business contexts directly within their control or influence, but that they also encourage and support their suppliers, vendors, distributors, partners, and other collaborators to follow them. (Source: NGRBC)

It may be concluded that though at present the BRSR is applicable to the top 1000 listed companies, based on its market capitalisation, in future it will be covered to all the companies, small or big, in a phased manner.

ENTITY’S MATERIAL RESPONSIBLE BUSINESS CONDUCT AND SUSTAINABILITY ISSUES, INDIAN PERSPECTIVE

Point No 24 of Guidance notes on BRSR released by SEBI reads as follows “Company shall provide Overview of the entity’s material responsible business conduct and sustainability issues as under;

Please indicate material responsible business conduct and sustainability issues pertaining to environmental and social matters that present a risk or an opportunity to your business, rationale for identifying the same, approach to adapt or mitigate the risk along-with its financial implications, as per the following format:

S. No.	Material issue identified	Indicate whether risk or opportunity (R/O)	Rationale for identifying the risk / opportunity	In case of risk, approach to adapt or mitigate	Financial implications of the risk or opportunity (Indicate positive or negative implications)

Sustainability as per National Guidelines on Responsible Business Conduct is defined as the outcome achieved by balancing the social, environmental, and economic impacts of business. It is the process that ensures that business goals are pursued without compromising any of the three elements.

Under this section, the entity shall disclose the material responsible business conduct and sustainability issues pertaining to environmental and social matters that present a risk or an opportunity to its business, along-with the following:

- Classify the risk / opportunity as environment or social and provide its description.
- Rationale for identifying the risk, which may include a description of the impact associated with the risk or opportunity.
- In case of identified risks, approach to mitigate or adapt to the risk.
- Indicate the positive and negative impact of such risk or opportunity on the financials of the company. The company shall make qualitative disclosures in this regard and should not include any forward-looking quantitative information. However, in case of previous years, impact can be disclosed in quantitative terms. The entity may consider impact on parameters such as demand for products & services/ capital or operational costs/, investment opportunities etc.

(Source: Guidance note on BRSR issued by SEBI)

PRINCIPLE WISE MATERIAL RESPONSIBLE BUSINESS CONDUCT AND SUSTAINABILITY ISSUES

As delineated above identification of the material responsible business conduct and sustainability issue/ topic is the starting point for developing sustainability framework in an

organisation. Few important factors for considerations prior to identify the material sustainability issues in an organisation are a) stakeholders’ group that an organisation deal with; b) location of business units; c) nature and kind of industry it operates; d) local areas of operation; e) applicability of statutes; f) stakeholders engagement methodologies; g) business model of the organisation; and h) future growth plan etc.

The below material responsible business conduct and sustainability issues are prepared principle wise which are an inclusive and indicative list. List can be extended and may be modified based on the organisation and nature of industry it operates.

Principle 1 Integrity, Ethics & transparency	Principle 2 Safa & Sustainable supply of goods and services	Principle 3 Employee well being
<ul style="list-style-type: none"> • Business ethics • Corporate governance, transparency and disclosures • Data privacy and security • Conflict of interest involving members, employees and business partners • Anti-corruption / Anti-bribery • Succession Planning • Regulatory Actions 	<ul style="list-style-type: none"> • Responsible sourcing • Preserving earth’s natural resources • Circular Economy • Responsible production and consumptions • Safe and sustainable products and services 	<ul style="list-style-type: none"> • Workforce health & safety • Local Employment • Employee development and retention • Diverse and inclusive work environment • Work life balance • Labour relations
Principle 4 Stakeholders growth	Principle 5 Human Rights	Principle 6 Environemnt
<ul style="list-style-type: none"> • Grievance redressal mechanism • Stakeholders Engagement • Conflict management • Sustainable economic growth 	<ul style="list-style-type: none"> • Human rights • Discrimination at workplace • Coercive or forced labour • Sexual harassment 	<ul style="list-style-type: none"> • GHG emissions / Climate Change/ Environmental issues such as climate change, global warming etc. • Air Emission • Waste and hazardous materials management • Biodiversity • Clean development mechanism • Water management • Afforestation • Energy management/zero net

Principle 7 Policy advocacy	Principle 8 Inclusive growth	Principle 9 Customer relationships
<ul style="list-style-type: none"> Engagement with statutory bodies Policy advocacy through trade and industry chambers and associations 	<ul style="list-style-type: none"> Community relationship 	<ul style="list-style-type: none"> Consumer concerns and feedback

PROCESS FOR SUCCESSFUL IDENTIFICATION OF MATERIAL SUSTAINABLE ISSUES AND DEVELOPMENT OF BUSINESS SUSTAINABILITY INSIDE THE ORGANISATION

- a) **Commitment from the top:** Like all other initiations, approach to bring the culture and mindset of sustainable development in an organisation should be driven from the top. Strong commitment and drive from top and involvement of workforce at bottom will enable the organisation to identify the real sustainable issues impacting the organisation and establishing mitigation plan for the key ESG risks.
- b) **Governance mechanism and capacity building:** Strong governance structure at Board, Sustainable Development Committee of Board, Sustainable development Committee at unit level, unit heads and functional heads are important prerequisites to develop a strong governance mechanism for establishing process for sustainable development. Besides establishing processes, it also enables formulation of policies, procedures and action plans to support management in taking timely decisions.
- c) **Defined process:** Process to identify, discuss, analyse, measure and report sustainability issues shall be in place. Policies to support the process, plans to implement different activities of ESG issues and time bound programmes to address key challenges are key for sustainability standards and its implementation.
- d) **Specific commitments, goals and targets set by the entity along-with performance, if any:**

Guidance notes on BRSR released by SEBI provides the following under Section B, Management and Process disclosures. Disclosure No 5 & 6 requires the management to disclose Specific commitments, goals and targets set by the entity along-with performance, if any under this field,

Identified material sustainable issue either throw challenges to the organisation at present or in future and impede the business growth or it may bring opportunities to the organisations thereby creating value for the business.

the entity may disclose if it has any specific commitment, goal or target against any of the principles. Such disclosures may include the following:

- Baseline and context for goals and targets;
- Entities covered such as subsidiaries / associates / joint ventures / value chain partners;
- Expected result or outcome, in quantitative or qualitative terms;
- Expected timeline for achieving each goal and target;
- Whether goals and targets are mandatory (based on legislation) or voluntary. If they are mandatory, the organization should list the relevant legislation.


(Source: Guidance note on BRSR issued by SEBI)

- e) **Continuous monitoring:** Finally, monitoring your sustainability issues is just as important as identifying them. Use ongoing evaluations built into your business processes to monitor the progress as well as separate evaluations, which will vary based on your level of risk, system effectiveness and regulation requirements. Engaging internal audit team to provide assurance on ESG implementation as per policy, plans and developed SOPs is one of the effective mechanisms to monitor the sustainability issues.
- f) **Reporting:** Transparent and authentic reporting both internal and external is one of the important and valid ingredients for bringing high level of integrity and governance into sustainable development. Untrue reporting and proving falsifying data to management, Sustainability Committee, Board internally and to shareholders through annual report and website will mar the whole objective of ESG implementation.

CONCLUSION

Mindset and cultural shift, aligning the sustainable goal with the strategy and working on ground will enable organisations, nations and globe to achieve the overall sustainable goals. Corporates, government agencies and policy makers nationally and globally should work in congruence with each other in order to elevate their standards for sustainable growth. Working in silos and independently will not improve the overall sustainable goals. Reporting shall not be limited to fulfilling compliance objectives. The ethos, values, and perspectives on which we human beings are born in this world and are living should remain alive in our consciousness during performance of our duties (whether for self, for the organisation and for the nation). Let us reminisce this prayer to make this world sustainable not only for present generations but for future generations also.

*Om sarve bhavantu sukhinah, Sarve santu nirāmayāh,
Sarve bhadrāni paśyantū mā kaścid dukkha bhāgbhaveta |
Om śāntih śāntih śāntih ||*

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. 

Adopting ESG-Sensitive Lending Practices for Sustainable Finance

The need to incorporate sustainability-focused lending practices has been felt recently. The Financial Stability Board in 2015 constituted the Task Force on Climate-Related Financial Disclosures which has recommendations on climate-related disclosures. Further, the Network for Greening the Financial System ('NGFS') was launched at the Paris One Planet Summit in 2017, which is a network of central banks and supervisors willing to voluntarily share best practices relating to development of environment and climate risk management in the financial sector.



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INTRODUCTION

Integrating ESG into business practices is a universal theme for businesses across spectrums. The case for sustainable business practices is fairly well made, and therefore, does not need emphasis. Back in 1987, the United Nations advocated for sustainable development through the Brundtland Report (1987)¹: *“sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future.”*

However, specifically for banks and financial intermediaries, the need to incorporate sustainability-focused lending practices has been felt recently. The Financial Stability Board in 2015 constituted the Task Force on Climate-Related Financial Disclosures which has recommendations on climate-related disclosures². Further, the Network for Greening the Financial System ('NGFS') was launched at the Paris One Planet Summit in 2017, which is a network of central banks and supervisors willing to voluntarily share best practices relating to development of environment and climate risk management in the financial sector.

Thus, within the financial sector as well, integration of sustainable development principles and goals is gaining relevance and recognition in recent years. According to a report³ by the Global Sustainable Investment Alliance ('GSIA')⁴,

1 The Brundtland Report (1987) - formerly known as the World Commission on Environment and Development - <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

2 Recommendations of the TCFD - <https://www.fsb-tcfd.org/recommendations/>

3 Global Sustainable Investment Review, 2020 - <http://www.gsi-alliance.org/wp-content/uploads/2021/08/GSIR-20201.pdf>

4 The GSIA is an international collaboration of membership-based sustainable investment organisations around the world.

in 2020, global reported sustainable investment assets under management make up a total of 35.9% of total assets under management (which amounted to USD 98.4 trillion during the reporting period), which represents a growth of 2.5% from the previous reporting period.

There is no doubt that for sustainable development to take place, the role of the financial system is of significant importance for allocation and mobilization of resources in a sustainable manner. The other important aspect that needs to be understood is that financial sector entities have to be cognizant of the climate related risks that their borrowers and beneficiaries face.

This article is focused on incorporating ESG, sustainability and climate risk into lending practices. The author attempts to answer, *inter alia*, why sustainable ESG driven practices are important among financial institutions and the need to develop an ESG Policy by financial institutions such as banks/NBFCs.

WHAT IS SUSTAINABLE FINANCE AND SUSTAINABLE LENDING?

The term 'Sustainable Finance' has been in the limelight amongst financial sector entities. Sustainable Finance would mean integrating environmental, social and governance (ESG) criteria into business, lending and investment decisions in a way that ultimately contributes to sustainable development.

To understand this term, we can refer to the definition of sustainable finance provided by the European Commission⁵ -

“Sustainable finance refers to the process of taking environmental, social and governance (ESG) considerations into account when making investment decisions in the financial sector, leading to more long-term investments in sustainable economic activities and projects.”

Sustainable Finance would thus mean integrating ESG factors into financing activities such as lending, investments, etc. to ensure that these business decisions are not impacted by environmental risks. In addition, the lending or investment helps towards sustainable economic development, in particular with reduced emission, environmental risk, etc.

The 'E' in ESG pertains to the 'Environment'. Environmental factors may include climate change considerations, mitigating greenhouse gas emissions, funding for green end uses by way

5 https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en#:~:text=Related%20links-,What%20is%20sustainable%20finance%3F,sustainable%20economic%20activities%20and%20projects.

Adopting ESG-Sensitive Lending Practices for Sustainable Finance

of green bonds and others, etc. Essentially factors that affect the environment in a manner that may harm the environment, would ideally fall under environmental considerations in ESG.

Social considerations (i.e. the 'S' in ESG) largely include issues pertaining to labor and employment, human rights considerations, equality, etc.

The 'G' stands for 'Governance' in ESG, which pertains to how governance considerations are taken into account for ultimately ensuring the inclusion of environmental and social considerations in the decision making process.

Sustainable Lending is a part of Sustainable Finance and Sustainable Banking, the definition of which can be drawn from a research paper⁶ by Felipe Calderon & Li Choy Chong (2014) that defined Sustainable Lending as *"the decision by banks to lend only to corporate borrowers who take into account the environmental and social impacts of their operations."*

IMPORTANCE OF ESG IN LENDING

Financial institutions, such as banks and NBFCs are the entities that need to consider the importance of incorporating ESG into their lending practices. This is because the climate risks easily get transmitted to the banking and financial institutions, either due to micro impact on specific borrowers (e.g. those affected by climate change), or macro risks (e.g. productivity, cost of energy, etc.) Therefore, lenders and investors have to incorporate climate change as a part of their risk assessment. Though the perceptions of climate risk may change rapidly, currently, climate risk is assessed over a 7-10 years' time frame. Therefore, in case of longer-term exposures, financial entities have to be particularly sensitised as to the risk of climate change.

So far, it seems that ESG related factors are not taken into account or are not integrated into the lending business of many banks and NBFCs in India. One instance that highlights this fact is the report of the 'Survey on Climate Risk and Sustainable Finance' published by RBI⁷ in July, 2022. The survey consisted of 30 questions and the survey was conducted on 34 leading scheduled commercial banks, comprising 12 public sector banks, 16 private sector banks and 6 leading foreign banks in India. One of the questions asked in the survey pertained to whether *"the bank's Board discussed the need to enhance lending or investing towards sustainable finance during the previous and current financial years?"*

The survey reported that in case of foreign banks, the Board of nearly 3 out of 5 banks discussed this topic, however, the Boards of only 3 out of 12 public sector banks and 10 out of 16 private sector banks had discussed this topic.

This shows that there is a greater need for understanding the risks associated with non-ESG lending and investment and the importance of incorporating ESG criteria into lending and investment decisions. Further, the aspect is also important from profitability perspective, especially in the long-run.



There are risks that banks/NBFCs face that could be mitigated when ESG considerations are integrated into lending/investment practices. Various reports have discussed the risks for financial institutions arising out of non-ESG sensitive investment/ lending practices. These reports (and necessary extracts) have been cited below where necessary. Some of the major risks that arise out of non-ESG sensitive investment/ lending practices for banks/NBFCs are highlighted below.

ENVIRONMENTAL RISKS

Banks and NBFCs have to account for several types of risks, including credit risks, liquidity risks, market risks, etc. However, environmental risks are also of significant importance to a financial entity's practices. As per a report by the European Banking Authority on Sustainable Finance - Market Practices⁸ ('EBA Report'), *"Environmental risk is defined as the risk of negative financial impact stemming, directly or indirectly, from environmental issues."*

It might seem that banks and NBFCs have less direct environmental risks, in that they are not major contributors to pollution and other climate change risks given the nature of their operations. However, environmental risks from a banks'/ NBFCs' perspective does not necessarily pertain to the risks arising out of the banks'/NBFCs' own operations but rather from the operations of the borrower/ investee.

According to FIRST (Financial Institutions: Resources, Solutions and Tools) for Sustainability⁹

"All financial institutions are exposed to some level of environmental and social risk through their clients/investees. If left unmanaged, these risks can lead to a decline in the financial institution's reputational image, costly litigation, or loss of revenue."

The ultimate borrower/ investee may be one that causes harm or pollutes the environment. This becomes a risk for the financial institution providing the funds, as there may be several risks that the client faces owing to its unsustainable practices.

This calls for a need to identify, assess and analyse the environmental impacts and issues associated with lending and investments.

6 Felipe Calderon & Li Choy Chong (2014) Dilemma of sustainable lending, Journal of Sustainable Finance & Investment - https://www.researchgate.net/profile/Felipe-Calderon/publication/262583634_Dilemma_of_sustainable_lending/links/5e82c6d4458515efa0bc1198/Dilemma-of-sustainable-lending.pdf?_sg%5B0%5D=started_experiment_milestone&origin=journalDetail

7 Report of the Survey on Climate Risk and Sustainable Finance - <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1215>

8 European Banking Authority on Sustainable Finance - Market Practices- https://www.eba.europa.eu/sites/default/documents/files/document_library/Sustainable%20finance%20Market%20practices.pdf

9 <https://firstforsustainability.org/about-us> - FIRST (an initiative by IFC) is a one-stop shop for financial institutions to get information and learn about the benefits of environmental and social risk management and how to identify and take advantage of environmental business opportunities.

Environmental risk can be further subdivided into two (i) physical risk and (ii) transition risk, as also highlighted in the BIS report on 'Climate-related risk drivers and their transmission channels', April 2021¹⁰ ('BIS report') -

(I) PHYSICAL RISK

The BIS report, defines physical risk as *"Economic costs and financial losses resulting from the increasing severity and frequency of:*

- *extreme climate change-related weather events (or extreme weather events) such as heatwaves, landslides, floods, wildfires and storms (i.e. acute physical risks);*
- *longer-term gradual shifts of the climate such as changes in precipitation, extreme weather variability, ocean acidification, and rising sea levels and average temperatures (i.e. chronic physical risks or chronic risks); and*
- *indirect effects of climate change such as loss of ecosystem services (eg. desertification, water shortage, degradation of soil quality or marine ecology)."*

This definition of physical risk (as well as transition risk below) as given in the BIS report has been referred to by RBI in its 'Discussion Paper on Climate Risk and Sustainable Finance' published on July 27, 2022¹¹ ('RBI discussion paper on climate risk and sustainable finance').

Physical risk is essentially that risk which arises out of the direct impact of climate change or other severe disasters on the stability of the financial system. When physical risk materialises, it may cause damage to property and loss in value through physical disruptions in the economy. These losses can be unpredictable and uncertain and can cause a systemic failure depending on the grave nature of the disaster.

(II) TRANSITION RISK

The BIS report defines transition risk as *"The risks related to the process of adjustment towards a low-carbon economy."*

This type of risk is more gradual. It arises through efforts made to transition to a lower carbon economy. Transition can be done through policy changes, changes in technology and consumer preference, etc. According to the EBA Report, *"These risks materialise when mitigation policies, technological advances or changes in the market sentiment or consumers' demand lead to value adjustments, especially if they are abrupt and unanticipated. This can be the result of unexpected policy measures and swift changes in consumer preferences."*

CREDIT RISKS

This risk may arise indirectly in case the borrower/ investee harms or pollutes the environment, there may be a possibility that such a borrower/ investee is ultimately driven out of business owing to changes in regulations that make it difficult for non-sustainable businesses to survive or other reasons.

With respect to the impact of transition risk materialising, the EBA Report highlights that *"there are also credit risks that can evolve depending on the policy measures, market reaction and impact of new technologies, ultimately leading to lower profitability and higher default rates, as well as operational risks whereby business continuity is impacted by severe weather events."*

LEGAL RISKS

There may be potential legal risks arising through unsustainable finance or non-ESG sensitive lending. This risk can materialise either indirectly, through suits filed against borrowers/ investees for harming the environment, or directly, through shareholder activism, i.e., shareholders filing suits against the financial institutions for not taking into account ESG factors in their business.

REPUTATIONAL RISKS

Reputational risks could be seen as materially impacting a financial institution depending on the damage caused if this risk materialises. Specifically, if the lending institution is seen associated with or lending to large scale projects that are viewed as unsustainable or environmentally damaging, the reputational risks can be severe.

Further, the BIS report highlights the potential effects of climate risk drivers on banks traditional risk categories. The table from the report is reproduced below -

Risk	Potential effects of climate risk drivers (physical and transition risk)
Credit Risk	Credit risk increases if climate risk drivers reduce borrowers' ability to repay and service debt (income effect) or banks' ability to fully recover the value of a loan in the event of default (wealth effect).
Market Risk	Reduction in financial asset values, including the potential to trigger large, sudden and negative price adjustments where climate risk is not yet incorporated into prices. Climate risk could also lead to a breakdown in correlations between assets or a change in market liquidity for particular assets, undermining risk management assumptions.
Liquidity Risk	Banks' access to stable sources of funding could be reduced as market conditions change. Climate risk drivers may cause banks' counterparties to draw down deposits and credit lines.
Operational Risk	Increasing legal and regulatory compliance risk associated with climate-sensitive investments and businesses.
Reputational Risk	Increasing reputational risk to banks based on changing market or consumer sentiment.

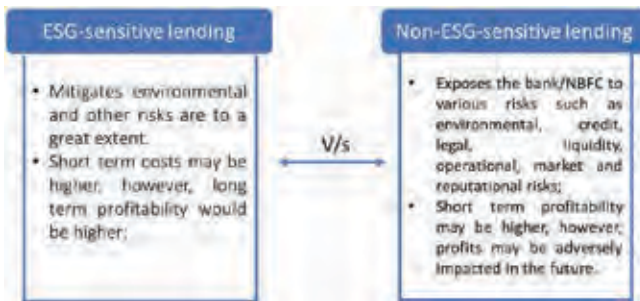
¹⁰ BIS report on 'Climate-related risk drivers and their transmission channels', April 2021 - <https://www.bis.org/bcbs/publ/d517.pdf>

¹¹ RBI Discussion Paper on climate risks and sustainable finance - <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=21071>

Adopting ESG-Sensitive Lending Practices for Sustainable Finance

Source: Report by the BIS on 'Climate-related risk drivers and their transmission channels,' April 2021

Below, the author highlights some of the major differences between ESG-sensitive and non-ESG sensitive lending practices.



REGULATORY PRESSURES AND INITIATIVES - GLOBAL SCENARIO

There have been regulators and organisations around the globe that have published their reports on the importance of adoption of sustainable practices into financial institutions lending and investment practices.

For instance, the Task Force on Climate-Related Financial Disclosures ("TCFD"), set up in 2015 by the FSB made recommendations¹² for disclosures in climate risk management approach and risk disclosures. These recommendations are adoptable by all organisations and have a strong focus on risks and opportunities related to transition to a lower carbon economy.

The European Banking Authority ("EBA") has published its own report¹³ on management and supervision of ESG risks by credit institutions and investment firms.

In India as well, the Securities and Exchange Board of India ("SEBI") has mandated Business Responsibility and Sustainability Reporting for certain listed entities¹⁴.

STEWARDSHIP ROLE OF LENDERS

Besides the risks and regulatory pressures, lenders also have a stewardship role to play. Stewardship, in the context of a financial institution, would mean responsibility towards effective capital allocation to clients which would lead to overall sustainable benefits.

The UK Stewardship Code (2020)¹⁵ ('Code') talks about the stewardship role of asset managers. Reference may be drawn from this Code for banks/NBFCs as well. The essence of the Code is that stewardship and investment should be integrated and should include ESG and climate change concerns.

12 <https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf>

13 https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/1015656/EBA%20Report%20on%20ESG%20risks%20management%20and%20supervision.pdf

14 https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

15 UK Stewardship Code, 2020 - https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Final2.pdf

There is no doubt that for sustainable development to take place, the role of the financial system is of significant importance for allocation and mobilization of resources in a sustainable manner. The other important aspect that needs to be understood is that financial sector entities have to be cognizant of the climate related risks that their borrowers and beneficiaries face.

BUILDING ESG SENSITIVE LENDING PRACTICES

In May 2021, the RBI set up the Sustainable Finance Group ("SFG") in the Department of Regulation ("DoR")¹⁶ to lead the efforts and regulatory initiatives in the area of climate risk and sustainable finance. The SFG was set up quite recently. According to the RBI survey referred to earlier, the SFG would be the key group responsible for suggesting strategies and changes needed in the regulatory framework for banks and other financial institutions like NBFCs, in order to propagate sustainable practices in their business.

This would imply that the RBI is intending to bring about changes in the regulatory regime governing banks and NBFCs that would require these regulated entities to incorporate sustainable practices and ESG considerations into their lending and investment decisions.

Further, it is also mentioned that RBI intends to issue a consultative discussion paper and based on the feedback received thereon and by leveraging on the work being done by the NGFS and international standard setting bodies like the BCBS, FSB, etc., RBI would propose appropriate guidelines thereafter. In this regard, the RBI discussion paper on climate change and sustainable finance highlights good practices that regulated entities should implement. One of the practices states that "REs may frame a climate-related policy by taking into consideration material physical and transition risks."

It is therefore imperative that lenders such as banks/ NBFCs prepare themselves for a change in the regulatory environment and integrate ESG related considerations into their business.

The RBI survey also states that, "Banks need to fully grasp the physical, transition and liability risks associated with climate risk and also actively start managing them to make their loan and investment portfolios more resilient to such risks", "for example, by climate-aligning their loan and investment portfolios." "Further, banks need to develop a strategy for managing climate risk and integrating it into their risk management framework."

16 The set up of the Sustainable Finance Group is talked about in the RBI survey - <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1215>



Besides, “Banks could come out with a strategy to reduce emissions from their own operations. In line with India’s commitment at the COP26 Summit, banks may also consider working on a timeline to move towards net-zero emissions.”

Suggestions to reduce emissions from banks’ own operations include decreasing “emissions from their buildings, branches, data centres, etc., as also their financed emissions (i.e. greenhouse gas emissions associated with a bank’s loans and investments in a reporting year) and review the progress in this regard annually. They could also increase the proportion of renewable energy in their total sourced electricity.”

There are certain practices, for example ESG ratings, ESG stress testing, assessing the impact of environmental factors on credit risk metrics such as probabilities of default (PD) and loss given default (LGD), scenario analysis, etc. which are prevalent in the context of a bank/NBFC.

ESG POLICY

One way of putting in place an appropriate standard for transitioning the business towards sustainable finance is to put in place an ‘ESG Policy’.

This ESG Policy would highlight and reaffirm the financial institutions commitment to sustainable practices and ESG considerations and it may also adopt global principles for sustainability through this policy. The policy can also assist in appropriately laying down a risk management and mitigation framework, with respect to ESG related risks, along with the process of integrating and implementing ESG practices into its lending and investment business.

The ESG policy should ideally be owned by the risk committees of the financial entity, and duly subjected to monitoring and supervision by the board.

BROAD CONTOURS OF AN ESG POLICY

The RBI discussion paper on climate risk and sustainable finance recommended that as a good practice, REs may frame

a climate related policy. According to the discussion paper this policy must “have a clear definition and assignment of responsibilities and reporting lines across the three lines of defence.

- First line should have sufficient awareness and understanding to identify potential climate-related financial risks.
- Second line should undertake independent climate-related risk assessment and monitoring, including reassessment of the initial assessment conducted by the frontline staff. The compliance function should ensure adherence to applicable rules and regulations and adopt formal escalation procedures to report material risks to the Board.
- Third line should carry out regular reviews of the overall internal control framework and systems, including the quality of underlying data.”

Accordingly, the broad contours of an ESG policy, can be incorporated structurally in the manner discussed below while including the three lines of defence discussed above. It may be noted that these are illustrative and not exhaustive pointers and may require adjustments/ tweaking where necessary.

ROLES & RESPONSIBILITIES OF THE ENTITY W.R.T ESG PRACTICES WITHIN THE ORGANISATION

This would deal with the direct impact on the environment caused through the financial institutions own activities. For instance, emissions from buildings, branches of a bank/ NBFC. The financial institution has some roles and responsibilities with respect to ESG practices within its own organisation. Its role towards the environment, social, labour and working conditions should be captured in this portion of the policy.

The governance aspect may talk about how the governance structure of the bank/NBFC would incorporate environmental and social concerns into its decision making hierarchy. This may

Adopting ESG-Sensitive Lending Practices for Sustainable Finance

also include setting up of ESG committee and sub-committees as is being done by some banks in their ESG Policies¹⁷.

ESG-SENSITIVE LENDING/ INVESTMENT PRINCIPLES OF THE ENTITY

The entity should outline the principles it would follow while incorporating ESG into its lending/ investment activities. This may include listing out the acceptable ESG parameters for the organisation, classifying customers into various risk categories (such as high, medium, low), having a list of activities that are prohibited (essentially an exclusion list)¹⁸.

Further, this section may also highlight the tools to be used by the entity for the purpose of screening or scoring the borrower/ investee in accordance with ESG parameters. ESG ratings that the entity may use, stress testing tools, etc. may form part of this portion of the policy.

ASSESSMENT OF THE CUSTOMER BASED ON THE ACCEPTABLE ESG PARAMETERS

The manner in which client screening and diligence will be done would be listed out in the policy. For instance when a client approaches a bank for a loan, the manner of assessment may be as under -

- Identify whether the client engages in activities mentioned in the exclusion list of the entity and if so, reject the client;
- If the client is not part of the exclusion list, collect data (which would include ESG specific data) for further analysing and understanding the business and checking whether the client has an appropriate ESG scoring;
- Assessment of the clients risk parameters may be done and accordingly, the loan may be further sent for approval subject to pricing considerations incorporating ESG risks as well (for instance a high ESG risk score may incorporate covenants or pricing adjustments for that particular client).

DECISION MAKING AND PERIODIC MONITORING/ REVIEW OF THE BORROWER

Upon appropriate assessment criteria being spelt out, the decision making parameters should be specified in the policy. The authority that would make the decision to sanction the loan and their responsibility should be highlighted in the policy.

One important aspect is review and periodic monitoring of the borrower after the lending/ investment decision has been made. According to a research report¹⁹ by Ingrid Johansson and Emelie Karlsson (2018) "Several banks that work with

sustainability, only integrate an environmental analysis during the client's due diligence but not during the monitoring phase.

Thus, there should be periodic review of the loan account/ borrower at a specified frequency. This requirement of periodic monitoring and the frequency at which it would be done, should be spelt out in the policy.

REPORTING/ DISCLOSURE STANDARDS

Reporting could include internal, as well as, external reporting. Internal reporting would mean the process for reporting ESG related data within the organisation to the relevant authority such as an ESG committee or the Risk committee or the Board at periodic intervals.

External reporting would mean reporting to the public at large. This could be through sustainability reports/ ESG reports that deal specifically with ESG related data. The disclosure standards that would be adhered to while doing such external reporting can be highlighted in the policy such as those reporting guidelines laid down in the RBI discussion paper on climate risk and sustainable finance.

CONCLUSION

There is no denying the fact that incorporating ESG considerations into business practices is becoming increasingly important for financial institutions like banks and NBFCs, and would soon become a precondition of survival. Regulators are ramping up their own internal departments and databases to identify climate related risks and other ESG considerations that need to be addressed by financial institutions.

Shri M. Rajeshwar Rao, Deputy Governor, RBI, in his speech at the Business Standard BFSI Insight Summit at Mumbai dated December 22, 2022²⁰ stated that "climate change may result in physical and transition risks that could have implications for the physical safety and financial soundness of individual regulated entities as well as for the stability of financial system. Thus, there is a need for regulated entities to develop and implement comprehensive frameworks for understanding and assessing the potential impact of climate-related financial risks in their business strategy and operations."

Sooner than later there is a high possibility that regulators may mandate financial institutions to make changes that incorporate sustainability principles into their lending and investment decisions. Such a mandate by a regulator could require structural changes in the ways a financial entity runs its business.

Putting in place a comprehensive ESG Policy, without waiting for the regulator's mandate, is the initiating step towards integrating sustainable practices into business and to align one's practices with what may anyway be mandated in the not-so-distant future.

17 For instance, HDFC Bank's ESG policy states that the bank has established an ESG committee and sub-committees - <https://www.hdfcbank.com/content/api/contentstream-id/723fb80a-2dde-42a3-9793-7ae1be57c87f/fbac1d94-7b3f-4b7a-ad10-d84cd154eae2>

18 For instance, the ESG Policy of Axis Bank has an exclusion list as well as categories for risk classification that need to be checked prior to lending - <https://www.axisbank.com/docs/default-source/default-document-library/esg-policy-and-procedure.pdf>

19 Sustainable Lending - A case study of Swedbank's lending operations, Ingrid Johansson and Emelie Karlsson (2018) - https://gupea.ub.gu.se/bitstream/handle/2077/56908/gupea_2077_56908_1.pdf?sequence=1

20 Challenges and Opportunities in Scaling up Green Finance (Address by Shri M. Rajeshwar Rao, Deputy Governor, Reserve Bank of India - December 22, 2022 - at the Business Standard BFSI Insight Summit at Mumbai) - https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?id=1344

Regulatory Sandbox: A way of Innovative Revolution

The concept of Regulatory Sandbox is one step ahead to the conventional technology environment. Under the Regulatory Sandbox, a regulator facilitates a safe or controlled space/environment, in which businesses/entities/innovators can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question in real world.



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INTRODUCTION

Regulatory Sandbox has become buzzword for the technology industry and Regulators nowadays. Almost major Regulators in India, like SEBI, RBI and IRDAI have already published discussion papers/SOPs/circulars and other guidelines in this regard.

WHAT IS THE CONCEPT OF REGULATORY SANDBOX?

A simple dictionary meaning of a word ‘**Sandbox**’ is ‘A children’s play area consisting of a box filled with sand’. It is a limited area, having defined boundaries, where children can play. Applying the simile to the real world, perhaps in technology world, Sandbox refers a testing environment in a computer system in which new or untested software or coding can be run securely.



The concept of Regulatory Sandbox is one step ahead to the conventional technology environment. Under the Regulatory Sandbox, a regulator facilitates a safe or controlled space/environment in which businesses/entities/innovators can **test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question in real world.**

The controlled environment can be equated with situation where, Regulator will provide the playground with their observers, innovators will play their game with their rules and regulator will observe if the fair play is in place.

BIRTH OF REGULATORY SANDBOX

The concept of regulatory sandbox originated in the UK as one element of *Project Innovate*, a program of the Financial Conduct Authority (FCA). Project Innovate was launched in October 2014 **to promote competition through disruptive innovation** in the interests of consumers. Project Innovate was reportedly modelled after the US Consumer Financial Protection Bureau’s Project Catalyst, which dates back to 2012.¹



Project Catalyst was tasked with addressing concrete issues facing consumers, including improving unbanked consumers’ financial access (financial inclusion) and making payment services more consumer-friendly. The means by which it did so, include **data-based decision making**, and a flexible pilot testing process. These two features were shared by the UK’s Project Innovate also. Project Innovate further refined the pilot testing process in the form of the FCA’s regulatory sandbox.

At this juncture, it is pertinent to note the *approach of German Government* in this area:

“In specialized laws, the possibility of ‘trying things out’ should be increased. [...] For this reason, we want to check each future law, within the framework of the departmental principle, whether freedom can be given to innovative services by including an experimentation clause.”

NEED OF REGULATORY SANDBOX: BALANCING ACT BETWEEN REGULATION AND INNOVATION

Generally, when any new product comes to market, apart from competition, it faces an inherent fear from regulatory in that particular country. Innovation is taking shape at such a breakneck speed that **instead of ‘Survival of the Fittest’ one should now say ‘Survival of the Latest’.**

¹ <https://financialit.net/blog/rise-regulatory-sandbox>



In such environment, regulatory agencies need to actively seek understanding the benefits, advantage and risks of innovation, while simultaneously developing appropriate policies, guidance to reap the benefits of such innovation, protect consumers, and safeguard the financial/regulatory environment in the country.

Launching and running a sandbox is no small undertaking. It requires a lot of learning and consumes human and financial resources. In such scenario, regulatory relief to the testing is important, when it comes to bringing novel products to market. Regulator has to do the act of balancing between the regulation and innovation.

REGULATORY SANDBOX: GLOBAL INITIATIVES (OF LEADING COUNTRIES)

To give boost to the innovation at one hand and to protect the financial/regulatory environment of the country on the other hand, Regulators around the world have come forward to provide the protected/controlled environment to innovators to test their products.

China: Recently, China is mulling a regulatory sandbox for the increasingly digitalized and automated vehicle industry as part of efforts to solve potential risks while facilitating the automobile sector's development. What is to be tested in the sandbox covers vehicles' environmental perception, decision-making and coordination control as well as functions including updating over the air and autonomous driving.²

Singapore³: The Energy Market Authority (EMA) is inviting commercial and industrial companies to participate in a two-year regulatory sandbox to optimise their energy consumption. Optimising energy demand underpins the ongoing transition to lower carbon emissions as set out in the Singapore Green Plan 2030.

Russia⁴: The Russian Export Centre (REC), which is a state-run institute tasked to support Russia's exports, is now considering the employment of digital currencies as an alternative approach to international settlements under sanctions.

The organization believes that setting up a "cross-border digital sandbox" is a promising initiative. The project will aim to create opportunities for fintech companies to process payments using digital financial instruments on behalf of Russian exporters and importers.

United States: The Consumer Financial Protection Bureau (CFPB) was the first regulatory agency to set up a dedicated fintech office to study fintech and provide assistance to promote consumer friendly innovation. After that, there are too many sandbox project going over different states in USA.

2 <https://global.chinadaily.com.cn/a/202204/11/W562538ff4a310fd2b29e56320.html>
 3 https://www.ema.gov.sg/media_release.aspx?news_sid=20221024BUJD4YDq1igs
 4 <https://news.bitcoin.com/russia-developing-sandbox-for-cross-border-crypto-payments/>

INITIATIVES OF 'NEW DIGITAL INDIA'

With the ongoing global pace and technological revolution, it is impossible for New Digital India to lag behind. Our payment technologies have proven to be world class architecture of its own kind and it is evident from the fact that the BHIM is being launched overseas also.

With this background certain Indian regulatory authorities launched the discussion papers/SOPs/drafts for the regulatory sandbox innovation at around 2019 and onwards.

So far four authorities viz RBI (Reserve Bank of India), SEBI (Securities and Exchange Board of India), IRDAI (Insurance Regulatory and Development Authority of India) and IFSCA (International Financial Service Centres Authority) have launched various initiatives towards the Regulatory Sandbox innovation.

However, till date only RBI, amongst others, have succeeded in gifting Indians, with innovative solutions.



(A) RBI Regulatory Sandbox⁵

Initiative: RBI in July 2016 set up an inter-regulatory Working Group (WG) to look into and report on the more subtle and granular aspects of FinTech and its implications or risks involved, so as to review the regulatory framework and respond to the dynamics of the rapidly evolving FinTech landscape in the country. WG released their report on February 08, 2018, for public comments. One of the key recommendations of the WG was to introduce an appropriate framework for a Regulatory Sandbox (RS) within a well-defined space and duration where the financial sector regulator will provide the requisite regulatory guidance, so as to increase efficiency, manage risks and create new opportunities for consumers.

Experimenting and learning is the first and foremost key in this concept. The RS fosters 'learning by doing' on all sides. Regulators obtain first-hand empirical evidence on the benefits and risks of emerging technologies and their implications, enabling them to take a considered view on the regulatory

5 <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/ENABLING79D8EB31FED47A0BE21158C337123BF.PDF>

changes or new regulations that may be needed to support useful innovation, while containing the attendant risks. Incumbent financial service providers, including banks, also improve their understanding of how new financial technologies might work, which helps them to appropriately integrate such new technologies with their business plans. Innovators and FinTech companies can improve their understanding of regulations that govern their offerings and shape their products accordingly. Finally, feedback from customers, as end users, educates both the regulator and the innovator as to what costs and benefits might accrue to customers from these innovations.

Testing: Users of an RS can test the product’s viability without the need for a larger and more expensive roll-out, if the product appears to have the potential to be successful. If any concerns arise, during the sandbox period, appropriate modifications can be made before the product is launched in the broader market.

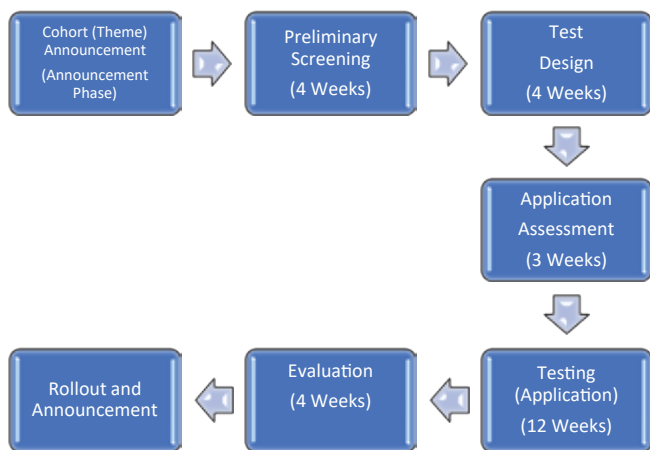
Wide Reach: FinTechs provide solutions that can further financial inclusion in a significant way. The RS can go a long way in not only improving the pace of innovation and technology absorption but also in financial inclusion and in improving financial reach. Areas that can potentially get a thrust from the RS include microfinance, innovative small savings, remittances, mobile banking and other digital payments.

Self-Learning: By providing a structured and institutionalized environment for evidence based regulatory decision-making, the dependence of the regulator on industry/stakeholder consultations only is correspondingly reduced.

Diversified products: RS could lead to better outcomes for consumers through an increased range of products and services, reduced costs and improved access to financial services.

PHASES OF REGULATORY SANDBOX UNDER RBI

The following are the phases involved in RBI RS:



>>> **Announcement Phase:** It is the initial phase, wherein RBI or any other regulatory invites the application from various applicant which revolves around a specific theme. Before applying applicant must ensure his proposed product is fitting for the theme.

>>> **Preliminary Screening:** This phase may last for 4 weeks from the closure of application window. The applications shall be received by the FTU and evaluated to shortlist applicants meeting the eligibility criteria. The FTU shall ensure that the applicant clearly understands the objective and principles of the RS and conforms to them.

>>> **Test Design:** This phase may last for 4 weeks. The FTU shall finalize the test design through an iterative engagement with the applicants and identify outcome metrics for evaluating evidence of benefits and risks.

>>> **Application Assessment:** This phase may last for 3 weeks. The FTU shall vet the test design and propose regulatory modifications, if any. Enabling Framework for Regulatory Sandbox.

>>> **Testing:** This phase may last for a maximum of 12 weeks. The FTU shall generate empirical evidence to assess the tests by close monitoring.

>>> **Evaluation:** This phase may last for 4 weeks. The final outcome of the testing of products/services/technology as per the expected parameters including viability/ acceptability under the RS shall be confirmed by the RBI. The FTU shall assess the outcome reports on the test and decide on whether the product/service is viable and acceptable under the RS.

>>> **Roll Out and Announcement:** On completion of all the above phases, on successful evaluation, Regulatory announces the exit of the product from the RS and announces its future plan about the roll out.

So far RBI has announced 5 following Cohorts/Themes

Cohort No	Theme Name
Cohort 1	Retail Payments
Cohort 2	Cross- Border Payments
Cohort 3	MSME Lending
Cohort 4	Prevention and Mitigation of Financial Frauds
Cohort 5	Themed Neutral (Any Innovative products/ services/ technologies cutting across various functions)

UPI 123PAY which enables the featured phone user one step closer to an entirely cashless economy is the outcome of RBIs Regulatory Sandbox Cohort 1 ‘Retail Payments’. *UPI 123PAY* is an instant payment system for feature phone users who can use Unified Payments Interface (UPI) payment service in a safe and secure manner without internet connection.

(B) SEBI Regulatory Sandbox

Under the SEBI Regulatory Sandbox, all entities registered with SEBI under Section 12 of the SEBI Act, 1992, shall be eligible for testing within the Regulatory Sandbox. An entity can participate on its own or use the Services of Fintech Firms. SEBI Sandbox are cohort neutral i.e., no specific cohort is announced by SEBI for the purpose of Sandbox.

Regulatory Sandbox: A way of Innovative Revolution

As of October 2022, only 1 out of 10 applications is approved by SEBI for Regulatory Sandbox purpose.⁶

SEBI has come out with a standard operating procedure for inter-operable regulatory sandbox in a bid to facilitate testing of innovative products falling within the regulatory ambit of more than one financial sector regulators.

(C) IRDAI Regulatory Sandbox

Insurance Regulatory and Development Authority of India launched the regulatory sandbox on Jul 26, 2019 under the IRDAI (Regulatory Sandbox) Regulations, 2019.

Shriram General Insurance has bagged the regulatory sandbox approval to launch an innovative concept, Fire Loss of Profit insurance cover.

The product covers loss of gross profit or income, and/or increase in the cost of working due to reduction in business turnover/output caused by covered perils.

(D) IFSCA Regulatory Sandbox

On 19 October 2020, the International Financial Services Centres Authority (IFSCA) released a Framework for Regulatory Sandbox. Under this framework, entities operating in the capital market, banking, insurance and financial services space shall be granted certain facilities and flexibilities to experiment with FinTech solutions in a live environment with a limited set of real customers for a limited period.

In its endeavour to support a world-class fintech hub at GIFT City, IFSCA had launched I-Sprint'21, a global FinTech Hackathon, as part of InFINITY Forum 2021. After multiple rounds of assessment, the Finacle Trade Connect, a blockchain-based solution was selected for the 'Buyers Credit Optimization' category and consequently, granted direct entry into the IFSCA's Regulatory Sandbox.⁷

(F) State Level Efforts

Government of Telangana⁸: Government of Telangana has set up **Emerging Technology Wing** and it has mooted the Sandbox in February 2023 to provide stakeholders in the Web 3.0 ecosystem a platform to test their product and get it validated by regulators. It has by far received 20 applications from various stakeholders for the Sandbox. The aim is to accelerate innovation in the Web 3.0 industry by facilitating robust testing mechanisms and support required by firms.

INTER-OPERABLE REGULATORY SANDBOX

Some Financial products or service providers business models fall within the remit of more than one financial sector regulator such as RBI, SEBI, IRDAI, PFRDA and IFSCA (International Financial Services Centres Authority). One step further in this

direction, RBI has recently announced a standard operating procedure (SOP) for interoperable regulatory sandbox to regulate newer fintech products and services falling in the ambit of more than one regulator. This move is aimed at developing a clear jurisdiction where there are overlapping areas involving multiple regulators.

SOME AREAS OF CONCERN



When we talk about innovation and its benefits, we have to think of the risks it poses both as to the technology landscape and regulatory landscape. Technology may affect the chunk or mass population and hence social aspect also must be kept in mind.

1. **Hurdle or facilitator ??:** The role of regulator is very crucial in Regulatory Sandbox regime. Regulators "facilitating and hosting the sandbox" may play the role of gatekeeper and eventually may slow down or even halt the innovation at even small suspicious of threat.
2. **Inadequate market knowledge:** The pace and spectrum of technology is changing at such a pace that without a solid understanding of the fast-paced market, regulatory sandboxes will not function properly. Rather if regulator takes too long time to clear the innovative technology, there is threat that the technology may become outdated by that time. This will discourage the process of innovation.
3. **Technology Bias:** Sometimes it may so happen that regulator thinks that regulatory sandbox is the only way to invent and encourage innovation. However, there are structured and unstructured ways of innovation which may be outside the purview of regulatory sandbox regime and still have use case benefits for innovation.
4. **Coverage and Sustainability:** The most a sandbox can do is to provide temporary relief to a small number of market participants. That is not sustainable solution for which the idea of Sandbox came into being. The temporary innovations and strategies which give relief temporarily is of no use as there is technology bubbles all over the world that creates the temporary technologies for shorter period of time. Agencies should take advantage of sandbox experiments to design lasting policies that benefit the entire ecosystem.

FUTURE OF INNOVATION

Like FinTech there are other two wings of technology that is taking shape in the world viz. RegTech and SupTechs. Regulators and supervisors have to undertake accelerated off-site surveillance. This also brings in the need for a transparent, technology and data-driven approach. To serve this need, new fields called RegTech and SupTech are coming up.⁹

6 <https://www.sebi.gov.in/sebiweb/other/RegulatorySandbox.jsp>

7 https://www.business-standard.com/article/news-cm/infosys-finacle-gets-inducted-into-ifscas-regulatory-sandbox-framework-122080100540_1.html

8 <https://telanganatoday.com/telangana-web-3-0-regulatory-sandbox-to-begin-in-february#:~:text=Hyderabad%3A%20In%20a%20few%20weeks,get%20it%20validated%20by%20regulators.>

9 https://rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=1071

RegTech

RegTechs is simple spinoff of FinTech. RegTech i.e., Regulatory Technology is the technology that assists a bank, credit union, or other financial institution by using technological advancements in data mining, artificial intelligence, blockchain, Machine Learning, automation etc to solve problems, optimise processes and manage risks for regulatory compliance.

SupTech

SupTech is a flip side of the coin of RegTech.



There could be two types of RegTechs - technology that aids organisations to meet regulatory compliance obligations and the other is the use of technology by regulatory authorities themselves to monitor and ensure regulatory compliance by regulated entities.

The latter category of RegTech is popularly known as 'SupTech', a contraction for the term 'supervisory technology'.

The examples are Import Data Processing and Monitoring System (IDPMS), Export Data Processing and Monitoring System (EDPMS) and Central Repository of Information on Large Credits (CRILC).



Some RegTech/SupTech solutions being used around the world:

- Standardized solution for asset management and fund administration, insurance companies and banks;
- Integrated real-time due diligence, transaction monitoring, sanctions screening/watch list filtering and

Generally, when any new product comes to market, apart from competition, it faces an inherent fear from regulatory bodies in that particular country.

regulatory reporting capabilities to comply with AML and CTF regulations;

- Risk analytics to detect disruptive events in global financial markets and anticipates price movements.

WHAT COMPANY SECRETARY HAS TO DO WITH ALL THIS?

One may think that, it is all about technology and not per se falling in the realm of legal or secretarial areas. However, apart from FinTech; RegTech and SupTechs are the emerging technologies which will give shape to the Governance, Regulatory and Supervisory environment in the country. Being Governance Professional, Company Secretary must be aware of what is going on in this field. It is definitely going to affect the way the various laws and regulations are being governed & implemented in the country. ***It is very evident from the Income Tax AIS system wherein all your incomes are comprehensively tracked. Even MCA is now using some AI and Machine Learning modules to strengthen the governance.***


CONCLUSION

Reg-Tech, Sup-Tech and Fin-Tech are the new trio of technology revolution.

A well-designed and executed sandbox can facilitate innovation and protect consumers, avoiding the pitfalls that concern many critics.

But more efforts must be taken both at regulatory end and innovators end. The regulatory should provide with more flexibility and innovator must try for the long-term solution over short lived solutions.

A well designed countrywide Regulatory Sandbox system may bring about miracle in the economic working of the country with the help of technology.

Being Company Secretary or Governance Professionals, right now our role is limited to wait and watch. However in near future we may need to dive deep to understand and apply these emerging technologies in the area of practice or to improve the areas of our employment. 

Issue & Allotment Confusion – Companies Act vs. FEMA Regulations



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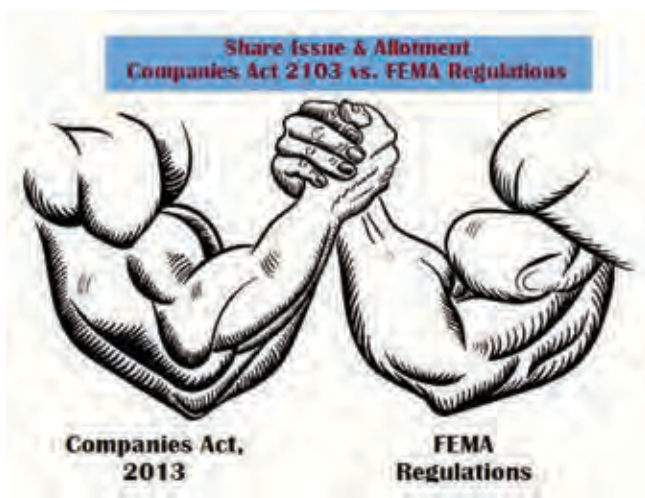


Image credits: Google Images

INTRODUCTION

The above image summarises the theme of this article. The articles has highlighted the anomaly of misaligned provisions of Companies Act 2013 ('Companies Act') and Master Direction – Reporting under Foreign Exchange Management Act, 1999 ('FEMA Reporting Regulations' as amended upto September 30, 2022) read with Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 ('NDI Reporting Regulations' as amended upto June 15, 2020) (together called as the 'FEMA Regulations') with respect to the issue & allotment of shares and its reporting, for the shares issued & allotted to person resident outside India ('foreign nationals'), post incorporation of a company in India under the provisions of Companies Act. The Companies Act allows for incorporating companies by foreign nationals either as wholly-owned subsidiary ('WOS') or through partial subscription of upto any percentage, subject to sectoral caps and conditions as provided in the Consolidated FDI Policy read with applicable Press Notes. Every company

which gets incorporated shall mandatorily have subscribers to its Memorandum of Association ('MOA') and Articles of Association ('AOA'), which are called as the Promoters / First Subscribers and are bound to pay the amount subscribed to the Company (except in cases of company limited by guarantee). In such cases, where foreign nationals subscribe to the capital of company, they are not only required to adhere to the provisions of the Companies Act but also comply with above-mentioned FEMA Regulations. Both being legislation of equal force governing the subject matter, give rise to the end matter – which one to be applied and complied?

To discover the answers, let us glance through some relevant provisions from Companies Act and FEMA Regulations and their possible rationale:

RELEVANT PROVISIONS OF COMPANIES ACT

[Emphasis supplied]

9. Effect of Registration

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

10. Effect of Memorandum and Articles

- (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
- (2) *All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.*

56. Transfer and Transmission of Securities

- (1) xxx
- (4) *Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—*
 - (a) *within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;*

- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares.

Analysis: A joint understanding of above provisions of Companies Act gives the following conclusion – companies must register the subscribers as members from date of incorporation and record the subscription money in its balance sheet as receivables (debt) from them. Further, companies must ‘deliver the certificate’ i.e. share certificate, within 2 months of incorporation. Undoubtedly the Companies Act does not warrant a separate event for issue & allotment of securities / shares to the subscribers in case of post incorporation, as their subscription to charter documents itself is considered as the event of issue & allotment, which is given effect from the ‘date of incorporation’. In other words, every subscriber has a “right to receive” certificate for the securities subscribed by her for which the only obligation upon her is to make payment of the subscription money. Even if not made, the same shall be recorded as debt in the books of accounts and the company shall, without fail, take note of subscribers in its first meeting post incorporation (also known as the ‘**statutory board meeting**’) as mandated under Section 173(1) of the Companies Act, to issue, print and deliver the certificates. Simply considered, there is no time limit prescribed for the subscribers, within which they should make the payment of their obligation (i.e. subscription money). However, an indirect reference from Section 10A¹ (**Commencement of business**) clarifies that companies can commence business only after filing Form INC-20A. Such form can be filed only if the companies satisfy two conditions, namely: (a) declaration by director confirming receipt of subscription money; and (b) verification of registered office filed with Registrar of Companies (**ROC**). Such return of commencement of business i.e. Form INC-20A can be filed within 180 days of date of incorporation. Thus, time limit for subscribers to pay their debt to company, stands at 180 days maximum, without any late fee / additional fee.

RELEVANT PROVISIONS OF PART-IV A. 1(b) OF THE FEMA REPORTING REGULATIONS

[Emphasis supplied]

Part IV: Foreign Investment

A. Reports

1. Reporting for issue of capital instruments
 - a) Reporting inflows: The *actual inflows on account of issue of equity instruments shall be reported* by the AD branch in the R-returns in the normal course.
 - b) Reporting of issue of equity instruments:
 - (i) Foreign Currency – Gross Provisional Return (FC- GPR): *An Indian company issuing equity instruments to a person resident outside India, and where such issue is reckoned as Foreign Direct Investment under NDI Rules, 2019, shall report such issue in Form FC-GPR in the Single Master Form not later than thirty days from the date of issue of the equity instruments. Issue of ‘participating interest/ rights’ in oil fields shall be reported in Form FC-GPR.*

Analysis: The provisions enumerated above do not specify the event related to issue of equity instrument but only specify that ‘reporting of such issue’ shall be done within 30 days of date of issue. Since the FEMA Reporting Regulations do not specify the date of issue, it is safe to assume such date from Companies Act, being the primary law giving out provision for issue and allotment of securities.

RELEVANT PROVISIONS OF NDI REPORTING REGULATIONS SCHEDULE I (A)(2) [Emphasis supplied]

Schedule I: Purchase or sale of equity instruments of an Indian company by a person resident outside India.

A. Mode of payment

- (1) xxx
- (2) *Equity instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.*

Analysis: The above provisions in the NDI Reporting Regulations is contained in the Schedule therein. Evidently, the provisions enumerated above goes beyond its intended purpose i.e. specifying mode of payment. One should also introspect as to how NDI Reporting Regulations prescribe such restriction of issuing equity instrument post receipt of consideration. In ordinary cases (non-incorporation), such restriction makes sense as the intent is to get the foreign remittance remitted to India before giving out any capital instrument in hands of foreign nationals. Such view is also supported in non-incorporation cases, as provisions of Section 42 read with 62 of Companies Act mandate receipt of capital before making allotment but post issue of shares / securities. Thus, in case of incorporation, where the companies do not have issue & allotment event, this provision results into confusion in compliance requirements.

As evident from the above provisions, the instrument (or equity shares) is required to be allotted to the foreign nationals towards their subscription to the Memorandum of Association (‘MOA’) and Articles of Association (‘AOA’). However, the ambiguity remains on whether to allot the instruments post receipt of remittance from foreign or prior to receipt of remittance. As per the Companies Act, the Company is mandatorily required to deliver the certificates of all securities allotted within a period of two months from the date of allotment. But the NDI Reporting Regulation state that equity instruments shall be issued within 60 days from date of receipt of consideration. The FEMA Reporting Regulations prescribe that Form FC-GPR be reported within 30 days of date of issue of equity instruments. In such a situation, the Companies Act being the primary law is followed by the companies, following the principle of interpretation “specific to prevail over general” as the other two FEMA Reporting Regulations and NDI Reporting Regulations are to be followed for the purpose of reporting of foreign inward remittance. These two regulations are not meant for determining process of issue & allotment of

¹ Inserted by the Companies (Amendment) Ordinance, 2018 Dated 02.11.2018 and later inserted by the Companies (Amendment) Act, 2019



securities but only for reporting the event pertaining to issue & allotment and receipt of proceeds thereof. As discussed above, it is pertinent to note that in case of incorporation of any company, the event related to issue or allotment of shares does not arise, since the promoters by the virtue of subscribing to the MOA-AOA are deemed to be issued & allotted such number of shares as they have subscribed for. Thus, the date of issue / allotment for all official purpose is recorded as the 'date of incorporation' pursuant to the provisions of Section 9 r/w Section 10(2) of the Companies Act. Further, pursuant to provisions of Section 173(1) r/w Annexure III of the Guidance Note on Secretarial Standard-I Meetings of The Board of Directors ('SS-1') companies are required to hold their statutory board meeting within 30 days of incorporation and approve *illustrative agendas* provided under SS-1, which includes 'authorisation for issue of share certificates and printing thereof to the subscribers to the MOA-AOA of the company'. This makes it abundant clear that the date of issue & allotment is the date of incorporation OR date of statutory board meeting in which such matter is recorded (taken note of), *for all practical reasons*, of issuing share certificates and signing thereof by directors, paying stamp duty thereon, reporting to RBI (through AD Bank) of issue & allotment, recording names in register of members, etc. The FEMA Reporting Regulations and NDI Reporting Regulations, do not contain any specific provision on treatment of date of issue & allotment post incorporation but instead have notified two different ways to consider the said event for reporting receipt of proceeds from foreign inward remittance, being:

- (i) Under the FEMA Reporting Regulations, companies are required to report **such issue** in Form FC-GPR in the Single Master Form **not later than thirty days from the date of issue of the equity instruments** – notably, the date of issue is not clarified here for cases of incorporation.
- (ii) Under the NDI Reporting Regulations companies **to issue the equity instruments within sixty days from the date of receipt of the consideration**.

This difference in the provisions has resulted into ambiguity on account of following (*for cases of incorporation*):


- A. Whether to issue the equity instrument (shares) prior to receipt of remittance or post receipt of remittance – *if*

intention is to issue instrument post incorporation, then ordinarily remittance shall be a pre-requisite to registration of company in Form SPICe which is filed with Ministry of Corporate Affairs. Since it is not a mandatory pre-requisite, in my view, this should be taken as clarification for accepting remittance post incorporation.

- B. Whether to comply with provisions of Companies Act for recording date of issue & allotment as date of incorporation (*or date of statutory board meeting in which allotment is recorded for issue of share certificates*) or whether to comply with FEMA Reporting Regulations r/w NDI Reporting Regulations, by issuing & allotting equity instruments post receipt of consideration, thereby resulting into breach of Companies Act provisions. – *Companies Act being specific law for the purpose of issue and allotment of securities, it should prevail, thereby ending any scope for ambiguity further.*

Attention is also drawn towards the bank account opening process for the companies being WOS or having foreign national as director/subscribers, which require a board resolution and also other declarations from promoters / directors, etc. which cannot be possible until the Company holds its statutory board meeting within 30 days of incorporation. If the Company will pass the board resolution for account opening in 30 days post incorporation, then the money shall only be possible to be received post the opening of account based on such board approval at its meeting. Considering the processing & execution of documents from foreign state, including the liaison between Indian and foreign banks, the time taken to open bank account by WOS ranges between 30-60 days in itself. Therefore, companies must stick to provisions of Companies Act and deliver the share certificates within 2 months of incorporation by recording the subscription amount as due from subscribers in their books of account. There should be no instance of non-compliance or contravention of either Companies Act or FEMA Regulations in following this approach by companies. The AD Banks being engaged in the entire process cannot be unaware of such operational difficulty faced by the WOS or companies with foreign national subscribers, and yet they continue to throw challenges at companies for contravention of FEMA Regulations.

CONCLUSION

In the age of technological advancements where the RBI has moved towards testing its own digital currency and potentially rumored crypto too, it should issue necessary instructions (as part of FIRMS manual or otherwise) for the AD Banks and foreign nationals at large to remove this ambiguity and set the process straight for once and all. Needless to say, this shall be a boost in ease of doing business and would save many companies from late submission fee ('LSF'), **if any**, being levied by AD banks for contravention with FEMA Regulations. Since the above is a matter of mere understanding, AD Banks shall, without waiting for an official clarification, understand the genesis of provisions and their inter-connectivity in operational procedures. Until then, the companies can only hope for sailing through this confusion based challenge. 



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Invitation For Research Papers In CS Journal – March 2023 Issue

We, invite Research papers/ Manuscripts to publish in 'Chartered Secretary' with the objective of creating proclivity towards research among its Members both in employment and practice. As research is an integral part the of scientific approach towards an issue for arriving at concrete solutions, in view of this it is essential to ensconce the research oriented approach. Further, research is pervasive, i.e. it is not restricted to a particular field. Whether it is engineering, management, law, medicine, etc. without proper research, it is almost next to impossible to ascertain the solution of a problem.

Contributions may be sent on topics like Secretarial Practice, Auditing Standards, Company Law, Mercantile Law, Industrial Law, Labour Relations, Business Administration, Accounting, CG & CSR, Legal Discipline, and Digital Transformation & Artificial Intelligence or on any other subject and topic of professional interest.

Participants are requested to send their articles/ research papers with the following terms:

- The article/research papers should be original and exclusive for Chartered Secretary.
- It should be ensured that the article has not been/will not be sent elsewhere for publication.
- Article/ research papers should include a concise Title, Abstract name of the author(s) and address.

Members and other readers desirous of contributing articles may send the same latest by **Saturday, February 25, 2023** at cs.journal@icsi.edu for the March 2023 issue of Chartered Secretary Journal.

The length of the research paper should ordinarily be between 2,500 - 4,000 words. The research paper should be forwarded in MS Word format.

We look forward to your co-operation in making this initiative of the Institute a success.

Regards,

Team ICSI

2

RESEARCH CORNER



■ LURKING FEAR OF THE UNKNOWN: RECONSIDERING CYBER SECURITY IN THE DIGITAL TRANSFORMATION AGE

Lurking fear of the Unknown: Reconsidering Cyber Security in the Digital Transformation Age

Cyberspace has become one fundamental necessity for an economy to thrive and survive. There has been an exponential upsurge in the adoption of digital technology. In the year 2021, the volume of spending on digital transformation was USD 1.85 trillion ([www. Statista.com](http://www.Statista.com)). Digitization brings a wide array of benefits and also brings along significant challenges. As the global economy is interlinked, hence cyberattack has the potential to disrupt the economy with a single attack. This paper tries to highlight cyber security issues and challenges. The paper also highlights cyber security management techniques. There has been a measured increase in the spending of enterprises on cyber security. Total spending in the year 2017 was USD 101543 million, which grew to USD 167893 million in the year 2022.



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INTRODUCTION

Digital Transformation is the adoption of technology to facilitate enterprises to automate their activities to accelerate their performance. Digital transformation creates both challenges and opportunities. The key advantages of Digital transformation are increased productivity, better performance, improved agility, transparency, etc. If the company rejects digitization, then the company may become obsolete. Companies are leveraging new technologies like Cloud computing, Artificial Intelligence, Big Data, Machine Learning, the Internet of Things, and blockchain. Digitization has not only affected enterprises but also deeply impacted the socio-economic environment. As people are using digital payment platforms, e-commerce platforms, social media platforms, etc., digitization has exponentially proliferated during the COVID period (*Amoah, 2021*). A single cyberattack can have a domino effect on the global economy. With growing dependence on digital technologies, the stakes are high not only for an enterprise but for the whole economy.

Globally, spending on digital transformation is rapidly growing. In the year 2017 the volume of spending on digital transformation was USD 0.96 trillion, which grew to USD 1.85 trillion in year 2021. The spending on digital transformation is expected to grow to USD 3.4 trillion by year 2026 ([www. Statista.com](http://www.Statista.com)). The repercussion of cyberattack can be devastating and dealing with cyber security issue is highly

complex. The number of cases of cyberattack is soaring. In year 2021, the global financial industry faced 2527 cyber incidents. These attacks also resulted in data disclosure and data loss. **Table 1.1** presents the number of cyberattack incidents occurred globally in the financial industry. Among many of those incidents sensitive data got disclosed.

Table – 1.1
Number of cyber incidents in the financial industry worldwide from 2013 to 2021

Year	Cyber incidents	Cyber incidents with data disclosure
2013	856	456
2014	642	277
2015	1386	795
2016	998	471
2017	598	146
2018	927	207
2019	1509	488
2020	721	467
2021	2527	690

Source: <https://www.statista.com/statistics/1310985/number-of-cyber-incidents-in-financial-industry-worldwide/>

REVIEW OF LITERATURE

This section presents past studies conducted in the research area of cybersecurity both globally and nationally.

Perez et al. (2022) conducted research on digital transformation and cyber security of healthcare systems. The data was collected on the critical infrastructure sector related to transformative, adaptive, and absorptive digitization of the healthcare sector in the United States of America. The study found that factors like cyber security knowledge, better interlinking of systematic and organizational interdependence and uncertainty management are crucial for digital Resilience.

Bocayuva (2021), in his study, laid down the importance of cyber security in the maritime sector in the European Union. The study highlighted the importance of digital transformation for the maritime industry like a decline in the number of accidents, reduction of pollution, increased efficiency, output optimization, etc.

Mendhurwar and Mishra (2021), in their study, explored synergy created from adoption of technology. It also discusses the key challenge of digital transformation. The study highlighted that enterprise Architects should work on security, trust and privacy concerns. The paper identified the architecture at an abstract level to integrate IoT and Social technologies for enterprises adopting digital transformation.

Sandhu (2021), in his study, presented a case analysis of recent incidents on American Pipeline systems, Microsoft servers, SolarWinds, etc. The study also discussed the emerging technologies that can prevent cyberattacks, like nanotechnologies, artificial intelligence, quantum computing and blockchain. The study highlighted the need for highly qualified IT professionals for organizations to shift from legacy systems to the modern system.

Maglaras et al. (2020), in their paper, studied the legal framework in Greece to expand cyber security measures as Greece stood in rank one among 160 countries in the NCSI index, which measures the preparedness of countries to prevent cyberattacks and counter cyber incidents. The study was conducted by post establishment Greek National Cyber Security Authority. The study pointed out that Greece issued a Ministerial decree to form the National Cyber Security Authority and framed the National cyber security strategy.

Ohkubo (2019), in his study, highlighted security risks and threats arising from technological advancement. The study discussed offensive and defensive security issues. The study stressed the need for a better legal framework to efficiently handle cyberattack incidents.

Areces (2017) in his study pointed out that disruptive digital transformation is here to optimize performance, provide new solutions and provide worldwide connectivity. The study highlighted that there is a need to take complex measures such as designing strategic Information systems, protecting databases, fragmentation and Web Doorkeepers. The study also highlighted creating an environment of trust and security both internally and externally.

2.1. Research Gap

After an in-depth study, it was found research gap in the scope of the study. The major portion of the studies was international. Very limited work has been conducted in the Indian context. Also many studies focused on the benefits of digital transformation comparatively challenges of digital transformation have not gained the much-required attention. The study intends to highlight the cyber security concern in the digital transformation age.

OBJECTIVE OF THE STUDY

- To understand the cyber security issues
- To highlight the regulatory framework for cyber security in India

RESEARCH METHODOLOGY

The present study is qualitative in nature. The study is based on secondary data from various research publications, various government reports of CERT-In Indian Computer Emergency Response Team of TRAI (Telecom Regulatory Authority of India), DeitY (Department of Electronics and Information Technology), etc. The databases of CIME, www.statista.com, and www.moneycontrol.com were also accessed.

CYBERATTACK

Cyberattack is a complex challenge both at the national and international levels. Cyberattack sees no boundary. These attacks can be sourced from any corner in the world. Cyberattack can be threat not only to an individual but also to Enterprises and countries. An individual may suffer the attacks like cyber stalking and cyber bullying. Attackers target person’s dignity and try to blackmail them. Enterprises may suffer attacks like Intellectual Property theft, Embezzlement and financial fraud. A country may face grievous attack like cyber war, cyber espionage, cyber terrorism and cybercrime. After land, water and air, cyberspace is a new war domain. Cyberterrorists bear ill intentions against the government and its people bearing political and social vendetta (*Dennings 2000*). Cyber espionage is breaking into the computer system to gain access to sensitive information. The information is stolen or transmitted through a cracked computer system (*Banks, 2017*). Cyberattacks steals the secrets and intellectual property of enterprises. Cyber criminals access crucial data or control critical infrastructure in cyberspace to exploit people financially or psychologically. Apart from these, there are other types of attacks like incitement of communal violence, manipulation of public opinion, destruction of information, identity theft, etc.

CYBERATTACK TOOLS

Cyber attackers exploit computer systems and corrupt them using malicious codes as a result, it hampers the functioning of the dependent enterprise. Cyber attackers may use the following tools to carry out a cyberattack.

❖ Malware (Virus, Trojans, worms)	❖ Web application attacks
❖ Phishing	❖ Advanced Persistent threats
❖ Spear Phishing	❖ Social Engineering
❖ Whaling	❖ Targeted attacks
❖ Spyware	❖ SSL encrypted threats
❖ Ransomware	❖ Insider threats
❖ Denial of Service	❖ Zero Day attacks
❖ Accounts take over / Credential abuse	❖ Buffer Overflows
❖ Botnet	❖ Man-in-the-middle
❖ Spoofing	❖ Buffer Overflows
❖ Tailgating and Impersonation	❖ Data Injections
❖ SQL Injection Attacks (SQLi)	❖ Bluejacking and Bluesnarfing

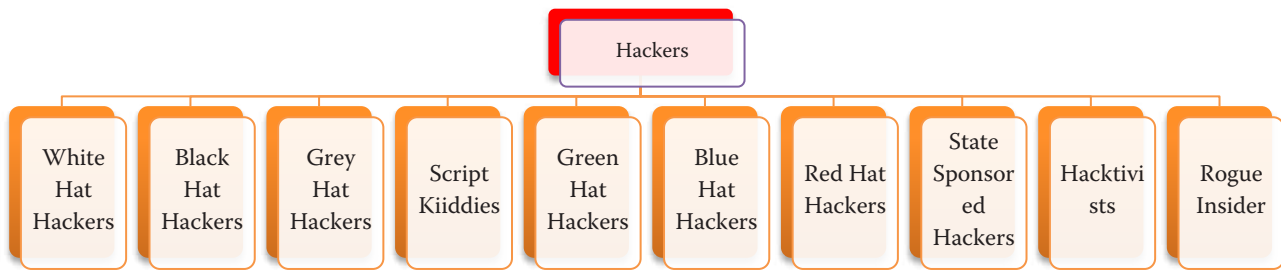
Source: www.itu.int

Apart from the threats mentioned above there are other tools. One of the biggest threats in digital transformation is the fear of the unknown, as the nature of cyberattack is constantly changing, and the attacks are getting more sophisticated each day.

CYBER ATTACKERS

Cyber attackers or hackers are persons who access into a system without authorization (Logan and Clarkson, 2005). Hackers are divided into various categories as seen in **figure 1.1** grouped into ethical hackers and unethical hackers.

Figure 1.1: Types of Hackers (Cyber attackers)



Source: Pashel, 2006

White hat hackers are the ethical hackers who abide by the law and works for organizations and government. They perform penetration testing report the loopholes in the system. Whereas Black Hat Hackers are unethical hackers, they do not abide by the law and are often considered criminals. They gain unauthorized access to the system and delete or steal sensitive data. Grey Hat Hackers act both ethically and unethically. Script Kiddies attempt to hack systems using existing hacking scripts and tools. They are basically new to hacking. Green Hat Hackers are also amateurs like the script kiddies. They aim to be classic hackers. Blue Hat Hackers are hired to test software for viruses and bugs before its release. Unlike White hackers, they are not employed by companies but rather outsourced. Red Hat Hacker attacks Black Hat Hacker by countering the malware. State-sponsored hackers act as per the direction of the country to gain sensitive information from other countries. Hacktivists are a group of hackers that hack the government's information system to register their protest.

CYBERATTACK INCIDENTS IN INDIA

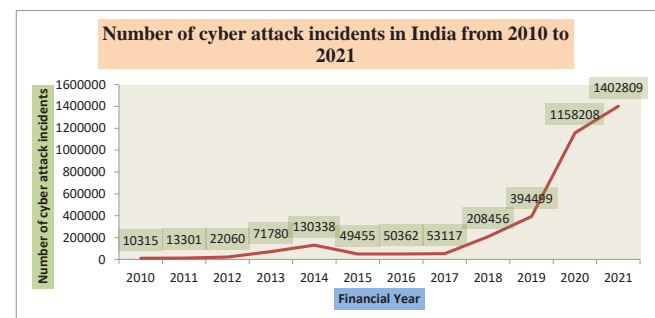
According to IAMA KANTAR, as on 2021, India has more than 622 million internet users, and around 346 million Indians make online transactions such as e-commerce and digital payments. Among the states, Goa has the maximum internet penetration, while Bihar has the lowest. The report also estimates that by 2025 there will be more than 900 million Internet users in India.

As per the survey report of US security firm CrowdStrike in the year 2021 Indian firms suffered more ransomware attacks than any other country in the world. As per DSCI report, 27% of firms paid an average of USD 500000; some firms paid up to USD 5 million. (Source: DSCI - India cybersecurity industry report 2021). In the year 2021, India came in at third, after the US and Iran, with 86.6 million data breach cases, a huge jump of 356% from 2020's cases of 19 million. (Times of India). Cyberattacks can, at times, paralyze critical services crucial to society. It could be seen when AIIMS, one of the biggest hospitals in India, was attacked by Ransomware. Another example is when the functioning Jawaharlal Nehru Port, the largest port in India, was attacked by Ransomware. Indian Railway portal was hacked, purportedly leaking data of 30 million travellers. In another instance in May 2020, it was reported that data of 40 million Truecaller (mobile application) Indian users was reportedly put out for sale on the dark web. In January 2018, the Unique Identification Authority of India and its Aadhaar system were hacked, and the personal data of more

than one billion people became available for purchase (CSIS 2018).

Figure 1.2 Shows the number of cyberattack incidents from the year 2010 to 2021. The incidents were Website Intrusion & Malware Propagation, Phishing, Malicious code, Website Defacements, Denial of Service attacks, Ransomware attacks, Unauthorized Network Scanning/ Probing activities, Vulnerable service, Data Breaches, etc. Indian Computer Emergency Response Team (CERT-In) is a functional organization of the Ministry of Electronics and Information (MeitY) under the Government of India; the cases of cyberattacks are handled by it. As per 70B (6) of IT Act on the occurrence of a cyberattack, enterprises must report to CERT-In strictly within 6 hours after the first observation of the incident.

Fig 1.2: Cyberattacks incidents in India from 2010 to 2021



Source: <https://www.statista.com/statistics/1201177/india-number-of-cyber-attacks/> & <https://www.cert-in.org.in>

CYBER SECURITY MANAGEMENT

Cyber security relates to technologies, policies and processes that help to prevent and/or reduce the adverse impact of events in cyberspace that can happen as the result of deliberate action by hostile or malevolent actors (Clark et al., 2019). Cybersecurity takes measures to safeguard the data transmitted, stored, and used in information systems (Möller, 2020); cybersecurity aims to secure cyberspace. Firstly, It is important to understand the risk and challenges of digital transformation. Secondly, the risk and challenges must be measured. Then the company should adopt the available technologies to mitigate the risk and challenges. Technologies like firewalls, data leakage protection and intrusion detection and prevention system can mitigate cyber attack risk (www.weforum.org). The security measures like mobile device security, SCADA security,

endpoint security, cryptography and cryptanalysis, network and system security, cyber forensics, threat intelligence and AI-based threat modelling can be adopted (*Innovate and Design, Annual report, GOI*). IT companies at times organize hackathons where a group of computer programmers work on collaborating or competing to develop new ideas or find a solution to problems. Recruiting and retaining cybersecurity talent is another challenge faced by enterprises. Maintaining cyber hygiene and running frequent Security drills is advisable. Cyber Hygiene is precarious to prevent cyber incidents. End users' cyber hygiene practices often play a big role in the prevention of cyberattacks. The end users should develop a deeper understanding of good cyber hygiene practices. According to European Unique Agency for Network and Information Security (ENISA) cyber hygiene is simple daily practices and occasional check-ups to maintain the optimum health of the organization (*ENISA, 2016*). According to NCE (National Centre of Excellence for Cyber Security Technology) exercises like Encryption solutions, Network monitoring, Authentication along with encrypted transmission, Real-time visibility, API security solution, Zero trust security, Cloud Access Security Broker (CASB) and Granular segmentation to compartmentalize workloads must be done to reduce cyber security threats.

Appointment of Chief Information Security Officers (CISOs), Chief Technology Officers (CTOs), Chief Information Officer (CIO), Chief Security Officer (CSO), VP of Security, Chief Risk Officer (CRO) is a crucial step. They act cyber leaders in an enterprise. Their role is chalk out the threat landscape, design risk management systems, addressing cyber security concerns, review cyber security documents, Vulnerability Assessment & Penetration Testing (VAPT), Web Application Security Assessment (WASA), Software Development Lifecycle (SDLC) Audit and periodic Code Reviews, Information Security Audit, Incident Response plans to deal with Cyber crises, contingencies and disasters, attack on IT systems etc. (Source: meaty.gov.in). Enterprises must identify the new risk that are emerging due to the adoption of new technology (*Mistri, 2022*). Cyber risk can be categorized into two. Base risk is the risk that can be handled by the enterprise and Residue risk is the bigger risk where the company should hire an expert from around the world to mitigate risk. Cyber leaders should quantify these risks. Cyber security R&D is another crucial initiative for securing cyberspace.

INDIAN REGULATORY FRAMEWORK

Cyberattack should not just be counter technologically, but it also needs the support of an efficient legal system to tackle the situation promptly. The government has set up institutions with this motive. National Informatics Centre (NIC) was set up in the year 1976. Almost all government websites were developed and managed by it. It provides e-governance support to the central, state, union territory administration and other government bodies. It performs security drills and provides an Intrusion Prevention system (IPS), Firewalls, application firewalls and Anti-virus. National Security Council Secretariat (NSCS) was established in 1999 as a Secretariat under the Ministry of Home Affairs and National Informatics Board. NSCS monitors the cyber security issue in India. It bridges various agencies working in the cyber security area. National

Information Board (NIB) was set up in 2002 and is headed by National Security Advisor. It is responsible the national policy formulation and security governance. It coordinates various dimensions of information security. National Technical Research Organization (NTRO) started functioning from the year 2004. NTRO is a technical intelligence-gathering agency. In the year 2004 Indian Computer Emergency Response Team (CERT-In) was in line with an international institution, namely Computer Emergency Response Teams (CERTs). It is crucial institute was established under the Ministry of Electronics and Information Technology specifically to handle cyber incidents. National Intelligence Grid (NATGRID) got approval from parliament in November 2010. NATGRID facilitates the uninterrupted sharing of information among different agencies; this reduces the pressure of information overload in one agency. National Critical Information Infrastructure Protection Centre (NCIIPC) set up in 2014, is responsible for the maintenance of Critical Information Infrastructure in cyberspace. The National Centre of Excellence for Cybersecurity Technology is formed the Ministry of Electronics & Information Technology and DSCI to harness emerging technology to accelerate cyber security. Along with the Information Technology Act (2000 & amended 2008), National Cyber Security Policy (2013) was established to create a secure and strong computing environment.

Figure: 1.3 Regulatory Framework in India for cyber security



CYBER SECURITY SPENDING

Globally the, spending on cyber security has been a raising trend. Total spending in the year 2017 was USD 101543 million, which grew to USD 167893 million in the year 2022 and further in the year 2023 it is expected to grow to USD 186861 million markets and by 2024, the spending on cyber security is expected to be double that of 2017. The highest spending can be seen in the case of Security services, and the least spending could be seen in the case of cloud security.

Table – 1.2
Cyber security spending worldwide from 2017 to 2023 by segment (in USD million)

Cyber security spending	2017	2018	2019	2020	2021	2022	2023*
Application Security	2434	2742	3095	3333	4963	6018	7503
Cloud Security	185	304	439	595	4323	5276	6688
Data Security	2563	3063	2662	2981	3193	3500	3997
Identity Access Management	8823	9768	9837	12036	15865	18019	20746
Infrastructure Protection	12583	14106	16520	20462	24109	27408	31810
Integrated risk management	3949	4347	4555	4859	5647	6221	7034
Network security equipment	10911	12427	13387	15262	17558	19076	20936
Other information security software	1832	2079	2206	2306	1767	2032	2305
Security services	52315	58920	61979	65070	71081	71684	76468
Consumer security software	5948	6395	6254	6507	8103	8659	9374
Total	101543	114151	120934	133411	156609	167893	186861

Source: <https://www.statista.com/statistics/790834/spending-global-security-technology-and-services-market-by-segment/>

CONCLUSION

Enterprises are highly dependent on modern digital technology. The study has highlighted cyber security issues like types of cyberattacks and tools used to carry out a cyberattack. It also discusses recent cyberattack incidents in India. Setting up a mechanism to counter cyberattacks is not enough. Backing by an efficient legal system and multidimensional support system is needed. The study has detailed our Regulatory framework in India and discussed cyber security management techniques.

Looking at the current scenario it is absolute necessary to build a resilient cyber security management. The Budget allocated for cyber security must not be seen in profit-making terms rather, it must be seen as an investment to prevent losing money. Technologies like firewalls, data leakage protection and intrusion detection and prevention system can mitigate cyberattack risk (www.weforum.org). Globally, spending on cyber security is raising. Globally, the spending in cyber security in 2022 was USD 167893 million and in 2023, it is expected to grow to USD 186861 million (www.statista.com).



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3

LEGAL WORLD



- ARCHEAN GRANITES LTD v. RPS BENEFIT FUND LTD. & ORS [SC]
- IFB AGRO INDUSTRIES LTD v. SICGIL INDIA LTD [SC]
- SHAHI MD KARIM v. KABAMY INDIA LLP & ANR [NCLAT]
- SUPRIYO KUMAR CHAUDHURI & ANR V. JHUNJHUNWALA OIL MILLS LTD& ANR [NCLAT]
- SHAPOORJI PALLONJI FINANCE PVT LTD v. REKHA SINGH & ORS [NCLAT]
- HEWLETT PACKARD INDIA SALES PVT LTD V. COMMISSIONER OF CUSTOMS (IMPORT) NHAVA SHEVA [SC]
- THE STATE BANK OF INDIA V. KAMAL KISHORE PRASAD [SC]
- TATA SONS PVT LTD V. SIVA INDUSTRIES &HOLDINGS LTD& ORS [SC]



Corporate Laws

Landmark Judgement

LMJ 02:02:2023

ARCHEAN GRANITES LTD v. RPS BENEFIT FUND LTD. & ORS [SC]

Civil Appeal No. 2354 of 2010[@ SLP(C) No.5028/2006

R.V. Raveendran & R.M. Lodha, JJ. [Decided on 09/03/2010]

Equivalent citations: (2010) 155 Comp Cas 473.

Companies Act, 1956- section 531A- company under liquidation- sale of property at lower value- whether proper-Held, No.

Brief facts:

The first respondent Company ('Company' for short), was the owner of an odd shaped (triangular) plot of land 9315 sq. ft. The first respondent had mortgaged the said property in favour of Bank of Madura Ltd. in the year 1998 for a loan of Rs.60 lakhs. The first respondent decided to sell the said property to pay its depositors and the secured creditor. It took out advertisements on 22.11.1998 and 21.3.1999 for sale of the property. After considering the responses, on 22.4.1999, the Board of Directors of first respondent passed a resolution to sell the said property to the appellant for a consideration of Rs.1.65 crores and entered into an agreement of sale with appellant on the same day. In pursuance of it, the first respondent, under a Sale Deed dated 13.8.1999, sold the said property to the appellant herein for a consideration of Rs.1.65 crores. The sale deed recited that out of the sale price, Rs.95,80,275/- was paid to the vendor (first respondent); and as the property was subject to a mortgage in favour of Bank of Madura Ltd, Rs.69,19,725/- was retained for payment to the said Bank towards full and final settlement of the dues of the vendor. On 9.9.1999, the appellant paid Rs.10 lakhs towards the Bank's dues. The appellant offered the balance amount due to the Bank by a demand draft under cover of its letter dated 17.9.1999 with a request to the Bank to accept the same and discharge the mortgage.

In the meanwhile in July, 1999, Company Petitions No.233 to 238 of 1999 were filed against the first respondent in the Madras High Court for winding up. By order dated 7.9.1999, the High Court appointed the Official Liquidator as the Provisional Liquidator, to take over the assets of the company into custody. In view of the pendency of the liquidation

proceedings, the Bank refused to accept the balance amount and discharge the mortgage. The appellant therefore made an application to the High Court and sought confirmation and validation of the sale in its favour. It also sought permission to pay the balance money due to the secured creditor and receive the title deeds from the bank.

The learned company Judge by order dated 30.4.2002 dismissed the appellant's application. The learned company Judge held that the transfer of the said property was made during the pendency of the petition for winding up; that there was no material to show that the entire sale proceeds had been used to discharge the liabilities of the first respondent company; that the payment of a deficit stamp duty of Rs.23,60,956/- in regard to the sale deed by the appellant without demur, demonstrated that the property was undervalued in the sale deed; and that the transaction was not bona fide. Consequently, the learned company Judge held that the sale was void under section 531 A of the Companies Act, 1956 ('Act' for short). The appeal filed by the appellant was dismissed by a Division Bench of the High Court on 7.10.2005. The said judgment is challenged in this appeal by special leave.

Decision: Partly allowed.

Reason:

The appellant contended inter alia that it was a bona fide purchaser for value; that the price paid by it was the prevailing true market value having regard to the peculiar shape and size; that when the property had earlier been put up for sale with a minimum bidding price of Rs.2.25 crores, it could not be sold due to want of response; that the sale was made in pursuance of a Board Resolution dated 22.4.1999 and sale agreement dated 22.4.1999, for the benefit of the company and in the interests of the depositors; and that the High Court had misled itself by taking note of subsequent increase in land prices, ignoring the market value on the date of the sale.

Having regard to the market value as disclosed by the enquires by the official liquidator, we are of the view that what has been offered may not be adequate. Keeping in view the present value of the amount already spent/incurred by the appellant (that is the consideration plus stamp duty paid with the interest thereon), it would be fair and reasonable if the appellant is required to pay Rs.2.5 crores to the ICICI Bank in full and final settlement of the amount due to the Bank and a sum of Rs.3.5 crores to the Official Liquidator representing the first respondent, in all Rs.6 crores. Having regard to the fact that the issue is being examined with reference to an application under section 531A of the Act, and the facts and circumstances, payments as aforesaid would result in a permanent solution doing complete justice among the parties.

In view of the above, we allow this appeal in part and set aside the impugned judgment dated 7.10.2005 of the Division Bench of the High Court confirming the order dated 30.4.2002 of the learned Company Judge. The application by appellant for approval and validation of the sale deed dated 13.8.1999 in its favour is allowed subject to the following:

- (a) The appellant shall pay Rs.2.5 crores (Rupees Two and half crores) to second respondent (ICICI Bank) on or

before 30th March 2010 in full and final settlement of the mortgage loan of first respondent;

- (b) The appellant shall pay Rs.3.5 crores (Rupees Three and half crores) to the official Liquidator representing the first respondent company on or before 30th March 2010, to enable the official Liquidator to disburse the amount in accordance with the direction of the Company Court.
- (c) On payment of six crores as aforesaid, the second respondent shall deliver the title deeds of the property to the appellant and discharge the equitable mortgage. On such payment, the official Liquidator shall also deliver possession of the property of the appellant.
- (d) If the payments as aforesaid are not made, this appeal shall stand dismissed and the judgment of the High Court shall stand confirmed.

LW 09:02:2023

IFB AGRO INDUSTRIES LTD v. SICGIL INDIA LTD [SC]

Civil Appeal No. 2030 of 2019

A.S. Bopanna & P.S. Narasimha, JJ.[Decided on 04/01/2023]

Companies Act,2013- section 59 (S.111A of 1956 Act)-rectification of members register- application filed for rectification of register raised violations of SEBI (PIT) regulations as well-NCLAT allowed the same- whether proper-Held, No.

Brief facts:

The short question for our consideration in this appeal relates to the scope of the rectificatory jurisdiction of the National Company Law Tribunal under Section 59 of the Companies Act, 2013. In this context, we are called upon to determine the appropriate forum for adjudication and determination of violations of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997, and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, framed under the Securities and Exchange Board of India Act, 1992.

This was an appeal against the judgment of the National Company Law Appellate Tribunal (hereinafter referred to as 'Appellate Tribunal') whereby the Appellate Tribunal set aside the judgment of the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), allowing the company petition filed by the Appellant under Section 111A of the Companies Act, 1956, (which is Section 59 of the 2013 Act), for rectification of Members Register. The Tribunal while allowing the petition, directed the Appellant to buy-back its shares which were held by the Respondents. In appeal, the Appellate Tribunal set aside this direction on the ground that the Tribunal exceeded its jurisdiction. It is this order of the Appellate Tribunal which was challenged before the supreme Court.

Decision: Dismissed.

Reason:

Having heard both sides, we formulate the following questions for our consideration.

What is the scope and ambit of Section 111A of the 1956 Act, as amended by Section 59 of the 2013 Act, to rectify the register of members?

Which is the appropriate forum for adjudication and determination of violations and consequent actions under the SEBI (SAST) Regulations 1997 and the SEBI (PIT) Regulations 1992?

Re: Interpretation and scope of Section 111A of the 1956 Act as replaced by Section 59 of the 2013 Act:

The declaration to hold the acquisition of shares by the Respondents as null and void in a petition under Section 111A has to be examined in the context of the scope and ambit of the rectificatory jurisdiction of the Tribunal and, in particular, the specific wordings of the said provision.

The rectificatory powers of a Board/Company Court under Section 38 of the Companies Act, 1913, then under Section 155 of the 1956 Act, followed by Section 111A introduced by the 1996 Amendment to the 1956 Act, and finally, Section 59 of the 2013 Act, demonstrate that its essential ingredients have remained the same. It is a summary power to carry out corrections or rectifications in the register of members. The rectification must relate to and be confined to the facts that are evident and need no serious enquiry.

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

The decision in Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. & Ors was followed by this Court even after the deletion of Section 155 and insertion of Section 111A. This Court, in Standard Chartered Bank v. Andhra Bank Financial Services Ltd. & Ors, and Jai Mahal Hotels (P) Ltd. v. Devraj Singh & Ors held that even though Section 111(7) of the 1956 Act seemingly enlarges the power of the CLB, the power of rectification continues to remain summary in nature and if any seriously disputed questions arise, the Company Court should relegate parties to a forum which is more appropriate for investigation and adjudication of such disputed questions.

The principle enunciated in Ammonia's case relating to the jurisdiction of a Tribunal with respect to the rectification of the register is well-recognized and consistently followed. Sub-section (3) of Section 59 recognizes the overarching right to hold and transfer securities with the concomitant

entitlement of voting. This is a precious right, and that is the reason why the Parliament found it necessary to caution that the provision of this Section shall not restrict the right of a holder of securities, to transfer such securities. This is another feature which is indicative of the limited scope and extent of the power of rectification of the register.

For the reason stated above, we are of the opinion that the company petition under Section 111A of the 1956 Act for a declaration that the acquisition of shares by the Respondents as null and void is misconceived. The Tribunal should have directed the Appellant to seek such a declaration before the appropriate forum. The Appellate Tribunal is, therefore, justified in allowing the appeal and setting aside the order of the Tribunal.

Re: appropriate forum for enquiry and adjudication of violations of the SEBI Regulations:

There is another perspective in which the legality and propriety of the company petition under Section 111A for declaring the acquisition of shares as null and void for violation of SEBI Regulations could be judged - Which is the appropriate forum for adjudication and determination of violations and consequent actions under the SEBI (SAST) Regulations and the SEBI (PIT) Regulations?

Having considered the comprehensive role of the SEBI in regulating the securities market with respect to insider trading, we are of the opinion that the important role of the Regulator cannot be circumvented by simply asking for rectification under Section 111A of the 1956 Act. Such an approach is impermissible. The scrutiny and examination of a transaction allegedly in violation of the SEBI (PIT) Regulations will have to be processed through the regulations and remedies provided therein.

Having considered the matter from a different perspective, we are of the opinion that the Appellant is not justified in invoking the jurisdiction of the CLB under Section 111A of the Act for violation of SEBI regulations. We are also of the opinion that the Tribunal committed an error in entertaining and allowing the company petition filed under Section 111A of the 1956 Act. Though we are not in agreement with the reasoning adopted by the Appellate Tribunal in the impugned order, we are in agreement with its conclusion that the Tribunal exceeded its jurisdiction and therefore, the Appellate Tribunal was correct in setting aside the judgment dated 05.07.2017.

LW 10:02:2023

SHAHI MD KARIM v. KABAMY INDIA LLP & ANR
[NCLAT]

Company Appeal (AT) (CH) (Ins.) No. 16 of 2023

M. Venugopal & Shreesha Merla. [Decided on 25/01/2023]

Insolvency and Bankruptcy Code, 2016- Section 9-CIRP petition- admitted by NCLT- whether correct- Held, Yes.

Brief facts:

Aggrieved by the 'Order' dated 05.01.2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench - I), whereby the Adjudicating Authority has admitted the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'), the Suspended Director of the 'Corporate Debtor' preferred this Appeal.

Decision: Dismissed.

Reason:

From the aforementioned Orders, it is clear that the Corporate Debtor had appeared on both the dates and that the copy of the Petition and the supporting documents were served on them on 02.11.2022, hence the Adjudicating Authority had closed the opportunity to file the Counter vide Order dated 21.11.2022; the matter was posted for hearing' on 05.12.2022 and thereafter on 05.01.2023, the CIRP was initiated. When the matter came up for hearing on 05.12.2022, the Corporate Debtor could have been present and submitted his arguments. Though, his right to file the counter was closed, he was not set 'Ex Parte' as on the date 21.11.2022 and therefore he could have appeared on 05.12.2022 when the matter was posted for final hearing and having been present as on 11.12.2022, the Counsel was very much aware that the matter was posted for hearing' on 05.12.2022. Though, the Adjudicating Authority does not have the 'Power of Review' it can, based on the facts and circumstances of the case, recall the order. In the instant case, this Tribunal, sitting in appeal, does not find any tangible / substantial grounds to interfere with the impugned order.

Further, the Appellant, has challenged the admission order on merits, on the ground that there was an arbitration clause, in the C & F Agreement, and that the Respondent, ought to have invoked this Clause. There is no embargo on the Operational Creditor, to file a Section 9 Petition, under I & B Code, 2016, even if there is an arbitration clause, in the Agreement. The scope and objective of the Code is 'Resolution', and not a 'Recovery Mode / Forum'.

In the instant case, the Adjudicating Authority, based on the material on record, had arrived at a conclusion that there were recurring defaults on behalf of the Corporate Debtor and that the Operational Creditor, has requested for full and final payment of the outstanding dues. The Corporate Debtor vide reply dated 01.02.2022, requested for dispatch of the inventory stocked in the warehouse in Mumbai. The Operational Creditor in reply to the email, sent an email dated 02.02.2022, highlighting the outstanding dues, along with the ledger attached. But there was no response and the Operational Creditor sent one more email dated 29.03.2022, demanding the outstanding total dues of Rs.3,12,81,028/- and therefore issued a legal notice dated 28.06.2022, for which, the Corporate Debtor sent a reply dated 12.07.2022, but the amounts were not paid.

For all the aforementioned reasons and discussions, this Tribunal, does not find any illegality or infirmity, in the passed by the Adjudicating Authority and this Appeal is dismissed accordingly.

LW 11:02:2023

SUPRIYO KUMAR CHAUDHURI & ANR v. JHUNJHUNWALA OIL MILLS LTD& ANR [NCLAT]

Company Appeal (AT) (Ins) No. 794 of 2021 with Company Appeal (AT) (Ins) No. 04 of 2022

Rakesh Kumar Jain & Alok Srivastava. [Decided on 23/01/2023]

Insolvency and Bankruptcy Code,2016- moratorium period- rent demanded from corporate debtor- whether tenable- Held, No.

Brief facts:

These appeals have been filed by the Appellants, who are aggrieved by the order dated 6.8.2021 (hereinafter called 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) in the three interlocutory applications.

Two IAs were filed by Jhunjhunwala Oil Mills Limited (in short 'JOML') praying for direction to the Resolution Professional (in short 'RP') of the corporate debtor JVL Agro Industries Pvt. Ltd. (in short 'JVL Agro') to pay the rent along with interest of the premises owned by JOML which was used by JVL Agro and also to vacate the premises of JOML. One IA was filed by the liquidator of JVL Agro with prayer for direction to Respondents No. 1 to 5 to open the padlocks inserted at the entry gate of the office premises of the corporate debtor situated at Village Tilmapur, Gazipur Road, Ashapur, Varanasi and further to restore the physical possession of the said office to the liquidator.

The Appellant/JOML was aggrieved by the part of the order whereby vacant possession of the said premises has not been directed to be handed over to JOML and further the rent directed to be paid is as per the assessment done by the District Magistrate and not the amount of Rs. six lakhs plus GST per month, which was agreed to between the two parties.

Decision: Allowed.

Reason:

The issues that arise for consideration in the present appeal are two-fold:-

- (i) Whether the 'said premises' of JOML being used as Registered Office of the corporate debtor JVL Agro could be recovered by the landlord JOML during the subsistence of moratorium after the initiation of CIRP, and
- (ii) Whether any monthly rent was agreed upon and is payable to the landlord JOML by the corporate debtor JVL Agro whether before the imposition of moratorium or during the moratorium period?

We first look at the issue whether 'said premises' owned by JOML, situated at Village Tilmapur, Gazipur Road, Ashapur, Varanasi were being used by the corporate debtor prior to

the initiation of CIRP of JVL Agro. We note that JVL Agro started using the 'said premises' belonging to JOML since 14th February, 2018. Therefore, on the basis of above stated letters (after referring to various communications), we are of the clear view that the 'said premises' were definitely in possession of JVL Agro from 14.2.2018, if not earlier, and was definitely in the possession of the corporate debtor on 25.7.2018 when the CIRP of the corporate debtor was initiated.

We now consider the issue whether the insertion of padlocks on the gates of the 'said premises' was permitted in view of moratorium which was in force.

18. Section 14(1)(d) of the IBC stipulates that during the period of moratorium, recovery of any property by an owner or lessor, where such property occupied by or in the possession of the corporate debtor is prohibited. We also note that the provision in section 14(2-A) which stipulates that where the Interim Resolution Professional considers the supply of goods and services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except when the corporate debtor has not paid dues arising from such supply of services during the moratorium period.

In the instant case, we have already noted that the 'said premises' owned by JOML were in possession of the corporate debtor JVL Agro at least from 14.2.2018 which is about five months prior to the date of initiation of CIRP of the corporate debtor. Therefore, the recovery of any property by the owner was expressly prohibited under section 14(1)(d) of the IBC during the period when moratorium was in force. The insertion of padlocks by JOML at the 'said premises' happened on 28.7.2020, which is as is stated in the complaint made by the RP to the Officer In- charge, Sarnath Thana, Varanasi and later to SSP, Varanasi and hence complaints are not disputed by JOML. Thus, this recovery which was done by the owner JOML of the 'said premises' on 28.7.2018, is clearly after the initiation of CIRP on 25.7.2018 and therefore, during the period of enforcement of moratorium and thus, such a recovery is a clear infringement of section 14(1)(d) of the IBC.

We do not think that section 14(2-A) is attracted in the present case as the RP had not considered the renting of the 'said premises' critical to protect and preserve the value of the corporate debtor nor had made any request to JOML to continue renting of the 'said premises' to the corporate debtor. The 'said premises', therefore, should have lawfully been with the RP/ corporate debtor and continue in its lawful possession during the continuation of the CIRP of the corporate debtor.

The second issue to be considered is whether any rent was payable to the owner of the 'said premises' JOML by the corporate debtor during the period of subsistence of moratorium.

In this connection, we note the no objection certificate given by JOML regarding the use of this premises to the corporate

debtor, JVL Agro does not mention payment of any monthly rent to the owner of the premises.

We further peruse the NOC which is claimed to be issued by JVL Agro addressed to JOML (attached at pg. 246 of appeal paperbook Vol.II). Evidently, this NOC is undated and the letterhead is also different from the letterhead used by JVL Agro, which is attached at pg. 48 of the appeal paperbook, Vol.I). Further, the letter does not disclose the name/identity of the director, who has signed this NOC. In the face of such uncertainties, this NOC appears to be of doubtful origin and does not inspire confidence to place reliance upon it. Further e-mail dated 28.8.2018 and reminder e-mails dated 31.8.2018 and 24.9.2018 sent by the JOML to RP do not indicate if any rent was being paid prior to date of sending of these e-mails. Therefore, on the basis of documents submitted both the parties, we are of the view that no rent was agreed upon to be paid by the corporate debtor to JOML nor any such payment was made for any period starting from 14.2.2018. It is clear that the issue of payment of rent was created by JOML only after the corporate debtor went into CIRP.

Thus, we are convinced by the arguments of the corporate debtor JVL Agro/RP that no rent was agreed upon to be paid for use of 'said premises' when the 'said premises' were offered to be used as registered office of the corporate debtor nor any rent was paid prior to the initiation of the CIRP of the corporate debtor. We also take note of section 14(2-A) of the IBC, which the landlord JOML has placed reliance upon regarding payment of rent during the moratorium period. A plain reading of this provision makes it clear that supply of certain goods and services has to be considered critical by IRP/IP to protect and preserve the value of the corporate debtor. Quite clearly in this case, the IRP/RP has neither recorded such a need nor requested the landlord JOML for continuing the supply of rental services to the corporate debtor. Therefore, we are of the view that section 14(2-A) is not attracted in the present case. Moreover, we have already seen how the present case is covered under section 14(1)(d) of the IBC, whereby the recovery of the 'said premises' in the possession of the corporate debtor, though owned by JOML, is expressly prohibited during the moratorium period.

In view of the detailed discussion on the issues framed by us, we hold the clear view that the Adjudicating Authority has gone beyond its jurisdiction in ordering payment of rent by the corporate debtor during the period of moratorium. We also find that the Adjudicating Authority did not adjudicate on the prayer made by the RP in IA No. 199/2020 for restoration of the possession of the 'said premises', which it should have done to settle the dispute early. In view of the fact that liquidation order with respect to the corporate debtor has already been passed by the Adjudicating Authority, no orders are now necessary in connection with IA 199/2020 in the present appeals.

We thus hold that the Impugned Order is erroneous, and therefore, liable to be set aside. We set aside the Impugned Order. The appeal is disposed of accordingly.

LW 12:02:2023

SHAPOORJI PALLONJI FINANCE PVT LTD v. REKHA SINGH & ORS [NCLAT]

Company Appeals (AT) (Insolvency) No. 397-399 of 2022

Ashok Bhushan & Barun Mitra. [Decided on 18/01/2023]

Insolvency and Bankruptcy Code, 2016- Section 3 (7) and 227- financial service provider- threshold of asset limit of Rs.500 Cr- whether includes all assets besides loans - Held, Yes.

Brief facts:

The appellant is the financial creditor who advanced loan facility to the corporate debtor, who was a financial service provider. The respondents are the personal guarantors who stood guaranty to the loan availed by the corporate debtor. When the corporate debtor defaulted in making payments, the appellant filed an application for initiating CIRP against the corporate debtor in which the respondents had filed application to dismiss the application on the ground that the corporate debtor being a financial service provider having an asset size of less than Rs. 500 crores cannot be considered to be a corporate debtor. The Adjudicating Authority had allowed the applications against which the appellant had approached the appellant Tribunal under the present appeals.

Decision: Allowed.

Reason:

The provision of Section 3(7) of the Code provides for exclusion of any Financial Service Provider from the definition of Corporate Person. Thus, any Financial Service Provider cannot be a Corporate Debtor when we read Section 3(7) and 3(8). However, Section 227 dealing with Power of Central Government to notify financial service providers starts with non-obstante clause "Notwithstanding anything to the contrary contained in this Code". Thus, Section 227 has been given overriding effect to the provisions contained in the Code itself for a purpose and object. Thus, Financial Service Providers can be brought under the insolvency code for the purpose of their insolvency and liquidation if the Central Government deems fit after consultation with the financial sector regulator. Notification dated 18.11.2019 is within the exercise of power under Section 227 by which Financial Service Providers have been brought into the insolvency and liquidation proceedings. The Notification, however, contains a rider i.e. "with asset size of Rs.500 crore or more, as per last audited balance sheet". Thus, a Financial Service Provider who has asset size of Rs.500 crore or more can only be proceeded for insolvency and liquidation as per law as exist on date.

We, thus, have to first examine as to whether "Jumbo Finvest (India) Ltd. (JFIL)" is a Financial Service Provider against which insolvency can be proceeded with under the

Notification dated 18.11.2019 which is the question which has been considered by the Adjudicating Authority in the impugned order. The Adjudicating Authority after noticing the provisions and Notification as well as the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 came to the conclusion that as per last audited Balance Sheet year ending 31.03.2020 the asset size is approx. Rs.487 Crore. In Note 17, when we add current and non-current assets, the total comes to Rs.487,80,22,601/- . The Adjudicating Authority has relied on this figure of Rs.487,80,22,601/- which is details of loan receivables.

Now, the question to be considered is as to whether the expression used in the Notification dated 18.11.2019 “asset size of Rs.500 crore or more” can be confined to the loan receivables only or asset shall include non-current and current assets. We have noticed that in the Balance Sheet as on 31.03.2020 under the heading ‘Assets’ both ‘non-current assets’ and ‘current assets’ have been included. Word ‘asset size’ indicate that what is meant is total assets. When total assets are looked into, as are given under heading ‘Assets’, the amount comes to more than Rs.600 Crores in the Balance Sheet as on 31.03.2020. The Adjudicating Authority has committed an apparent error in only considering the loan receivables. A Financial Service Provider admittedly have loan receivables but what is meant by asset size in Notification dated 18.11.2019 cannot be confined to loan receivables. We, thus, are of the view that the Adjudicating Authority committed error in applying the Notification dated 18.11.2019 by taking the figure of only loan receivables as referred to in Note 17 but has ignored the details of the Assets as given in the Balance Sheet as on 31.03.2020, as extracted above. Due to the above, the Adjudicating Authority incorrectly came to the conclusion that JFIL cannot be included in the definition of ‘Corporate Person’ so as to become Principal Borrower. On the above premise, the Adjudicating Authority jumped to the conclusion that application filed under Section 95 against the Personal Guarantor(s) is not maintainable since the JFIL cannot be treated to be Corporate Debtor. Had the finding of Adjudicating Authority that asset size of JFIL is Rs.487 Crore been correct, the conclusions recorded by the Adjudicating Authority could have been flawless but as noted above, the Adjudicating Authority committed error in taking figure of only loan receivables i.e. Rs.487 Crores and not considered the figure of assets as contained in Balance Sheet as on 31.03.2020 as required by the Notification dated 18.11.2019. The very basis of the Adjudicating Authority for allowing the applications filed by the Personal Guarantors being unfounded, the ultimate decision suffers from error.

We may, as observed above, for argument sake if we take a case where asset size of the Financial Service Provider which on the date of filing the application as per last Balance Sheet was more than Rs.500 Crore and if it is reduced from Rs.500 Crore during the pendency of the application as per any further audited Balance Sheet available, whether the Adjudicating Authority shall lose jurisdiction is the question to be answered.

As noted above, consequent to asset size going down during pendency of the application is the basis of the contention of the Respondent that Adjudicating Authority shall lose jurisdiction to proceed with the application. In view of the foregoing discussion, we are of the view that submission of learned counsel for the Respondent that since the asset size of JFIL became less than Rs.500 Crore as on 31.03.2021, the Adjudicating Authority shall lose jurisdiction to proceed further and this Tribunal shall also have no jurisdiction to proceed in the matter, cannot be accepted. We are of the view that jurisdiction will be there with the Adjudicating Authority, as per Notification dated 18.11.2019, which has to exercise on the date when application can be filed against the Financial Service Provider for insolvency. As a corollary, an application under section 95 can be filed against the Personal Guarantor only when on the same date insolvency can be commenced against the Financial Service Provider.

The question is as to whether the Section 95 application which was filed by the Financial Creditor against the Personal Guarantor was maintainable or not. We, having held that on the date when application was filed under Section 95 by the Financial Creditor against the Personal Guarantor an application could have filed against the Financial Service Provider on the basis of last Balance Sheet which had asset size of more than Rs.500, the application filed by the Financial Creditor against the Personal Guarantor was fully maintainable.

In view of the foregoing discussion, we hold that the Adjudicating Authority has committed error in allowing the applications filed by the Personal Guarantors and dismissing the Company Petitions. All the Appeals are allowed.



Tax Laws

LW 13:02:2023

HEWLETT PACKARD INDIA SALES PVT LTD v. COMMISSIONER OF CUSTOMS (IMPORT) NHAVA SHEVA [SC]

Civil Appeal No 5373 of 2019

Surya Kant & Vikram Nath, JJ. [Decided on 17/01/2023]

All-in-one Integrated Desktop Computer- principles of interpretation- whether it is portable computer- Held, No.

Brief facts:

The question that arises for our consideration pertains to correct classification of Automatic Data Processing Machines (hereinafter, 'ADP') which are popularly known as 'All-in-One Integrated Desktop Computer'. The assessee classified it as non-portable computer while the Revenue considered as portable computer. The main question was how the word "portable" has to be interpreted.

Decision: Allowed.

Reason:

We have heard learned counsel for the parties and perused the documents produced on record. It must be noted that both sides have not disputed the findings of the adjudicating authorities except in respect of the aspect of portability of Concerned Goods. Hence, the only limited question that falls for consideration before us in these proceedings is whether the Concerned Goods are 'portable' or not under 'Tariff Item 8471 30 10'.

On a conjoint reading of the relevant material and inputs, it is explicitly clear that weight cannot be the sole factor to determine the factum of portability. Instead, the essential ingredients to logically establish whether an ADP is 'portable' are twofold. The first ingredient is their ability to be carried around easily which includes all aspects such as weight and their dimensions. We must hasten to add that in appropriate cases, this assessment would also take into consideration the necessary accessories which are required for safe and efficient usage such as mounted stands or any power adapters. The second ingredient is that the ADP must be suitable for daily transit of a consumer and would include aspects such as durability to withstand frequent commute and damage protection. An example of the same would be the availability of protection cases which allows users to carry the ADPs in hand or possibility of carrying the same in normal briefcases or shoulder bags.

On applying these core ingredients to the characteristics of Concerned Goods there is no room to doubt that they are not 'portable'. Firstly, the dimensions of the Concerned Goods make it illogical and unviable for daily transit. While it is true that classification of the goods must not be usually made on the advertisement material of the manufacturer, the user guides produced before us showcase that placing the product in other than the specified orientation could lead to damage to the Concerned Goods. The user guides also emphatically highlight that the Concerned Goods were meant to be used at a fixed place and contained specifications that made them ideal for being mounted on a wall.

Secondly, the inability of the consumer to carry these goods around in the absence of any protective case or any covering bags, which makes the Concerned Goods vulnerable to damage during transit. As noted in the literature relied upon before us, the weight was not the sole consideration for being considered as 'portable'. For example, there used to be

computers which are now no longer in common use which were popularly known as 'luggable'. They used to weigh more than 10 kilograms. These old predecessors of laptops were designed at the relevant time to be portable and used to fold up neatly in one box with a handle. Despite their weight and the size comparable to small suitcase, they could still be transported, albeit without a wagon.

Furthermore, we must also use this opportunity to highlight the impact of technological advancement on law. It's a matter of fact that at the time when the relevant entries of the First Schedule came into effect, weight was definitely an important criterion for deciding whether any ADPs was 'portable'. Scientific progress has greatly reduced the weight associated with high performance in the context of ADPs. It is not surprising that the advent of LED technology, faster microchips, etc. has made it possible for mobile phones to have performance specifications which merely a decade ago was possible only on high end laptops. We must therefore be cognizant of such an impact on the consumer's understanding of any good or trade.

Keeping in view the applicable understanding of the element of 'portable' as understood in common parlance used in the trade of ADPs, we must hold that the Concerned Goods are not portable for the reasons that Firstly, the diagonal dimension of the Concerned Goods being minimum of the length of 18.5 inches and the same needs to be transported along with the power cable as well as the applicable stand in most cases if it is to be mounted and; secondly there being no protective case designed by the markets for daily transport for these Concerned Goods. Such requirements make the Concerned Goods unable to be carried around easily during daily transit. We, thus, hold that the Concerned Goods are not 'portable'.



Labour Laws

LW 14:02:2023

THE STATE BANK OF INDIA v. KAMAL KISHORE PRASAD [SC]

Civil Appeal No. 175 of 2023 (@ SLP (C) No. 9819 of 2018)

Krishna Murari & Bela Trivedi, JJ. [Decided on 09/01/2023]

Dismissal of employee after conducting disciplinary proceedings- upheld by High Court- direction to pay all consequential benefits- whether correct- Held, No.

Brief facts:

The present appeal was directed against the judgment and order passed by the High Court of Judicature at Patna, whereby the High Court had dismissed the appeal filed by the Appellant-Bank and confirmed the order passed by the Single Bench. The Single Bench of the High Court quashed and set aside the order of dismissal passed by the Appellant-Bank and directed the Appellant-Bank to pay all the consequential benefits i.e., arrears of salary and retiral benefits within 3 months thereof. The aggrieved appellant-bank filed LPA, which came to be dismissed by the Division Bench vide the impugned order.

Decision: Allowed.

Reason:

So far as the facts of the present case are concerned, the disciplinary proceedings against the respondent were already initiated and had stood concluded, culminating into dismissal from service as per the order dated 11.08.1999 passed by the Appointing Authority. The said order was challenged by the respondent by filing the Writ Petition, which came to be allowed by the Single Bench on 26.03.2009 whereby the order of dismissal was set aside, nonetheless the Appellant-Bank having preferred the LPA No. 378 of 2003, the Division Bench had stayed the operation and implementation of the said order passed by the Single Bench on 09.05.2003. The said LPA came to be dismissed on 22.04.2010, in the meantime on 30.11.2009, the respondent attained the age of superannuation i.e., during the time, when the operation of the order of Single Bench was stayed. Thus, the order of Single Bench setting aside the order of dismissal passed by the Appointing Authority having been stayed by the Division Bench, the respondent could not be deemed to have continued in service, and also when he had attained the age of superannuation on 30.11.2009. Thereafter, the order of Division Bench dated 22.04.2010 passed in the LPA 378 of 2003 having been set aside by this Court while allowing the appeal filed by the Appellant-Bank vide the order dated 25.11.2013, again it could not be said that the respondent was continued in service, till he attained the age of superannuation.

The reliance placed by the learned counsel for the respondent on Rule 19(3) of the Rules is also thoroughly misplaced in as much as Rule 19(3) contemplates a situation, when the disciplinary proceedings against a bank officer, have already been initiated, and are pending when the officer ceases to be in the Bank's service, and in that case the Managing Director in his discretion may continue and conclude the disciplinary proceedings against the officer as if the officer continues to be in service. However, in the instant case, there was no question of Managing Director exercising such discretion under Rule 19(3) as the disciplinary proceedings initiated against the respondent had already culminated into his dismissal as per the order dated 11.08.1999 passed by the Appointing Authority. Though the said order of dismissal was set aside by the Single Bench, the order of Single Bench had remained stayed pending the LPA filed by the Bank; and though the LPA was dismissed by the Division Bench, the said order in LPA was set aside by this Court, observing that the person who hears the matter has to decide it.

It was only pursuant to the direction given by this Court vide the order dated 25.11.2013, the Appointing Authority was expected to hear the respondent and pass appropriate order. This Court had kept all the contentions of all the parties open. Hence the Appointing Authority after issuing show-cause notice and granting opportunity of hearing to the respondent had passed the order imposing the penalty of "Dismissal from Service" w.e.f. 11.08.1999, i.e., from the date when the first order of dismissal was passed by the Appointing Authority. Since all the contentions were kept open by this Court while allowing the appeal filed by the Appellant-Bank, as such no affirmative action was expected from the Appellant-Bank, as sought to be submitted by the learned counsel for the respondent. The said order of Appointing Authority dismissing the respondent from service after granting opportunity of hearing to the respondent was in consonance with the direction given by this Court and could not be said to be arbitrary illegal or in violation of Rule 19(3) of the said Rules. The impugned order of the High Court setting aside the said order of dismissal being under misconception of facts and law deserves to be quashed and set aside.



General Laws

LW 15:02:2023

TATA SONS PVT LTD v. SIVA INDUSTRIES & HOLDINGS LTD & ORS [SC]

Miscellaneous Application No 2680 of 2019 in Arbitration Case (Civil) No 38 of 2017

D.Y.Chandrachud & P.S. Narasimha, JJ. [Decided on 05/01/2023]

Arbitration and Conciliation Act, 1996- section 29A-extension of the period to make award-whether applicable to international arbitration-Held, Yes.

Brief facts:

Arbitration proceedings were under progress between the Appellant and the respondents. The sole arbitrator could not deliver the award within the prescribed period. Meanwhile, section 29A, by way of an amendment Act 2019 provided for the extension of the period to deliver award. Respondents contented that the amended provisions do not apply to an international arbitration.

Decision: Allowed.

Reason:

The provisions of Section 29A, as originally introduced into the statute, mandated that all awards shall be made within a period of twelve months from the date on which the

arbitral tribunal enters upon the reference. The explanation clarified when the arbitral tribunal would be deemed to have entered upon the reference, namely, the date on which the arbitrator has received written notice of the appointment. The mandatory nature of the provisions of Section 29A(1) and their application to all arbitrations conducted under the Act, domestic or international commercial, was evident from the use of the word “shall”. In terms of Section 29A(4), in case the arbitral award was not rendered within the twelve or eighteen month period as the case may be, the mandate of the arbitrator(s) would stand terminated, unless on an application made by any of the parties, the court extended time on sufficient cause being shown.

After the amendment, Section 29A(1) stipulates that the award “in matters other than international commercial arbitration” shall be made by the arbitral tribunal within a period of twelve months from the date of the completion of the pleadings under Section 23(4).¹⁰ The expression “in matters other than an international commercial arbitration” makes it abundantly clear that the timeline of twelve months which is stipulated in the substantive part of Section 29A(1), as amended, does not apply to international commercial arbitrations. This is further reaffirmed in the proviso to Section 29A(1) which stipulates that the award in the matter of an international commercial arbitration “may be made as expeditiously as possible” and that an “endeavour may be made to dispose of the matter within a period of 12 months” from the date of the completion of pleadings. The expression “as expeditiously as possible” coupled with the expression “endeavour Section 23(4) of the Arbitration Act, as inserted by Act 33 of 2019, provides that “The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.” may be made” demonstrate that the intent of Parliament is that the period of twelve months for making the award is not mandatory in the case of an international commercial arbitration. In an international commercial arbitration, the arbitral tribunal is required to endeavour, that is, make an effort to render the arbitral award within a period of twelve months or in a timely manner. In a domestic arbitration, Section 29A(1) stipulates a mandatory period of twelve months for the arbitrator to render the arbitral award. In contrast, the substantive part of Section 29A(1) clarifies that the period of twelve months would not be mandatory for an international commercial arbitration. Hence, post amendment, the time limit of twelve months as prescribed in Section 29A is applicable to only domestic arbitrations and the twelve-month period is only directory in nature for an international commercial arbitration.

Having clarified that the 2019 Amendment Act has excluded international commercial arbitrations from the statutorily prescribed mandatory time limits, the question arises whether the amended Section 29A would apply prospectively or retrospectively.

Procedural law establishes a mechanism for determining rights and liabilities of a party and a machinery for enforcing them. Generally, procedural laws are presumed to be retrospective, unless there is a clear indication that such was not the intention of the legislature, or the procedural law imposes new obligations qua transactions already concluded or creates new rights or liabilities.

The 2019 Amendment Act does not contain any provision equivalent to Section 26 of Act 3 of 2016 evincing a legislative intent making the application of the amended provision prospective. The amended provisions of Section 29A, in terms of which the arbitral tribunal has to endeavour to dispose of the proceedings in an international commercial arbitration as expeditiously as possible within a period of twelve months from the completion of the pleadings are remedial in nature. The amended provision has excepted international commercial arbitrations from the mandate of the twelve-month timeline which governs domestic arbitrations. The amendment is intended to meet the criticism over the timeline in its application to international commercial arbitrations. The amendment is remedial in that it carves out international commercial arbitrations from the rigour of the timeline of six months. This lies within the domain of the arbitrator and is outside the purview of judicial intervention. The removal of the mandatory time limit for making an arbitral award in the case of an international commercial arbitration does not confer any rights or liabilities on any party.

Consistent with the amended provisions of Section 29A, the sole arbitrator in the present case would be acting within his domain and jurisdiction to decide upon any further extension of time beyond what is originally stipulated at the meeting which was held on 21 March 2018. The sole arbitrator may issue appropriate procedural directions for extension of time while at the same time endeavouring an expeditious conclusion of the arbitration.



YOUR OPINION MATTERS

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FROM THE GOVERNMENT



- RELEASE PLAN OF 45 COMPANY E-FORMS IN MCA 21 VERSION 3.0-REG.
- FILING OF FORMS GNL-2 (FILING OF PROSPECTUS RELATED DOCUMENTS) AND MGT-14 (FILING OF RESOLUTIONS RELATING TO PROSPECTUS RELATED DOCUMENTS) DUE TO MIGRATION FROM V2 VERSION TO V3 VERSION IN MCA 21 PORTAL FROM 7TH JANUARY, 2023 TO 22ND JANUARY, 2023
- FACILITY OF CONDUCTING MEETINGS OF UNIT HOLDERS OF REITS THROUGH VIDEO CONFERENCING OR OTHER AUDIO-VISUAL MEANS
- FACILITY OF CONDUCTING MEETINGS OF UNIT HOLDERS OF INVITS THROUGH VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS
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- ALLOWING STOCK EXCHANGES TO LAUNCH MULTIPLE CONTRACTS ON THE SAME COMMODITY IN COMMODITY DERIVATIVES SEGMENT
- INTRODUCTION OF FUTURE CONTRACTS ON CORPORATE BOND INDICES
- CHANGE IN CONTROL OF PORTFOLIO MANAGERS PROVIDING CO-INVESTMENT SERVICES
- COMPREHENSIVE FRAMEWORK ON OFFER FOR SALE (OFS) OF SHARES THROUGH STOCK EXCHANGE MECHANISM
- STANDARD OPERATING PROCEDURE FOR HANDLING OF STOCK EXCHANGE OUTAGE AND EXTENSION OF TRADING HOURS THEREOF
- MODE OF SETTLEMENT FOR TRADES EXECUTED ON THE REQUEST FOR QUOTE (RFQ) PLATFORM
- OPERATIONAL CIRCULAR FOR CREDIT RATING AGENCIES
- MANAGEMENT AND ADVISORY SERVICES BY AMCS TO FOREIGN PORTFOLIO INVESTORS
- EXTENSION OF TIMELINES FOR ENTERING AND VERIFICATION OF THE DETAILS OF THE EXISTING OUTSTANDING NON-CONVERTIBLE SECURITIES IN THE 'SECURITY AND COVENANT MONITORING' SYSTEM HOSTED BY DEPOSITORIES
- MONITORING AND PERIODICAL REPORTING OF THE COMPLIANCE WITH THE REQUIREMENTS PERTAINING TO 'SECURITY AND COVENANT MONITORING' SYSTEM HOSTED BY DEPOSITORIES
- RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 – REG.
- LIMITED RELAXATION – DISPATCH OF PHYSICAL COPIES OF FINANCIAL STATEMENTS ETC. – REGULATION 58 OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015
- IMPLEMENTATION OF SECTION 51A OF UAPA, 1967: UPDATES TO UNSC'S 1267/ 1989 ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST: ADDITION OF 1 ENTRY
- DESIGNATION OF 3 INDIVIDUALS AS 'TERRORISTS' UNDER SECTION 35 (1) (A) OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT (UAPA), 1967 AND THEIR LISTING IN THE SCHEDULE IV OF THE ACT- REG.
- SAFE DEPOSIT LOCKER/SAFE CUSTODY ARTICLE FACILITY PROVIDED BY BANKS
- 'FULLY ACCESSIBLE ROUTE' FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES – INCLUSION OF SOVEREIGN GREEN BONDS
- DESIGNATION OF TWO INDIVIDUALS AND ONE ORGANISATION UNDER SECTION 35(1) (A) AND 2(1) (M) OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 AND THEIR LISTING IN THE FIRST AND FOURTH SCHEDULE OF THE ACT.
- IMPLEMENTATION OF SECTION 51A OF UAPA, 1967: UPDATES TO UNSC'S 1267/ 1989 ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST: ADDITION OF 1 ENTRY
- MASTER DIRECTION – RESERVE BANK OF INDIA (ACQUISITION AND HOLDING OF SHARES OR VOTING RIGHTS IN BANKING COMPANIES) DIRECTIONS, 2023
- RESERVE BANK OF INDIA GUIDELINES ON ACQUISITION AND HOLDING OF SHARES OR VOTING RIGHTS IN BANKING COMPANIES JANUARY 16, 2023
- FORMATION OF NEW DISTRICT IN THE STATE OF ARUNACHAL PRADESH – ASSIGNMENT OF LEAD BANK RESPONSIBILITY
- FORMATION OF NEW DISTRICT IN THE STATE OF SIKKIM – ASSIGNMENT OF LEAD BANK RESPONSIBILITY
- OPERATIONAL RISK MANAGEMENT: PRICE / YIELD RANGE SETTING IN E-KUBER
- BASEL III CAPITAL REGULATIONS - ELIGIBLE CREDIT RATING AGENCIES
- FORMATION OF NEW DISTRICTS IN THE STATE OF CHHATTISGARH – ASSIGNMENT OF LEAD BANK RESPONSIBILITY
- FOREIGN INVESTMENT IN INDIA - RATIONALISATION OF REPORTING IN SINGLE MASTER FORM (SMF) ON FIRMS PORTAL



Corporate Laws

01 Release Plan of 45 company e-Forms in MCA 21 Version 3.0-reg.

[Issued by the Ministry of Corporate Affairs E No. Policy-17/150/2022-CL-V-MCA dated 09.01.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1)]

I am directed to inform all the stakeholders that this Ministry is in the process of introducing certain company e-Forms in MCA21 Version 3.0 (as per Annexure) and thus these e-Forms will not be available in MCA21 Version-2 from 07.01.2023 to 22.01.2023.

- Therefore, keeping in view the fact above, it has been decided by the Competent Authority to allow additional time of 15 days, without levying additional fees, to the stakeholders, in cases where the due dates for filing of these 45 e-Forms fall during the period between 07.01.2023 and 22.01.2023.
- This issues with the approval of the Competent Authority.

KMS NARAYANAN
Deputy Director

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

02 Filing of Forms GNL-2 (filing of prospectus related documents) and MGT-14 (filing of Resolutions relating to prospectus related documents) due to migration from V2 Version to V3 Version in MCA 21 Portal from 7th January, 2023 to 22nd January, 2023

[Issued by the Ministry of Corporate Affairs E No. Policy-02/01/2023-CL-V-MCA dated 09.01.2023. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1)]

Representations have been received in the Ministry requesting for clarification about filing of Form GNL-2, for the purposes of filing prospectus related documents and MGT-14 during 7th January, 2023 to 22nd January, 2023 when migration from V2 Version to V3 Version in MCA-21 Portal will be done and such forms will not be available for filing in V2 Version. The stakeholders have further stated that such forms required to be filed due to time bound activities.

- The matter has been examined in the Ministry and it has been decided that the companies intending to file (i) Form GNL-2 (filing of prospectus related documents) and (ii) MGT-14 (filing of Resolutions relating to prospectus

related documents) during 7th January, 2023 to 22nd January, 2023 on the MCA-21 Portal may file such Form in physical mode duly signed by the persons concerned as per requirements of the relevant forms, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee and take acknowledgement (as per Annexure to this Circular) thereof. Such filing will be accompanied by an undertaking from the company that once the filing of such Form is enabled on the portal, the company shall file the relevant Form in electronic form on MCA-21 Portal alongwith fees payable as per Companies (Registration Offices and Fees) Rules, 2014.

- As clarified by General Circular Number 01/2023 dated 09.01.2023 no additional fees will be levied for the period during which the filing was disabled.
- For the purpose of inspection or obtaining copy of any documents pursuant to section 399 of the Companies Act, 2013, the forms as referred to in this circular alongwith annexures thereto shall be placed by the Ministry on its website in accordance with the provisions of the Companies Act, 2013.
- This issues with the approval of the Competent Authority.

KMS NARAYANAN
Deputy Director

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03 Facility of conducting meetings of unit holders of REITs through Video Conferencing or Other Audio-Visual means

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2023/13 dated 12.01.2023]

- SEBI is in receipt of representations from Manager of REITs to allow them to conduct meetings of unit holders through Video Conferencing or Other Audio Visual means.
- Regulation 22(3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 provides that an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months. Further, Manager of REITs are also required to hold meetings of unit holders for certain matters specified under SEBI (Real Estate Investment Trusts) Regulations, 2014.
- Enabling participation of unit holders through Video Conferencing or other Audio Visual means ensures maximum participation of the unit holders in the decision-making process, irrespective of their geographical location, and delivers collaborative in-person experience at their convenience.
- In order to allow maximum participation of unit holders in the meeting and for better governance, it has been decided to allow Manager of the REIT to conduct meetings of unit holders through Video Conferencing or Other Audio

Visual means. While conducting meetings of unit holders through Video Conferencing or Other Audio Visual means, the Manager of the REIT is required to adopt the following procedures in addition to any other requirement specified under the SEBI (Real Estate Investment Trusts) Regulations, 2014 and circulars issued thereunder:

- (a) The recorded transcript of the meeting held through Video Conferencing or Other Audio Visual means shall be maintained in safe custody of the Manager of the REIT and shall also be uploaded by the Manager of the REIT on the website of the REIT as soon as possible after the conclusion of the meeting.
- (b) Convenience of different persons positioned in different time zones shall be kept in mind by the Manager of the REIT before scheduling the meeting.
- (c) All care must be taken to ensure that such meetings conducted through Video Conferencing or Other Audio Visual means allow two-way teleconferencing for the ease of participation of the unit holders and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the email address of the REIT.
- (d) The facility for joining the meeting shall be kept open at least fifteen minutes before the time scheduled to start the meeting and shall not be closed until the expiry of fifteen minutes after such scheduled time.

DEENA VENU SARANGADHARAN

Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

04 Facility of conducting meetings of unit holders of InvITs through Video Conferencing or Other Audio Visual means

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2023/14 dated 12.01.2023]

1. SEBI is in receipt of representations from Investment Manager of InvITs to allow them to conduct meetings of unit holders through Video Conferencing or Other Audio Visual means.
2. Regulation 22(3)(a) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 provides that an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months. Further, Investment Manager of InvITs are also required to hold meetings of unit holders for certain matters specified under SEBI (Infrastructure Investment Trusts) Regulations, 2014.
3. Enabling participation of unit holders through Video Conferencing or other Audio Visual means ensures maximum participation of the unit holders in the decision-making process, irrespective of their geographical location, and delivers collaborative in-person experience at their convenience.

4. In order to allow maximum participation of unit holders in the meeting and for better governance, it has been decided to allow Investment Manager of the InvIT to conduct meetings of unit holders through Video Conferencing or Other Audio Visual means. While conducting meetings of unit holders through Video Conferencing or Other Audio Visual means, the Investment Manager of the InvIT is required to adopt the following procedures in addition to any other requirement specified under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and circulars issued thereunder:

- (a) The recorded transcript of the meeting held through Video Conferencing or Other Audio Visual means shall be maintained in safe custody of the Investment Manager of the InvIT and shall also be uploaded by the Investment Manager of the InvIT on the website of the InvIT as soon as possible after the conclusion of the meeting.
- (b) Convenience of different persons positioned in different time zones shall be kept in mind by the Investment Manager of the InvIT before scheduling the meeting.
- (c) All care must be taken to ensure that such meetings conducted through Video Conferencing or Other Audio Visual means allow two-way teleconferencing for the ease of participation of the unit holders and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the email address of the InvIT.

DEENA VENU SARANGADHARAN

Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

05 Participation of AIFs in Credit Default Swaps

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/AFD/PoD/CIR/2023/15 dated 12.01.2023]

1. SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations'), have been amended and notified on January 09, 2023 to allow AIFs to participate in Credit Default Swaps ('CDS') as protection buyers and sellers. Copy of the notification is available at link.
2. Regulations 16(1)(aa), 17(da), 18(ab) and 20(11) of AIF Regulations enable AIFs to participate in CDS in terms of the conditions as may be specified by SEBI from time to time. In this regard, the following is specified:
 - A. Conditions applicable to Category I, II and III AIFs for buying CDS:
 - 2.1. Category I AIFs and Category II AIFs may buy CDS on underlying investment in debt securities, only for the purpose of hedging.
 - 2.2. Category III AIFs may buy CDS for the purpose of hedging or otherwise, within permissible leverage as specified in SEBI circular no. CIR/IMD/DF/10/2013 dated July 29, 2013.

- B. Conditions applicable to Category II and III AIFs for selling CDS:
- 2.3. Category III AIFs may sell CDS, subject to the condition that effective leverage undertaken is within the permissible limits as specified in SEBI circular no. CIR/IMD/DF/10/2013 dated July 29, 2013.
 - 2.4. Further, Category II AIFs and Category III AIFs may sell CDS, by earmarking unencumbered Government bonds/Treasury bills equal to the amount of the said CDS exposure. Such earmarked securities may also be used for maintaining applicable margin requirements for the said CDS exposure. Exposure to CDS undertaken in the aforesaid manner shall not tantamount to leverage.
 - 2.5. Total exposure to an investee company, including exposure through CDS, shall be within the limit of applicable concentration norm as specified in AIF Regulations.

SANJAY SINGH BHATI
Deputy General Manager

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06 **Allowing stock exchanges to launch multiple contracts on the same commodity in commodity derivatives segment**

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/MRD-POD-1/P/CIR/2023/12 dated 11.01.2023]

1. It is SEBI's constant endeavor to frame policies that encourage broader participation of investors in commodity derivatives market. Stock exchanges have represented to SEBI that due to requirement of single contract on a particular commodity, except for gold, silver and precious metals, the participation of investors, especially in metal contracts, is limited. Stock exchanges have expressed their desire to launch multiple contracts on same commodity to cater to all value chain participants.
2. The matter has been discussed in Commodity Derivatives Advisory Committee of SEBI. Accordingly, after due consultations, it has been decided that stock exchanges may be allowed to launch multiple contracts in same commodity.
3. The Circular shall come into force with immediate effect.
4. This Circular is issued with the approval of the competent authority.
5. The Exchanges are advised to:
 - 5.1. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same,
 - 5.2. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website,
 - 5.3. communicate to SEBI, the status of the implementation of the provisions of this Circular.

6. This Circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
7. This Circular is available on SEBI website at www.sebi.gov.in at "Legal → Circulars".

NAVEEN SHARMA
General Manager

07 **Introduction of future contracts on Corporate Bond Indices**

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/11 dated 10.01.2023]

1. In order to enhance liquidity in the bond market and also to provide opportunity to the investors to hedge their positions, SEBI had constituted a working group of representatives of NSE, BSE and MSEI to make recommendations on the matter of 'Derivatives on Bond Indices.'
2. Based on the submissions made by the working group and recommendations of Secondary Market Advisory Committee of SEBI, it has been decided to permit Stock Exchanges to introduce derivative contracts on indices of corporate debt securities rated AA+ and above. To start with, the Stock Exchanges are permitted to launch future contracts on corporate bond indices.
3. The details regarding index composition, contract specifications, position limits, risk management framework, etc. for introduction of future contracts on corporate bond indices are given at Annexure A.
4. The stock exchanges desirous of introducing such contracts shall submit a detailed proposal to SEBI for approval, *inter alia*, providing details relating to underlying corporate bond index, the index methodology, contract specifications, applicable trading, clearing & settlement mechanism, risk management framework, the safeguards to ensure market integrity, investor protection, surveillance systems, etc.
5. For implementation of the above, Stock Exchanges and Clearing Corporations are advised to:
 - 5.1. Take necessary steps and put in place necessary systems.
 - 5.2. Make necessary amendments to the relevant bye-laws, rules and regulations.
 - 5.3. Bring the provisions of this circular to the notice of their members and also to disseminate the same on their websites.
6. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in under the category 'Circulars'.

HRUDA RANJAN SAHOO
Deputy General Manager

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08 Change in control of Portfolio Managers providing Co-investment services

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/8 dated 10.01.2023]

1. SEBI vide Circular No. SEBI/HO/IMD-1/ DOF1/P/ CIR/2022/77 dated June 02, 2022 specified the procedure for seeking prior approval in case of change in control of Portfolio Manager. The Circular stands partially modified and para 2 (iv) of the said Circular may be read as under:

"Pursuant to grant of prior approval by SEBI, in order to enable existing investors/ clients to take well informed decision regarding their continuance or otherwise with the changed management, the portfolio manager shall inform its existing investors/ clients about the proposed change prior to effecting the same and give an option to exit without any exit load, within a period of not less than 30 calendar days, from the date of such communication. However, for the clients under co-investment portfolio management services, the Portfolio Manager shall ensure compliance with the second proviso of Regulation 22 (2) of PMS Regulations."

2. All other requirements, terms and conditions specified in the Circular shall remain unchanged.
3. This Circular is issued in exercise of powers conferred under Section 11(1) of the SEBI Act, 1992 read with the provisions of Regulation 43 of the SEBI (Portfolio Managers) Regulations, 2020 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
4. The circular is available on SEBI website at www.sebi.gov.in under the categories "Info for –Portfolio Managers" and "Legal framework -Circulars".

MANASWINI MAHAPATRA
General Manager

09 Comprehensive Framework on Offer for Sale (OFS) of Shares through Stock Exchange Mechanism

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/10 dated 10.01.2023]

- A. Based on the feedback received from various market participants, discussions with Stock Exchanges, Clearing Corporations and deliberations in Secondary Market Advisory Committee (SMAC) of SEBI, it has been decided to modify certain provisions of the existing OFS framework through Stock Exchange Mechanism. The comprehensive OFS framework is given as under:

1.0 Definitions

- 1.1 "Floor Price" is the minimum price at which the seller intends to sell the shares.
- 1.2 "Illiquid Shares" are securities not forming part of "Most liquid shares" and "Liquid shares".
- 1.3 "Indicative Price" is the volume weighted average price of all the valid bids.
- 1.4 "Liquid Shares" are listed securities forming part of Group I securities as per SEBI circular No.MRD/DoP/SE/Cir-07/2005 dated February 23, 2005 and having mean impact cost of greater than 0.05 percent and less than or equal to 0.10 percent for a trade of Rupees One Lakh.
- 1.5 "Most Liquid Shares" are listed securities forming part of Group I securities as per SEBI Circular No.MRD/DoP/SE/Cir-07/2005 dated February 23, 2005 and having mean impact cost of up to 0.05 percent for a trade of Rupees One Lakh.
- 1.6 "Multiple Clearing Prices" are the prices at which the shares are allocated to the successful bidders in a price priority methodology.
- 1.7 "Shares" are the listed equity shares of the company.
- 1.8 "Single Clearing Price" is the price at which the shares are allocated to the successful bidders in a proportionate basis methodology.
- 1.9 "Size of the Offer" is the number of shares offered * floor price.
- 1.10 "T day" is first day of OFS.
- 1.11 "Units" are the listed units of Real Estate Investment Trusts (REITs) or Infrastructure Investment Trusts (InvITs).

HRUDA RANJAN SAHOO
Deputy General Manager

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10 Standard Operating Procedure for handling of Stock Exchange Outage and extension of trading hours thereof

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD-TPD-1/CIR/P/2023/7 dated 09.01.2023]

1. Trading hours of stock exchanges are pre-defined and known to all market participants including the other Market Infrastructure Institutions (MIIs) to enable them to carry out activities related to continuous trading in securities.
2. If due to any technical reason or otherwise, continuous trading on stock exchanges is disrupted, it is of paramount importance that not only all market participants including other MIIs, are promptly informed about the outage but also the trading hours are extended, if required, so as to provide opportunity for smooth closure of intraday positions.

3. With a view to ensure that any outage at stock exchange(s) is handled in a harmonized and consistent manner, the matter was discussed with the MIIs and Standard Operating Procedure with regard to handling of such stock exchange outage in Cash Market and Equity Derivatives segment is detailed below.

Definition of Stock Exchange Outage

4. Stock Exchange Outage shall mean stoppage of continuous trading, either suo moto by exchange or by virtue of reasons beyond control of stock exchange. Further, stoppage of continuous trading shall not include trading halt on account of index based market-wide circuit breaker.

ANSUMAN DEV PRADHAN

Deputy General Manager

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11

Mode of settlement for trades executed on the Request for Quote (RFQ) platform

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/9 dated 09.01.2023]

1. SEBI vide circular no. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/142 dated October 19, 2022 on 'Request for Quote (RFQ) platform for trade execution and settlement of trades in listed Non-convertible Securities, Securitised Debt Instruments, Municipal Debt Securities and Commercial Paper' has permitted stock brokers registered under the debt segment of the Stock Exchange(s) to place/seek bids on the RFQ platform on behalf of client(s), in addition to the existing option of placing bids in a proprietary capacity.
2. Further, SEBI vide circular no. SEBI/HO/DDHS/P/CIR/2022/00144 dated October 28, 2022 on 'Reduction in denomination for debt securities and non-convertible redeemable preference shares' inter-alia modified the face value of the listed debt security and non-convertible redeemable preference share issued on private placement basis traded on a stock exchange or OTC basis from Rs. Ten Lakh to Rs. One lakh.
3. Furthermore, SEBI vide circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/ 2022/154 dated November 14, 2022 on 'Registration and regulatory framework for Online Bond Platform Providers' inter-alia stipulated that all the orders with respect to listed debt securities placed on an online Bond Platform shall be mandatorily routed through the RFQ platform of the recognised Stock Exchange(s) and settled through the respective Clearing Corporations.
4. As a matter of practice, presently, Stock Exchanges are using Real-Time Gross Settlement (RTGS) channel as a mode of settlement for trades executed on the RFQ platform with respect to listed corporate bonds, commercial paper, and securitised debt instruments. Stock Exchanges and market participants have sought clarification as to whether payment mechanisms other than RTGS provided by banks/ payment aggregators can be permitted for settlement of trades executed on the RFQ platform.
5. It is clarified that, in addition to the existing payment mechanisms, payment mechanisms provided by banks/ payment aggregators authorised by Reserve Bank of India, from time to time, may be used for settlement of trades executed on the RFQ platform.
6. The Stock Exchanges and Clearing Corporations are directed to:
 - 6.1. Put in place necessary infrastructure for this purpose.
 - 6.2. Bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites; and
 - 6.3. Make necessary amendments to the relevant by-laws, rules and regulations for the implementation of the above directions in coordination with one another to achieve uniformity in approach and communicate to SEBI.
7. This circular shall come into force with immediate effect.
8. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 55 (1) of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021, Regulation 29 of the SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 and Regulation 48 of the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
9. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

PRADEEP RAMAKRISHNAN

General Manager

12

Operational Circular for Credit Rating Agencies

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2023/6 dated 06.01.2023]

- I. Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 prescribes guidelines for registration of Credit Rating Agencies (CRAs), general obligations of CRAs, manner of inspection and investigation and code of conduct applicable on CRAs. Multiple circulars have been issued, over the years, covering the operational and procedural aspects thereof.
- II. In order to enable the industry and other users to have access to all the applicable circulars/ directions at one place, Operational Circular for CRAs has been prepared.
- III. This Operational Circular is a compilation of the existing circulars as on December 31st, 2022, with consequent

changes. The stipulations contained in these circulars have been detailed chapter-wise in this operational circular. Accordingly, the list of existing circulars for CRAs which have been superseded by Operational Circular is placed at Annexure A.

- IV. **Applicability:** The provisions of the circular shall come into effect from February 01, 2023.
- V. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20 of Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

DEENA VENU SARANGADHARAN
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

13 Management and advisory services by AMCs to Foreign Portfolio Investors

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/001 dated 06.01.2023]

- SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/155 dated December 16, 2019 specifies the categories of Foreign Portfolio Investors (FPIs), to which the AMCs may provide management and advisory services in terms of Regulation 24(b) of SEBI (Mutual Funds) Regulations, 1996. Accordingly, AMCs may provide management and advisory services to FPIs operating from International Financial Services Centres (IFSC) and regulated by International Financial Services Centres Authority (IFSCA) and falling under the categories specified in the aforementioned SEBI circular.
- In consultation with IFSCA and based on the requests received from AMCs, it has been decided that, AMCs may also provide management and advisory services to FPIs operating from IFSC and regulated by IFSCA, not falling under the categories of FPIs specified under para 2(i) of SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/155 dated December 16, 2019, subject to the following:
 - Such FPI shall be allowed to invest in mutual fund schemes other than the schemes in the category of "thematic" as defined in SEBI Circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017.
 - For investment in equity and equity derivative securities listed on recognized stock exchanges in India, such FPI shall not take contra-position for a period of six months from the date of purchase or sale of such securities.
- This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board

of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

MANASWINI MAHAPATRA
Deputy General Manager

14 Extension of timelines for entering and verification of the details of the existing outstanding non-convertible securities in the 'Security and Covenant Monitoring' system hosted by Depositories

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/RACPOD1/CIR/P/2023/003 dated 05.01.2023]

- SEBI vide Circular SEBI/HO/MIRSD/MIRSD_CRADT/CIR/P/2021/618 dated August 13, 2021 specified the manner of recording of charges by Issuers and manner of monitoring and other responsibilities of stakeholders for 'Security and Covenant Monitoring' using Distributed Ledger Technology (DLT). Further, vide circular SEBI/HO/MIRSD/CRADT/CIR/P/2022/38 dated March 29, 2022 the Operating Guidelines of the said system using DLT, including roles and responsibilities of the various stakeholders involved, were specified.
- Pursuant to receipt of representations from depositories for extension in the timeline of entering the legacy data being requested by the issuers, para 8.d of the SEBI Circular dated March 29, 2022 was accordingly modified providing that for existing outstanding non-convertible securities, issuers shall ensure that they enter the details into the system on or before October 31, 2022 and Debenture Trustees (DTs) shall verify the same by December 31, 2022.
- SEBI is in receipt of further representations from DTs citing operational/ technical difficulties owing to the advanced nature of the technology involved and seeking extension of timeline for verifying the entries made by issuer. Accordingly, it has been decided that for existing outstanding non-convertible securities, issuers shall ensure that they enter the details into the system on or before January 31, 2023 and DTs shall verify the same by February 28, 2023. DTs shall submit a fortnightly progress report of status of compliance regarding the details pertaining to existing outstanding non-convertible securities being entered in the system by the issuers and verification of the same by DT, till the extension of the timeline for compliance is in place. The progress report shall be submitted within five days of the end of the fortnight.
- This circular is issued in exercise of the powers conferred upon SEBI under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, Regulation 55 of the Securities and Exchange Board of India (Issue And Listing Of Non-Convertible Securities) Regulations,

2021, Regulation 29 of the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015, Regulation 48 of SDI Regulations, 2008 and Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

- This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Circulars”.

PRADEEP RAMAKRISHNAN
General Manager

15 Monitoring and Periodical reporting of the compliance with the requirements pertaining to ‘Security and Covenant Monitoring’ system hosted by Depositories

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/RACPOD1/CIR/P/2023/0002 dated 05.01.2023]

- SEBI vide Circular SEBI/HO/MIRSD/MIRSD_CRADT/CIR/P/2021/618 dated August 13, 2021 specified the manner of recording of charges by Issuers and manner of monitoring and other responsibilities of stakeholders for ‘Security and Covenant Monitoring’ using Distributed Ledger Technology (DLT). Further, vide circular SEBI/HO/MIRSD/CRADT/CIR/P/2022/38 dated March 29, 2022 the Operating Guidelines of the said system using DLT, including roles and responsibilities of the various stakeholders involved, were specified.
- Depositories shall ensure periodic monitoring regarding compliance with the requirements of various circulars pertaining to ‘Security & Covenant Monitoring System’ issued by SEBI from time to time, including the circulars dated August 13, 2021 and March 29, 2022, and shall also bring to the notice of SEBI, any instances of non-compliance, on a quarterly basis, not later than one month from the end of the quarter, in the format specified as under:

ISIN	Stakeholders involved & their status of compliance	Reference to the provision of the relevant circulars pertaining to non-compliance	Reasons/ remarks for such non-compliance	Date of compliance/ expected date of compliance
	<Name of the Issuer>			
	<Name of the Debenture Trustee>			
	<Name of the Credit Rating Agency>			

- Applicability:** The provisions of this circular shall come in force from April 01, 2023.

- This circular is issued in exercise of the powers conferred upon SEBI under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, Regulation 55 of the Securities and Exchange Board of India (Issue And Listing Of Non-Convertible Securities) Regulations, 2021, Regulation 29 of the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015, Regulation 48 of SDI Regulations, 2008 and Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

- This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Circulars”.

PRADEEP RAMAKRISHNAN
General Manager

16 Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg.

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/4 dated 05.01.2023]

- SEBI, vide circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020, had inter-alia relaxed the requirements specified in regulation 36(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”) relating to dispatching hard copy of the statement containing salient features of all the documents as prescribed in section 136 of the Companies Act, 2013 (financial statements, Board’s report, Auditor’s report etc.), to those shareholders who have not registered their email addresses. The said relaxation was initially extended till December 31, 2021 and was subsequently extended upto December 31, 2022, vide SEBI circular no. SEBI/HO/CFD/CMD2/CIR/P/2022/62 dated May 13, 2022 (“**SEBI Circular**”).
- SEBI has been receiving representations from listed entities seeking extension of the relaxations provided in the aforesaid SEBI Circular, beyond December 31, 2022. Incidentally, MCA, vide General Circular No. 10/2022 dated December 28, 2022, has provided similar relaxations to companies from dispatching physical copies of the financial statements (including Board’s report, Auditor’s report or other documents required to be attached therewith) to the shareholders, for the Annual General Meetings (AGMs) conducted till September 30, 2023.
- After consideration, it has been decided to extend the relaxations provided in para 2 and 4 of the SEBI Circular till September 30, 2023. The listed entities shall ensure compliance with the conditions specified in para 2 and 3 of the said circular which is reproduced below:

- In terms of regulation 36(1)(c) of the LODR Regulations, listed entities are required to send hard

copy of full annual reports to those shareholders who request for the same.

- b. The notice of AGM published by advertisement in terms of regulation 47 of the LODR Regulations shall disclose the web-link to the annual report so as to enable shareholders to have access to the full annual report.
4. This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities that have issued specified securities and also disseminate on their websites.
5. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 101 and 102 of the LODR and the relaxations contained herein are subject to the provisions of the Companies Act, 2013 and rules made thereunder.
6. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

YOGITA JADHAV
General Manager

17 Limited relaxation – dispatch of physical copies of financial statements etc. – Regulation 58 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/001 dated 05.01.2023]

1. SEBI vide Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 had inter-alia, relaxed certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) related to dispatch of hard copy of Annual Report to debenture holders, pursuant to relaxations granted by the Ministry of Corporate Affairs (MCA). Thereafter, vide Circular no. SEBI/HO/DDHS/P/CIR/2022/0063 dated May 13, 2022, the said relaxations were extended till December 31, 2022.
2. MCA vide Circular dated December 28, 2022 has, inter-alia, now extended the relaxations from dispatching of physical copies of financial statements due in the year 2023 (i.e. till September 30, 2023).
3. Considering the above, it has been decided to relax up to September 30, 2023, the requirements of Regulation 58 (1)(b) of the Listing Regulations which prescribes that an entity with listed non-convertible securities shall send a hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not registered their email address(es) either with the listed entity or with any depository.

4. This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all entities with listed non-convertible securities and disseminate on their websites.
5. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the Listing Regulations.

PRADEEP RAMAKRISHNAN
General Manager

18 Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Addition of 1 entry

[Issued by the Reserve Bank of India vide RBI/2022-23/171 DOR.AML.REC.99/14.06.001/2022-23 dated 30.01.2023]

Please refer to Section 51 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021, in terms of which "Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC)."

2. In this connection, Ministry of External Affairs (MEA) has informed about UNSC press release SC/15186 dated January 27, 2023 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities approved the addition of the entry specified below to its ISIL (Da'esh) and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021) and adopted under Chapter VII of the Charter of the United Nations:

B. Entities and other groups

QDe.169 Name: Islamic State In Iraq And the Levant In South-East Asia (ISIL-SEA, ISIL-South East Asia)
Name (original script): na **A.k.a.:** a) Islamic State East Asia Division b) Dawlatul Islamiyah Waliyatul Mashriq
F.k.a.: na **Address:** na **Listed on:** 27 Jan. 2022 **Other information:** Formed in June 2016 upon announcement by now-deceased Isnilon Hapilon (QDi.204). Associated with Islamic State in Iraq and the Levant, listed as Al-Qaida in Iraq (QDe.115). INTERPOL-UN Security Council Special Notice web link: www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Entities

3. The UNSC press releases concerning amendments to the list is available at URL: <https://www.un.org/securitycouncil/sanctions/1267/press-releases>
4. The details of the sanction measures and exemptions are available at the following URL: https://www.un.org/securitycouncil/sanctions/1267#further_information

In view of the above, Regulated Entities (REs) are advised to take appropriate action in terms of section 51, 52 and 53 of the RBI Master Direction (MD) on Know Your Customer (KYC) dated February 25, 2016 as amended from time to time and strictly follow the procedure laid down in the UAPA Order dated Feb 02, 2021 annexed to the MD on KYC ibid.

- Updated lists of individuals and entities linked to ISIL (Da'esh), Al-Qaida and Taliban are available at: www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list, <https://www.un.org/securitycouncil/sanctions/1988/materials>
- Further, as per the instructions from the Ministry of Home Affairs (MHA), any request for delisting received by any Regulated Entity (RE) is to be forwarded electronically to Joint Secretary (CTCR), MHA for consideration. Individuals, groups, undertakings or entities seeking to be removed from the Security Council's ISIL (Da'esh) and Al-Qaida Sanctions List can submit their request for delisting to an independent and impartial Ombudsperson who has been appointed by the United Nations Secretary-General. More details are available at the following URL: <https://www.un.org/securitycouncil/ombudsperson/application>
- REs are advised to take note of the aforementioned UNSC communications and ensure meticulous compliance.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

19 Designation of 3 individuals as 'Terrorists' under Section 35 (1) (a) of the Unlawful Activities (Prevention) Act (UAPA), 1967 and their listing in the Schedule IV of the Act-Reg.

[Issued by the Reserve Bank of India vide RBI/2022-23/170 DOR.AML. REC.98/14.06.001/2022-23 dated 24.01.2023]

In terms of Section 53 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021, "The procedure laid down in the UAPA Order dated February 2, 2021 (Annex II of this Master Direction) shall be strictly followed and meticulous compliance with the Order issued by the Government shall be ensured." Further, Section 52 of the aforementioned Master Direction states that, "Details of accounts resembling any of the individuals/entities in the lists shall be reported to FIU-IND apart from advising Ministry of Home Affairs as required under UAPA notification dated February 2, 2021 (Annex II of this Master Direction)". In this regard, it is highlighted that the UAPA Order in Annex II of the MD on KYC, 2016 shall also apply to amendments carried out in Schedule I and IV of the UAPA, 1967 apart from the UNSC lists mentioned in the Order.

- In this connection, please refer to the Gazette notifications dated January 06, 2023, January 07, 2023 and January 09, 2023, of the MHA in respect of three individuals who have been declared as 'Terrorists' and have been listed in the IV of the UAPA 1967, under Section 35 (1) (a) of UAPA 1967. The Statutory Order (S.O.) numbers and the respective entries are as provided below:

S.O. Numbers	Entries
71(E)	51. Arbaz Ahmad Mir
104(E)	52. Dr. Asif Maqbool Dar
105(E)	53. Arshdeep Singh Gill @ Arsh Dala

- Regulated Entities (REs) are advised to take note of the aforementioned Gazette notifications issued by MHA for necessary compliance. REs shall also take note of any future amendments to Schedule I and IV of the UAPA, 1967, for immediate necessary compliance.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

20 Safe Deposit Locker/Safe Custody Article Facility provided by banks

[Issued by the Reserve Bank of India vide RBI/2022-23/168 CO.CEPD.PRS. No.S1233/13-01-018/2022-2023 dated 23.01.2023]

Please refer to the RBI circular DOR.LEG. REC/40/09.07.005/2021-22 dated August 18, 2021 on the captioned subject.

- In terms of paragraph 2.1.1 of the said circular, banks were required to renew their locker agreements with existing locker customers by January 1, 2023. However, it has come to the notice of the Reserve Bank that large number of customers are yet to execute the revised agreement and are facing difficulties in doing the same. In many cases, the banks are yet to inform the customers about the need for renewal of agreements before January 1, 2023. Further, there is a need for revision in the Model Agreement drafted by the Indian Banks' Association (IBA) to fully comply with the revised instructions.
- Considering the above aspects, the deadline for banks is being extended in a phased manner to December 31, 2023. Banks are advised to notify all their customers of the revised requirements by April 30, 2023 and ensure that at least 50 per cent and 75 per cent of their existing customers have executed the revised agreements by June 30 and September 30, 2023 respectively. Banks shall report the status of compliance with these instructions on the DAKSH supervisory portal of the Reserve Bank on a monthly basis.
- IBA is being advised separately to review and revise the Model Agreement to ensure that it complies with the requirements of circular dated August 18, 2021 and circulate a revised version to all banks by February 28, 2023. There may be instances, where the revised agreements already executed in pursuance of circular dated August 18, 2021 are at variance with this revised IBA Model Agreement. In such cases, all the provisions of the said circular of the RBI, in particular Part VII thereof on compensation policy/liability of banks, shall continue to apply to banks even if not explicitly stated in the agreements already executed. Further, in such cases, banks shall have the option to execute fresh agreements or revise them through supplementary agreements. The cost of stamp paper in such cases may be borne by the banks.

5. Banks are advised to facilitate execution of the fresh/ supplementary stamped agreements with their customers by taking measures such as arranging stamp papers, franking, electronic execution of agreement, e-stamping, etc. and provide a copy of the executed agreement to the customer. Where operations in lockers have been frozen for non-execution of agreement by January 1, 2023, the same should be unfrozen with immediate effect.

ANUPAM SONAL
Chief General Manager

21 'Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds

[Issued by the Reserve Bank of India vide RBI/2022-23/169 FMRD.FMID. No.07/14.01.006/2022-23 dated 23.01.2022]

A reference is invited to the Press Release on Issuance Calendar for Marketable Sovereign Green Bonds: FY 2022-23 dated January 06, 2023, issued by the Reserve Bank, notifying the issuance calendar for Sovereign Green Bonds for the fiscal year 2022-23. Attention is also invited to the Fully Accessible Route (FAR) introduced by the Reserve Bank, vide A.P. (DIR Series) Circular No. 25 dated March 30, 2020, wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

- The Government Securities that were eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD.FMSD. No.25/14.01.006/2019-20 dated March 30, 2020 and circular no. FMRD.FMID.No.04/14.01.006/2022-23 dated July 07, 2022.
- It has now been decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2022-23 as 'specified securities' under the FAR.
- The Directions contained in this circular have been issued under Section 45W of Chapter IIID of the Reserve Bank of India Act, 1934 and are without prejudice to permissions/ approvals, if any, required under any other law.
- These Directions shall be applicable with immediate effect.

DIMPLE BHANDIA
Chief General Manager

22 Designation of two individuals and one organisation under Section 35(1) (a) and 2(1) (m) of the Unlawful Activities (Prevention) Act, 1967 and their listing in the First and Fourth Schedule of the Act.

[Issued by the Reserve Bank of India vide RBI/2022-23/166 DOR.AML. REC.96/14.06.001/2022-23 dated 17.01.2023]

In terms of Section 53 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021, "The procedure laid down in the UAPA Order dated February 2, 2021 (Annex II of this Master Direction) shall be

strictly followed and meticulous compliance with the Order issued by the Government shall be ensured." Further, Section 52 of the aforementioned Master Direction states that, "Details of accounts resembling any of the individuals/entities in the lists shall be reported to FIU-IND apart from advising Ministry of Home Affairs as required under UAPA notification dated February 2, 2021 (Annex II of this Master Direction)". In this regard, it is highlighted that the UAPA Order in Annex II of the MD on KYC, 2016 shall also apply to amendments carried out in Schedule I and IV of the UAPA, 1967 apart from the UNSC lists mentioned in the Order.

- In this connection, please refer to the Gazette notifications dated January 04, 2023 and January 05, 2023, of the MHA in respect of two individuals and one organization which have been declared as 'Terrorists' and 'Terrorist Organisation' and have been listed in the Schedule I and IV of the UAPA 1967, under Section 35 (1) (a) and 2(1) (m) of UAPA 1967. The Statutory Order (S.O.) numbers and the respective entries are in the table below:

S.O. Numbers	Entries
29(E)	49. Aijaz Ahmad Ahanger @ Abu Usman Al-Kashmiri
39(E)	50. Mohammed Amin Khubaiab @ Abu Khubaiab @ Pinna @ Muhammed Amin Butt
45(E)	"/The Resistance Front and all its manifestations and front Organisations"

- Regulated Entities (REs) are advised to take note of the aforementioned Gazette notifications issued by MHA for necessary compliance. REs shall also take note of any future amendments to Schedule I and IV of the UAPA, 1967, for immediate necessary compliance.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

23 Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Addition of 1 entry

[Issued by the Reserve Bank of India vide RBI/2022-23/167 DOR.AML. REC.97/14.06.001/2022-23 dated 17.01.2023]

Please refer to Section 51 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021, in terms of which "Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC)."

- In this connection, Ministry of External Affairs (MEA) has informed about UNSC press release SC/15177 dated January 16, 2023 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities approved the addition of the entry specified below to its ISIL (Da'esh)

and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021) and adopted under Chapter VII of the Charter of the United Nations:

A. Individuals

QDi.433 Name: 1. ABDUL 2. REHMAN 3. MAKKI 4: na **Name (original Script):** na **Title:** na **Designation:** na **DOB:** 10 Dec. 1954 **POB:** Bahawalpur, Punjab Province,

Pakistan Good quality a.k.a.: a) Abdur Rehman Makki; b) Abdur Rahman Makki, c) Abdul Rahman Makki; d) Hafiz Abdul Rahman Makki; e) Hafiz Abdul Rehman Makki; f) Hafiz Abdul Rehman Low quality a.k.a.: na **Nationality:** Pakistan **Passport No:** a) Pakistan number CG9153881, issued on 2 Nov 2007 b) Pakistan number A5199819 **National Identification No:** a) Pakistan 6110111883885 b) Pakistan 34454009709 **Address:** Tayyiba Markaz, Muridke, Punjab Province, Pakistan **Listed on:** 16 Jan. 2023 **Other Information:** He is deputy Amir/Chief of LASHKAR-E-TAYYIBA (LET) (QDe.118) a.k.a JAMAAT-UD-DAWA (JUD) and Head of Political Affairs Wing JUD/LET. He also served as head of LET's foreign relations department and member of Shura (governing body). He is the brother-in-law of JUD/LET Chief Hafiz Muhammad Saeed (Qdi.263). **Father's name is** Hafiz Abdullah Bahwalpuri. Photo is available for inclusion in the INTERPOL-UN Security Council Special Notice. **INTERPOL-UN Security Council Special Notice web link:** <https://www.interpol.int/en/How-we-work/Notices/View-UN-Notices-Individuals>

3. The UNSC press releases concerning amendments to the list is available at URL: <https://www.un.org/securitycouncil/sanctions/1267/press-releases>

4. The details of the sanction measures and exemptions are available at the following URL: https://www.un.org/securitycouncil/sanctions/1267#further_information

In view of the above, Regulated Entities (REs) are advised to take appropriate action in terms of section 51, 52 and 53 of the RBI Master Directions on KYC dated February 25, 2016 as amended from time to time and strictly follow the procedure laid down in the UAPA Order dated Feb 02, 2021 annexed to the MD *ibid*.

5. Updated lists of individuals and entities linked to ISIL (Da'esh), Al-Qaida and Taliban are available at: www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list <https://www.un.org/securitycouncil/sanctions/1988/materials>

6. Further, as per the instructions from the Ministry of Home Affairs (MHA), any request for delisting received by any Regulated Entity (RE) is to be forwarded electronically to Joint Secretary (CTCR), MHA for consideration. Individuals, groups, undertakings or entities seeking to be removed from the Security Council's ISIL (Da'esh) and Al-Qaida Sanctions List can submit their request for delisting to an independent and impartial Ombudsperson who has been appointed by the United Nations Secretary-General. More details are available at the following URL: <https://www.un.org/securitycouncil/ombudsperson/application>

7. REs are advised to take note of the aforementioned UNSC communications and ensure meticulous compliance.

SANTOSH KUMAR PANIGRAHY
Chief General Manager

24 Master Direction – Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023

[Issued by the Reserve Bank of India vide RBI/DOR/2022-23/95 DOR.HOL. No.95/16.13.100/2022-23 dated 16.01.2023]

In exercise of the powers conferred by Sections 12, 12B, and 35A of the Banking Regulation Act, 1949, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

These directions may be read along with the 'Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies' issued by the Reserve Bank of India (the Guidelines).

Objective: These directions are issued with the intent of ensuring that the ultimate ownership and control of banking companies are well diversified and the major shareholders of banking companies are 'fit and proper' on a continuing basis.

CHAPTER – I

PRELIMINARY

1. Short Title and Commencement.

1.1 These directions shall be called the Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023.

1.2 These directions shall become effective from the date of issue.

2. Applicability

2.1 The provisions of these directions shall apply to all banking companies (as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949), including Local Area Banks (LABs), Small Finance Banks (SFBs) and Payments Banks (PBs) operating in India¹.

3. Definitions

3.1 In these directions, unless the context otherwise requires, the terms used shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly:-

(a) "acquisition" means, acquiring, or agreeing to acquire, shares² or voting rights in a banking company, directly or indirectly³;

(b) "aggregate holding" means the total holding, directly or indirectly, beneficial or otherwise, of shares or voting rights by a person along with his relatives,

associate enterprises and persons acting in concert with him in a banking company [For the purpose of arriving at indirect holding, the acquisition of shares or voting rights mentioned in Annex I shall also be considered and that indirect acquisition is not limited to the acquisition(s) mentioned therein];

- (c) “applicant” means the person making an application under Section 12B of the Banking Regulation Act, 1949 (10 of 1949);
- (d) “encumbrance” has the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- (e) “major shareholding” means “aggregate holding” of five per cent or more of the paid-up share capital or voting rights in a banking company by a person;
- (f) “person” means a natural person or a legal person;
- (g) “relative” has the same meaning as defined in Section 2(77) of the Companies Act, 2013 and rules made thereunder; and
- (h) “significant beneficial owner” has the same meaning as stated in Companies (Significant Beneficial Owners) Rules, 2018.

3.2 All other expressions, unless defined herein, shall have the same meaning as have been assigned to them under the Banking Regulation Act, 1949.

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

25 Reserve Bank of India Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies January 16, 2023

The contents of these Guidelines shall be read along with Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023, and applicable provisions of the Banking Regulation Act, 1949.

Prior approval for acquisition of shares or voting rights in a banking company

- 2. In terms of sub-section (1) of Section 12B of Banking Regulation Act, 1949, every person, who intends to acquire shares or voting rights and intends to be a major shareholder¹ of a banking company, is required to obtain previous approval of the Reserve Bank.
- 3. The person, who intends to be a major shareholder of a banking company, is required to make an application to the Reserve Bank along with the declaration in Form A. The Reserve Bank would undertake a due diligence to assess the ‘fit and proper’ status of the applicant. It will be open to the Reserve Bank to seek additional information / documents from the applicant / concerned banking company and make such enquiries with regulators,

revenue authorities, investigation agencies, credit rating agencies or any other persons as considered appropriate.

- 4. While granting approvals, the Reserve Bank may specify conditions under sub-section (4) of Section 12B of B R Act, 1949, including a validity period for completing such acquisition. Subsequent to such acquisition, if at any point in time the aggregate holding² of the person falls below five per cent, as per sub-section (1) of Section 12B of B R Act, 1949, the person will be required to again obtain prior approval from the Reserve Bank to raise the aggregate holding to five per cent or more of total paid-up share capital or voting rights of the banking company.
- 5. Any person who intends to acquire shares or voting rights in a banking company beyond the limit for which approval was obtained from the Reserve Bank, is required to apply to the Reserve Bank for prior approval to increase their aggregate holding in the banking company.
- 6. The persons from³ Financial Action Task Force (FATF) non-compliant jurisdictions⁴ shall not be permitted to acquire major shareholding in the banking company. However, the existing major shareholders from such FATF non-compliant jurisdictions would be allowed to continue with their investment, provided that there shall not be any further acquisition without prior approval of the Reserve Bank. The Reserve Bank may, however, review the ‘fit and proper’ status of such holders of shares or voting rights at any point of time and may take steps to limit their voting rights in accordance with law.

Information to be provided for continuous monitoring

- 7. In addition to furnishing the information sought by the banking company, major shareholders who have completed the approved⁵ acquisition or applicants who have obtained the approval to have major shareholding or applicants who have submitted the application for obtaining the prior approval shall inform the banking company of any change in the information provided in Form A or any other development which may have a bearing on the ‘fit and proper’ status.

Limits on shareholding

- 8. Permission of the Reserve Bank to acquire shares or voting rights in a banking company shall be subject to the following limits:
 - (a) Non-promoter:
 - (i) 10 per cent of the paid-up share capital or voting rights of the banking company in case of natural persons, non-financial institutions, financial institutions directly or indirectly connected with Large Industrial Houses⁶ and financial institutions that are owned to the extent of 50 per cent or more or controlled by individuals (including the relatives and persons acting in concert)⁷, or
 - (ii) 15 per cent of the paid-up share capital or voting rights of the banking company in case of

financial institutions (excluding those mentioned in paragraph 8(a)(i) above), supranational institutions, public sector undertaking and central/state government.

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

26 Formation of new district in the State of Arunachal Pradesh – Assignment of Lead Bank Responsibility

[Issued by the Reserve Bank of India vide RBI/2022-23/164 FIDD.CO.LBS. BC.No.16/02.08.001/2022-23 dated 13.01.2023]

The Government of Arunachal Pradesh vide Gazette Notification No.Law/Legn-15/2022 dated May 6, 2022 has notified formation of a new district in the state of Arunachal Pradesh. It has been decided to assign the lead bank responsibility for the new district as under:

Sr No	Newly Created District	Erstwhile District	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Lower Siang	(i) East Siang (ii) West Siang	State Bank of India	396

- Further, the District Working Code of the new district has also been allotted for the purpose of BSR reporting by banks.
- There is no change in the Lead Banks of the erstwhile district and of other districts in the state of Arunachal Pradesh.

SONALI SEN GUPTA
Chief General Manager

27 Formation of new district in the State of Sikkim – Assignment of Lead Bank Responsibility

[Issued by the Reserve Bank of India vide RBI/2022-23/165 FIDD.CO.LBS. BC.No.17/02.08.001/2022-23 dated 13.01.2023]

The Government of Sikkim vide Gazette Notification No.50/LR&DMD/ACQ/GOS dated December 20, 2021 had notified formation of a new district in the state of Sikkim. It has been decided to assign the lead bank responsibility of the new district, Pakyong, as under:

Sr No	Newly Created District	Erstwhile District	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Pakyong	East Sikkim	Central Bank of India	01U

- Further, the District Working Code of the new district has also been allotted for the purpose of BSR reporting by banks.
- There is no change in the Lead Banks of the erstwhile district and of other districts in the state of Sikkim.

SONALI SEN GUPTA
Chief General Manager

28 Operational Risk Management: Price / Yield range setting in e-Kuber

[Issued by the Reserve Bank of India vide RBI/2022-23/163 IDMD. No.S2800/08.02.032/2022-23 dated 11.01.2023]

Please refer to our circular IDMD/1615/08.02.032/2019-20 dated December 12, 2019 advising the participants in the Government Securities (G-Sec) market about the “Price / Yield range setting” facility provided on the e-Kuber platform as a risk management measure. The facility allows a market participant to define a range i.e., a maximum and a minimum value for bids they intend to submit in an auction. The range can be set in either price or yield terms, for each security in every auction, which can be set before the auction and can also be modified during the auction. Once the limits are set by the participating entity, the bids in the auction are automatically validated against the set limits. This is expected to eliminate instances of Fat-finger / Big-figure error by the bidders in the G-Sec auctions.

- As there have been a few instances of Fat-finger / Big-figure error by the bidders in the G-Sec auctions conducted by Reserve Bank, it suggests that some of the market participants are yet to put in place the “Price / Yield range setting” facility in their system.
- All the market participants are, therefore, advised to utilize the “Price / Yield range setting” facility provided on the e-Kuber platform before placing bids in the Primary Market auctions. It may be noted that no request for cancellation of bids will be entertained after the close of auction window.

S VENKATARAMAN
General Manager

29 Basel III Capital Regulations - Eligible Credit Rating Agencies

[Issued by the Reserve Bank of India vide RBI/2022-23/162 DOR.STR. REC.94/21.06.008/2022-23 dated 09.01.2023]

Please refer to paragraph 6.1.2 of the Master Circular DOR. CAP.REC.3/21.06.201/2022-23 dated April 01, 2022 on Basel III Capital Regulations, wherein the list of domestic credit rating agencies accredited for the purpose of risk weighting banks’ claims for capital adequacy purposes has been prescribed.

2. On a review, banks are advised to use the ratings of the following domestic credit rating agencies (arranged in alphabetical order) for risk weighting their claims for capital adequacy purposes:
- Acuite Ratings & Research Limited (Acuite)
 - Credit Analysis and Research Limited (CARE);
 - CRISIL Ratings Limited;
 - ICRA Limited;
 - India Ratings and Research Private Limited (India Ratings); and
 - INFOMERICS Valuation and Rating Pvt Ltd. (INFOMERICS)
3. A reference is also invited to the Press Release: 2022-2023/1033 dated October 12, 2022 in terms of which, Regulated Entities/ Market Participants were advised that in respect of ratings/credit evaluations required in terms of any guidelines issued by the Reserve Bank, no such fresh ratings/evaluations shall be obtained from Brickwork Ratings India Private Limited. Banks shall continue to be guided by the press release ibid till further review.
4. All other provisions regarding external credit ratings stipulated in the Master Circular ibid remain unchanged.

MANORANJAN MISHRA
Chief General Manager

30 Formation of new districts in the State of Chhattisgarh – Assignment of Lead Bank Responsibility

[Issued by the Reserve Bank of India vide RBI/2022-23/161 FIDD.CO.LBS. BC.No.15/02.08.001/2022-23 dated 06.01.2023]

The Government of Chhattisgarh has notified formation of five new districts in the state of Chhattisgarh vide Gazette Notifications No. F 11-40/2021/Seven 4, No. F 11-08/2022/Seven-4, No. F 11-37/2021/Seven-4 dated September 1, 2022 and No. F 11-38/2021/Seven-4, No. No. F 11-39/2021/Seven-4 dated September 8, 2022. Accordingly, it has been decided to designate Lead Banks of the new districts as under:

Sr No	Newly Created District	Erstwhile District(s)	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Sarangarh-Bilagarh	(i) Raigarh (ii) Baloda Bazar – Bhatapara	State Bank of India	01R

2	Khairagarh-Chhuikhadan-Gandai	Rajnandgaon	State Bank of India	01P
3	Mohla-Manpur-Ambagarh Chouki	Rajnandgaon	Bank of Baroda	01Q
4	Sakti	Janjgir-Champa	State Bank of India	01S
5	Manendragarh-Chirmiri-Bharatpur (MCB)	Korea	Central Bank of India	01T

- The District Working Codes of the new districts have also been allotted for the purpose of BSR reporting by banks.
- There is no change in the Lead Banks of the other districts in the state of Chhattisgarh.

SONALI SEN GUPTA
Chief General Manager

31 Foreign Investment in India - Rationalisation of reporting in Single Master Form (SMF) on FIRMS Portal

[Issued by the Reserve Bank of India vide RBI/2022-23/160 A.P. (DIR Series) Circular No. 22 dated 04.01.2023]

Attention of Authorised Dealer Category-I banks (AD banks) is invited to A.P. (DIR Series) Circular No. 30 dated June 07, 2018.

- It is advised that the following changes are being implemented with respect to the reporting of foreign investment in SMF on FIRMS portal:
 - The forms submitted on the portal will be auto-acknowledged. The AD banks shall verify the same within five working days based on the uploaded documents, as specified.
 - In cases of delayed reporting, the AD banks shall either advise the Late Submission Fee (LSF) to the applicants, which will be computed by the system or advise for compounding of contravention, as the case may be.

The salient features of the changes made in the system are given in Annex for ready reference. For detailed guidelines, the FIRMS manual available at <https://firms.rbi.org.in> may be referred to, and the version of manual available at the portal will have the finality in case of any mismatch.

- The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

N. SENTHIL KUMAR
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in

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COMPANY SECRETARIES BENEVOLENT FUND

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COMPANY SECRETARIES BENEVOLENT FUND

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Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

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ANNOUNCEMENT

QUALITY REVIEW BOARD OF ICSI INVITES APPLICATIONS FOR EMPANELMENT OF “QUALITY REVIEWERS”

The Quality review Board (Board) of ICSI has been constituted by the Ministry of Corporate Affairs to make recommendations to the Council with regard to the quality of services provided by the members of the Institute; to review the quality of services provided by the members of the Institute including secretarial services; and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

With a view to carry out the above mentioned functions, the Board contemplates to avail the services of senior members of the profession as Quality Reviewers to assess the quality of services being rendered by Company Secretaries both in practice and in employment.

Revised Eligibility criterion for Quality Reviewers-

A Quality Reviewer shall fulfil the criteria mentioned in para I or para II:-

- I. An individual desiring to be empanelled:
 - a) Be a Fellow member of ICSI; and

- b) Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
- c) Be currently in practice of the profession of company secretaries.”

II. An individual desiring to be empanelled

- a) Be empanelled Peer Reviewers and has completed minimum 5 assignments of Peer Review

The Board assigns review of Quality of services rendered by the members to Quality Reviewers.

For payment terms and other details please refer to Terms of Reference for Quality Reviewers available at <https://www.icsi.edu/qrbboard/home/>

Interested persons may kindly apply in the enclosed format and send it through e-mail to qrb@icsi.edu

PROFORMA FOR INCLUSION OF NAME IN THE PANEL OF “QUALITY REVIEWERS” CONSTITUTED UNDER THE AEGIS OF “QUALITY REVIEW BOARD”

To,
 Quality Review Board
 The Institute of Company Secretaries of India
 ICSI House
 22, Institutional Area, Lodi Road
 New Delhi - 1100 003



1. Applicant's Name Mr/Ms/Dr. (in Capital Letter)

FIRST MIDDLE LAST

--	--	--

2. Father's/Husband's Name Mr. (in Capital Letter)

FIRST MIDDLE LAST

--	--	--

3. Date of Birth (DD MM YYYY)

--	--	--	--	--	--	--	--

4. Institute's Membership details:

Particulars	Membership Number	Month & Year of membership
ACS details		
FCS details		
COP details		

5. Contact details in CAPITAL letters

	Residential	Professional
Address		
City		
State		
PIN Code		
Phone No With STD Code:		
Mobile No.		
E-mail Address		

6. Details of academic, professional and Post Membership qualifications (Graduation onwards):

Examination Passed		University / Institution	Main subjects, if any
Name of Exam	Year		

7. Current Occupation (indicate major area(s) in which services rendered)

8. Work experience:

Do you possess minimum fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company;

(Yes/No)

9. Are you empanelled Peer Reviewers who has completed minimum 5 assignments of Peer Review. If yes, please share the below details: (Yes / No)

a. Peer Reviewer Code: _____

b. Details of the Peer Review done:

Sl. no.	Name of the Practice Unit	Year of Review

Please add separate sheet, if required.

10. Details of Post Qualification Experience in Employment/Practice (if require, attach separate sheet)

Name of the Employer/s	Designation	Professional Experience		Work Assigned / Performed
		From	To	

11. Are you member of Council / Regional Council / Managing Committee of Chapter, if yes; please provide the details:

12. Other professional achievements, if any:

13. Whether any penal action under any law has been taken/pending against you during last 5 financial years and/or thereafter?
(Yes/No)

If yes, please give details thereof:

14. Whether you have been charged for any criminal proceedings / cognizance of offence.
If yes, please give details thereof: (Yes/No)

I hereby declare that the information given above is true and correct to the best of my knowledge and belief and that nothing has been concealed therefrom.

Place:

Date:

(Signature)

(Name _____)

For Office Use Only:

1. Whether complete information in the prescribed format is given:

a.	a Fellow member of ICSI	Yes	No
b.	Possess at least fifteen years of post- membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company	Yes	No
c.	Be currently in practice of the of profession company secretaries	Yes	No
d.	Empanelled Peer Reviewers who has completed minimum 5 assignment of Peer Review	Yes	No

2. Whether all other applicable points of the form have been filled:

Yes No

If no, give details _____

3. Whether applicant is to be considered for allotment of reviews:

Yes No

Remarks _____

4. Reference No. allotted

5

NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF DECEMBER 2022
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2022
- ATTENTION MEMBERS
- UPLOADING OF PHOTOGRAPH AND SIGNATURE
- CHANGE / UPDATION OF ADDRESS
- RESTORATION OF MEMBERSHIP
- RESTORATION OF CERTIFICATE OF PRACTICE
- LIST OF PRACTICE UNITS PEER REVIEWED / CERTIFICATE ISSUED DURING JANUARY, 2023



Institute News

MEMBERS RESTORED DURING THE MONTH OF DECEMBER 2022

SL. NO	NAME	MEMB NO	REGION
1	CS AMIT ARYA	ACS - 12967	NIRC
2	CS GAGAN PALTA	ACS - 14396	NIRC
3	CS SHILPA BURMAN ROY	ACS - 14413	WIRC
4	CS PURUSHOTTAM KEJRIWAL	ACS - 16625	NIRC
5	CS GURPREET SINGH ANAND	ACS - 18267	NIRC
6	CS KASTURI PRASAD	ACS - 19746	SIRC
7	CS GEETA MAHADEO KARNIK	ACS - 19784	WIRC
8	CS TEJAS RAMNIKBHAI PAREKH	ACS - 20626	WIRC
9	CS ASHITA GUPTA	ACS - 21162	WIRC
10	CS URAVSHI RATHI	ACS - 21874	WIRC
11	CS CHITRA HARSHAL JOSHI	ACS - 22342	WIRC
12	CS ARCHIT JAIN	ACS - 23242	NIRC
13	CS SHIKHA CHADHA	ACS - 24734	NIRC
14	CS HETAL ROHIT MEHTA	ACS - 24838	WIRC
15	CS PARUL PATNI	ACS - 27333	NIRC
16	CS VANITA ARORA	ACS - 27345	NIRC
17	CS ANUBHA PANT	ACS - 27830	SIRC
18	CS DEEPMALA MALL	ACS - 28146	WIRC
19	CS ROHIT MAHANSARIA	ACS - 30052	EIRC
20	CS TUSHITA SISODIA	ACS - 30752	NIRC
21	CS MOHITA BANSAL	ACS - 30919	NIRC
22	CS VIDHI DINESH ARORA	ACS - 31884	WIRC
23	CS SUJIT KUMAR JHA	ACS - 34024	NIRC
24	CS PRAVEEN K AGGARWAL	ACS - 3429	NIRC
25	CS SANKETH T G	ACS - 35314	SIRC
26	CS SHWETA MADAN	ACS - 36012	NIRC
27	CS SHIV KUMAR PAHARIA	ACS - 3856	EIRC
28	CS DINESH KUMAR JAIN	ACS - 38747	EIRC
29	CS PAWAN KUMAR MITTAL	ACS - 40112	SIRC
30	CS AMAN AGGARWAL	ACS - 41869	NIRC
31	CS YASHASHWINI P M	ACS - 42052	SIRC
32	CS MOTILAL JAIN	ACS - 4463	WIRC
33	CS DHEERAJ KUMAR JAIN	ACS - 45354	NIRC
34	CS VIBHA ARORA	ACS - 45446	NIRC
35	CS ANJU RANOLIA	ACS - 47429	NIRC
36	CS OSHIN GEHLOT	ACS - 48754	WIRC
37	CS ROHIT KUMAR JALAN	ACS - 52949	EIRC
38	CS NEERALI CHANDRAKANT LAKHANI	ACS - 54237	WIRC
39	CS ALPA PURUSHOTTAM AGRAWAL	ACS - 54298	WIRC

40	CS NIDHI BHUPINDER JAIN	ACS - 54354	WIRC
41	CS RAJESH BABARAO KADU	ACS - 55503	WIRC
42	CS KANISHKA JAIN	ACS - 55519	EIRC
43	CS MEENA GOENKA	ACS - 56500	WIRC
44	CS POONAM CHIMANBHAI THADESHWAR	ACS - 56970	WIRC
45	CS VINAYAK CHOUDHARY	ACS - 57879	NIRC
46	CS ANKITA GINNANI	ACS - 58591	SIRC
47	CS PAVITRA GOYAL	ACS - 59755	NIRC
48	CS VASUDHA JALAN	ACS - 59827	NIRC
49	CS SWETA GUPTA	ACS - 61190	EIRC
50	CS POOJA	ACS - 61263	NIRC
51	CS KHUSHBU NUWAL	ACS - 61712	NIRC
52	CS SUBHASH VITHAL SATAM	FCS - 1404	WIRC
53	CS NITA MEHTA	FCS - 2594	WIRC
54	CS LALIT MULCHANBHAI PATEL	FCS - 3084	WIRC
55	CS MADHU SUDAN SAHOO	FCS - 3179	NIRC
56	CS V LAKSHMINARASIMHAN	FCS - 3888	SIRC
57	CS SANJAY KUMAR PATEL	FCS - 4450	NIRC
58	CS VIKAS BIJAY KEDIA	FCS - 5912	WIRC
59	CS SANJAY TANWANI	FCS - 8084	NIRC
60	CS ARVIND HARLALKA	FCS - 8757	EIRC
61	CS DEBASIS BHATTACHARYA	FCS - 9800	EIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2022

SL. NO	NAME	MEMB NO	COP No.	REGION
1	CS AJAY KUMAR RAMNAYAN VISHWAKARMA	ACS - 45552	24188	WIRC
2	CS AMEYA DHANANJAY BODAS	ACS - 50027	18203	WIRC
3	CS AMITA GANESH ALKE	ACS - 56834	21627	WIRC
4	CS ANAMIKA SHUKLA	ACS - 60722	23742	NIRC
5	CS ANKIT GUPTA	ACS - 33245	16277	NIRC
6	CS ANUJ KUMAR SOLANKI	FCS - 9761	13132	NIRC
7	CS APPANNA HALALLI	ACS - 62279	23830	SIRC
8	CS BEENA HIRA LAL THUTHGAR	ACS - 47296	18431	WIRC
9	CS CHANDRABHANU RITURAJ	ACS - 65502	24681	NIRC
10	CS CHETAN SHYAMLAL CHANDWANI	ACS - 63694	25472	WIRC
11	CS CHHAYA WALIA	ACS - 42947	19868	NIRC
12	CS CHIVUKULA VENKATA SUBRAHMANYA VARA PRASAD	ACS - 68175	25401	SIRC
13	CS D KAREN MONISHA	ACS - 70237	26228	SIRC
14	CS DEEPIKA	ACS - 39441	23484	NIRC
15	CS DINESH KUMAR JAIN	FCS - 6224	25591	NIRC
16	CS GAURAV SURESHBHAI PATADIA	ACS - 45705	18939	WIRC
17	CS HIMANSHU KOHLI	ACS - 61671	23799	NIRC

18	CS ISHAN VINOD TAKALKAR	ACS - 46396	24269	WIRC
19	CS JAYA GOPALDAS AHUJA	ACS - 56009	24824	WIRC
20	CS KALPANA SINGH	ACS - 69099	26180	NIRC
21	CS KAMIL MUSTAKBHAI LAKHANI	ACS - 62474	23491	WIRC
22	CS KIRANPREET KAUR	FCS - 12391	16428	NIRC
23	CS LAVEENA PAHUJA	ACS - 58004	21923	NIRC
24	CS MANJULADEVI SRIDHARAN	ACS - 51778	23564	SIRC
25	CS MOHAMMAD ANWAR UL HAQ ABDUL MANNAN	ACS - 33676	24062	SIRC
26	CS MOHIT MAHESHWARI	FCS - 9565	19946	NIRC
27	CS MONA PARAG KEWALRAMANI	ACS - 53826	24606	WIRC
28	CS NAYANKUMAR MAHADEVPRASAD ADHYARU	ACS - 14692	9856	WIRC
29	CS NEHA RANA	ACS - 69123	26127	NIRC
30	CS NIKITA PAWAN AGRAWAL	ACS - 51541	24244	SIRC
31	CS NITIN SHARMA	ACS - 35048	18124	NIRC
32	CS PALAK TIWARI	ACS - 54695	23369	WIRC
33	CS PANKAJ JAIDEV OCHANI	ACS - 51804	24965	WIRC
34	CS POONAM SINGH	ACS - 53179	24039	EIRC
35	CS PRIYANKA GUMBER	ACS - 63321	24631	NIRC

36	CS RAMA HARSHAD RANADE	ACS - 41097	21311	WIRC
37	CS RAMAN SINGH	ACS - 56657	25163	NIRC
38	CS RAMRAJ SINGH THAKUR	ACS - 51637	25239	WIRC
39	CS RIYA KHURANA	ACS - 58282	26091	NIRC
40	CS SALONI BADJATYA	ACS - 60457	24887	WIRC
41	CS SANTOSH KUMAR JAIN	ACS - 46495	22419	SIRC
42	CS SHAILJA SHARMA	FCS - 6872	7554	NIRC
43	CS SHIKHA RANI KUSHWAHA	ACS - 60524	22717	NIRC
44	CS SHIVALI AGRAWAL	ACS - 55952	23631	EIRC
45	CS SHIVANSHU GAUR	ACS - 49064	22761	NIRC
46	CS SNEHA LAVARAJ PARAB	FCS - 12171	23952	WIRC
47	CS SOURABH VISHNOI	ACS - 57433	24742	WIRC
48	CS SUDHANYA SENGUPTA	FCS - 7057	7756	EIRC
49	CS SUMAIRA RAFIQI	ACS - 59392	22346	NIRC
50	CS TOSHOKE AHMAD BHAT	ACS - 70172	26305	NIRC
51	CS TRUSHA DEEPAK SHAH	ACS - 41022	19908	WIRC
52	CS UDHBHAV PRATAP SINGH	ACS - 36638	23496	NIRC
53	CS VINAY KUMAR PANDEY	ACS - 64170	24764	SIRC
54	CS YATI GUPTA	ACS - 40306	19605	NIRC
55	CS ZEEL SUNIL THACKER	ACS - 51922	21392	WIRC

ATTENTION!

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link <https://www.icsi.edu/member>



ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2022 is available in the Institute on payment of Rs.295/-* for members and Rs.590/-* for non-members (*including GST@18%). Request along with payment by way of cheque at par or demand draft payable at New Delhi favouring "The Institute of Company Secretaries of India" may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida - 201309. For queries if any, please write to member@icsi.edu

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Members are requested to ensure that their latest scanned passport size front-facing colour photograph (in formal wear) and signature in .jpg format (each on light-colored background of not more than 200 kb file size) are uploaded on the online portal of the Institute.

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- Login using your membership number e.g. A1234/F1234
- Enter your password
- Under My Profile --- Click on View More option
- Upload/update the photo and signature as required
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The members are requested to check and update (if required) your professional and residential addresses ONLINE only through Member Login. Please indicate your correspondence address too.

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2. Click on **MEMBER** in the menu
3. Click on **Member Search** on the member home page
4. Enter your membership number and check
5. The address displayed is your Professional address (Residential if Professional is missing)

The steps for online change of address are as under:

1. Go to www.icsi.edu
2. On the Online Services ----select **Member Portal** from dropdown menu
3. Login using your membership number e.g. A1234/F1234
4. Under **My Profile** --- Click on View More option and check all the details and make the changes required and save
5. To change the mobile number and email id click the side option “**Click Here to update Mobile Number and E-mail Id**”
6. Check the residential address and link the Country-State-District-City and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 (Click Here to change residential address)
 - a) Select the Country#
 - b) Select the State
 - c) Select the City
 - d) Submit the Pincode which should be 6 digits without space.
 - e) Then click on “Save” button.
7. Select the appropriate radio button for Employment Status and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 click the link on the right (Click Here to change Professional address)
 - a) Select the Country#
 - b) Select the State
 - c) Select the City
 - d) Submit the Pincode which should be 6 digits without space.
 - e) Then click on “Save” button.
8. Go back to the Dashboard and check if the new address is being displayed.

#in case of Foreign Country and State is not available in options then Select “**Overseas**” – A pop-up will open and you can add the “City, District, State” of that Country alongwith Zipcode

Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date

For any further assistance, we are available to help you at <http://support.icsi.edu>

RESTORATION OF MEMBERSHIP

The members who have not paid the Annual Membership Fee by the due date i.e. 31-07-2022 can now restore their membership by making the payment of the annual membership fee for the year 2022-2023 including GST@18% (Associates admitted on or after 1-4-2021 – Rs. 1770/-, Associates admitted till 31-03-2021 – Rs. 2950/- and Fellow – Rs. 3540/-) with the entrance fee of Rs. 2360/- and restoration fee of Rs. 295/-.

Particulars	Associate (admitted till 31.03.2021)	Associate (admitted on or after 01.04.2021)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee*	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295

* Fee inclusive of applicable GST@18%.

MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute's website www.icsi.edu. Payment made through any other mode will not be accepted.

The steps for online restoration of membership

- Use ONLINE SERVICES tab on www.icsi.edu
- Select Member Portal from dropdown
- Login using your membership number e.g. A1234/F1234
- Enter your password
- Select Track ACS /FCS Membership from dropdown menu ACS/FCS Membership
- Search your detail and select the radio button on visible record
- Click on Restoration Request tab
- Fill the detail and Proceed for Payment

For specific assistance raise a ticket at <http://support.icsi.edu>

RESTORATION OF CERTIFICATE OF PRACTICE

The process of Restoration of Certificate of Practice is now enabled for the members who have not paid the COP fees by the due date i.e. 31-07-2022.

The certificate of practice fee and restoration fee payable is as follows:

Particulars	Admitted as associate member till 31.03.2021)	Admitted as associate member on or after 01.04.2021)	Fellow
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360
Restoration fee**	Rs. 295	Rs. 295	Rs. 295

* Fee inclusive of applicable GST@18%.

** Fee inclusive of applicable GST@18% and applicable as certificate of practice fee is not received by 31st July, 2022

MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute's website www.icsi.edu. Payment made through any other mode will not be accepted.

The steps for online COP restoration

- Use ONLINE SERVICES tab on www.icsi.edu
- Select Member Portal from dropdown
- Login using your membership number e.g. A1234/F1234
- Enter your password
- Select the Track COP option in the COP menu
- Select the request type "Restoration" and search
- Click on the radio button and select Restoration Request option
- Check the details and pay the fee.

For specific assistance raise a ticket at <http://support.icsi.edu>

Documents downloadable from the DigiLocker Platform

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon'ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the Digilocker anytime, anywhere.



How to Access:

- Go to <https://digilocker.gov.in> and click on Sign Up
- You may download the Digilocker mobile app from mobile store (Android/iOS)

How to Login:

- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your Documents digitally:

Members can download their digital ID Card / ACS / FCS / COP certificate(s) by following the steps given below:

1. Log in to <https://www.digilocker.gov.in> website
2. Go to Central Government and select Institute of Company Secretaries of India
3. Select the option of ID card / Membership Certificate / Practice Certificate
4. For ID Card, enter your membership number e.g. ACS 12345 / FCS 12345.
5. For membership certificate, Enter your membership and select ACS / FCS from drop down.
6. For COP certificate enter your COP number e.g. 12345 and select COP.
7. Click download / generate.
8. The ID Card / Membership certificate / Practice Certificate can be downloaded every year after making payment of Annual Membership fees.

LIST OF PRACTICE UNITS PEER REVIEWED / CERTIFICATE ISSUED DURING JANUARY, 2023

Sl. No.	Name of the Practice Unit	City	Year of Review	Certificate no.
1	M/s. JSP Associates	Mumbai	2021-22	2867/2023
2	M/s. Varun K & Associates	Shimla	2021-22	2868/2023
3	M/s. Pasare and Associates	Kolhapur	2021-22	2869/2023
4	M/s. Pradeep Chawla & Associates	Delhi	2021-22	2870/2023
5	M/s. Aarju Agrawal & Associates	Nagpur	2021-22	2871/2023
6	M/s. Ladhawala Ronak & Associates	Ahmedabad	2021-22	2872/2023
7	CS Awashesh Dixit	Kanpur	2021-22	2873/2023
8	M/s. Mukesh J. & Associates	Ahmabad	2021-22	2874/2023
9	M/s. Swati Hegde & Associates	Bengaluru	2021-22	2875/2023
10	M/s. DV & Associates	Ernakulam	2021-22	2876/2023
11	CS Somina Jain	Delhi	2021-22	2877/2023
12	CS Anuja Bansal	Jaipur	2021-22	2878/2023
13	M/s. Gorisaria & Associates	Hooghly	2021-22	2879/2023
14	CS Saimathy Soupramanien	Puducherry	2021-22	2880/2023
15	M/s. S Khatri & Associates	Jaipur	2021-22	2881/2023
16	M/s. SSPK & Co.	New Delhi	2021-22	2882/2023
17	CS Sahil Malhotra	Chandigarh	2021-22	2883/2023
18	CS Snehal Kashyap	New Delhi	2021-22	2884/2023
19	M/s. Sumit Bajaj & Associates	Delhi	2021-22	2885/2023
20	M/s. Sazid & Associates	Noida	Limited Review	2886/2023
21	CS K Dhandapani	Chennai	2021-22	2887/2023
22	M/s. Shanu Mata and Associates	Mumbai	2021-22	2888/2023
23	CS Tanu Tyagi	Faridabad	2021-22	2889/2023
24	M/s. Mohit Arora & Associates	Delhi	2021-22	2890/2023
25	CS Payal Ashok Vyas	Mumbai	Limited Review	2891/2023
26	M/s. Dinesh Gupta & Co.	Jalandhar	2021-22	2892/2023
27	CS Bipin Kumar Verma	Kolkata	2021-22	2893/2023
28	M/s. Viral Soni & Associates	Ahmedabad	2021-22	2894/2023
29	M/s. GNC & Company	Ghaziabad	Limited Review	2895/2023
30	CS Seetharama Jayaraman	Chennai	2021-22	2896/2023
31	CS Hetal Rajendra Kudecha	Mumbai	Limited Review	2897/2023
32	M/s. C J Nayak & Associates	Bengaluru	2021-22	2898/2023
33	M/s. Jasneet Kaur Sahdev & Co.	Dehradun	2021-22	2899/2023
34	CS Divya Khare	Dehradun	2021-22	2900/2023
35	M/s. Gaurav Gupta & Associates	Moradabad	2021-22	2901/2023
36	CS Subramanian Chandrasekar	Chennai	2021-22	2902/2023
37	M/s. Pratul Agrawal & Associates	Ghaziabad	2021-22	2903/2023
38	CS Apeksha Agarwal	Jaipur	2021-22	2904/2023
39	CS Raghunatha Reddy	Chennai	2021-22	2905/2023
40	M/s. LK & Associates	Chennai	2021-22	2906/2023
41	CS Shilpi Sureka	Kolkata	2021-22	2907/2023
42	M/s. Kundan Kumar Mishra & Associates	New Delhi	2021-22	2908/2023
43	M/s. Jatin Aggarwal & Associates	Gurugram	2021-22	2909/2023
44	M/s. H. Agarwal & Associates	Mumbai	2021-22	2910/2023
45	M/s. Bhavesh & Associates	Bengaluru	2021-22	2911/2023
46	CS Bimlendu Kumar	Bengaluru	2021-22	2912/2023
47	M/s. S. S. Risbud & Co.	Thane-(E)	2021-22	2913/2023
48	M/s. Kalpana Chauhan & Associates	Bengaluru	2021-22	2914/2023
49	M/s. Aman Poddar & Company	Kolkata	2021-22	2915/2023
50	CS Tanisha Srivastava	New Delhi	2021-22	2916/2023



INSTITUTE OF INSOLVENCY PROFESSIONALS
(Subsidiary of ICSI and Insolvency Professional Agency of IBBI)

ICSI IIP'S PUBLICATIONS

A Compendium on Insolvency Professionals

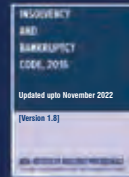
ICSI, IIP has brought-out a comprehensive publication on Insolvency Professionals titled 'Compendium on Insolvency Professional' covering varied aspects like legal and regulatory framework for IPs, disciplinary proceedings against IPs (and their outcomes), ethical and code of conduct for IPs, opportunities for IPs and case laws related to IPs.



INR 1000/- Postage Extra

Insolvency and Bankruptcy Code, 2016 (Version 1.8)

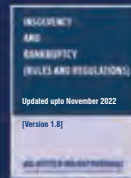
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6

MISCELLANEOUS CORNER



- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER

NOTIFICATION NO. 01/2023-CENTRAL TAX DATED 4TH JANUARY, 2023

This notification seeks to assign the powers of Superintendent of Central Tax to Additional Assistant Director of Directorate General of Goods and Services Tax Intelligence (DGGI) or Additional Assistant Director, Directorate General of Goods and Services Tax (DGGST) or Additional Assistant Director, Directorate General of Audit (DG Audit).

For more details please visit: <https://taxinformation.cbic.gov.in/view-pdf/1009607/ENG/Notifications>

CIRCULAR NO. 189/01/2023-GST DATED 13TH JANUARY, 2023

Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022.

Rab -classifiable under Tariff heading 1702

It has been clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017).

Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni

The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017-Central Tax (Rate), dated 28.06.2017.

Further, as per recommendation of the GST Council, in view of genuine doubts regarding the applicability of GST on subject goods, matters that arose during the intervening period are hereby regularized on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST, dated the 3rd August, 2022, till the date of coming into force of the above-said S. No. 102C and the entries relating thereto. This is in addition to the matter regularized on as is basis vide para 8.6 of the said Circular.

Clarification regarding 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'

On the basis of the recommendation of the GST council in its 45th meeting, a specific entry has been created in notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and notification No. 1/2017-Compensation Cess (Rate), dated the 28th June, 2017, vide S. No. 12B in Schedule IV and S. No. 4B in Schedule respectively, with effect from the 1st October, 2021, for goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

It has been clarified that the applicable six-digit HS code for the aforesaid goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is HS 2202 99. The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. The S. Nos. 12B and 4B mentioned in Para above cover all such carbonated beverages that contain carbon dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.

Applicability of GST on Snack pellets manufactured through extrusion process (such as 'fryums')

It is hereby clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

Applicability of Compensation cess on Sports Utility Vehicles (SUVs)

It has been clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: -these are popularly known

as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.

This clarification is confined to and is applicable only to Sports Utility Vehicles (SUVs).

Applicability of IGST rate on goods specified under notification No. 3/2017-Integrated Tax (Rate)

It has been clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax(Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

For more details please visit: <https://taxinformation.cbic.gov.in/view-pdf/1003143/ENG/Circulars>

CIRCULAR NO. 190/02/2023-GST DATED 13TH JANUARY, 2023

Clarifications regarding applicability of GST on certain services

Applicability of GST on accommodation services supplied by Air Force Mess to its personnel

All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017.

Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions

Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

For more details please visit <https://taxinformation.cbic.gov.in/view-pdf/1003144/ENG/Circulars>

Professional Misconduct under Part I of the First Schedule to the Company Secretaries Act, 1980



For the purposes of the Company Secretaries Act, 1980, the expression “professional or other misconduct”, pursuant to Section 22 of the Company Secretaries Act, 1980, shall be deemed to include any act or omission provided in any of the Schedules i.e. First and Second Schedule to the Company Secretaries Act, 1980, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Part I of the First Schedule to the Company Secretaries Act, 1980 is in relation to the acts or omissions of professional misconduct by the Company Secretaries in Practice, as given below: -

- (1) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him.
 - (2) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India. Partner includes a person residing
 - outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of Part I of the First Schedule to the Company Secretaries Act, 1980.
 - (3) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute.
- Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of Part I of the First Schedule to the Company Secretaries Act, 1980.
- (4) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 of the Company Secretaries Act, 1980 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships.
 - (5) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he secures, either

through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business.

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of Part I of the First Schedule to the Company Secretaries Act, 1980.

- (6) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.

Provided that nothing herein contained shall be construed as preventing or prohibiting (i) any company secretary from applying or requesting for or inviting or securing professional work from another company secretary in practice; or (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.

- (7) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council. Provided that a member in practice may advertise through a write up setting out the services provided by the member in practice or his firm and particulars of his firm subject to such guidelines as may be issued by the Council.
- (8) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts a position as a Company Secretary in practice previously held by another Company Secretary in Practice without first communicating with him in writing.
- (9) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act.
- (10) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage.

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company

except as provided in the Companies Act, 1956 (now the Companies Act, 2013).

- (11) A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

CASE STUDY

- The Complainant has reported non-compliances/ violations of the provisions of the Companies Act, 1956 by the Respondent regarding four companies viz. A Ltd., B Ltd., C Ltd. & D Ltd. of one group of companies. The Respondent had only given the Compliance Certificate for the financial year ended 31st March, 2012 of A Ltd. and B Ltd. and failed to issue Compliance Certificate for C Ltd. and D Ltd. The Respondent in the Compliance Certificate issued by him for A Ltd. has stated that it has maintained registers as required under Section 301 of the Companies Act, 1956 instead of certifying that the A Ltd. has made necessary entries in the register maintained under Section 301 of Companies Act, 1956. The Respondent has failed to note that the Auditor of A Ltd. has clearly mentioned in his Audit Report for the financial year ended 31st March, 2012 that A Ltd. has not provided the Register maintained by it under Section 301 of Companies Act, 1956 due to which they were unable to ascertain, whether the transactions have been entered in the register or not. The Respondent without proper verification has stated in the Compliance Certificates issued for A Ltd. and B Ltd. that the companies have duly complied with the requirements of Section 217 of the Companies Act, 1956. However, the directors of both the companies in its Board Report have not complied with the provision of Section 217(3) of the Companies Act, 1956. The Respondent has omitted the material fact in the Compliance Certificate of A Ltd. by not specifying that whether or not the A Ltd. has complied with the provisions of section 73, 58A, 58AA of the Companies Act, 1956 for the issue of Redeemable Preference Shares and Unsecured Debentures. The Respondent has also made false statements in the Compliance Certificate by reporting that the A Ltd. has not accepted deposit in the form of unsecured debentures under the provisions of Section 58A of the Companies Act, 1956 and by stating that the A Ltd. has not made any loans and advances. The Respondent in the Compliance Certificate of B Ltd., failed to report that whether the B Ltd. while obtaining a loan of certain amount has not contravened with the provisions of Section 293(1)(d) of the Companies Act, 1956. The Complainant has stated that the Respondent by not reporting in the Compliance Certificates about the violations of the Companies Act, 1956 made by the companies with respect to the acceptance of deposit in the form of unsecured debentures and issue of redeemable preference shares to general public at large etc. failed to comply with Section 383A of the Companies Act, 1956 read with the Companies (Compliance Certificate) Rules, 2001. The Complainant has alleged that the Respondent

was involved with the Directors to induce public at large to invest their money as proviso of sub-section (3) of Section 67 of the Companies Act, 1956 clearly interprets as to what is public offer and as the company has issued shares to more than fifty persons, it is very much clear that the company has made public offer.

2. The Respondent has stated that he was just a Practicing Company Secretary and not a whole time Company Secretary of C Ltd. and D Ltd. He was not assigned to file the Compliance Certificate of C Ltd. and D Ltd. Further, the A Ltd. had duly maintained statutory registers as required under the Companies Act, 1956 and accordingly, necessary entries in the register as on 31st March, 2018 were duly made by the company, the fact of which has been stated in clause (1) and (11) of the Compliance Report. The Respondent further stated that he is not responsible if the company failed to produce the Register maintained under Section 301 of Companies Act, 1956 before the Auditor for verification. Moreover, A Ltd. in its Directors' Report has also confirmed that necessary statutory registers are maintained at the registered office of the company. The Respondent further stated that the A Ltd. had duly complied with the requirement of Section 217 including sub-section (3) of 217 of the Companies Act, 1956 as Annexure II of the Boards' Report of A Ltd. which includes in detail, the comments/clarifications of the directors to the qualification/ reservation/adverse remarks of the Auditor.
3. The Respondent has further stated that he had given details of the issue of Redeemable Preference Shares and Unsecured Debentures by the A Ltd. in clause (14) and (20) of the Compliance Certificate. The same may also be verified from the clause (6) and (15) of the Annexure II to the Boards' Report of the A Ltd. The Respondent further stated that since, the A Ltd. did not have any record confirming invitation/acceptance of any public deposits under Section 58A of Companies Act, 1956, the Respondent in the Compliance Certificate mentioned that the company had not issued any public deposit under section 58A of the Companies Act, 1956. The Respondent stated that in the Compliance Certificate of the B Ltd. it has obtained loan during the financial year ending 31st March, 2012 and also the B Ltd. in clause (1) of the Annexure II to its Directors' Report has stated that the members of the company of B Ltd. have approved the borrowing limit of the B Ltd. by way of unsecured loan/ issuance of redeemable unsecured debentures in terms of Section 293(1)(d) of the Companies Act, 1956. However, the Complainant with malafide intention has alleged that B Ltd. while obtaining a loan of certain amount has contravened with the provisions of Section 293(1)(d) of the Companies Act, 1956. The Respondent further submitted that he, in the Compliance Certificate issued to A Ltd. has inadvertently mentioned that the A Ltd. has not made any loans. He further stated that the word 'Not' is inadvertent and he has no intention to suppress any fact. The Respondent submitted that he had duly reported the details of issue of the Redeemable Preference Shares and Unsecured Debentures in clause (14) and (20) of the Compliance Certificate. He further stated that as

per the explanation given by the company, the Preference Shares and the Unsecured Debentures were privately placed with the relatives and friends of the director and employees of the company and the provisions of Section 73 and Section 58A were not attracted. The same were also confirmed by the directors in their Directors' Report vide clause (6) of Annexure II. He submitted that he is not aware that the company has accepted public deposits in the form of Unsecured Debentures as assumed by the Complainant. The Respondent further submitted that the Compliance Certificates issued by him was based on the records, statutory documents made available to him and the explanation made to him by the company. He further stated that the Certificate issued by him is without any prejudice.

4. The Disciplinary Committee is of the view that the Respondent while issuing the compliance certificate for M/s. A Ltd. for the year ended 31st March, 2012 has not exercised due diligence and failed to disclose and report the entries made by the company in the Register maintained under Section 301 of the Companies Act, 1956. The Respondent has also incorrectly reported that the company has duly complied with Section 217 of the Companies Act, 1956. However, upon perusal of the Directors' Report of the company, it is observed that there is absence of clarification on all the observations of the Auditor in its Boards' Report as required under Section 217(3) of the Companies Act, 1956. The Respondent also failed to report as to whether the company has complied with the provisions of the Companies Act, 1956 for issuing of Redeemable Preference Shares and unsecured non-convertible debentures. Further, the Respondent has wrongly reported that the company has not invited/ accepted any deposits including any unsecured loans during the year even though the company has disclosed in its Annual return and Directors' Report that it has collected amount in the form of unsecured debentures and has issued unsecured non-convertible debentures. The Disciplinary Committee also observed that the Respondent has admitted that while reporting about loans and advances made by the company, the Respondent has inadvertently mentioned that the company has not made any loans and advances during the year. The Disciplinary Committee further observed that the Respondent, while issuing the compliance certificate for M/s. B Ltd., for the year ended 31st March, 2012 has not exercised due diligence and incorrectly reported that the company has duly complied with Section 217 of the Companies Act, 1956. However, upon perusal of the Directors' Report of the company, it is observed that there is absence of clarification on all the observations of the Auditor in its Boards' Report as required under Section 217(3) of the Act. The Respondent further failed to report that whether the necessary resolution has been passed by the company under Section 293(1) (d) for the amount borrowed by the company during the year. The Disciplinary Committee held that the Respondent is 'Guilty' of professional misconduct under clause (6) and (7) of Part I of Second Schedule to the Company Secretaries Act, 1980 for not exercising due diligence. The Disciplinary Committee passed an order of 'Reprimand' against the Respondent.

Gender Budgeting

Gender Budgeting (GB) is a powerful tool for achieving gender mainstreaming so as to ensure that benefits of development reach women also as much as men. It involves usage of a budget as an entry point to apply a gender lens to the entire policy process. Gender Budgeting is concerned with gender sensitive formulation of legislation, policies, plans, programmes and schemes; allocation and collection of resources; implementation and execution; monitoring, review, audit and impact assessment of programmes and schemes; and follow-up corrective action to address gender disparities.

According to the Council of Europe's widely used definition, gender budgeting is an application of gender mainstreaming in the budgetary process. It involves conducting a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process, and restructuring revenues and expenditures in order to promote gender equality. In short, gender budgeting is a strategy and a process with the long-term aim of achieving gender equality goals.

According to OECD, Gender budgeting is the use of analytical tools, as a routine part of the budget process, so that the budget is more effective at helping to meet gender equality goals.

Gender budgeting requires political commitment, strong leadership and clarity of roles and responsibilities of different actors across government so that a whole-of-government approach is in place. This approach is also most effective where actions are guided by a national gender equality strategy that outlines overarching gender goals.

It would be of immense academic and research interests to know the tools espoused by OECD countries for gender budgeting that are as under:

- *Gender impact assessments:* Analysis of the gender impact of existing and/or new budget measures (both ex-ante and ex-post).
- *Gender dimension in performance setting:* Identifying gender equality indicators and objectives as part of the performance budgeting framework.
- *Gender budget statement:* A summary of how budget measures are intended to support gender equality priorities.
- *Gender budget tagging:* Tracking how programmes and activities support gender equality objectives, helping to quantify financial flows.

- *Gender perspective in evaluation and performance audit:* Identifying whether gender goals relating to different policies and programmes were achieved.
- *Gender perspective in spending review:* Ensuring spending reprioritisation has a positive impact on gender equality goals.

The optimism regarding gender budgeting in India is manifested through significant progress it made in promoting gender equality. India scored 0.490 on the Gender Inequality Index (GII), according to the Economic Survey 2022-2023 which is a remarkable improvement compared to South Asian region's average value of 0.508 and is close to the global average of 0.465, and ranking wise India secured 122nd rank among over 190 countries. Moreover, India's Union Budget 2023-2024 has embraced initiatives to strengthen the financial independence and to facilitate economic empowerment of women by providing them with greater resources and access. The prodigious success achieved by the Deen Dayal Antyodaya Yojana, which has helped in the mobilisation of rural women into 81 lakhs Self Help Groups (SHGs) and Honourable Finance Minister's announcement in the union budget that from now on, the government will put in additional efforts to form Large Producer Enterprises to help these groups reach the next stage of economic empowerment by providing them with raw material supply, branding, marketing of products, etc. is a harbinger of embracing of rational gender budgeting.

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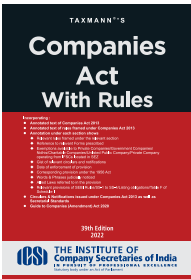
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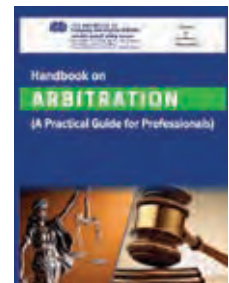


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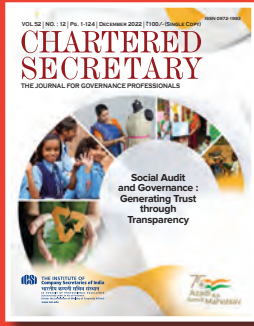
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