



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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ICSI – WIRC e-newsletter



CHANGE IS INEVITABLE

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

ICSI Motto

सत्यं वद। धर्मं चर। इष्टकारं कुरु। अग्रतेः कोटिं कुरु।

ICSI Mission

"To develop high calibre professionals facilitating good corporate governance"

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सत्यं वद। धर्मं चर।
इष्टकारं कुरु त्वात्तः शोभते ह्यु तेन त्वया।
वैशिष्टीयपत्रिका

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Editorial Board (Ad-hoc)

CS Amit Kumar Jain- Acting Editor

CS Hitesh Kothari

CS Ashish Karodia

CS Chetan Patel

CS Praveen Soni

VISION

"To be a global leader in promoting Good Corporate Governance"

MISSION

"To develop high calibre professionals facilitating good Corporate Governance"

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Chairman's Message.



My Dear Professional Colleagues,

Greetings

क ईप्सितार्थस्थिरनिश्चयं मनः पयश्च निम्नाभिमुखं प्रतीपयेत्॥

Who can reverse the course of two things, namely, the mind which is steadfastly clinging to the desired object and water which always flows from higher level to lower level!

At the outset I wish you all a Happy and Prosperous New Year-2018 and sincerely thank all my Regional Council members in bestowing trust and confidence in me and entrusting the mammoth responsibility of Chairman of our own WIRC of ICSI.

On a personal note, I wish to share with you that I have risen to this position from a simple down-to-earth beginning which had its own share of struggles. I owe whatever I am today to the hard training & learning experience which I got from my seniors and the love and support I got from fellow professionals.

We've been through many changes, challenges and developments. Company Secretary as a profession is a very young profession and is, maturing and nurturing. Government, Regulator and Business World in recent has bestowed their trust on us as CS fraternity providing us with Opportunities and it is upto us to stand with the Responsibilities and Contribute towards Development of the Business World being Core Contributors.

Company Secretary Profession has been taking measures and initiatives and working tirelessly to anchor the governance for sustainability. We all have to with our vision to grow with the nation for the nation, besides commitment to support and shoulder the initiatives of growth have to act like catalyst in the process.

I believe in the thought that development of any institution not lies on the contribution of the elected representatives but also that of members who have to fuel the process by their ideas and suggestions. I appeal to one all to give their inputs to me so I can holistically be a Value Adder in the process.

During the year under process we shall be endeavouring to work under the ageis of "Creating Connections-Building Bridges...Together"

As the saying goes, coming together is a beginning; keeping together is progress; working together is success

Creating Connections -Building Bridges...Together

When I look back at how our profession has evolved and how it has undergone a paradigm shift, it fills me with pride and satisfaction. I think this process needs to be given more and more momentum. Our profession is still effectively evolving in different dimensions driven by all-encompassing aspirations of our younger lot which need to be assiduously augmented. We have, no doubt, come a long way, but much of the distance is yet to be covered before we reach our destination across newer horizons. For that we have to walk together.

I believe that decisions don't happen in a vacuum and the best ones rarely come from deep pondering in isolation. They happen when we learn from and draw on experiences of others. In that respect, I invite you all to be part of our decision-making and delivery processes. Let's work to instil in ourselves the culture of continuous improvement. If we see a way to do something better, let's take initiative to point it out and share it with our entire professional community. The collective pursuit of continuous improvement is very powerful not only because it leads to performance gains but also because of its value in unifying a professional community as remotely spread and diverse as ours. This will further strengthen the sense of 'US'. But in this endeavour there has to be a definite positive pattern with a deep understanding of how small improvements add up to make a difference over the time.

During the year we shall be conducting numerous Seminars and Conferences to sharpen and polish the capabilities of the Members and some of the them would include KMP Submit, Drafting and Appearance in NCLT & Insolvency, Banking Conclave, Intellectual Property Rights conference etc.

At the same time students are the future and we shall be devoting considerable attention on them and focus on making them ready for future challenges and be ready Market ready.

We all have to work along with the Regulators and would be having some day to day difficulties and I would be driving an initiative to understand them along with you and reach to regulators to iron out the concerned difficulties.

I am very sure that with your active contribution we shall together as a team be catalyst of Nation Development.

सर्वस्तरतु दुर्गाणि सर्वे भद्राणि पश्यतु।

सर्वः कामानवाप्नोतु सर्वः सर्वत्र नन्दतु ॥

May all cross their difficulties. May all see good and auspicious things. May all get their wishes fulfilled. May everyone everywhere be happy.

I Humbly Salute the Profession

Yours Sincerely

CS Hitesh Kothari

Chairman 2018-WIRC of ICSI



CS MAKARAND LELE

CS Makarand Lele, a Fellow Member of the Institute has been elected as the President of the Institute of Company Secretaries of India for the year 2018-19 w. e. f. 19th January, 2018.

CS Makarand Lele is a Member of The Institute of Company Secretaries of India since 1992. He has done his Commerce graduation (B.Com) from Garware College of Commerce Pune and Law graduation (L.L.B) from ILS Law College Pune. Mr. Lele is a Practicing Company Secretary since 1993 and has professional experience of 25 years.

He is actively associated with The Institute of Company Secretaries of India (ICSI) since 1994. Mr. Lele was elected to the Central Council of the Institute for the term of 2015-19 and became the Vice-President of the Institute for the year 2017-18. Earlier he was elected to the Western India Regional Council and was the Regional Council Chairman for the year 2011-12. Prior to this he has served on the Managing Committee of Pune Chapter and in the year 2003 during his Chairmanship, Pune Chapter was, first time in its history conferred with the exclusive 'Best National Chapter' Award by ICSI.

He was appointed as the first Chairman of ICSI Auditing Standards Board formed by The Institute in the year 2016. He is a member of Corporate Legislation Core Committee of Mahratta Chamber of Commerce, Industry & Agriculture (MCCIA) and was invitee on the Business Law Syllabus Review Committee of University of Pune.

Mr. Lele is a renowned trainer and speaker on several segments in corporate laws, management & economic affairs. He is a regular contributor to various professional magazines & publications.

**CS AHALADA RAO V**

CS Ahalada Rao V is a Fellow Member of the Institute of Companies Secretaries of India. He was an Associate Member of Chartered Institute for Securities and Investment, U.K. Science graduate from Osmania University, Master of Law from Osmania University and Master in Financial Management from Pondicherry University. He further completed Certificate course on “Business Valuation and Corporate Restructuring” which is conducted by the Institute of Cost Accountants of India. He is currently pursuing detailed Research Study on Valuation of Intangible Assets of Indian Companies.

CS Ahalada Rao V. has overall 20 years of corporate experience and has spread various expert opinions and advice on all the matters of Corporate Laws, served as Advocate during the year 1999-2001. Representing before the Company Law Board and Consumer Forums. From 2001 till date, he has rich experience in Secretarial works. He is empanelled as Mediator and Conciliator with Ministry of Corporate Affairs for East, West, North, Northwest, South and Southeast Regions. He was the Secretary of All India Federation of Tax Practitioners south zone for the year 2010-2011. He is a Certified SEBI Financials Resource Person. He was also a Member of Secretarial Standard Board of Institute of Company Secretaries of India, New Delhi, 2014-2016.

CS Ahalada Rao V has been Chairman at Hyderabad Chapter of SIRC of ICSI for the year (2006). He is elected Council member for the term 2014-18. He is chairman of ICSI Research committee & ICSI Centre of Excellence. CS Ahalada Rao V has been Faculty to Executive Students of Company Secretary Course of Hyderabad Chapter for Economic Labour and Industrial Laws, from November 2002 onwards. He has been delivering lectures to reputed Organizations on Accounting Standards, Company Law and Industrial Laws. He has also delivered lectures on Securities Laws & Regulation of Financial Markets for Post Graduate Students. CS Ahalada Rao V has written numerous articles in various professional journals and newspaper. He is a regular faculty at Seminars and Workshops conducted by various Professional Bodies.



CS HITESH KOTHARI

CS Hitesh Kothari is elected as the Chairman of ICSI-WIRC for the year 2018. Having a humble beginning CS Kothari hails from a mofisil part of Madhya Pradesh, completed his education from Indore, did his training from Pune and eventually established his Whole time practice as a Company Secretary in Mumbai.

CS Kothari is a Regional Council Member for second term and during the last eight years played a crucial role in development of various activities. He played a key role in procurement and renovation of ICSI-WIRC premises. He organized a major and successful programme in Mumbai as a part of the initiative. As a Chairman of TEFC he brought radical changes in OTC and other training programmes.

While heading the Professional Development committee of ICSI-WIRC the Professional Membership Scheme has witnessed a sea change both in terms of quality and number of memberships. He also pioneered the concept of Knowledge centers in WIRC and established and inaugurated Four Knowledge centers in different parts of Mumbai.

He believes in the overall development of profession and always looks for 360 degree development of profession and members. Some of his initiatives in this line include the introduction of cricket match with regulators, medical checkups, foundation day celebrations, cultural development programmes for members etc.

He was also the Treasurer of WIRC in the year 2016. CS Hitesh Kothari played a pivotal role in the formation of Bhayender Chapter and natured the chapter efficiently and successfully during its stage of infancy. CS Kothari is a regular speaker at various training and professional development programmes of ICSI.

As far as his educational background is concerned he is a fellow member of ICSI, a graduate in Commerce & Law and also member of Insolvency Professional Agency.



Congratulations



CS Makarand Lele
President, The ICSI

New President and Vice President of The Institute of Company Secretaries of India (ICSI) for 2018



CS Ahalada Rao V.
Vice President, The ICSI

OFFICE BEARERS OF ICSI WIRC FOR THE YEAR 2018



CS Hitesh Kothari
Chairman



CS Ashish Karodia
Vice Chairman



CS Chetan Patel
Secretary



CS Praveen Soni
Treasurer

Shri Hitesh Kothari
Chairman



Shri Ashish Karodia
Vice-Chairman



Shri Chetan Patel
Secretary



Shri Praveen Soni
Treasurer



Other Regional Council Members

Ms. Shilpa Kedar Dixit



Shri Amit Kumar Jain



**Shri Devendra Vasant
Deshpande**



Ms. Swati Yash Bhatt



**Shri Rishikesh Gagan
Vyas**



**Shri Kamlesh
Joshi**



Shri Prakash Pandya



Shri Makarand Lele
President, ICSI



Shri Atul H Mehta
Central Council Member



Shri Ashish Doshi
Central Council Member



Shri Ashish Garg
Central Council Member



Shri Mahavir Lunawat
Central Council Member



Ex-officio Members

CS Pradeep Debnath
Chairman-NIRC



CS Ramakrishna Gupta Racharla
Chairman-SIRC



CS Ashok Purohit
Chairman-EIRC





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Due Diligence in the Banking Sector

Recent headlines around rising Non Performing Assets (NPAs) in India have brought a myriad of challenges faced by banks and financial institutions into the spotlight. Banking and finance sector is struggling with the constant issue of inadequate due diligence about the borrowers.

The issue of gathering information about the borrower can be demystified by segregating it into the various stages of the loan cycle:

Due Diligence while On-boarding

Global banks faced significant fines for violation of Anti Money Laundering provisions. Heightened Risk Professionals have played a significant role in making these banks operationally weak and identifying the Heightened Risk Individuals help the banks to tackle the risks.

Due Diligence while Sanctioning

There are times when loans are sanctioned without adequate due diligence to confirm authenticity of the promoters background. In the age of continuous monitoring by the regulators it becomes important to conduct the quick review of the background of the borrowers. This becomes even more relevant for loans sanctioned especially at period ends where there is significant pressure on Turn Around Time.

In some instances, it has been observed that the 'market value' of the collateral is considered while preparing the sanction documents instead of taking a rather conservative approach and considering 'book value' which allows a 'cushion' to the lending institution.

Another case could be when the evaluation of collateral is often performed by independent agencies that are later identified as being linked to the borrower (being appointed by the borrower) thus defeating the purpose of independent assessments. In order to identify the nexus between the borrowers and valuers, tools like Biznexus play a crucial role.

Loan documentation

Documents submitted by the borrower are often taken at face value without adequate diligence and skeptical review. Many of the times it is essential to understand the nexus of the auditors with the borrowers. Auditor borrower nexus can prove costly to the banks. Hence auditor independence check plays a crucial role in today's world.

Some common occurrences in this case would be unavailability of requisite insurance cover or just photocopy of 'no objection certificate' obtained from other banks.

In the pre-disbursement stage if the banks perform the additional due diligence checks such as the auditor independence checks, review of the nexus of the borrower with other parties, analysis of undisclosed related parties it helps the banks to take the informed decisions.

Banks must outsource due-diligence activities with care: EY report

Outsourcing of due-diligence activities by banks to various entities, such as surveyors, financial analysts and other verification agencies, is an Achilles heel for the banking sector, according to an EY report.

“Lenders rely significantly on the inputs issued by such third parties. Reports are made as a routine with little scrutiny. In some situations the report may be drafted under the influence of unscrupulous borrowers.

“It is therefore important that the selection of such third parties is independent, done in a transparent manner and is based on their capability and credentials,” the report said.

Vikram Babbar, Executive Director – Fraud Investigation & Dispute Services, EY, said in many cases banks often send their sales force instead of credit officers to do credit appraisal activities, such as in-person verification, background checks, and factory visits, which is inherently conflicting to their role of loan origination.

Discretion needed

Various checks need to be conducted discreetly while visiting the factory premises of a prospective client, says Babbar.

These include speaking to employees on whether their salaries are paid on time, doing a random check on whether inventory actually exists, talking to their suppliers and service providers about concentration of their business, besides the behaviour of the company towards doing business.

Information on negative issues, such as raids by the officials of excise/ customs/ income tax/ provident fund departments are also an important part of the due diligence process, according to Babbar.

On what stops banks from talking to their peer banks where the prospective client has a banking relationship, Babbar says such checks should be independent and the borrower should not refer the bank to his banker.

This is because there are chances of the referral being directed to someone in the branch who is not authorised to speak on the borrower’s account. On banks often blaming their software vendors and core banking implementation partners for glitches in their CBS (core banking solution platform), Babbar said that the onus of the CBS rests on the bank. It is up to the bank to decide on how to capture the data, and the type of reports that are required.

Closely monitoring exceptions, especially related to NPAs (non-performing assets), are an imperative, as the first early warning signal on an account turning NPA is thrown up by account behaviour — data for which rests within the CBS, Babbar said.

Case Law on failure to perform due diligence in the banking sector

When the banking sector is busy counting its losses in one of the most gigantic banking frauds, the law enforcement agencies, CBI and ED, have raided properties linked to diamantaire Nirav Modi and Mehul Choksi's Gitanjali Jewels. The CBI has already arrested three persons, including the 2 PNB staffers, who have been sent to the judicial custody till March 3. The ED raided dozens of Nirav Modi's premises and seized diamonds, gold and jewellery worth Rs. 5,670 crore. The banks that are likely to be affected include UCO Bank and State Bank of India (SBI), while Axis Bank says that it has already sold its exposure to Nirav Modi and his firms.

What is PNB Fraud: On January 29, a PNB official from Mumbai filed a criminal complaint with Central Bureau of Investigation (CBI) against 3 companies, Solar Exports, Stellar Diamonds and Diamond R US, and four people, including diamantaire Nirav Modi and Mehul Choksi, the managing director of Gitanjali Gems, saying they had defrauded the bank and caused a loss of Rs. 280 crore (\$43.8 million). The bank alleged two junior employees at the Mumbai branch had helped the companies and people managing them get "letters of undertaking" (LoUs) from it without having a sanctioned credit limit or maintaining funds "on margin". The LOUs were used to obtain short-term credit from overseas branches of other Indian banks, PNB said. Based on the complaint, the Central Bureau of Investigation (CBI) registered a preliminary case against the companies and the people named on January 31 and PNB said a detailed probe was underway. On February 14, PNB said that it had discovered fraudulent and unauthorised transactions totalling Rs. 11,300 crore at the Mumbai branch. Investigators have said the latest disclosure was related to the earlier case filed.

Enforcement Directorate Raids: After having already searched dozens of locations linked to Nirav Modi, the Enforcement Directorate (ED), said it conducted additional searches at 21 locations of companies tied to Modi, seizing precious stones, metals and jewellery. Both authorities (CBI and ED) have conducted dozens of raids since PNB disclosed the fraud, targeting PNB, Modi and Choksi, with the Enforcement Directorate now having seized diamonds, gold and jewellery worth Rs. 5,670 crore. The ED conducted fresh searches at over 45 more locations in 15 cities across India, an official said.

CBI Closes PNB Branch After Arresting Two Officials: The Central Bureau of Investigation (CBI) detained two employees of Punjab National Bank. Gokulnath Shetty and Manoj Kharat are suspected of steering fraudulent loans to companies linked to billionaire jeweller Nirav Modi and entities tied to jewellery retailer Gitanjali, which is led by Modi's uncle, Mehul Choksi. CBI also arrested a third person, Hemant Bhat, whom a source described as the "authorised signatory" of the companies tied to Modi. Besides, CBI closed down a PNB branch on Monday that is at the heart of a \$1.77 billion fraud and questioned more of its employees.

Court Gives Custody: A court has ordered three people arrested by the federal police on suspicion of involvement in a \$1.77 billion fraud at state-run Punjab National Bank to remain under police custody until March 3.

CBI Raids on Gitanjali: Raids were also carried out by the Central Bureau of Investigation (CBI) on the offices of Jewellery Retailer Gitanjali, whose chief executive has been accused along with Modi of colluding with PNB employees to fraudulently obtain advances for payments to overseas suppliers. Two key executives namely the company's CFO Chandrakant Karkare and compliance officer Pankhuri Warange. of Gitanjali Gems announced their resignations. The latter stated that her conscience doesn't allow her to continue in her role.

What PNB Says: PNB shares have fallen. Punjab National Bank officials had met representatives of Nirav Modi and Gitanjali Group to impress upon them to pay outstanding amounts, the bank said in a clarification to the stock exchanges. "A series of meetings were held with representatives of Nirav Modi group and Gitanjali Group at Delhi & Mumbai to impress upon them to pay the amount. They were also directed to provide all necessary documents as per law to ensure that the imports are bonafide trade transactions," the PNB statement said in the clarification dated February 15 to the exchanges accessed on Saturday. "The amount is big. But we will have the capacities to bring it back to normalcy, maybe within six months," PNB CEO Sunil Mehta said.

CS Dipti Yogesh Shah
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Insider trading and its implementation in the organizations

Objective of Insider Trading-

With the object of bringing the basic framework governing the regime of insider trading practices in line with the dynamic global scenario and to tighten the gaps of existing norms, SEBI has notified the new PIT Regulation to be renowned as SEBI (Prohibition of insider trading) Regulation, 2015 on 15th January, 2015. These regulations will be effective w.e.f 15th May 2015.

What is insider trading?

Insider Trading is trading/ dealing of a company's stock by an insider/ connected person on the basis of Unpublished Price Sensitive Information.

Who are the insiders?

Any connected person and persons in the possession of UPSI

The Regulations also intend to bring in its ambit persons who may seemingly not occupy any position in a company but are in regular touch with the company & its officers & have access to its internal nittygritties.

Who are the connected persons?

Following shall be Connected/ Deemed to be connected with the Company:

- Any person who is or has been associated with company, in any manner, during the six months prior to the concerned act;
- An immediate relative of the connected person;
- A holding / associate/ subsidiary company;
- An official of stock exchange or of clearing corporation;
- A banker of the company;
- A concern, firm, trust, HUF, company or AOP wherein a director of a company/ immediate relative/ banker of company, has more than 10% of the holding or interest;

Trading means and includes

- Subscribing;
- Buying;
- Selling;
- Dealing;
- Agreeing to buy, sell, subscribe, deal in any securities;

What does mean unpublished price sensitive information's (UPSI)?

Any information, relating to a company or its securities, that is not generally available, and is likely to materially affect the price of the securities is a UPSI

It includes:-

- Financial results;
- Dividends;
- Change in capital structure;
- Mergers, de-mergers, acquisitions, delisting and such other transactions;
- Changes in KMPs;
- Material events in listing Regulations;

Who will monitor the insider trading?

- The Regulations have casted major responsibility for monitoring & implementing the codes specified in these Regulations upon the Compliance Officer;
- Compliance Officer means any senior officer, designated so and reporting to the Board of Director, who is financially literate and well-versed with legal & regulatory compliances;
- He/she shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company;

No insider shall communicate, provide or allow access to any UPSI, to any person including other insiders, however, there are certain exceptions to this:

- Except for performance of duties, for legitimate business purposes & on a need to know basis. :
- UPSI may be communicated in connection with an open offer under the takeover regulations, where the Board of Director is of the view that the proposed transaction is in the best interest of the company;
- If the proposed transaction does not entail an open offer, then the Board of Directors shall disseminate the UPSI at least 2 trading days prior to the proposed transaction;

Is there any defense available for insider?

- The Onus of Proving the Innocence Lies on the Insider
 - Contract confidentiality & Non-disclosure agreements has been executed;
 - The transaction is an off-market *inter-se* transfer between promoters;
- In case of non-individual insiders:
 - Individuals who were in possession of such UPSI were different from the individuals taking decisions;
 - Appropriate & adequate arrangements were in place to ensure that Regulations are not violated;
 - Trades were pursuant to a trading plan;

What is code of conduct and Code of fair disclosure?

- **Code of conduct** -Formulated by board of director of every listed companies, Market intermediaries & all other persons (Including Professional firms, auditor, consultants etc.) who are essentially in possession of UPSI
- Policy shall be framed in accordance with schedule B
- **Code of fair disclosure**-formulated by: board of director of every listed company
- Policies shall be framed in accordance with schedule A & published on its website
- Some important contents of this Code are:
 - Uniform & universal dissemination of UPSI to avoid selective disclosure;
 - Designation of a senior officer as a chief investor relations officer to deal with dissemination of information & disclosure of UPSI;
 - Appropriate & fair response to queries on new reports & requests for verification of market rumours by regulatory authority;
 - Ensuring that information shared with analyst and research personnel is not UPSI
 - Code of Conduct carrying internal guidelines for trading by insiders has been approved and adopted by the Board of Directors at the Board Meeting
 - It regulates monitors and report trading by its employees and other connected persons towards achieving compliance with these regulations adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.
 - Designated employees and Intermediaries are required to follow the Code of conduct framed by the company.

Disclosure under insider trading

Types of Disclosure	What	By	To	Time limit
INITIAL DISCLOSER	Holding in the company	Promotor, KMP, or Director of the listed company	Company	Within 30 days of these regulation taking effect
	Holding on the date of appointment	Promotor, KMP, or Director	Company	Within 7 days of such appointment
CONTINUAL DISCLOSURES	Value of securities traded in aggregate in a calendar quarter, exceeds traded value of Rs 10 Lac or any other value as may be prescribed	Promotor, Director, or Employee	Company	Within 2 days of such transaction
		Company	Stock exchange	Within 2 days of receipts of disclosure
Disclosure by other connected person	As Required by the company	Connected person	Company	As specified by the company

What is the format of disclosure?

SEBI vide CIR/ISD/01/2015 dated May 11, 2015 prescribed format for disclosure as under:

- **Form A** - Details of Securities held by Promoter, Key Managerial Personnel (KMP), Director and other such persons as mentioned in Regulation 6(2);
- **Form B** - Details of Securities held on appointment of Key Managerial Personnel (KMP) or Director or upon becoming a Promoter of a listed company and other such persons as mentioned in Regulation 6(2);
- **Form C** - Details of change in holding of Securities of Promoter, Employee or Director of a listed company and other such persons as mentioned in Regulation 6(2);
- **Form D (Indicative format)** - Regulation 7(3) ;V Transactions by Other connected persons as identified by the Company

What should do for effective implementation of insider trading?

- **Training and Communication :-**
 - **Proper and periodic training** is the need of time to educate designated employee about the Insider Trading Regulations and Code of Conduct. The training materials should briefly contain the requirement of the Regulations, when not to deal in the company's shares, timeline to submit requisite disclosures etc. Such training can be imparted through various means e.g. internal Workshops, Seminars, Web based training etc.

- **Distribution of Pamphlets and Handouts** can also be circulated to the designated employee at regular intervals making them aware about the requirement of pre-clearance of trade, disclosures and trading window. Nicely printed/ eye catching pamphlets may also be affixed at prominent places at the premises of the Company.
- **One of the duties of the Compliance Officer** is to communicate to Tools to comply with Insider Trading Regulations: Use of 'Three Ts' (Training, Technology & Timely disclosures) the designated employees about the Closure & opening of Trading Window. This communication is sent through E-mails which apart from containing the closure period of Trading Window should also specify the Dos and Don'ts pertaining to dealing in securities of the company.

Following are some of the **Dos and Don'ts that can be circulated** amongst the designated employee.

➤ **Don'ts**

1. Trade in the company's securities without pre- clearance of Compliance Officer.
2. Buy or sell the securities of the company when the 'Trading Window' is closed.
3. Enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction.
4. Take positions in derivatives of the securities of the company at any time.
5. Trade in securities of the company while in possession of UPSI.
6. Recommend or counsel to buy, sell or retain the securities when holding UPSI.

➤ **Dos**

1. In case intend to deal in the securities of the company, submit the duly filled Dealing Authorization Form ('DAF') for pre-clearance to the Compliance Officer.
2. Ensure to obtain pre-clearance before placing the order for dealing in the securities of the company.
3. Intimate the details of securities dealt pursuant to pre- clearance.
4. Ensure to submit disclosure in prescribed form if change in shareholding exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding, whichever is lower from the last disclosures.
5. Submit in time the Annual Statement of holding of shares in the company to Compliance Officer.
6. In case of any doubt, contact the Compliance Officer of the company.

■ **Technology:-**

- Use of technology has become the buzz word not only for reparation of reports and MIS but also for compliance of various laws.
- it is difficult to memorize and track the compliances with the help of checklists alone. Hence, need of the hour is effective usage of technology.
 - **With the advancement of technology**, developing a software (or application) where details about the designated employees are to be preserved is the need of time. The application should enable the designated employees to raise their request for pre-clearance of trade, intimation of dealing in the shares pursuant to pre-clearance, submission of Annual Disclosure etc. online. With the usage of software for the above, complete log details would be available with the Compliance Officer for any future reference and records. Hence, it becomes imperative for CS to insist for development of software/ application, which can be built at the minimal cost.

- **Collate master data** (viz. Name, Employee ID, PAN, Date of Birth, DP ID/ Client ID, No. of shares held in the concerned company etc.) of designated employees. Collate such details of relatives (as defined in the company's Code of Conduct) also. This data need to be uploaded in the software which is one time activity. Software/ application should support bulk upload of data, addition/ deletion of designated employees etc.
- **Provide list of designated employees and their PAN to Registrar and Share Transfer Agent (RTA)** and advise them to get the details of outstanding shares against each PAN. This can be extracted by RTA from the Beneficiary Position ('BENPOS') obtained/ downloaded from NSDL/ CDSL free of cost on weekly basis.
- **Upload the number of outstanding shares against each PAN**, as at the end of each trading day of the week, in the software of the Company. This can be done by bulk upload and requires a single mouse click to get it uploaded.
- **Obtaining of the details of outstanding shares against each PAN** as at the end of each trading day of the week from RTA and bulk uploading of the same in software should be a continuous process.
- **Compare the details of outstanding shares as the end of previous and current week.** If there is any variation in number of outstanding shares, then check whether the trade was pre-cleared by Compliance Officer. If yes, automatic trigger to be sent to concerned DEs to submit the disclosure(s), if the change exceeds the prescribed limits
- **Apart from the above**, the application should have auto checks & balances viz. trigger to designated employees if proposed pre-clearance/ trade would lead to disclosure(s) to the company/ SEs, not allowing designated employees to submit DAF during closure of Trading Window, etc.
- **Prompt intimation/notice by the Compliance Officer to designated employees** if he/she dealt in the company's shares without pre-clearance or during closure of Trading Window. In case of any default, the company can impose appropriate penalty and/ or take necessary action including wage freeze, suspension, ineligible for future participation in employee stock option plans against the violator including referring the matter to SEBI.

■ **Timely Disclosures:-**

- **Regulations require only prompt disclosures** of PSI to SEs, disclosures on acquisition/sale of certain numbers, amount and/ or percentage of shares of the listed Company and restricting oneself from dealing in the company's shares based on UPSI. This is in order to enable the shareholders and the public to apprise the position of the company and to avoid the establishment of a false market in its securities.
- The required **disclosures to be submitted to the company and/ or SEs** by the Directors, Officers, Promoters and designated employees after dealing in certain number, amount and percentage of shares etc. within a short span of time.
- In view of the above, it is essential that the **company follows proper and prompt disclosure mechanism for disseminating UPSI**. UPSI shall be first disseminated to SEs and then to media, analysts, etc. At the same time, the companies should also post the PSI in their website, once disseminated to the SEs, so as to achieve maximum reach and quick dissemination.

- **In order to avoid misquoting or misrepresentation**, at least two company representatives including Corporate Spokesperson should be present at meetings with Analysts, or Institutional Investors and the discussions should preferably be recorded. Unanticipated questions may be taken on notice and a considered response be given later. If the answer includes PSI, a public announcement should be made before responding. Corporate Spokesperson also plays an important role in overseeing and coordinating disclosure of PSI to the SEs, analysts, shareholders and media. The company should also proactively and promptly verify or deny rumours, if any, to avoid false market.
- The above clearly indicates that time is the essence which is supreme to ensure **not only compliance but also for prevention of violation of the Regulations**

What are the roles and responsibilities of a compliance officer?

The compliance officer is made responsible for compliance:

- a. With policies, i.e. the Policy for fair disclosure of Unpublished Price Sensitive Information as per Schedule A pursuant to Regulation 8 (1) and Code of conduct for regulating and monitoring insider trading as per Schedule B under Regulation 9(2) (1).
- b. Setting forth codes/policies in consultation with the Board
- c. Prescribing procedures for various activities referred to in the Code of Conduct
- d. Granting of pre-trading clearance to the Designated Persons for dealings in the Company's Securities and monitoring of such trade of insiders. (Including their immediate relatives)
- e. Maintaining of records as required under the Regulations
- f. Implementation of the Code
- g. Adherence to the code specified for preservation of Unpublished Price Sensitive Information
- h. Monitoring of trades and the implementation of Code of Conduct under the overall supervision of the Board
- I.To approve and assist in implementation of the trading plan as and when presented by the insiders, in accordance with the Regulations.

However, he is supposed to do all the above either under the supervision of the Board or the head of an organization. This means that though compliance officer will be responsible for the above areas but the ultimate responsibility and accountability is that of the board or the head of the organization under whom or accordingly to whose instructions the compliance officer will work.

The role and responsibilities of the compliance officer under the Insider Trading Regulations came under scrutiny of SEBI in adjudicating order NO. PG/AO-115/2011 dated November 29, 2011 involving the compliance officer of Satyam Computer Services Limited. SEBI's charge is that the compliance officer failed to close the trading window of the company prior to its board considering the transaction involving the proposed acquisition of shares in Maytas Infra Limited and Maytas Properties Limited. The key question for SEBI's consideration was the extent to which the compliance officer must be deferential to

the board. In other words, should the compliance officer act pursuant to the instructions of the board, or should he act independently? In the present case, Satyam's compliance officer argued that since he did not receive any instructions from the board to close the trading window, he had no obligation to do so, and that he had therefore not flouted the model code of conduct. SEBI's order seems to suggest that the compliance officer is not to be deferential to the board, or only act under its supervision. He is required to discharge certain responsibilities nevertheless.

He is further required to identify connected persons amongst the outsiders such as banks, mutual funds, legal advisors etc. by asking for information and further dissemination of information under the Regulations to such insiders. However, he cannot be an investigating officer to investigate into who all can be insiders. The onus of identification of insiders/connected persons cannot be on the compliance officer.

When can an UPSI be communicated, provided or procured by an UPSI without violation of Regulation 3?

Regulation 3 will not get violated if the communication of UPSI is for following purpose:

Where the board of the Company is of the informed decision that a transaction is in the best interest of the Company, such as in case of mergers/takeovers and acquisitions involving change of control to assess a potential investment. This will entail making of an open offer under the takeover regulations which will not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

Where a transaction would not entail an open offer under the takeover regulation but where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and UPSI is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected.

Board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential. Further, proviso to section 195 (1) provides that if any communication is required to be made in the ordinary course of business or profession or employment or under any law, the same shall not be considered as insider trading. This is therefore a deviation from the requirement of the Regulations. However, if it can be proved that such communication was for a legitimate purpose, there will be harmonious interpretation of the Regulations and the proviso to section 195.

When will a trade by an Insider regarded as Insider Trading? Who has the onus to prove the same?

Trading when in possession of UPSI by an insider will be regarded as Insider Trading.

The onus of showing that a certain person was in possession of or had access to UPSI at the time of trading would be on the person leveling the charge after which the person who has traded when in possession of or having access to UPSI may demonstrate that:

- he was not in such possession of UPSI; or
- he has not traded; or

- he could not access UPSI; or
- his trading when in possession of UPSI was squarely covered by exonerating circumstances.

In the case of connected persons the onus of establishing, that they were not in possession of UPSI, shall be on such connected persons itself while in other cases in relation to any other person, the onus would be on the Board to prove that the person has dealt into insider trading.

What are exonerating circumstances in insider trading?

When the trade has been done under following circumstances by an insider while in possession of UPSI, the same may be treated to be exonerating circumstances under Regulation 4-

- Off market inter-se transfer between promoters who were in possession of same UPSI and both parties made conscious and informed decision. However, it is to be noted that the provisions under Regulation 3 should not be breached.
- Trade was executed as per Trading Plan under Regulation 5.
- Where insider in non-individual,
- trading decision was taken by individuals other than insiders in possession of UPSI and those decision-making individuals were not in possession of UPSI when they took the decision to trade; and
- Appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no UPSI was communicated and there is no evidence of such arrangements having been breached.

What is the essential philosophy of a trading plan? Who is required to frame the same?

- Insiders who are perpetually in possession of UPSI such persons cannot be rendered incapable of trading in securities throughout the year. In such a situation, an Insider will be permitted to formulate in advance to effect trade at a subsequent date. By that time such insider would be in possession of new UPSI and the one they possessed at the time of formulating the plan would then be generally available.
- A trading plan is to accommodate firm plans to acquire/dispose off securities typically by strategic shareholders. For example a holding company may have plan to do disposal of its subsidiary at a pre-specific time. Also promoters of the company may have a firm plan to do a creeping acquisition of securities in their controlled company. These plans are pre announced, and are firm plans irrespective of the prevailing price. Hence, they are insensitive to prices, and hence, are presumably immune from allegations of insider trading.
- Trading plan are required to be framed by such insiders who are at all times in possession of UPSI and the plan is required to be reviewed and approve and monitor implementation of the trading plan.

What are the prerequisites for Trading Plan?

- Trading only after 6 months from the public disclosure of plan
- Such a period is considered reasonably long for UPSI that is in possession of the insider when formulating the trading plan, to become generally available.

- If the financial period ends on X, then not to trade in the period between (X-20 trading days) to (X+2 trading days)
- UPSI exists around declaration of financial results.
- Trading plan shall entail trading for a minimum period of 12 months
- To avoid frequent announcements of trading plan.
- Trading plan should not lead to overlap of any period for which another trading plan is in existence.
- Trading plan shall set out either value of trades to be effected or the number of securities to be traded along with the nature of the trade (acquisition or disposal) and the intervals at, or dates on which such trades shall be effected;
- Trading plan shall not entail trading for market abuse.

Are any other persons required to frame Code of Conduct?

Pursuant to Regulation 9 a market intermediary, as explained in SEBI Act, 1992 and every other person who is required to handle UPSI in the course of business operations are required to frame Code of Conduct. Therefore, where an UPSI is handled by legal advisors, auditors, legal firms etc. even those other persons should frame code of conduct for their firms/organizations as they are dealing with UPSI in connection to the company.

What are the functions of Chief Investor Relation Officer?

- Dealing with universal dissemination and disclosure of UPSI.
- Determination of questions as to whether any particular information amounts to UPSI.
- Determination of response, if any, of the Company to any market rumour in accordance with Code of Fair Disclosure of the Company.
- Dealing with any query received by any Insider about any UPSI.
- Providing advice to any Insider as to whether any particular information may be treated as UPSI.

Penalties

Any contravention of these Regulations shall be dealt with by SEBI in accordance with the SEBI and companies Act 2013.

- **Monetary Penalty:** Section 15G of the Act imposes penalty of atleast Rs10 Lacs, which may extend to Rs. 25 Crore or three times of profits made out of insider trading, whichever is higher.
- **Imprisonment:** Section 24 of SEBI Act even goes to the extent of imprisonment upto 10 years or fine uptoRs. 25 Crore, or both, for any offences pertaining to contravention of the provisions of the Act.

Conclusion

These should preferably be used in the order of preference (viz. Training, Technology and Timely Disclosures). Hence, first train/educate the Directors, Insiders, Designated employee about the Regulations through periodic training, workshop, and circulation of hand out containing Dos & Don'ts and then create a culture of submission of the required disclosures to the company and the Stock exchange timely. These are achievable with effective use of technology. Keeping in view the large number of designated employee, use of technology is necessary. Further, it is not feasible to maintain and preserve all the information manually anymore and hence this requires reasonable amount of automation. Effective usage of training, technology and timely submission of disclosures will not only ensure the compliances but will also track and prevent violation of Insider Trading Regulations.

Complied by CS Swati Bhatt
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Important Updates under Foreign Exchange Management Act, 1999(FEMA) during the month of January, 2018

FDI POLICY FURTHER LIBERALIZED IN KEY SECTORS - CABINET APPROVES AMENDMENTS IN FDI POLICY SO AS TO PROVIDE EASE OF DOING BUSINESS IN COUNTRY (PIB PRESS RELEASE, DATED 10-1-2018)

- ◆ 100% FDI under automatic route for Single Brand Retail Trading
- ◆ 100% FDI under automatic route in Construction Development
- ◆ Foreign airlines allowed to invest up to 49% under approval route in Air India
- ◆ FIIs/FPIs allowed to invest in Power Exchanges through primary market
- ◆ Definition of 'medical devices' amended in the FDI Policy

Details:

Government approval no longer required for FDI in Single Brand Retail Trading (SBRT)

- i.* Extant FDI policy on SBRT allows 49% FDI under automatic route, and FDI beyond 49% and up to 100% through Government approval route. It has now been decided to permit **100% FDI under automatic route for SBRT.**
- ii.* It has been decided to permit single brand retail trading entity to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1st April of the year of the opening of first store against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India for that single brand (in INR terms) in a particular financial year over the preceding financial year, by the non-resident entities undertaking single brand retail trading entity, either directly or through their group companies. After completion of this 5 year period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.
- iii.* A non-resident entity or entities, whether owner of the brand or otherwise, is permitted to undertake 'single brand' product retail trading in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner.

Civil Aviation:

As per the extant policy, foreign airlines are allowed to invest under Government approval route in the capital of Indian companies operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. However, this provision was presently not applicable to Air India, thereby implying that foreign airlines could not invest in Air India. It has now been decided to do away with this restriction and **allow foreign airlines to invest up to 49% under approval route in Air India** subject to the conditions that:

- i. Foreign investment(s) in Air India including that of foreign Airline(s) shall not exceed 49% either directly or indirectly
- ii. Substantial ownership and effective control of Air India shall continue to be vested in Indian National.

Construction Development: Townships, Housing, Built-up Infrastructure and Real Estate Broking Services

It has been decided to clarify that real-estate broking service does not amount to real estate business and is therefore, eligible for 100% FDI under automatic route.

Power Exchanges:

Extant policy provides for 49% FDI under automatic route in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010. However, FII/FPI purchases were restricted to secondary market only. It has now been decided to do away with this provision, thereby **allowing FIIs/FPIs to invest in Power Exchanges through primary market as well.**

Other Approval Requirements under FDI Policy:

- i. As per the extant FDI policy, issue of equity shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. is permitted under Government approval route. It has now been decided **that issue of shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. shall be permitted under automatic route in case of sectors under automatic route.**
- ii. Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies/ LLP and in the Core Investing Companies is presently allowed upto 100% with prior Government approval. It has now been decided to align FDI policy on these sectors with FDI policy provisions on Other Financial Services. Thus, if the above activities are regulated by any financial sector regulator, then foreign investment upto 100% under automatic route shall be allowed; and, if they are not regulated by any Financial Sector Regulator or where only part is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route, subject to conditions including minimum capitalization requirement, as may be decided by the Government.

Competent Authority for examining FDI proposals from countries of concern:

As per the existing procedures, FDI applications involving investments from Countries of Concern, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time, are to be processed by the Ministry of Home Affairs (MHA) for investments falling under automatic route sectors/activities, while cases pertaining to government approval route sectors/activities requiring security clearance are to be processed by the respective Administrative Ministries/Departments, as the case may be. It has now been decided that **for investments in automatic route sectors, requiring approval only on the matter of investment being from country of concern, FDI applications would be processed by Department of Industrial Policy & Promotion (DIPP) for Government approval.** Cases under the government approval route, also requiring security clearance with respect to countries of concern, will continue to be processed by concerned Administrative Department/Ministry.

Pharmaceuticals:

FDI policy on Pharmaceuticals sector inter-alia provides that definition of medical device as contained in the FDI Policy would be subject to amendment in the Drugs and Cosmetics Act. As the definition as contained in the policy is complete in itself, it has been decided to drop the reference to Drugs and Cosmetics Act from FDI policy. Further, it has also been decided **to amend the definition of 'medical devices' as contained in the FDI Policy.**

Prohibition of restrictive conditions regarding audit firms:

The extant FDI policy does not have any provisions in respect of specification of auditors that can be appointed by the Indian investee companies receiving foreign investments. It has been decided to provide in the FDI policy that wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.



FED Master Direction No. 11/2017-18 January 4, 2018

Downstream Investment

Definition: **'Downstream Investment'** is investment made by an Indian entity which has received foreign investment or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity.

Conditions for downstream investment that is treated as Indirect Foreign Investment for the investee Indian Entity

1. An Indian entity which has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines and other FDI linked performance conditions as applicable for foreign investment.
2. Downstream investment by an LLP which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

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3. Indirect foreign Investment is permitted in an LLP in sectors where foreign investment is allowed 100% under automatic route and there are no FDI linked performance conditions.
4. If the sponsors/ managers/ investment managers of an investment vehicle are 32 individuals, for the downstream investment made by such investment vehicle not to be considered as Indirect Foreign Investment for the investee, the sponsors/ managers/ investment managers of the investment vehicle should be resident Indian citizens. In case the sponsor/ manager/ investment manager is organised in any other form, SEBI will determine whether it is foreign owned and/ or controlled or not.
5. The downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity should have the approval of the Board of Directors as also a Shareholders' Agreement, if any, of the investing Indian entity.
6. The Indian entity making the downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity is required to bring in the requisite funds from abroad and not use funds borrowed in the domestic markets. Subscription by persons resident outside India to non-convertible debentures issued by an Indian company will not be construed as funds borrowed/ leveraged in the domestic market. However, raising of debt and its utilisation will have to comply with the Act and the rules or regulations made thereunder.

Downstream investment/s under Corporate Debt Restructuring (CDR), mechanism

1. With effect from July 31, 2012, downstream investment/s made by a banking company (as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, incorporated in India) which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, will not be considered as indirect foreign investment.
2. Strategic downstream investment by a banking company referred to at 1.above will be considered as indirect foreign investment for the investee company.

Guidelines for calculation of total foreign investment in Indian companies

1. Any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment.
2. FCCBs and DRs having underlying of instruments in the nature of debt will not be reckoned for total foreign investment.
3. The methodology for calculating total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.
4. For the purpose of downstream investment, the portfolio investment held as on March 31 of the previous financial year in the Indian company making the downstream investment will be considered for computing the total foreign investment of the investee Indian entity.
5. The indirect foreign investment received by a wholly owned subsidiary of an Indian company will be limited to the total foreign investment received by the company making the downstream investment.

Conditions for exit

1. Capital instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to: (a) a person resident outside India, subject to reporting requirements in Form FCTRS. However, pricing guidelines will not apply for such a transfer. (b) a person resident in India subject to adherence to pricing guidelines. (c) an Indian company with foreign investment and not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India. Pricing and reporting guidelines will not apply.
2. The instructions at 1.above will be construed accordingly for an LLP.

Responsibility for compliance

1. The first level Indian company making downstream investment will be responsible for ensuring compliance with the provisions of these regulations for the downstream investment made by it at second level and so on and so forth. Such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis. Such compliance of FEMA provisions shall be mentioned in the Director's report in the Annual Report of the Indian company.
2. In case the statutory auditor has given a qualified report, the same should be immediately brought to the notice of the Regional Office of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.
3. The instructions at 1. above will be construed accordingly for an LLP

Applicability of downstream investment guidelines

1. Downstream investment which is treated as indirect foreign investment for the investee Indian entity made prior to February 13, 2009 would not require any modification to conform to FEMA 20(R). All other investments, after the said date, would come under its ambit.
2. Downstream investments which is treated as indirect foreign investment for the investee Indian entity made between February 13, 2009 and June 21, 2013 which was not in conformity with the downstream investment guidelines should have been intimated to the Reserve Bank by October 3, 2013 for treating such cases as compliant with FEMA 20(R).

Compiled by Ajay Kumar
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A BIRD'S EYE VIEW: RECENT JUDGEMENTS ON COMPANY LAW

CORPORATE INSOLVENCY RESOLUTION PROCESS

1. Section 9 prescribes for issue of demand notice in the prescribed format and it is only on receipt of such notice under sub-section(1) of section 8 that corporate debtor may pay the demand or may dispute the claim in terms of sub-section (2) of that section.– **SABARI INN (P.) LTD V. RAMEESH ASSOCIATES (P.) LTD. [2018] 142 CLA 158 (NCLAT)**
2. Application filed by the financial creditor under section 7 is liable to be admitted on satisfaction that there is default, application is complete, and no disciplinary proceeding against the proposed insolvency resolution professional is pending.–**PUNJAB NATIONAL BANK V. CARNATION AUTO INDIA (P.) LTD. [2018] 142 CLA 187 (NCLT – NEW DELHI)**
3. Where Adjudicating Authority has committed no infirmity in admitting a petition, no interference is called for by the Appellate Tribunal. Where settlement between the parties has been reached subsequently , Appellate Tribunal has no jurisdiction to accept the settlement - **KAPIL GUPTA AND ANOTHER V. INDIABULLS HOUSING FINANCE LTD. AND ANOTHER [2018] 142 CLA 150 (NCLAT).**

4. APPLICATION BY OPERATIONAL CREDITOR

Where in response to demand notice corporate debtor had raised a dispute that there was pendency of arbitration proceedings between operational creditor and corporate debtor, application under section 9 against corporate debtor was not to be admitted – **TATA POWER CO. LTD. V. MEENAKSHI ENERGY LTD. (NCLT – HYDERABAD) [2018] 145 SCL 487**

5. INITIATION BY FINANCIAL CREDITOR

Where financial creditor, along with application to initiate insolvency process, had failed, copies showing details of disbursement in respect of credit facilities, statement of accounts and other documents proving existence of financial debt, instant application was to be admitted – **BANK OF BARODA V. VIMAL OIL & FOODS LTD. (NCLT – AHMEDABAD)[2018] 145 SCL 512.**

6. OPPRESSION/MISMANAGEMENT

Where allegations of oppression and mismanagement could not be stated to be frivolous application, the appellants would be held to have made out a case of waiver to enable them to apply for relief under section 241- **CYRUS INVESTMENTS (P.) LTD V. TATA SONS LTD. [2017] 141 CLA 368 (NCLAT)**

7. OPPRESSION/MISMANAGEMENT

National Company Law Tribunal alone is competent to consider complaints of oppression and mismanagement in the affairs of a company and civil court has no jurisdiction in the matter- **CHIRANJEEVI RATHNAM AND OTHERS V. RAMESH AND ANOTHER. [2018] 142 CLA 258(MADRAS)**

8. COMPROMISE AND ARRANGEMENT

When transferor companies are wholly owned subsidiaries of transferee company and financial position of transferee is highly positive and merger is not affecting rights of applicant shareholders or creditors, allowing transferee company to obtain approval without taking shareholders' approval is permissible under law and, therefore, transferee company need not hold any meeting either with its creditors or members- **HOUSING DEVELOPMENT FINANCE CORPORATION LTD. [2017] 143 SCL 705 (NCLT- MUMBAI)**

9. RECTIFICATION OF REGISTER OF MEMBERS

Where the issue of title of shares is the main issue to be decided in the suit filed by the respondent, he cannot seek rectification of register of members- **N RAMJI V. ASHWATH NARAYAN RAMJI(MADRAS). [2017] 140 CLA 13**

10. RECTIFICATION OF REGISTER OF MEMBERS

While for rectification the exclusive jurisdiction lies with company court, the question of title to the shares is beyond the jurisdiction of company court, and the same will have to be decided by the civil court- **SUNIL SETINV. SYMPHONY LTD. [2017] 140 CLA 15 (NCLT - AHMEDABAD)**

List of Incharge/Executive Officers of WIRC Chapters

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Aurangabad Chapter MCM

Name	Designation	Contact no.	E-mail Id
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CS Pritesh Vijaykumar Gangwal	Secretary	09823888999	cspriteshgangwal@gmail.com
CS Neha Dilip Agrawal	Treasurer	8275678717	csnehaagrawal2493@gmail.com
CS Prem Chand Agrawal	Member	09371109336	cs.pcagrawal@gmail.com
CS Rupesh Kamlakar Khokle	Member	08411079191	rupeshkh@gmail.com
CS Vijay Harikishanji Baheti	Member	09420787288	vijayhbaheti@rediffmail.com
CS Prasad Satish Takalkar	Co-opted Member	9860738853	csprasadtakalkar@gmail.com

Bhayander Chapter MCM

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CS Sunil Agarwal	Treasurer	9920715299	sunilcs_mumbai@rediffmail.com
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CS Manoj Mimani	Member	9920214899	mmimani111@gmail.com
CS Rakesh Gupta	Member	9322154230	gupta2rakesh@rediffmail.com

Bhopal Chapter MCM

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CS Pranay Patel	Treasurer	7869020174	28pranay@gmail.com
CS Devendra Pal Singh Dhaked	Member	9406542127	devendradhaked65@yahoo.co.in
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CS Amit Narendra Kumar Jain	Ex-Officio	9425373231	csamitkjain@gmail.com

Dombivali Chapter MCM

Under constitution

Goa Chapter MCM

Name	Designation	Contact no.	E-mail Id
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Indore Chapter MCM

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CS Pinky Shrivastava	Secretary	9755091991	pinkysatyam@gmail.com
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CS Kamlesh Joshi	Ex-Officio	9425058456	kamleshjoshifcs@gmail.com

Kolhapur Chapter MCM

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CS Patil Snehalata Vinayak (Mrs)	Treasurer	7709625015	cs.svp7@gmail.com
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Nashik Chapter MCM

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Navi Mumbai Chapter MCM

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CS Sanjaya Khare	Secretary	-	sanjay.khare@ncmsl.com
CS Aparna Uparkar	Treasurer	-	acs.aparna@gmail.com
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CS Rahul Deshpande	Member	-	rahul_jan11@rediffmail.com

Pune Chapter MCM

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CS Dixit Shilpa Kedar	Ex-officio	9822394384	shilpa.dixit@mrmcs.com

Raipur Chapter MCM

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CS Nupur Gupte	Secretary	09752092920	nupurkg@gmail.com
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CS Radha Bansal	Co-opted Member	8889944484	csradhabansal@gmail.com

Rajkot Chapter MCM

Name	Designation	Contact no.	E-mail Id
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CS Purvi Dave	Member	9574767754	dave.purvig@gmail.com
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CS Nalin Ganatra	Co-opted Member	9586458882	nalinganatra@rediffmail.com

Surat Chapter MCM

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Thane Chapter MCM

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Chapter Activity Report- January 2018

AHMEDABAD CHAPTER

05 days Skill Development Academic Program	
Date	January 30, 2018 to February 03, 2018
Venue	Ahmedabad Chapter Premises
Topics	5 Days Skill Development Academic Program
Chief Guest / Speakers	Faculty : Mr. Ashish Sharma, Mr. Vivek Nihlani, Ms. Bhoomika Swarnkar, Mr. Felix Fernandes, CS Hema Chattani, Ms. Vinita Raj, Mr. Uday Dholakiya, Advocate Udayan Vyas
Delegates	
– Target / Total capacity	50 Students
– Actual attendance	

Bhayander Chapter

Celebration of 5th Foundation Day of Bhayander Chapter & Full Day Seminar on “Companies (Amendment) Act.2017 and CODS-2018”	
Date	13.01.2018
Venue	GCC Hotel & Club- Mira Road(East), Thane – 401107.
Topics	“Companies (Amendment) Act.2017 and CODS-2018” / Grooming Etiquettes and Interview Skills
Chief Guest / Speakers	CS Narayan Shankar / Dr. Samta Jain
Delegates	No. of Participants - 124
– Target / Total capacity	
– Actual attendance	

INDORE CHAPTER

Study Circle Meeting	
Date	16.01.2018
Venue	ICSI Indore Chapter
Topics	Succession Planning
Chief Guest / Speakers	CS V. N. Dubey

Delegates – Target / Total capacity – Actual attendance	70 37
Other features	Indore Chapter of ICSI organised a Study Circle Meeting on “Succession Planning” at Chapter office. Chapter Chairperson CS Dipika Kataria welcomed all the participants and speaker of the session. The programme is of around two hours. Around 35 plus members have participated in the programme.
05 Days Skill Development Programme	
Date	16 th January, 2018 to 20 th January, 2018
Venue	ICSI Indore Chapter
Topics	Professional Skills, Interpretation Skills, Interpersonal Skills, Communication Skills, Writing Skills, Advocacy Skills
Chief Guest / Speakers	Capt. Jaison Thomas CS Sheetal Verma Advocate Sangeeta Choudhary CS Shubham Jain Dr. Rajesh Mishra CA Pratik Uppal Dr. Shweta Choudhary Ms. Pooja K Biswas Prof. Roopa Vijayvargiya
Delegates – Target / Total capacity – Actual attendance	50 30
Other features	From 16th Jan, 2018 to 20th Jan, 2018 Indore Chapter of ICSI organised 09th Batch of Skill Development Program at Indore Chapter premises. The program was inaugurated on 16th Jan, 2018 and completed on 20th Jan, 2018. During Valedictory Training Completion Certificate were awarded to the participants of the programme.
Republic Day Celebration & Blood Donation Camp	
Date	26.01.2018
Venue	ICSI Indore Chapter
Topics	Republic Day Celebration
Chief Guest / Speakers	CS Anurag Gangrade CS (Dr.) D. K. Jain CS (Dr.) Pinky Shrivastava
Delegates – Target / Total capacity – Actual attendance	70 55
Other features	Republic Day was celebrated by the members and students of The ICSI with great enthusiasm. Chapter Chairman CS Anurag Gangrade welcomed all the members & students present in the gathering. Cultural Activities were held followed by Blood Donation Camp. Around 10 plus members and students have donated blood and became a part of noble cause.

NAGPUR CHAPTER

MEGA GST Awareness Program	
Date	17.01.2018
Venue	Vyas Sabhagruha ,Near Reshimbagh Ground, Nagpur
Topics	GST
Chief Guest / Speakers	1. Sh. Dinesh Bisen (Joint Commissioner GST & Customs) 2. CA Jaideep Shah (Past President, ICAI) 3. Sh. Vinod Gawai (Deputy Commissioner of SGST)
Delegates – Target / Total capacity – Actual attendance	1000+ students
Other features	Nagpur Chapter of ICSI Conducted A MEGA GST Awareness Program at Vyas Sabhagruha ,Near Reshimbagh Ground, Nagpur on 17th January 2018. Nearly 1000+ Students all across Vidarbha Region Participated and made the Event a Grand Success.

PUNE CHAPTER

Study Circle Meeting on “Corporate Governance (ICSI-UDAI Diwas)”	
Date	01.01.2018
Venue	Pune Chapter of ICSI
Topics	Corporate Governance (ICSI-UDAI DIWAS)
Chief Guest / Speakers	CS Vikas Agarwal
Delegates – Target / Total capacity – Actual attendance	- N/A - Attendance - 18
“Orientation Session for Students on occasion of Udai Diwas celebration.”	
Date	01.01.2018
Venue	Pune Chapter of ICSI
Topics	“Orientation Session for Students on occasion of Udai Diwas celebration.”
Chief Guest / Speakers	CS Nivedita Ketkar
Delegates – Target / Total capacity – Actual attendance	- N/A - ATTENDANCE - 16
“Full Day Joint Program with Symbiosis Institute (SIMS) on “ Companies (Amendment) Bill and Corporate Governance	
Date	06.01.2018
Venue	Pune Chapter of ICSI
Topics	“Full Day Joint Program with Symbiosis Institute (SIMS) on “ Companies (Amendment) Bill and Corporate Governance”.

Chief Guest / Speakers	Dr K R Chandratre, Past President ICSI, Mr Pravin Rajani, Director, PWC and Mr P K Rajagopal.
Delegates	
– Target / Total capacity	- N/A
– Actual attendance	- Attendance - 268
Free Lecture on “Basic Accounting”.	
Date	07.01.2018
Venue	Pune Chapter of ICSI
Topics	Free Lecture on “Basic Accounting”
Chief Guest / Speakers	CMA Smita Chapekar
Delegates	
– Target / Total capacity	- N/A
– Actual attendance	- Attendance - 27
President, ICSI meeting with Vice Chancellor, Savitribai Phule Pune University, Pune	
Date	25.01.2018
Venue	Savitribai Phule Pune University, Pune.
Topics	Free Lecture on “Basic Accounting”
Chief Guest / Speakers	CS Makarand M Lele, President ICSI; Prof (Dr) Nitin R Karmalkar, Vice Chancellor, Savitribai Phule Pune University, Pune ; CS Omkar Deosthale, Chairman, Pune chapter; Prof Vaishali Jagtap, Faculty
Delegates	
– Target / Total capacity	- N/A
– Actual attendance	- N/A
Other features	<p>The main discussion points of this meet were:</p> <ol style="list-style-type: none"> 1. Research Collaboration among both parties 2. To organise various Programmes of common interest to develop expertise among Students and faculties 3. Finalisation of Signature Award scheme with Savitribai Phule Pune University 4. Providing strategic and academic support in designing commerce and Law Stream syllabus and professional development courses. 5. Strategic support for training of Commerce and Law Stream Students of University
69th Republic Day Celebration	
Date	26.01.2018
Venue	Pune Chapter of ICSI
Topics	69 th Republic Day Celebration
Chief Guest / Speakers	CS Omkar V Deosthale, Chairman Pune Chapter of ICSI
Delegates	
– Target / Total capacity	- N/A
– Actual attendance	- ATTENDANCE - 23

RAIPUR CHAPTER

S.C.M on Companies Amendment Act -2017	
Date	08 TH JANUARY 2018
Venue	RAIPUR CHAPTER OFFICE
Topics	Companies Amendment Act -2017
Chief Guest / Speakers	CS Yarra Chandra Rao
Delegates	
– Target / Total capacity	41
– Actual attendance	50
ANNUAL SPORTS MEET	
Date	20 Th JANUARY 2018
Venue	SAPRE SHALA,BUDHA PARA,RAIPUR(C.G)
Topics	BADMINTON,CARROM,CHESS,TUG OF WAR, RELAY RACE
Chief Guest / Speakers	
Delegates	
– Target / Total capacity	40
– Actual attendance	24 MEMBERS & 32 STUDETNS
ACADEMIC PROGRAMME	
Date	22ND JANUARY 2018
Venue	RAIPUR CHAPTER OFFICE
Topics	5 Days Skill Development Programme Related Topics As Per The Guideline Of Training Department
Chief Guest / Speakers	VARIOUS FACULTIES
Delegates	
– Target / Total capacity	25
– Actual attendance	13
Other features	5th Batch Of 5 Days Skill Development Program
REPUBLIC DAY CELEBRATION	
Date	26 Th January 2018
Venue	Raipur Chapter Office
Topics	Republic Day Celebration
Chief Guest / Speakers	Managing Committee Members, Other Members & Students
Delegates	
– Target / Total capacity	21 Members & 7 Students
– Actual attendance	
S.C.M ON COMPANIES AMENDMENT ACT 2017	
Date	26 Th JANUARY 2018
Venue	Raipur Chapter Office

Topics	Companies Amendment Act 2017
Chief Guest / Speakers	CS Yarra Chadra Rao
Delegates	
– Target / Total capacity	50
– Actual attendance	21 Members & 7 Students

SURAT CHAPTER

Seminar on Intellectual Property Rights	
Date	20-Jan-2018
Venue	Agrasen Bhavan, City Light, Surat.
Topics	Intellectual Property Rights
Chief Guest / Speakers	CS A. G. Shaikh
Delegates	Capacity: 50 persons
– Target / Total capacity	Actual Attendance: 59 members & 5 students.
– Actual attendance	
Seminar on to commemorate 26th Jan republic Day	
Date	27-Jan-2018
Venue	Surat Chapter office premises
Topics	Blood Donation Camp
Chief Guest / Speakers	Dinners (Members, Students & ICSI-Employees)
Delegates	Blood unit targets: 50
– Target / Total capacity	Units collected: 29
– Actual attendance	
Other features	Persons from outside ICSI also visited & was part of this noble initiative.
Seminar on Skill Development programme	
Date	8 to 12-Jan-2018
Venue	Lords Plaza, Ring Road, Surat.
Topics	Skill Development programme
Chief Guest / Speakers	Various speakers
Delegates	30 students
– Target / Total capacity	
– Actual attendance	

Seminar organized by IMC on The Companies (Amendment) Act 2017 jointly with ICSI-WIRC as the Knowledge Partner





Creating Connections -Building Bridges...Together



Pune Chapter



Pune Chapter



Surat Chapter



Surat Chapter



Meeting of President ICSI, CS Makarand M. Lele with Prof (Dr) Nitin R Karmalkar, Vice Chancellor, Savitribai Phule Pune University, Pune

Creating Connections -Building Bridges...Together

भारतीय कंपनी सचिव संस्थान आईसीएसआई के नए पदाधिकारियों ने कार्यभार संभाला

नई दिल्ली, जेएनएन। प्रेक्टिसिंग कंपनी सचिव हितेश कोठारी वर्ष 2018 के लिए पश्चिम भारतीय क्षेत्रीय परिषद् (वेस्टर्न इंडिया रीजनल काँसिल) के अध्यक्ष के रूप में चुने गए हैं। श्री कोठारी दूसरी बार क्षेत्रीय परिषद् के सदस्य चुने गए और 2011 से कई समितियों के अध्यक्ष के रूप में कार्यरत रहे हैं, वह 2016 में परिषद् के कोषाध्यक्ष पद पर भी रह चुके हैं। नई काँसिल ने शुक्रवार को अपना कार्यभार संभाल लिया। उपाध्यक्ष पद पर इंदौर के सीएस आशीष करोडिया, सचिव पद पर अहमदाबाद के सीएस चेतन पटेल और कोषाध्यक्ष पद पर मुंबई के सीएस प्रवीण सोनी ने पदभार संभाला है।



हितेश कोठारी वेस्टर्न इंडिया रीजनल काँसिल के अध्यक्ष चुने गए

भोपाल, 19 जनवरी। भारतीय कंपनी सचिव संस्थान की (आईसीएसआई) के पश्चिम भारतीय क्षेत्रीय परिषद् (वेस्टर्न इंडिया रीजनल काँसिल) के नए पदाधिकारियों ने 19 जनवरी, 2018 से कार्यभार सम्हाला।



प्रेक्टिसिंग कंपनी सचिव हितेश कोठारी वर्ष 2018 के लिए पश्चिम भारतीय क्षेत्रीय परिषद् (वेस्टर्न इंडिया रीजनल काँसिल) के अध्यक्ष के रूप में चुने गए हैं। कोठारी दूसरी बार क्षेत्रीय परिषद् के सदस्य चुने गए और

FREE PRESS

CS Anurag Gangrade elected chairman of ICSI city chapter

CS Anurag Gangrade elected vice chairman of Western India Regional Council

OUR STAFF REPORTER

CS Anurag Gangrade was elected as chairman of ICSI India Chapter for the year 2018 here on Thursday last.

CS Anurag Gangrade was elected as chairman of ICSI India Chapter for the year 2018 here on Thursday last. He is also currently working as company secretary in the city.



Anurag Gangrade

After the election as chairman, CS Gangrade stated that his first priority is to provide quality programme to members and students and also to open new areas for students of local backgrounds. He added that focus on infrastructure of local chapter and to implement ICSI governance practice in departments of India. CS Anurag Gangrade is a member of ICSI Council since 2011. He is also a member of ICSI Council since 2011. He is also a member of ICSI Council since 2011. He is also a member of ICSI Council since 2011.

ICSI is a premier professional body set up under Company Secretaries Act, 1936, for the regulation and development of the profession of company secretaries in India. India Chapter is one of biggest chapter of ICSI having more than 6000 members and 60 members in India.

IN BRIEF

KEITHAN ELECTED CHAIRMAN



Keithan has been elected as chairman of ICSI India Chapter for the year 2018 here on Thursday last. He is also currently working as company secretary in the city.

ICSI is a premier professional body set up under Company Secretaries Act, 1936, for the regulation and development of the profession of company secretaries in India. India Chapter is one of biggest chapter of ICSI having more than 6000 members and 60 members in India.

हितेश कोठारी ...

के रूप में कार्यरत रहे हैं, वह 2016 में परिषद् के कोषाध्यक्ष पद पर भी रह चुके हैं। सीएस हितेश कोठारी ने अपने सन्देश में बताया कि सीएस स्टूडेंट्स को एजाम में सफल होने के लिए सही गाइडेंस एवं रिसोर्सेज मिलना जरूरी है। जिसके लिए वह बेहतर इंफ्रास्ट्रक्चर प्रोवाइड करवाने की कोशिश करेंगे। उन्होंने अभिनव दृष्टिकोण और सूचना प्रौद्योगिकी के अधिकतम उपयोग के माध्यम से सीएस सदस्यों एवं छात्रों के लिए ज्यादा से ज्ञानवर्धक सेमिनार/कांफ्रेंस ट्रेनिंग्स, कैंपस प्लेसमेंट, जीएसटी में अवसरों के साथ लक्ष्यों को प्राप्त करने के लिए सदस्यों और छात्रों के बीच बेहतर नेटवर्किंग बनाने पर ध्यान केंद्रित किया जाएगा। उपाध्यक्ष पद पर इंदौर के सीएस आशीष करोडिया, सचिव पद पर अहमदाबाद के सीएस चेतन पटेल और कोषाध्यक्ष पद पर मुंबई के सीएस प्रवीण सोनी ने पदभार संभाला है। वेस्टर्न इंडिया रीजनल काँसिल भारतीय कंपनी सचिव संस्थान की चार काँसिल में से एक है एवं इसका मुख्यालय मुंबई में है, जिसके अंतर्गत देश के पांच राज्यों मध्यप्रदेश, महाराष्ट्र, गुजरात, उत्तीसगढ़, गोवा एवं दो केंद्र शासित प्रदेश दमन एवं दीव एवं दादर नगर हवेली में 17 चेंटर स्थित है। वर्तमान में परिषद् के अंतर्गत 75000 से अधिक छात्र एवं 15000 से अधिक

OFFICER CRIPPLES GARY EVEN DEATH OF BRIBING

Officer Cringles Gary even death of bribing. The officer has been found guilty of bribing and has been sentenced to 10 years in prison. The officer has been found guilty of bribing and has been sentenced to 10 years in prison.

AMY BISHI HELD ON OF MARRIAGE FALS CLAIMS

Amy Bishi held on of marriage fals claims. The woman has been found guilty of making false claims and has been sentenced to 5 years in prison. The woman has been found guilty of making false claims and has been sentenced to 5 years in prison.

INDIA KHAMBOU GOVERNMENT HELD AT ON WIND

India Khambou government held at on wind. The government has been found guilty of mismanagement and has been sentenced to 10 years in prison. The government has been found guilty of mismanagement and has been sentenced to 10 years in prison.

“CS Benevolent Fund is a collective effort towards extending the much needed financial support to the community of Company Secretaries in times of distress Let us lend support and join for noble cause.”

COMPANY SECRETARIES BENEVOLENT FUND



Saathi Haath Badhana साथी हाथ बढ़ाना

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CSBF

- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription/Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of over 12,000

Eligibility

A member of the Institute of Company Secretaries of India is eligible for the membership of the CSBF.

How to join

- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹10,000/-.
- One can submit Form A and also the subscription amount of ₹10,000/- ONLINE through Institute's web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹10,000/- drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Offices of the Institute/ Regional Offices/Chapters.

Benefits

- ₹7,50,000 in the event of death of a member under the age of 60 years
- Upto ₹3,00,000 in the event of death of a member above the age of 60 years
- Upto ₹40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

Contact

For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.011-45341088.

For more details please visit www.icsi.edu/csbf



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