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THE JOURNAL FOR CORPORATE PROFESSIONALS

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Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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01 >> Meeting of ICSI delegation with Hon'ble Minister for Finance, Corporate Affairs and Defence – CS R. Sridharan (President, The ICSI) presenting a bouquet on behalf of ICSI delegation to Arun Jaitley (Hon'ble Minister for Finance, Corporate Affairs and Defence).

03 >> Meeting of ICSI delegation with Member of Parliament – Group Photo – Standing from Left: CS Vikas Y Khare, CS R. Sridharan, Dr. Veerappa Moily (Member of Parliament), CS Sanjay Grover, CS M. S. Sahoo and CS Atul H Mehta.

05 >> ICSI 9th International Conference on Convergence of Company Law and Corporate Governance-Recent Trends at Grand Seasons Hotel, Kuala Lumpur (Malaysia) held on 6.7. 2014. Group photo of participants.

02 >> Meeting of ICSI delegation with Hon'ble Minister for Finance, Corporate Affairs and Defence – Sitting from Left (clockwise): Arun Jaitley (Hon'ble Minister for Finance, Corporate Affairs and Defence), CS M. S. Sahoo, CS Vikas Y Khare, CS R. Sridharan and CS Sanjay Grover.

04 >> ICSI –CCGRT –Launch of Full Time Integrated Company Secretary Course by Chief Guest Uday S Kotak (EY World Entrepreneur of the year, 2014).

06 >> NIRC – National Seminar on Companies Act, 2013 & Rules made thereunder & its Implementation – Sitting from Left: CS Deepak Kukreja, CS Atul Mittal, CS Alok Tandon (ARoC, MCA), CS Sanjay Grover, CS Alka Kapoor and CS Anju Tiwari.



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07 >> SIRC – 39th Regional Conference of Company Secretaries on Versatility Meets the Paradigm Change - CS & The Act - Release of Conference Souvenir -Standing from Left: CS Ramasubramaniam C, CS M S Sahoo, CS Dr. Baiju Ramachandran, B K Bansal (RD, SR, MCA, Chennai), CS R. Sridharan, Gopalkrishnan Iyer (Senior General Manager, BSE, Mumbai), CS Gopal Krishna Hegde and CS C Sudhir Babu.

09 >> ICSI launch of Optional Study Material Scheme.

11 >> ICSI launch of soft skill programme.

08 >> EIRC – Bhubaneswar Chapter–Full Day Workshop on Companies Act, 2013 - Ansuman Das (CMD, NALCO) addressing . Others sitting on the dais from Left: CS Priyadarshi Nayak, CS Sunita Mohanty, CS Arabinda Acharya, CS Anil Murarka and CS Debadatta Mohapatra.

10 >> ICSI launch of E-book scheme.

12 >> WIRC – Indore Chapter – Full Day Seminar on Practical Analysis and Compliances of the Companies Act, 2013 - CS Ashish Karodia addressing. Others sitting on the dais from Left: CS L. N. Joshi, J. N. Tikku (RoC, MCA), CS Ramaswami Kalidas, CS Dr. D. K. Jain and CS Kamlesh Joshi.





Articles

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One Person Company – Need For Granting Exemptions and Removing Limitations

P-12

Dr. K. S. Ravichandran, FCS

The Companies Act, 2013 enables the incorporation of a single member company as a private company. Such companies are known as One Person Companies. Underneath their names, the words "One Person Company" [OPC] must be written. It is compulsory for the single subscriber to the memorandum who will be the single member of the OPC, to mention the name of another natural person who would become the single member of the OPC, if the original subscriber suffers death or become incapable of contracting. In the event of death or incapacity to contract of the only member (subscriber) of the OPC, the person nominated for that purpose by the subscriber alone will be the person entitled to the shares and he would alone be the single member of the OPC. A body corporate cannot become a subscriber member of an OPC at all. The rules too make this legal position clear.

One Person Companies: Indian Law in a Global Perspective

P-18

Vinod Kothari & Nivedita Shankar

One person companies, known by various names such as single shareholder companies, sole member companies, or, *societas unius personae*, have been there in corporate laws of different countries for several years now. The objectives include encouraging small businesses to corporatize, and to recognise the fact that wholly-owning holding companies are a reality of the world of business. In this article, we examine the provisions of the Companies Act 2013 with those in different international jurisdictions, to draw some very apparent conclusions. The Indian law limits OPCs to resident individuals, but more importantly, sets a limit to turnover. Even if the limit on paid up capital was to be admitted as a signal of small resources, the very purpose of OPC is leverage the capital with limited liability, and therefore, even if the aggregate long term resources are turned over twice, the entity's turnover will cross the limit of Rs 2 crores as prescribed. A small business moving into the corporate form will not have the option of moving back into the unincorporated entity form once again. We argue that this will be a strong de-motivator for entrepreneurs to corporatize. We also contend that given the necessary insistence on a named individual behind the company, the very veil of separation between the company and the person seems too thin to sustain.

An Overview Of The Law And Practice Pertaining To One Person Company (OPC) Under The Companies Act, 2013

P-23

Dr. V. Balachandran & Sudheendhra Putty

The concept of One Person Company (OPC) is a novel and new one ushered in by the Companies Act, 2013. The OPC regime is a good augury for small and upcoming entrepreneurs - facilitate as it does their entry into the world of business. With the benefit of the 'cloak of legal existence' and fewer compliance, procedural and administrative hassles, OPC could well be a boon for startups and small time businessmen who have the wherewithal in terms of ideas and skills. This article provides an overview of the law and practice pertaining to OPCs and analyses the relative advantages and disadvantages. It also highlights a few shortcomings and makes recommendations about concomitant changes in other laws, including tax laws. Finally, it also outlines the advisory role of the company secretary in the new regime. What will be outcome of this fledgling business model – that is the million pound question!!

Why a One Person Company?

P-28

T. Ramappa

It is not clear as to the need for providing for a one person company. A company by all accounts is an incorporated legal entity. After incorporation, except for section

8 companies, a company would carry on business activity, for which it will meet its capital requirements from the public and from financial institutions. The whole history of the development of trade and commerce is through incorporated companies. The provision for nomination by the subscriber to the memorandum of a one person company and the provision that the nominee may withdraw his consent to the nomination add to uncertainty and the one person company would not attract other business entities to deal with it. It is difficult to conceive of a lender willing to lend money for large commercial operations to a single member, private company.

One Person Company – Boon in Pursuit of Professional Excellence

P-32

Delep Goswami & Anirrud Goswami

For the corporate professionals rendering numerous professional services to the companies, the newly introduced format in the Companies Act, 2013 viz. 'One Person Company' (OPC) as a legal entity is a boon. It is expected that since OPC will ensure continuity and perpetual succession and will restrict the liabilities of the director of the OPC limited to the extent of the paid up value of the shares held by the director, there will be a surge in the formation of OPC by the corporate professionals. There are more than one million companies in India, and it is felt that opening up of the structure of OPC for the 'Practising Company Secretaries' will also boost professional development and excellence. However, the practising company secretaries are governed by the provisions of the Company Secretaries Act, 1980, and the current provisions of the said Act do not permit a practising company secretary to render services through the medium of an incorporated legal entity. It is therefore suggested that keeping in view the fact that the Company Secretaries Act is 24 years old and in the meanwhile, there has been a sea-change in global economic scenario where the professionals are sought after for due diligence and legal and secretarial audit, there is a need for re-look and re-examine the provisions of the Company Secretaries Act, 1980 to enable the practising company secretaries to form OPC and render services earmarked in the Companies Act, 2013. Of course, how the PCS will continue to be amenable to the jurisdiction of the Institute of Company Secretaries of India and how the ethical professional standards can be maintained need to be deliberated upon and then only the Company Secretaries Act, 1980 be changed to allow PCS to form OPC for rendering statutorily prescribed services. The article deals with this subject.

One Person Company – A Legal Fiction

P-36

T.V. Narayanaswamy

In view of the fact that the OPC can command only limited resources, it is not suitable for business entities – particularly medium and large scale. This form of business organisation is suitable for professionals for pursuing their profession. This will benefit them for it affords them security in the form of limited liability. If otherwise, the professional would be liable to an unlimited extent and even their personal assets would be in jeopardy.

One Person Company (OPC) – New Opportunity to Start a Venture

P-39

Akarshika Goel

The new concept of 'One Person Company' (OPC) has been introduced by the Companies Act, 2013. OPC provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. OPC provides benefit of both forms of business - Proprietorship and Company. OPC is like One Man Army. The compliance burden is very less and the liability of the members very limited is an added advantage. OPC is expected to benefit people who are into self-employment and many small scale sectors. It is a remarkable feature of the Companies Act, 2013. OPC should boost the confidence of small entrepreneurs. To sum up, One Person Company-One Director-One Shareholder.



One Person Company - A Mixed Blessing



P-44

Dr. K. C. Goel

Doing business under the One Person Company form of business ownership is a mixed blessing to the single entrepreneur. While it avoids frittering away his resources, time and energy by conferring on him certain exemptions/privileges on procedural matters but at the same time results in higher tax liability. It remains to be seen whether the benefits outweigh the cost. The article deals with several aspects of the concept of OPC such as Incorporation of an OPC, Privileges available to an OPC, additional compliances to be made, conversion of OPC into a Private or Public Limited Company and Conversion of Private Company Into OPC, benefits and disadvantages of an OPC form of business ownership. Tax implications to an OPC have also been discussed. The coming years will reveal the popularity or otherwise of an OPC compared with Sole Proprietorship, Private Limited Company and Partnership.

One Person Company

Prerequisite, exemptions and restrictions



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Narendra Singh

The introduction of concept of OPC in the Companies Act, 2013 ('the Act') is a pioneering concept. This new form of legal vehicle gives surreal opportunity to first generation Indian entrepreneur to form an OPC instead of carrying the business in Sole-Proprietor form. The said concept is bound to be successful as it will give an OPC the benefits of private limited company e.g., access to bank loan, limited liability with relaxed compliance requirements under the Act. Nevertheless, OPC would require assistance of expert to ensure the applicable compliances envisaged in the Act and Rules made thereunder by MCA from time to time. Further, it would be apt if there would have been separate chapter in the Act relating to OPC for ease of reference and compliance.

A Concise Analysis of Section 185 of Companies Act 2013



P-53

Dr K R Chandratte

In the case of private companies section 185 is acting as an unduly harsh and impractical statutory prohibition and would have the effect of stifling business growth in the country since it is unavoidable that a company funds a new project undertaken by an independent company incorporated as an associate company and banks are not ready to provide funds unless a corporate guarantee or security is provided by a parent or group company. The misgivings of interpretation of section 185 and that of section 186 have all been explained in this article.

Performance of the Board, its Committees and Directors - An Appraisal & a Critique



P-59

J. Krishnamurthy

Every listed company and other public company with paid-up share capital of Rs. 25 crore or more shall include in its Board's Report (to be attached to Financial Statement for the year ended 31st March 2014) a statement indicating the manner in which a formal evaluation has been made by the Board of its own performance during the previous FY 2013-14 and that of its committees and individual directors. The exercise prescribed by Section 134 of the Companies Act 2013 is aimed at recognizing the strengths and addressing the weaknesses of the Board, its committees and the individual directors so as to improve the overall corporate governance which in turn, it is to be hoped, will assure the Stakeholders and the Regulators alike that corporate failures like those of the recent past will be prevented or minimized. With this step, India Inc. may be said to have moved closer to global standards of corporate governance, a hall-mark of India's vision to be among the Developed Nations of the World by 2020..



Legal World

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▶ LW: 65:08:2014 A company could be wound up without publishing the winding up petition.[Del-DB] ▶ LW: 66:08:2014 Since the consequences of opting out from the Consortium Agreement were factored in by the participating secured creditors, this Court is of the opinion that neither the BIFR nor the AAIIR could have compelled the petitioner Bank to continue in the DRS.[Del-DB] ▶ LW: 67:08:2014 CCI penalises Adani Gas Ltd and passes cease and desist order ▶ LW: 68:08:2014 CCI finds builder not abusing its dominant position and refuses to direct the builder to modify the one sided sale agreement ▶ LW: 69:08:2014 Director of a company cannot be prosecuted without prosecuting the offending company.[SC] ▶ LW: 70:08:2014 We also approve the pithy observations of the RPF Commissioner, Jalpaiguri in the subject Order that failure on the part of the employers to make remittances of accumulations and contributions, undermines the objectives and purposes of the statute.[SC] ▶ LW: 71:08:2014 The doctrine of proportionality cannot be used by the Labour Court to supplant its view over that of the Disciplinary Authority unless it finds that the punitive measures are grossly excessive and for good reasons.[Del] ▶ LW: 72:08:2014 There is no iota of doubt that the bonus as was being paid by the respondent cannot be included in the definition of 'basic wages' as defined under the Act. [Del] ▶ LW: 73:08:2014 Transactions of purchase and sale between the assessee and Mitsubishi Corporation are done on a principal to principal basis as such there is no infirmity with the reasoning of the ITAT that such transactions are akin to trading and cannot be considered activities of a commission agent or a broker. [Del]



From the Government

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▶ The Companies (Management and Administration) Second Amendment Rules, 2014 ▶ The Companies (Specification of Definitions Details) Amendment Rules, 2014. ▶ The Companies (Miscellaneous) Amendment Rules, 2014 ▶ The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014 ▶ Clarification on Transitional Period For Resolutions Passed Under The Companies Act, 1956. ▶ Extension of Validity of Reserved Names - Reg. ▶ Clarifications on matters relating Related Party Transactions. ▶ Registration of Names of The Companies Shall Be in Consonance With The Provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 -Reg. ▶ Clarification on Form MGT-14 Through STP mode. ▶ Clarification Regarding Filing of Form DPT4 Under Companies Act, 2013 ▶ Clarification with Regard to Use of The Words "Commodity Exchange" in A Company- Reg. ▶ Clarification on Section 58A(9) and Section 58AA of the Companies Act, 1955 -Reg. ▶ Class of companies for the purposes of the second proviso to of section 203(1) Companies Act, 2013 ▶ CThe Companies (Removal of Difficulties) Sixth Order, 2014 ▶ The Companies (Removal of Difficulties) Fifth Order, 2014 ▶ The Companies (Removal of Difficulties) Fourth Order, 2014 ▶ Inter-Governmental Agreement with United States of America under Foreign Accounts Tax Compliance Act - Registration ▶ Dispatch of physical Statements to BOs having Zero Balance and Nil Transactions ▶ Delivery Instruction Slip (DIS) Issuance and Processing ▶ Clarification and extension of deadline with respect to circular on 'Guidelines on disclosures, reporting and clarifications under AIF Regulations' ▶ Change in Government Debt Investment Limits ▶ Clarification on position limits of domestic institutional investors for currency derivatives contracts



Other Highlights

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▶ Certificate of Practice Issued / Cancelled
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▶ News From the Regions
▶ News From the ICSI - CCGRT
▶ Company Secretaries Benevolent Fund
▶ Our Members



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5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
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“Education is the most powerful weapon which you can use to change the world”.

-Nelson Mandela



Dear Professional Colleagues,

While writing this column, three themes struck to my mind for establishing the brand CS. These are: *professional institution, professional excellence and professional responsibility*. In one way or the other, the three are interrelated. For creating world class *CS brand*, it is imperative that we charter on the path of creating a world class institution for developing and regulating the profession. If we look at the rating of some of the world class universities, they continue to occupy top slots over several years, no matter whether it is economic slump or boom. Some of the common elements of these institutions to stay ahead are: the best faculty, the best students, the best pedagogy, the educational freedom, focus on research, large endowments and healthy budgets. These institutions connect their pedagogy, teaching and research to the real world situation and thus they stay closer to ground - companies, firms, trusts, governments, NGOs, or institutions. Most of these institutions adopt experiential learning, whereby students get exposed to live environment and they apply their learning of underlining theoretical concepts and thereby gain wonderful insights. The Greek philosopher Aristotle advocated experiential learning: ***“For the things we have to learn before we can do them, we learn by doing them”***. In the process, the creative impulses of the students are brought to the fore and end result is development of *integrated personality*. Coming back to from where I started, the seeds for creating unique world CS brand need to be sown at the students stage itself and this can be done only by a world class professional Institute.

The Institute has been leveraging technology to provide better and efficient services to the students. The details of such e-services are published elsewhere in this issue. I am happy to inform that the Institute has made the study material available freely on its website in PDF as well as e-books format. We have introduced computer based examination for foundation level and open book examination for specialised subjects at professional level. Keeping the preference of different students in view, the Institute offers various modes of learning. It used to offer only to distance learning mode initially. As an optional measure, it now offers oral coaching all over the country to prepare students for examinations. It has recently started a full time three year residential course as yet another optional measure for students to prepare for the examinations. It launched this course on 12th July, 2014 at CCGRT, Mumbai in the hands of the EY World Entrepreneur of the year 2014, Shri Uday S. Kotak, Executive Vice Chairman and Managing Director, Kotak Mahindra Bank. It is heartening to note what Shri Kotak stated while launching the course: ***“... and I have no doubt that there is one institution which has to be the pillar of maximum governance; it is the Institute of Company Secretaries of India and each of you students, once pass out, you will be carrying the torch of ensuring that India moves to maximum governance and without that “ache din nahi aa sakte”***. Thirty-one students, selected through an online written examination, interview and group discussion from all over the country have taken admission to the course. Shri Ashishkumar



From the President

Chauhan, Managing Director & CEO, BSE Ltd. was the Guest of Honour at this historic occasion.

Professional excellence is a scaffold on which CS Brand is to be built. When we talk of *professional excellence*, it is not restricted to technical skills alone; it goes much beyond. Communicating effectively, honouring commitments, recognizing and stretching professional limits, affirming fellow professionals, mentoring, engaging with the community, professional ethics, work-life balance, and celebration are some of the key elements of *professional excellence*. Continuous validation is vital, so as to keep the bar of professional excellence higher. Therefore, the Institute has embarked upon a couple of years ago 'Peer Review Programme' for members in practice. Capacity building through various professional development programmes is also one such exercise in this direction. When we talk of professional excellence, I am often reminded of Ronnie Oldham, who observed: "**Excellence is the result of caring more than others think is wise, risking more than others think is safe, dreaming more than others think is practical and expecting more than others think is possible.**" Another dimension of professional excellence is contribution to making of professionals for future. Our profession offers a unique opportunity to members to train the students over a long term internship. This is not just an extension of guru-shishya tradition; it is mutually beneficial to both the member and the student.

When we talk of excellence, it cannot be divorced from professional responsibility. Over the years, the dimensions of *professional responsibility* have undergone tremendous change both in its content and form. Contemporary discourses on *professional responsibility* aligns it with the evolving legislative ethos, governance framework, stakeholders' activism, environmental sustainability, ethical paradigm, and professional standards both within the country and at international level. Apart from these, cognitive factors such as attitude, approach, thinking, intuition, mind set, and mood also play an equally vital role in discharge of *professional responsibility*. More importantly, the **professional responsibility constantly undergoes change as the profession progresses and the accountability broadens. The issues arising from these need careful consideration, enlightened dialogue and collective wisdom among the members of the profession to reconfigure the dimensions of the professional responsibility so as to continue to enjoy the trust of the society and the public.**

This August is packed with prestigious events. ICSI Capital Markets Programme on the theme "*Capital Market-The Growth Engine*" in collaboration with BSE has been scheduled on 4th August 2014. Shri U. K. Sinha, Chairman, SEBI and Shri Ashishkumar Chauhan, MD & CEO, BSE Limited, would be the Chief Guest and Guest of Honour respectively at this programme.

As regards the much awaited event of the year, 42nd National Convention is scheduled on 21-22-23 August 2014, updates

of which are being sent to the members on regular basis. The Convention would be inaugurated by Shri Rajnath Singh, Hon'ble Home Minister. We have enlisted the support of eminent professionals, regulators and practitioners to handle the technical sessions and I am sure at this Convention, you will have a number of takeaways. I invite the members to register in large numbers as delegates to make this Convention a grand success.

Corporate Governance is no more a buzz word and limited to academic discussion and arm chair analysis. It has been amply demonstrated in recent times that the companies, who strive for corporate governance, have more effective, more competitive, more creative, more sustainable and more resilient. In fact, they get much better valuation in market. Our members are playing a critical role in compliances management, which forms the core of corporate governance. Having bracketed our members as KMP in the Companies Act, 2013, all the more, it is necessary for us to adequately display our resoluteness in upholding the tenets of corporate governance.

For over the 12 years, every year, the Institute is presenting prestigious Corporate Governance Awards to recognise and encourage governance ideals, norms and practices amongst the corporates. The Institute's mission and vision statements echo our commitment for promotion of corporate governance. The awardees are selected through a very rigorous comprehensive evaluation process undertaken by an eminent Jury. The questionnaires and evaluation methodologies are developed through an open, transparent and consultative process. I am happy to inform that Shri Arun Jaitley, Hon'ble Finance Minister has kindly consented to be the Chief Guest at the Presentation Ceremony of the 13th ICSI National Awards for Excellence to be held on August 24, 2014 at Kolkata.

I am happy to inform that myself along with a delegation of members attended the 9th International Professional Development Conference, which was held in collaboration with Malaysian Institute of Chartered Secretaries and Administrators [MAICSA] on the theme "*Convergence of Company Law and Corporate Governance – Recent Trends*" on 6th July, 2014 at KL, Malaysia. National Foundation for Corporate Governance [NFCG] was supporting organisation and Corporate Secretaries International Association (CSIA) was the Knowledge Partner. During the Conference, Mr. Heng Chiang Pooh, Honorary Secretary, MAICSA made a presentation on Malaysian Companies Bill, 2013, which was quite interesting. Deliberations at the Conference were highly enriching. I hope that this conference will further consolidate networking between the members of both the Institutes. Not restricting to the organizational success of the programme, it has also opened up new vistas for the international level cooperation between ICSI and MAICSA. We are exploring the possibility how well both ICSI and MAICSA can cooperate in the areas of mutual interest.

Robust growth of a profession rests on the standards assiduously





maintained by its members. As far as our profession is concerned the best practices were studied and codified as secretarial standards from time to time over the years, which culminated in making the SS-1 and SS-2 mandatory under the Companies Act, 2013. The Secretarial Standards Board (SSB) has finalised the Secretarial Standards on Board Meetings (SS1) and Secretarial Standards on General Meetings (SS2). I am sure the same will be notified shortly. These standards are guides to discharge our professional responsibility on the required scale.

The four regional councils were constituted in 1971 with a view to carry on the task of the building up of the profession. I happened to participate at the foundation day celebrations organized by NIRC on 25th July, 2014 and by SIRC on 31st July, 2014. At both the events, I recalled the dedicated efforts put in by my predecessors, senior members of this profession and the Team-ICSI in yester years against all odds, when the profession was at nascent stage. I also underlined the onerous responsibilities we have to shoulder under the Companies Act 2013, which gives us a distinctive status as key managerial personnel. It is not enough to display our professional competence, equally it is important to scrupulously adhere to professional ethics and follow the required standards and practices. In the process, we have to keep intact the trust reposed on us by the regulators and other stakeholders. We all are indebted to this noble profession and it would be more appropriate to recall the words of Francis Bacon: **"I hold every man a debtor to his profession"**.

I participated at the SIRC Regional Conference held on 18-19 July, 2014 at Alleppey, Kerala. I also participated, on 20th July, 2014, at a three-day programme on "Structuring and Managing Companies under the Companies Act, 2013" organised by CCGRT at Pune. At these programmes I outlined various professional development initiatives undertaken by the Institute and also emphasized the need for upgrading professional skills on a continuous basis. Subsequently, I visited Nagpur on 22nd July and Jaipur on 26th July 2014. At these places, I participated in various programmes organised by the Chapter and interacted with the members and shared common growth strategies of the Institute. It is a matter of pride for me to mention that the gathering at Nagpur on 22nd July, 2014 had participation of an overwhelming 300 students.

As you know, section 149(4) of the Companies Act, 2013 requires every listed public company to have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Section 150 (1) of the Act specifies that an independent director may be selected from a databank of eligible and willing persons maintained by anybody, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank. I am happy to inform you that our Institute in association with ICAI and ICoAI is launching a database of independent directors, the details of which will be provided to you soon. I strongly believe that you are the most

suitable professional for the positions of independent directors. I urge all of you to join the database and also prepare yourself to play the role of independent directors effectively.

The Companies Act, 2013, being a new law, has some teething problems. The Institute has been taking up the problems encountered by our members and others with the Government. We find that Government has been very responsive and prompt to address the difficulties. I am confident that all difficulties can be removed by continuous interaction with the Government. But we need to have patience as it takes time for the system to recognise a problem and take remedial measures. Just to give a sense of responsiveness of the Government to the difficulties, let me reproduce a reply to an unstarred question on 22nd July, 2014 in Rajya Sabha by Hon'ble Minister of State for Corporate Affairs, Smt. Nirmala Sitharaman:

"A little more than a half of the provisions of Companies Act, 2013 (Act) came into force from 1st April 2014. Following this, several communications were received in the Ministry of Corporate Affairs from bodies such as industry associations, chambers of commerce and professional institutes drawing attention to certain practical difficulties concerning these provisions or seeking clarifications about the same. There was also an interactive session on these issues with the stakeholders on 21st June 2014. Pursuant to this Government have issued suitable circulars, statutory orders and amendments in the Rules to provide transitional time, remove doubts or practical difficulties. Amendments in the Act will be considered if measures outlined above prove inadequate..."

The August 15 is an important day for every Indian. Apart from celebrating this day joyfully, as professionals we are also required to re-dedicate ourselves to nation building exercise. With all resoluteness and not to succumb to pressures and unlawful privileges, let us discharge our professional responsibilities in the desired manner answerable to our conscience. Recalling Mahatma Gandhiji would be more appropriate here: **"Manliness consists not in bluff, bravado or loneliness. It consists in daring to do the right thing and facing consequences whether it is in matters social, political or other. It consists in deeds not words."** To do a right thing consistently, we should always be guided by the steel frame of will, mind, intellect and clear conscience. I am again tempted to recall the prophetic words of Mahatmaji: **"Strength does not come from physical capacity. It comes from an indomitable will."**

My advance Independence Day greetings to all of you!
With kind regards,

Chennai
31st July, 2014

Yours sincerely,

(CS R. SRIDHARAN)
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One Person Company – Need For Granting Exemptions and Removing Limitations

- Though the introduction of the concept of one person company by the Companies Act, 2013 is indeed welcome, the law needs to be amended to make it popular and workable. This article brings to focus some such aspects and how to address them.

INTRODUCTION

In an interview of a candidate who was freshly qualified and brimming with confidence, the question was whether one person company [OPC] could have a Board of Directors with a strength of 15 directors. The candidate spontaneously answered that it is not possible because an OPC can have only one director. Despite the Act defining the expression “One Person Company”, the candidate candidly admitted that an OPC can have any number of members not exceeding 200 because it is a private company but it can have only one director. There are a number of questions in relation to an OPC. It is a new concept to India. It is part of comprehensive company law unlike a limited liability partnership [LLP] that has everything in a single exclusive law and without any different types of LLPs.

OPCs AND CORPORATE SOCIAL RESPONSIBILITY

In the era of corporate social responsibility, the head of an enterprise came up and asked if he could have an OPC registered under Section 8 of the Companies Act, 2013 [the Act]. I said that an OPC can never be able to get itself registered under Section 8 of

the Act, not only because a single person cannot be an association, whether for profit or not, but also because it is specifically prohibited under the Rules. I added that an OPC cannot even be part of the club of companies that are required to contribute a small portion of their profits towards their corporate social responsibility. Quite amused, the business head asked me in such a case how could a single person form a company though there would only be a single owner of all the shares of an OPC. The law that creates limited liability by a legal fiction can also add any number of such imaginary things such as the creation of a new form of organization styled as an OPC constituted by a single shareholder.





- One of positive features of an OPC is that there must be a person named by the single member even at the time of incorporation itself as to who would be entitled to hold his shares in the OPC in the event of the death or incapacity of the single member and such nominee should also be an Indian citizen.

LIMITS ON CAPITAL AND TURNOVER

However he would not leave me without my answering why do I say that an OPC can never be part of the CSR club even though it is a limited liability company incorporated under the Act. I readily answered that an OPC can never have a paid up capital beyond Rs.50 Lakhs and its average annual turnover in a period of three years could never cross Rs.200 Lakhs. Being a shrewd businessman, he would immediately ask me what if he could keep a higher amount of capital by issuing shares at a premium. I had no answer except to tell that it is technically possible though the concept of premium of shares was introduced to off set the accretion to share price due to the timing difference between any two investors bringing capital to the same firm. Further he asked what would happen if a windfall happens and an OPC achieves a turnover in the very first year itself which is of the order of Rs.1000 Lakhs. I had to quote the rules and say that by operation of law an OPC cannot remain as such a company and it must convert itself into a private company or public company if it crosses the threshold. But I could not answer as precisely as I could for his previous question when he said that this automatic provision cannot really affect an OPC achieving a huge turnover in its very first year itself. In fact, the Rules state that an OPC cannot voluntarily convert into any other type of company during the first two years of its incorporation unless its capital or turnover increases beyond the threshold limit during the relevant period. If one has to see if there is any increase in the capital or turnover during a relevant period, it must first be checked only after the expiry of relevant period which refers to a period of three consecutive financial years.

Moreover he was lamenting that for a paid up capital of Rs.50 Lakhs, a turnover of Rs.200 Lakhs is really not a match and no businessman would put so much of capital only to achieve so little a turnover as turnover indicates gross receipts. It should have been not less than Rs.500 Lakhs so as to match and operate as a challenge to the entrepreneur to achieve a turnover of ten times the capital employed.

SINGLE PERSON - SINGLE OPC

OPCs are not meant for those who would like to double. When a

person wanted to have two OPCs, I had to offer him only a sorry as it was further surprising to note that the rules would say that a single person can form only one OPC. He cannot have different OPCs for different lines of business. If he wants to run a hotel as well as a boutique, he cannot have two OPCs for each of those two lines. He can however be satisfied by naming his hotel, a boutique hotel!

OPCS AND FOREIGN DIRECT INVESTMENT [FDI]

When a foreign national wanted to invest in India, he was happy to hear that the new company law in India has created an avenue for OPCs to be formed and registered because he need not look out for any other person to join him in a private or public company. He was aware that FDI is not possible under the automatic route in terms of the FDI policy of the Government of India unless the recipient is a company. His happiness was short lived when I explained that the single shareholder must not only be an Indian Citizen but also be a resident in India. In order to be resident in India, he must clock not less than 182 days in a year in India during the immediately preceding calendar year. When he was asking as long as a resident director is available, why such restrictive rule has been inserted, I was as clueless as he was as Rules had brought in several conditions, restrictions and limitations which are not even remotely indicated in the substantive law.

OPC AND NOMINEE

One of the positive features of an OPC is that there must be a person named by the single member even at the time of incorporation itself as to who would be entitled to hold his shares in the OPC in the event of the death or incapacity of the single member and such nominee should also be an Indian citizen. But the foreigner had a problem as he cannot make his wife a nominee as she does not qualify to be an Indian Citizen and she would not be eligible to be treated as a resident in India. I had to tell him to find a suitable person who





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is a resident in India. He was asking can there be a nominee to a nominee because naming any other person as a nominee would make his wife surely angry. There was apparently no reason why the nominee should also be subject to such conditions when in the case of a private company such restrictions are not there for nominees. I had to clarify that neither of his children too, irrespective of their citizenship, could be appointed as his nominee because a minor is not entitled to become the nominee of the single member of an OPC.

OPC CANNOT BE THE WHOLLY OWNED SUBSIDIARY

Another question which the chairman of a reputed group had asked was why I say that he cannot get his wholly owned subsidiaries converted into OPCs. In fact he was showing me records of forming an OPC in a free trade zone in Sharjah in which his main Indian company was the single shareholder. As in an OPC, only an individual, natural person, could be the single member, the question of any “body corporate” or other form of organizations being the single member does not arise. Ideally the Act should have paved way for formation of wholly owned subsidiaries as OPCs. In such companies only for the purpose of being a private or public company nominees of the holding company are added as ostensible owners. In addition, in order to be useful, the rules relating to maximum capital and turnover must also be relaxed. He was wondering why there should be such limitations so long as an OPC complies with all applicable law.

OPC CANNOT UNDERTAKE NBFC ACTIVITY

A local money lender wanted to know if he can take up his lending and investment activities through an OPC, I had to show him the Rules that block his thoughts on that line as an OPC cannot take up the activities of a non-banking finance companies [NBFC].

LEVEL OF COMPLIANCES

Everyone who was consulting me was concerned with the level of compliances that an OPC must ensure. When I have explained the requirements, the opinion was that a sole proprietor would not mind limited liability as a cost rather than having to reckon with so many provisions.

GENERAL COMPLIANCES

- Have a registered office. Furnish in the prescribed manner by one person company to the Registrar of Companies.
- Mention the words “One Person Company” in brackets below the name of such company, wherever its name is printed / affixed / engraved.
- Paint Name Board with the name and address of the One

Person Company outside the Registered Office and also its offices including in the local language.

- Ensure that its name, address of registered office, Corporate Identity Number, Telephone Number, Fax Number, email ID, Website ID are printed in all its business letters, billheads, letter papers and in all its notices and other official publications.
- Print its name on hundies, promissory notes, bills of exchange and such other documents as may be prescribed.
- Have a common seal with its name engraved therein.
- Publish also the authorised, subscribed and paid up capital, if any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company.

BOARD MEETINGS AND DIRECTORS

1. Where there is only one director of an OPC, in the case of anything requiring Board Resolution, it shall be sufficient if the resolution is prepared, entered in the minutes book dated and signed and such date shall be deemed to be the date of the meeting of the Board.
2. Chapter XII with respect to meeting of Board will also apply, subject to what has been stated in Section 122 of the Act.
3. It is important to note that OPC, Small Company and Dormant Company shall be deemed to have complied with Section 173 relating to meeting of Board of Directors, if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days. It is really not possible to understand why the gap should not be less than 90 days.
4. Once a board meeting is called and held, it seems the law does not want the OPC to have another board meeting within the next 90 days and holding a board meeting within the next 90 days after a board meeting seems to be an offence.
5. Chapter XI with respect to Appointment and qualifications of directors will apply *mutatis mutandis*.
6. There must be at least 1 director. He should be a resident in India for not less than 182 days in the preceding calendar year.
7. Provisions relating to appointment of Woman Director, Independent Director and small share holder director do not apply.
8. Section 161 relating to appointment of additional director, alternate director will apply.
9. Section 164 applies to One Person Company as it pertains to disqualification of directors and number of directorship specified under section 165 will include directorships of One Person Company also.



➤ Like any other company, even an OPC must file its annual return with the Registrar of Companies. As an OPC need not call and hold an AGM, there seems to be lacuna with respect to the time within which the annual return must be filed with the Registrar of Companies. However there is indeed a weird provision that says, the annual return of an OPC could be signed by its company secretary.

10. Section 166 regarding Duties of Directors and Section 167 on vacation of office of directors and the other provisions of Chapter XI will apply.
11. Chapter XIII on Appointment of Managerial Personnel can apply. The question of overall maximum remuneration which applies to only Public Company under Section 197 of the Act would not apply to One Person Company as it is a private company.
12. Provisions relating to mandatory need for appointing Key Managerial Personnel including the need for appointment of a company secretary or the need for a mandatory Secretarial Audit will not apply.
13. The need to constitute the audit committee or any other committees and vigil mechanism will not apply.
14. Provisions relating to contracts and disclosures of interests will apply.

CONTRACTS

In case of contract with OPC, Section 193 says :

“Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the Company who is also the director of the Company, the company shall, unless the contract is in writing, ensure that the terms of the contract of offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of directors of the company held next after entering into contract”.

First of all, the contract must be between the OPC and its single member who must also be its director. Secondly if the contract is not in writing, the terms of the contract must be duly recorded in the minutes of the Board Meeting held next after the date of entering into the contract. However these provisions do not apply

if the contract is entered into in the ordinary course of its business. From this provision itself it can be understood that there was no intention to introduce any limit on the turnover of an OPC because if it had been known to the legislature beforehand, such complicated provisions would not have been brought into the statute. Section 193 is an exclusive law crafted for OPCs alone. Incidentally this provision makes it clear that an OPC could be a company limited by guarantee.

SHARE TRANSFERS

If the single member wants to transfer his entire shares in the company to another individual, all the provisions with respect to transfer of shares will also apply. In case the transfer is not approved by the Board, the transferee has the statutory right to apply for a rectification of register of members of the OPC. Change in nominee may also arise. In some cases, the nominee may be the transferee.

GENERAL MEETINGS

1. Provisions relating to the need for holding Annual General Meetings do not apply to OPCs.
2. Sections 100 to 111 shall not apply to OPCs. As a result provisions such as approaching the NCTL for calling a General Meeting, a shareholder submitting a requisition to call an Extra-Ordinary General Meeting, notice of General Meetings, statement annexed to notice of General Meeting, quorum for meetings, chairman of meetings, proxies, restrictions on voting rights, method of voting demand for poll, postal ballot, circulation of members' resolution do not apply.
3. It may be noted that the provisions such as ordinary and special resolution and resolution passed at an adjourned general meeting do not apply. As there is only a single member, all resolutions are subject to the consent of the single member. Though under Section 106(3) of the Act, on a poll a member need not cast all his votes in the same way. In an OPC such questions do not arise even if assuming there is a poll. The single member cannot create an absurdity of sorts by casting some of his votes in one way and remaining votes the other way.
4. Section 117 of the Companies Act, 2013 requires every resolution in respect of which explanatory statement should be given and every special resolution and every resolution agreed to by all the members of the Company are all required to be filed with the Registrar of Companies.
5. For instance, if the OPC wants to change its name or objects, a special resolution is necessary and under Section 114 of the Act, the intention to pass the resolution as a special resolution must be specifically stated in the notice of the meeting.





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6. Sub-section (8) of Section 13 that prohibits a company from changing its objects if it has unutilized money out of the money raised from public, will not apply to an OPC because the question of raising money from public through prospectus by an OPC does not arise at all.
 7. Section 122 of the Act states that for the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of an OPC, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under Section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.
 8. Section 122 of the Act further states that notwithstanding anything in this Act, where there is only one director on the Board of Directors of an OPC, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such OPC, the resolution by such director is entered in the minutes-book required to be maintained under Section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.
- will apply.
 7. Section 65 can apply. Section 66 with respect to reduction of share capital will apply.
 8. Section 67, 68, 69, 70 do not seem to have any big advantage though nothing stops the One Person Company to buy back its own shares.
 9. Section 71 with respect to issue of debentures may not be of any big use in view of the CAP on the turnover.
 10. Section 72 does not apply because it is compulsory for the single share holder to appoint nominee.
 11. Sections 73 may apply as an OPC can accept deposits from its single shareholder.
 12. An OPC may accept loans from its directors subject to necessary declaration.
 13. Section 74 will not apply as there was no OPC under the earlier Act and consequently Section 75 of the Act too will not apply.
 14. Section 76 does not apply to an OPC as it applies only to public companies.
 15. Chapter VI – Registration of charges and Chapter VII - relating to Management and administration will apply.
 16. With respect to Chapter VIII – Declaration and payment of dividend will apply.
 17. Chapter IX – Accounts of Companies will apply.
 18. Chapter X – Audit and Auditors will apply. It is very clear that the provision for rotation of auditors will not apply. Cash flow statement is not required to be given under section 129 for One Person Company. In the case of One Person Company, the Boards' Report means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report. Section 148 relating to cost audit will not apply.
 19. Chapter XIV – Inspection, inquiry and investigation, they may apply.
 20. Chapter XV – Compromises, arrangements and amalgamations will apply, more particularly the simple procedure under Section 233 can be applied.
 21. Chapter XVI – relating to prevention of oppression and mismanagement will not apply. Section 245 relating to Class action will not apply.
 22. Chapter XVII – Registered Valuers may apply with respect to valuation.

ANNUAL RETURN

Like any other company, even an OPC must file its annual return with the Registrar of Companies. As an OPC need not call and hold an AGM, there seems to be lacuna with respect to the time within which the annual return must be filed with the Registrar of Companies. However there is indeed a weird provision that says, the annual return of an OPC could be signed by its company secretary. Only if there is no company secretary, it should be signed by its director.

Applicability of certain other provisions and chapters of the Act:

1. Sections 23 to 41 relating to public offer and Section 42 with respect to private placement would not apply.
2. Section 48 with respect to variation of share holders rights, calls on shares and such provisions do not apply. Being a One Person Company, there is no meaning in issuing shares at premium or at discount and the question of sweat equity shares.
3. Section 61 is also possible with respect to increase in the share capital etc.
4. Section 62 with respect to rights issue and further issue of shares will not apply.
5. Section 63 with respect to bonus shares will apply.
6. Section 64 with respect to filing of notice to be given to ROC





23. Chapter XVIII - Removal of names of Companies from the Register of Companies will apply with respect to defunct One Person Company.
24. Chapter XIX – Revival and Rehabilitation of sick companies do not have any value in the case of a One Person Company which is going to be a very small company.
25. Chapter XX – with respect to winding up will apply between Section 270 to Section 365.
26. Chapter XXI will not apply with respect to Companies Authorised to Register under this Act including provisions of Part II of Chapter XXI relating to winding up of unregistered companies.
27. Chapter XXII – Companies Incorporated outside India will not apply.
28. Chapter XXIII – with respect to Government Companies may not apply even though if Government of India or any State Government wants to float a company and hold its capital in the name of the President or Governor, as the case may be in view of the fact that the President or Governor will be holding the shares for the beneficial interests of the Government concerned. In the case of an OPC, only a natural person can be the single member. Moreover the size of capital and turnover prescribed for OPCs is very small, smaller than the maximum limits for a small company.
29. Chapter XXIV – relating to Registration offices and fees and Chapter XXV – with respect to companies to furnish information or statistics will apply.
30. Chapter XXVI – relating to Nidhi's will not apply because in order to be a Nidhi company, the number of members of a Nidhi cannot be less than 7.
31. Chapter XXVII – relating to National Company Law Tribunal and Appellate Tribunal will apply.
32. Section 407 to Section 434 may apply to One Person Company literally only with respect to winding up of One Person Company.
33. Chapter XXVIII – with respect to Special Courts will apply.
34. Chapter XXIX – Miscellaneous will apply.
- Limited by guarantee and not having a share capital will apply.
- c. Table – C - Memorandum of Association of a Company Limited by guarantee and having a share capital will apply.
- d. Table – D - Memorandum of Association of an unlimited Company and not having share capital will apply.
- e. Table – E - Memorandum of Association of an unlimited company and having share capital will apply.
- f. Table – F – Articles of Association of a company limited by shares will apply.
- g. Table – G – Articles of Association of a company limited by guarantee and having a share capital will apply.
- h. Table – H – Articles of Association of a company limited by guarantee and not having share capital will apply.
- i. Table – I – Articles of association of an unlimited company and having a share capital will apply.
- j. Table – J – Articles of association of an unlimited Company and not having share capital will apply.
36. Schedule II – Useful lives to compute depreciation will apply.
37. Schedule III – General Instructions for preparation of Balance sheet and Statement of Profit and Loss of a company will apply.
38. Schedule IV – Code for Independent Directors will not apply.
39. Schedule V – Conditions to be fulfilled for the appointment of a Managing or Whole time Director or a manager without the approval of the Central Government will apply.
40. Schedule VI – Infrastructural Projects may apply.
41. Schedule VII – Corporate Social Responsibility will not apply.

APPLICABILITY OF SCHEDULES:

35. Schedule I:
 - a. Table – A – Memorandum of Association of a Company Limited by shares will apply.
 - b. Table – B - Memorandum of Association of a Company

CONCLUSION

The specific form for incorporation of an OPC contains reference to such terms as industrial activity and entrenchment all of which would be useful only if there is scope of increasing the size of business. There are so many limitations and restrictions which could be removed or relaxed in order to make OPCs popular. Section 462 should also be applied to grant specific exemptions to OPCs from several provisions. It may be noted that the Secretarial Standards Board is bringing out a guidance note on OPCs. A lot of provisions could have been made inapplicable such as Debentures, Charges, inspection, investigation, and winding up. It would have been possible to do away with the concept of forming several types of OPCs by limiting the facility to an OPC limited by shares.

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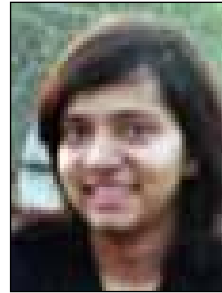




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One Person Companies: Indian Law in a Global Perspective

- While juxtaposing the Indian concept of OPCs with that in several other jurisdictions, particularly in the context of the recently proposed European Union directive to Member States, it is noted that the Indian OPC suffers from several limitations as compared to the global counterpart. Given the acclaimed purpose of the law namely to encourage entrepreneurs to corporatize, the question as to whether there is enough regulatory liberty in the law to promote corporatisation has been examined.

“To unleash the entrepreneurial talent of the people in the information and technology driven environment, law should recognize One Person Company (OPC)”

Irani Committee Report, para 3.2 of Chapter I, May 31, 2005

The concept of One Person Companies ('OPC') has been introduced in India by the Companies Act, 2013 and it is hyped as one of the major highlights of the new law.. The concept may be new to India but not elsewhere. Called by various names, single shareholder companies have been a common vehicle in corporate laws of many countries. Hence, the introduction of OPC in Indian corporate law was only a step towards harmonisation of the Indian Companies Act with the rest of the world. Having been enforced effective from 1st April 2014, there has been a significant pick up in the level of activity on incorporation of OPCs in India. According to data available on MCA's website, in the month of June, 2014, 68 OPCs had been incorporated. This is more than 7 times the number of OPCs incorporated in the month of May, 2014. This enthusiastic response is despite several limitations contained in the law on the concept. In this article,





we juxtapose the Indian concept of OPCs with that in several other jurisdictions, particularly in the context of the recently proposed European Union directive to Member States. We note that the Indian OPC suffers from several limitations as compared to the global counterpart, and given the acclaimed purpose of the law, viz., to encourage entrepreneurs to corporatize, we discuss whether there is enough regulatory liberty in the law to promote corporatisation.

CONCEPT OF OPCs AROUND THE WORLD

According to data available¹, Liechtenstein was the country to have acknowledged the legal position of OPCs by statute law and this concept has been replicated in other countries as well. United Kingdom, Singapore, United States of America, China are some such countries which have by statute allowed incorporation of OPCs. In most such countries the rationale behind allowing incorporation of OPCs was to ensure that sole proprietorship firms get a corporate cloak.

The European Union recently considered a proposal for a directive for member States to permit single shareholder companies². The discussion paper attached thereto gives details of single shareholder company legislation in 28 European countries. The concept of single shareholder companies exists in corporate laws of many countries in different forms. Prior to the 2014 proposals, there has been a 1989 Directive of the European Union (See Directive no 89/667/EEC³) pursuant to which most European countries permitted single shareholder companies.

Hereunder we discuss the position of single shareholder companies in some significant jurisdictions.

UNITED KINGDOM

United Kingdom enacted the Companies (Single-Member Private Limited Companies) Regulations, 1992 which came into effect from July 14, 1992. Under this law, a single member company would be a private limited company, whether limited by shares or guarantee. These Regulations required such companies to also maintain a minute book and hold meetings with the singular member being reckoned as quorum. Amendments were made to the Companies Act, 1985 and Insolvency Act, 1986 to incorporate provisions pertaining to single member companies. Further amendments to the concept of incorporation of single member companies were incorporated in the Companies Act, 2006 in keeping with the Twelfth Council Company Law Directive⁴ on September 16, 2009. It is with this that single member companies in United Kingdom could be incorporated as a public company also.

Section 123 of the UK Act, 2006 provides for formation of single member companies. A multi person company may reduce the number of members to one, by filing a statement with the Registrar. Thus, there is a full fungibility between multi-person company and a single-member company. Other than a filing requirement, there are no special limitations or disabilities for single member companies.

EU PROPOSAL OF 2014

On April 9, 2014, the European Commission had put forward a proposal for a directive for establishment of European Private Company Statute. With this Directive the aim was to ask Member States to make available a national company law form for single-member private limited liability companies. This initiative is in line with the recommendations of Report of the Reflection Group on the Future of EU Company Law issued on April 5, 2011⁵. Some of the proposed changes are uniform template for articles of association, minimum capital requirement of € 1. Apart from these, the single-member private limited liability companies shall be known by the common name *SocietasUnius Personae*. According to the press release of European Commission, European small and medium-sized enterprises (SMEs) were the backbone of the EU economy since 20.7 million SMEs produce 58% of EU GDP and account for 67% of all jobs in the private sector. Since, such SMEs could not set up subsidiaries in other Member States due to legal, administrative or linguistic constraints, the need was felt to harmonise laws on single member companies in all the member states of EU⁶. Further, the framework of a single member company is also such that issues which usually plague any company like minority protection, conflicts of interest and conflict resolution procedures including buy-outs, squeeze outs and exit rights would not arise at all. Thus, the need to initiate such a directive was similar to the need expressed in JJ Irani Committee's report.

Although, the move to adopt a common statute across Member States is novel, yet critics feel that this will act as an encouragement to set up 'letterbox companies'. Letterbox companies are companies which are set up in tax haven countries. Since, under the common statute, there would be a liberty to set up single member private limited liability companies in any Member State and the process of registration of such companies is also proposed to be simplified, the urgent need for EU is to solve the problem of letter box companies established for the purpose of fiscal optimisation⁷.

SINGAPORE

In Singapore, the concept of one-person companies was introduced by the Companies (Amendment) Act, 2004. Section 19 of the Companies Act permits any person to form a company. The shareholder may be a natural or a corporate person. However,

1 Taken from 'A Comparative Study of Legal Framework for Single Member Company in European Union and China' by Beihui Miao published on August 21, 2012

2 Read the proposal at : http://ec.europa.eu/internal_market/company/modern/index_en.htm

3 Read the directive at : <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31989L0667>

4 Read the Directive at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:258:0020:0025:EN:PDF>

5 Read the entire report at : http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf

6 Extracts taken from http://europa.eu/rapid/press-release_MEMO-14-274_en.htm

7 Extract taken from : http://www.etuc.org/documents/etuc-position-single-member-private-limited-liability-companies#.U8jMb_mSzX0



Article

ONE PERSON COMPANIES: INDIAN LAW IN A GLOBAL PERSPECTIVE

➤ Although, the intention behind introducing OPCs in India is novel, yet in their attempt to harmonise the concept with that in other countries, what has been presented to us is a watered down version of the same. Going by the figures provided earlier, it is clear that the concept has caught on like a forest fire in India, however, the real question remains if doing business in India in corporate form has actually been made any easier than before.

section 145 of the Companies Act requires a director of all companies to be a national of Singapore.

HONG KONG

Amendments were introduced by the Hong Kong Companies (Amendment) Ordinance 2003 to enable formation of single member companies. These amendments largely follow the UK law which merely requires filing of a notice on the registrar that the number of members has been reduced to one.

DELAWARE

In Delaware, the Limited Liability Company Act allows the incorporation of a company with a single member. Under this Act, the member can be a natural person or a corporation or even a limited liability partnership. What is also notable is that the member need not be a citizen of Delaware. Also, the single member itself can execute the Limited Liability Company Agreement and its enforceability shall not be questioned on the grounds that there is only one party to the agreement.

One of the most striking features of a single member limited liability company is that it can be regarded as a disregarded entity for the purpose of federal taxes. According to the Internal Revenue Code, if a single-member LLC does not elect to be treated as a corporation, the LLC is a “disregarded entity,” and the LLC’s activities should be reflected on its owner’s federal tax return.

CHINA

In China, the concept of one-person limited liability companies was introduced in the year 2006. The major highlights are:

1. Such companies can be set up with a minimum of RMB 100, 000 Yuan and the shareholder has to pay the entire amount.

2. The single member can either be a natural person or a legal person.
3. Any individual cannot set up more than one one-person limited liability company.
4. The formulation of the articles of association is at the complete discretion of the shareholder
5. The requirement to hold a general meeting has been dispensed with. However, the member has to ensure minuting for any decisions taken as listed down in Article 38 which pertains to ‘decisions which can be taken in a general meeting’, proper minutes is maintained.
6. The concept of a separate legal entity also comes with a twist wherein if the single member is not able to distinguish the property of the company as different from that of his, then he shall bear joint liabilities of debt of the company.

THE INDIAN SCENARIO

The JJ Irani Committee Report had suggested a few characteristics of OPCs in India. As is typical with the general drafting style of law makers in case of Companies Act, 2013, a major part of the law applicable to OPCs have been introduced by way of rules. The provisions applicable to OPCs have been majorly drawn from the provisions applicable to OPCs in other parts of the world.

Although, the intention behind introducing OPCs in India is novel, yet in their attempt to harmonise the concept with that in other countries, what has been presented to us is a watered down version of the same. Going by the figures provided earlier, it is clear that the concept has caught on like a forest fire in India, however, the real question remains if doing business in India in corporate form has actually been made any easier than before.

NATURAL PERSON AS MEMBER OF OPC

This is probably one of the major setbacks for those desirous of setting up OPCs. With the introduction of single member companies in Singapore, United Kingdom, etc., these became a favoured vehicle for doing business. In particular, wholly owned subsidiary companies are formed as sole member companies. Of international jurisdictions, it is difficult to find a parallel in any other country which has limited single member companies. It is not that the Indian law does not recognise wholly-owned subsidiaries – these have been recognised for decades, with nominees introduced just to raise the number of members to the legal minimum.

It was expected that the concept of OPCs would provide a statutory recognition to wholly-owned subsidiaries. The text of the Act, 2013 in sec. 2 (62) defines an OPC as a company with one person as a member. The word “person”, as commonly understood under General Clauses Act, 1897 would include an artificial person.





➤ If the admitted purpose of permitting OPCs was to encourage small businesses to corporatize, is it logical to expect a small business to remain small, if it has chosen to adopt the OPC vehicle? Sure enough, any entrepreneur choosing the OPC form will like to leverage on his own capital and borrow thereon, taking advantage of limited liability.

However, the Rules inserted a restriction that the “person” behind an OPC could only be a natural person.

It is difficult to understand what potential abuse of the device of OPC was in the mind of the rule maker, so as to impose the restriction that only a natural person can own an OPC. If the potential abuse of land-ceiling law was an issue, even currently, shell companies are being formed to bifurcate land holdings in the names of various companies. There is no “lifting or piercing of corporate veil” there so as to look through the facade of the company and recognise the entity of the shareholder.

Being limited only to natural persons, the existing practice of having wholly-owned subsidiary companies with nominee holdings will still continue. Hence, Indian law will be far different from global law in permitting companies to have a single shareholder.

Further, the Rules also do not allow a natural person to incorporate more than one OPC, leading to a forced lifting or piercing of corporate veil there. That is to say, the law necessarily recognises the name of the single member behind the company, whose name is entered in the Memorandum of Association itself. The ‘one-person-one-company’ rule equates the persona of the natural person to that of the company, since having formed one company, the natural person is deprived of his ability to form another. The key feature of corporate law is the artificial separation of entities,

which seems to have been disregarded in this case. It will not be surprising, if at some point of time, courts tear through the corporate veil and even deprive the company of the benefit of its limited liability, treating the company as nothing but the extended personality of the natural person behind it.

Further, not only does the person have to be a citizen of India, he also has to be resident of India.

PRINCIPLE OF PERPETUAL SUCCESSION CONTINUES

The Rules have however ensured that the principle of perpetual succession remains intact in case of OPCs by requiring the subscriber to nominate a person who shall become the member of the OPC in case of the subscriber’s death. In fact such a lacuna exists in Alabama LLC Act which provides that the affairs of the LLC can be wound up if there is no existing member unless the holders of all the financial rights in the limited liability company agree in writing, within 90 days after the cessation of membership of the last member, to continue the legal existence and business of the limited liability company and to appoint one or more new members. It is due to the oversight regarding the limited time available to avoid the dissolution of OPC if the single member dies that the Alabama court had to order the company to be wound up in the case of *L.B. Whitfield, III Family LLC v. Whitfield*⁸.

NARROW LIMIT ON TURNOVER TO STOP BUSINESSES FROM GROWING BIG

Even if one were to understand the natural person rule as limiting the concept of OPCs to encouraging small businesses to corporatise, the limit of Rs. 2.00 crores set for turnover is a strong deterrent. Turnover is different for different businesses – for a consulting firm, reaching a turnover of Rs. 2.00 crores is a dream-come-true, but for a trader working on small margins, a Rs. 2.00 crore turnover may mean nothing. A share trader may be reaching this turnover in a day!

If the admitted purpose of permitting OPCs was to encourage small businesses to corporatize, is it logical to expect a small business to remain small, if it has chosen to adopt the OPC vehicle? Sure enough, any entrepreneur choosing the OPC form will like to leverage on his own capital and borrow thereon, taking advantage of limited liability. Assuming an entrepreneur starts with a capital of Rs. 50.00 lacs (maximum permitted by the Rules), and borrows equal to that, he has a resource base of Rs. 1.00 crore. Even if he turns this over twice in a year, he would have hit the turnover limit. It will be really interesting to see if businesses can actually afford to have this limitation on turnover, and still feel the motive to corporatize.

⁸ Read the entire text of the ruling at: <http://www.llclawmonitor.com/uploads/file/Whitfield%20case.pdf>





FATE OF COMPANIES INCORPORATED UNDER ACT, 1956

The Companies Act, 2013 has brought within itself an element of positivity by allowing existing private companies to be converted into OPCs on reaching a certain threshold. This should come as good news for such companies which are looking to move towards a less regimented way of doing business. Although, the Act, 2013 does not talk about conversion of a public company into an OPC, there is seemingly nothing which stops a public company from converting into an OPC by way of application of section 18 of Act, 2013.

EXEMPTIONS FROM CERTAIN PROVISIONS

The Act has ensured minimum regularisation of OPCs by exempting OPCs from a number of provisions. Notably, the provisions relating to convening of annual general meeting have been exempted with the only requirement being to maintain minutes. Similar provisions exist for board meeting also where the OPC has only one director.

CAN SOLE SHAREHOLDER COMPANIES BENEFIT FROM LIMITED LIABILITY?

The age-old company in *Solomon v. Solomon and Company* was, virtually, a single shareholder company. The issue, discussed decades back, was whether the company is distinct from its shareholder? The question quite importantly arises to consider limited liability – an individual has unlimited liability for what he does or owes, but a company is liable only to lose its capital at the maximum. Thus, can single shareholders claim that their companies are different from their own personalities, to have the benefit of limited liability?

The concept of 'piercing the corporate veil' is an oft discussed topic wherein the general guiding principle is that the corporate cloak of any company can be only pierced if it has been used to induce fraud. This was held in the recent case of *Prest v. Petrodel Resources Limited and others*⁹ wherein Lord Sumption stated that corporate veil can be pierced only to prevent the abuse of corporate legal personality. Although, in an OPC, the member is the sole controller, yet the fact that any OPC is a separate legal entity cannot be undermined or forgotten.

In the USA, there have been several rulings where lifting or piercing of corporate veil has been attempted in case of LLCs, which are essentially single shareholder companies. It was held by the Kentucky Supreme Court in the case of *Turner v. Andrew*¹⁰ that:

"Moreover, an LLC is not a legal coat that one slips on to protect

the owner from liability but then discards or ignores altogether when it is time to pursue a damage claim."

Similar view was also expressed in the Twelfth Council Company Law Directive which stated that the very purpose behind setting up a single member company was to allow genuine individual entrepreneur to limit his liability. However, this power should not be misused as a vehicle to do fraud.

Thus, any assumption that the member can be taken to be a proper party to a legal proceeding by or against the company solely by reason of being a member was not profound. Hence, the concept of the sole member being an 'alter ego' of the OPC cannot be the sole reason to pierce the corporate veil in case of OPCs. This was discussed by the Court of Appeals in the case of *Hildreth v. Tidewater*¹¹ wherein it indicated that the alter ego rule should be applied only with great caution and in exceptional circumstances, and that the "evasion of a legal obligation" grounds will not apply if the party seeking to pierce the corporate veil has dealt with the corporation in the course of its business on a corporate basis. The concept of piercing the corporate veil was further discussed in the case of *Serio v. Baystate Props., LLC*¹² wherein the Maryland Court of Special Appeals refused to pierce the corporate veil of Serio Investments, LLC since there was adequate evidence to show that it had entered into a contract with Baystate Properties, LLC in its own capacity and there was no evidence of co-mingling of its funds with that of Serio, the sole member of Serio Investments, LLC or that an attempt to evade Serio Investments' legal obligations or of disregard of the entity status of Serio Investments.

CONCLUSION

Looking at the sudden rush to incorporate OPCs in India, critics may pass off the current trend as a fad. In fact in European Commissions which as discussed above is proposing to set up a separate regime for single member limited liability private companies, the figures are dismally low. In the UK, for instance, there are around 1.2 million single member companies out of around 2.5 million of all limited liability companies¹³. In India, although corporates may not have enough reason to cheer, individuals have been presented with another vehicle to do business. Further, mere incorporation of an OPC is not sufficient to do business. It remains to be seen if banks will also be comfortable providing finance. However, this does not mean that the doors are closed for companies to incorporate OPCs in India. As has been stated in the Standing Parliamentary Committee Report of 2009 that should the concept of OPC grow in India, further modifications may be considered to the existing provisions pertaining to membership of OPCs. We strongly recommend doing away with the turnover limit, and the restriction that only a natural person can be the member of an OPCs. **CS**

9 Read the entire text of the ruling at : <http://www.bailii.org/uk/cases/UKSC/2013/34.html>

10 Read the entire text of the ruling at: <http://www.lllawmonitor.com/uploads/file/Kentucky%202011-SC-000614-DG.pdf>

11 838 A.2d 1204 Md. 2006

12 Read the entire text of the ruling at: <http://mdcourts.gov/opinions/cosa/2013/1441s09.pdf>

13 Taken from : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014SC0124>

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An Overview Of The Law And Practice Pertaining To One Person Company (OPC) Under The Companies Act, 2013

- The immediate requirement from the Government is to suitably devise a tax structure that complements the OPC entity. Concomitant changes to other laws also need to be brought in. How successful the OPC regime will be is indeed a million dollar question.

INTRODUCTION

Among the several new concepts in the Companies Act, 2013 (hereinafter referred to as the Act), a notable one is that of One Person Company (OPC), a concept that has its origins in the United Kingdom, as do all other good things in our country. The genesis of OPC in India can be traced to 2004-05 when the expert committee on company law reform chaired by Dr. JJ Irani first mooted the concept of OPC in the Indian context. The Committee succinctly and aptly summarized the need for OPC and at para 6 of its report, it observed thus: "With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the

Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters."





Article

AN OVERVIEW OF THE LAW AND PRACTICE PERTAINING TO ONE PERSON COMPANY (OPC) UNDER THE COMPANIES ACT, 2013

➤ In keeping with the cardinal principles of 'separate legal entity' and 'perpetual succession' that are germane to the corporate legislation inherited from the United Kingdom, the Act has mandated the requirement of nomination in case of OPC.

The Institute of Company Secretaries of India (ICSI) in its backgrounder on the Act has buttressed the need for OPCs. It states:

"OPCs are imperative because they would give entrepreneurial capabilities of people an outlet for participation in economic activity and such economic activity may take place through the creation of an economic person in the form of a company."

Quite appropriately, the then Minister of Corporate Affairs remarked at a media interaction that the OPC concept was quite revolutionary and would give the individual entrepreneurs all the benefits of a company, which means they would get credit, bank loans, access to market, limited liability, and legal protection that are available to the companies. He added that rather than the middlemen conjuring profits, the OPC will have direct access to the market and the wholesale retailers. He was sanguine that the new concept would also boost the confidence of small entrepreneurs.

PROVISIONS IN THE ACT AND ANALYSIS

As per section 2 (62) of the Act, OPC is defined as a company which has only one person as a member.

Section 3 (1) (c) of the Act enables the formation of a new entity as an OPC. It reads as follows:

"3. (1) A company may be formed for any lawful purpose by—

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent

in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum"

In many ways, this section is the heart and soul of OPC in the Act.

OPC - ELIGIBILITY CRITERIA/ REQUIREMENTS

Rule 3 (1) of the Companies (Incorporation) Rules, 2014 provides that only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate an OPC. Further, it is also provided that only such a person can be the nominee of the sole member of the OPC. The Rule also provides for some restrictions on OPC:

- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company
- Where a natural person, being member in an OPC becomes a member in another such Company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria specified in the Rules within a period of one hundred and eighty days
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest
- OPC cannot be incorporated or converted into a company under section 8 of the Act
- OPC cannot carry on Non-Banking Financial Investment activities including investment in securities of any bodies corporate

LIABILITY OF THE MEMBER OF THE OPC

Section 3 (2) of the Act provides that an OPC formed under the Act may be either a company limited by shares, or limited by guarantee or an unlimited company.

The liability of the member of the OPC may be either limited or unlimited and the same shall be stated appropriately in the Memorandum of Association of the OPC. In the case of an OPC having a share capital, the Memorandum of Association shall





state the amount of share capital with which the company is to be registered and the division thereof into shares of fixed amount and the number of shares which the subscriber to the memorandum agrees to take which shall not be less than one share. It is also provided that the memorandum of association of the OPC shall indicate the name of the person who, in the event of death of the subscriber, shall become the member of the company. The restrictions contained in section 4 (2) of the Act with regard to names of company shall also apply to OPC, mutatis mutandis, as do the provisions pertaining to application for reservation of name by the OPC and the eventual reservation of name by the Registrar of Companies concerned. The memorandum of association of the OPC, depending on whether it is limited, and if so, by shares or by guarantee, or unlimited, shall be in the formats prescribed under Table A, B, C, D and E, in Schedule I as may be applicable to such OPC.

REQUIREMENT OF NOMINATION AND RELATED MATTERS

In keeping with the cardinal principles of 'separate legal entity' and 'perpetual succession' that are germane to the corporate legislation inherited from the United Kingdom, the Act has mandated the requirement of nomination in case of OPC. It has been provided that in the memorandum of the OPC, the subscriber shall nominate and indicate the name of the person, with his prior written consent in Form INC3, who shall, in the event of death or other contractual incapacity, become the member of the company to accept all the obligations and responsibilities of the OPC. The OPC shall in turn, file the same with the Registrar of Companies in Form INC2 along with the Memorandum and Articles of Association at the time of incorporation.

Further, such other person who has been so nominated and has consented to accept the obligation of the OPC in the event of death or other contractual incapacity of the subscriber of the OPC may withdraw his consent by giving a notice in writing to the sole member and the OPC. The sole member shall be bound to nominate another person as the nominee with a period of 15 days of the receipt of the notice of withdrawal as aforesaid and shall send an intimation in writing to the company along with the written consent of such other person so nominated in Form INC3.

The OPC shall, within 30 days of receipt of the notice of withdrawal of consent, file with the Registrar of Companies, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form INC 4. The written consent in Form INC3 shall also be attached to the Form INC4.

It has also been provided that the subscriber or sole member of the OPC may also at any time change the name of the person nominated by him by giving a suitable notice to the Registrar of Companies. The sole member must intimate the change of nominee in writing to the OPC and nominate any other person in

his place. Such intimation must also be in Form INC3.

Where the sole member of the OPC ceases to be a member of the OPC either by death or other contractual incapacity, then the nominee becomes the member of the OPC. The nominee shall within 15 days of becoming a member nominate a person who shall, in the event of his death or other contractual incapacity, become the member of the company to accept all the obligations and responsibilities of the OPC.

It has been clarified that change in the name of the nominee in the Memorandum of Association shall not be deemed to be an alteration therein.

CONTRACTS BY OPC

As per section 193 of the Act, where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes.

PRIVILEGES AND EXEMPTIONS OF THE OPC

The *raison de etre* of OPC is to facilitate business for small entrepreneurs by providing it a corporate cloak and at the same time saving it of the compliance requirements. Therefore, it is imperative to provide all possible privileges and exemptions under the Act. These are listed and analyzed as follows:

- The board of an OPC will have only one director. The member who is an individual will be deemed to be the first director until any other director is appointed by the member
- It would be sufficient for any business which is required to be transacted at the meeting of the board of the OPC if such resolution is entered in the minutes book required to be maintained under the law and signed and dated as such
- The financial statements including, consolidated financials, if any, shall be approved by one director for submission to the auditor for his report thereon. The report of the board of directors of an OPC to be attached to the financial statements shall mean the report containing explanations or comments by the board on every qualification, reservation, adverse remark or disclaimer made by the auditor in his report
- The financial statements of an OPC may not include cash flow statement
- An OPC is required to file a copy of its financial statements duly adopted by its member, along with relevant annexures and attachments, within a period of 180 days from the closure of the financial year





Article

AN OVERVIEW OF THE LAW AND PRACTICE PERTAINING TO ONE PERSON COMPANY (OPC) UNDER THE COMPANIES ACT, 2013

- An OPC needs to conduct at least one meeting of the board in each half of a calendar year and the gap between any two meetings shall not be less than 90 days. The provisions of quorum for a board meeting shall also not apply to an OPC
- The annual return of the OPC will have to be signed by the company secretary or in his absence, by the director of the company
- It is not mandatory for an OPC to hold the annual general meeting
- For businesses that are required to be transacted at an annual general meeting, whether by means of ordinary resolution or special resolution
- The words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

OPC – CONVERSION AND RELATED MATTERS

Where the paid up share capital of an OPC exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a OPC. Such OPC shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least seven members and three directors in accordance with the provisions of section 18 of the Act.

The OPC shall be required to alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto. The OPC shall within a period of sixty days from the date, give a notice to the Registrar in Form No. INC.5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in the Rules.

An OPC can also get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakh rupees or less or average annual turnover during the relevant period is two crore rupees or less may also convert itself into OPC by passing a special resolution in the general meeting. Prior to passing such resolution, the company shall obtain 'No objection' in writing from

members and creditors. The OPC shall be required to file a copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form MGT14.

The company shall file an application in Form INC.6 for its conversion into OPC along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014, by attaching the following documents, namely:-

- The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakh rupees or less or average annual turnover is less than two crore rupees, as the case may be;
- the list of members and list of creditors;
- the latest Audited Balance Sheet and the Profit and Loss Account; and
- the copy of No Objection letter of secured creditors.

ADVANTAGES OF THE OPC

- OPCs would surely be a boon for small and tiny entrepreneurs who may have the business wherewithal and ideas and may not yet be ready for the big corporate league. As such, it enables the small time businessman to enter the 'corporate sector' by incorporating OPC.
- The major advantage that he would enjoy is that of a separate legal entity. The OPC having an existence of its own, distinct from the sole member.
- The liability of the sole member would be restricted to the amount unpaid on the shares held by him.
- In keeping with the salutary recommendations of the Irani Committee, the process of setting up an OPC and indeed, administering and running it also seem to be fairly easy and





➤ There is little doubt that any OPC would require the services of a qualified professional to prepare the minutes of the meetings and complete the necessary statutory filings as discerned above. From that perspective, company secretaries have a constricted role to play in the OPC realm. It is vital that the company secretaries gear up to render advisory services to OPC in a manner that is palatable to them – service oriented, comfortable and with ease of use and more importantly, soft on the pocket.

comfortable. There have been a lot of exemptions provided to OPCs as listed above and it would enable the entrepreneur focus on the business rather than on compliance and process oriented matters.

- (5) Introduction of OPC is a measure that would provide a fillip to the corporatization of small businesses run by entrepreneurs. The fact that the businessman can do it by himself and not scout for another person to implement his ideas and options, is a huge boon.
- (6) Conceptually, OPCs will aid individuals who are in the less organized and unorganized sectors (small and medium sized traders, weavers, artisans, mechanics, carpenters, designers and other skill dependent professions and vocations).
- (7) Mandatory rotation of auditor after expiry of maximum term is not applicable.

DISADVANTAGES OF THE OPC

- (1) The Act prohibits any foreign participation in the OPC.
- (2) The success of this new OPC concept can be clearly gauged only after its implementation. For instance, Limited liability partnerships (LLPs) which were introduced with much ado and fanfare in 2006 did not actually take off and live up to the magnitude of its expectations.
- (3) From a taxation perspective, the concept of OPC may not appeal to smaller proprietorships (to convert themselves in OPCs) since the base rate of tax of a company is quite high (30% approx.) and may result in a higher incidence of taxation for them. Conversely, the OPC may also be used by unscrupulous individual entrepreneurs to siphon off funds and evade tax liability. Adequate safeguards must be put in

place in appropriate legislations to tide over these issues. The provisions of the UK Companies Act, 2006 are a case in point.

- (4) Further, some more grey areas emerge and need to be tackled. For instance, what would be the perspective of lenders, financial institutions and bankers to such companies – would they treat them as a normal company? Or as a special category of company? In terms of reconstruction and liquidation of OPCs, would there be any leeway?
- (5) Limited liability being one of the biggest benefits of a corporate form of organization, OPC will have to also compete with LLPs for they too offer the same benefit. However, the latter involves more than one person and as such might lead to a compromise on confidentiality. In all such cases, the OPC alternative would be the preferred vehicle.
- (6) It is also unfortunate that while doing away with procedural requirements, the Act has nonetheless not granted any relief to OPCs from the provisions of accounts and audit. This would be a burden and the MCA must look at means to provide relief forthwith on this score by at least exempting them from audit.

ROLE OF COMPANY SECRETARIES

Statutorily, the Act has laid down that the annual return of the OPC will have to be signed by the company secretary or in his absence, by the director of the company. It is almost certain that no OPC will have a company secretary and therefore, this is a toothless provision. Be that as it may, there is little doubt that any OPC would require the services of a qualified professional to prepare the minutes of the meetings and complete the necessary statutory filings as discerned above. From that perspective, company secretaries have a constricted role to play in the OPC realm. It is vital that the company secretaries gear up to render advisory services to OPC in a manner that is palatable to them – service oriented, comfortable and with ease of use and more importantly, soft on the pocket. The fact that OPCs are small entities with comparatively limited means, it offers an opening to company secretaries to offer multifarious services to them. In addition to putting in place the documentation and complying with the norms, they could also assist in business advisory and administration.

CONCLUSION

OPCs are a class of companies distinct from private and public companies. Admittedly, the concept is at a nascent stage; an enabler that facilitates small businesses to dream and give a concrete shape to their dreams. It provides a solid platform for such entities to emerge bigger and stronger. As the business grows, they will have the option and opportunity to move from a fledgling to a full-fledged company. The immediate requirement from the government is to suitably devise a tax structure that complements the OPC entity. Concomitant changes to other laws also maybe brought in. How successful the OPC regime will be is a million dollar question .

CS





Article



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Why a One Person Company?

- With Limited Partnership Act in place, there is really no indication as to why it was necessary to provide for the one person company form. There is also no evidence that there was any demand for this form of company which for want of a specific legislation could have posed some problem in carrying on any business activity.

INTRODUCTION

The concept of a 'One Person Company' ["OPC"] was first introduced through the Companies Bill, 2009, which was later considered, as the Companies Bill 2011, and ultimately passed by Parliament and became the Companies Act, 2013. The Statement of objects and reasons of the Companies Bill 2009 described the OPC as : "a new entity in the form of One Person Company (OPC), empowering the Government to provide for a simpler compliance regime for OPC and small companies and retention of the concept of Producer companies, while providing a more stringent regime for companies with charitable objects to check misuse."¹

The notes on clauses of the Companies Bill, 2011 states: "Clause 3. — This clause corresponds to section 12 of the Companies Act, 1956 and seeks to provide minimum number of persons to form a public or private (including One Person Company) (OPC) for any lawful purpose, by subscribing their names to the memorandum. Memorandum of OPC shall indicate the name of a person who shall become member, in the event of death of the single member. However, the other person whose name would reflect in the Memorandum of OPC shall be required to give prior written consent

in this regard. He shall have the right to withdraw his consent. It shall be duty of the member of the OPC to intimate the Registrar any change in name of person already mentioned in Memorandum. The companies formed under this clause may be limited by shares or limited by guarantee or an unlimited company."

It may be noted that clause 3 is the present section 3 of the 2013 Act, dealing with formation of companies.



¹ Paragraph 7[iv]



➤ There is no indication as to why it was determined that it was necessary to provide for this form of a company. There is no evidence that there was any demand for this one person company which for want of a specific legislation could have posed some problem in carrying on any business activity. The Limited Liability Partnership Act, 2008 enables an association of the members of the three Institutes to form a limited liability partnership, which was not possible under the Indian Partnership Act, 1932.

RELEVANT PROVISIONS

The Companies Act, 2013 [“the Act”] has defined the OPC as: “One person company” means a company which has only one person as a member². Section 3 of the Act provides for the formation of a company. Where the company to be formed is an OPC, it has to be a private company. The one person who will be the only member of the one person company should sign the memorandum, by subscribing his name to the memorandum. In the case of a one person company, the memorandum should state the name of another person who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of the company. This statement should be made with the prior written consent of that other person. The prior written consent, in the prescribed form, of this other person who will step into the shoes of the original subscriber to the memorandum of the OPC, shall be filed with the Registrar at the time of the incorporation of the OPC, along with that company’s memorandum and articles. The other person may withdraw his consent in such manner as may be prescribed. Also, the member of one person company may at any time change the name of such other person by giving notice in such manner as may be prescribed. It is the duty of the member of the one person company to intimate to the company, the change in the name of the other person nominated by him, by indicating in the memorandum or otherwise, within such time and in such manner as may be prescribed. The company shall intimate the Registrar any such change, within such time and in such manner as may be prescribed.

A company formed under section 3[1] may be either a company limited by shares or a company limited by guarantee or an unlimited company.³

² S 2[62]

³ S 3[2]

Section 96[1] of the Act requiring the holding of annual general meetings does not apply to a one person company. It runs as follows: ‘Every company other than a one person company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting’

Section 193 dealing with a contract by one person company is as follows: “(1) Where one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the board of directors of the company held next after entering into contract : Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business. (2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its board of directors under sub-section (1) within a period of fifteen days of the date of approval by the board of directors”.

Section 193 dealing with a contract by a one person company is unsatisfactory from the point of an outsider proposing to deal with the company, for example a lender, if one could be found willing to lend to the one person company. An agreement may meet a statutory requirement, but an outsider will not be willing to spend his time in due diligence, as it is well known that, even in the case of large companies, with provision for disclosure of the interest of a director, the records of a company available for inspection are not up-to-date and a series of meetings and checking of records in the company as well as the office of the Registrar will be necessary to ascertain the latest position on such contracts and their effect in so far as they may be of concern to the outsider seeking information.. A ‘contract in the ordinary course of business’ is a vague term and could lead to contentions. It may be in the interests of everyone, if the certificate of Registration that will be issued by the Registrar states ‘XYZ Ltd. [One person company]’.

WHAT IS THE GENESIS?

There is no indication as to why it was determined that it was necessary to provide for this form of a company. There is no evidence that there was any demand for this one person company which for want of a specific legislation could have posed some problem in carrying on any business activity. The Limited Liability Partnership Act, 2008 enables an association of the members of the three Institutes to form a limited liability partnership, which was not possible under the Indian Partnership Act, 1932. So much for the purpose of creating this form of a company.

The concept of one person company does not sail well with the principle of incorporation of companies, more so with the idea of incorporating companies for carrying on business activities on a large scale. Leaving aside the one person company, incorporation





Article

WHY A ONE PERSON COMPANY?

➤ The basic question is whether it is necessary to provide for such a chain of nominations. What are they intended to achieve, when a nominee may withdraw his consent? Is a nomination the only answer or should the subscriber to the memorandum of a one person company be asked to make a more stable arrangement?

of a company, though it requires a minimum of two or seven members, is followed by the next stage of issuing capital which in turn is followed by dispersal of the business activities of a company throughout the country and in some cases outside India also. This is how incorporation has been demonstrated, throughout the world, as a dynamic vehicle for spiralling through companies, industrial growth beyond one's imagination.

What could be the objects clause of a one person company, and how would they be achieved if there is only one member, though he may state that he agrees to take all the shares in the capital of the company⁴. The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.⁵ (6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.⁶

THE COMPANIES [INCORPORATION] RULES, 2014

Rule 3 of the Companies (Incorporation) Rules, 2014 dealing with incorporation of a one person company has prescribed that only a natural person who is an Indian citizen and resident in India, shall be eligible to incorporate a one person company and only such a person may be a nominee for the sole member of a one person company. The Explanation to this Rule states that for the purposes of this rule "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

It is not clear as to how such a test would meet the purpose in the context of obtaining incorporation of a one person company. Where the only person is the sole member and if he is away for a greater part of the year, who would deal with the public and queries from the Registrar of Companies? In matters of company management, there should always be someone with sufficient authority to represent the company available at the

registered office of the company to act for the company and provide information which the company may be bound to give to public authorities. Maybe this qualification would not cause much practical problems in tax matters, in companies where there are other directors, including a managing director.

No person shall be eligible to incorporate more than a one person company or become a nominee in more than one such company. Where a natural person, being a member in a one person company in accordance with Rule 3, becomes a member in another one person company as a nominee in that other company, he shall meet the eligibility criteria, stated in sub-rule 2, which is that he should not be a nominee in more than one such company. A minor is not eligible to become a member or nominee of a one person company, nor can he hold shares with beneficial interest.

A one person company cannot be incorporated or converted into a company under section 8 of the Act, which deals with formation of a company with charitable objects etc. A one person Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates. Nor can a one person company convert voluntarily into any kind of company unless two years has expired from the date of incorporation of one person company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

It appears to be a theoretical situation that a minor would join the incorporation of any company, much less a one person company. Where there is only one member, would he be in a position to bring in the amount of capital that would be necessary to carry on non-banking financial investment activities? And would one consider the risk worth taking? The point is that these appear to be provisions for situations that may never arise in practice.

Rule 4 deals with nomination by the subscriber to the memorandum of a one person company. This is to comply with the first proviso to section 3[1] of the Act. The nomination is made by the subscriber to the memorandum of a one person company of another person to become a member of the one person company, in the event of the death or incapacity of the subscriber to act. The nomination can be made only after obtaining the prior written consent of the person thus nominated. The nomination, the written consent and other papers are to be filed with the Registrar at the time of the incorporation of the company along with the memorandum and articles.

The person nominated by the subscriber or member of a one person company may withdraw his consent by giving a notice in writing to such sole member and to the one person company. The sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in the prescribed form. The company shall, within

⁴ Schedule I of the Act, Table A, item 7, in the case of a one person company

⁵ S 4[6]

⁶ S 5[6]





thirty days of the receipt of the notice of withdrawal of consent, file with the Registrar, notice of withdrawal of consent and the intimation of the name of another person nominated by the sole member in the prescribed form. Rule 4[5] is a general authority to the subscriber or a member of a one person company, to write to the company, intimating the change of the name of the nominee, at any time and for any reason and also nominate another person after obtaining his prior written consent. The company shall file with the Registrar the notice of the change within the prescribed period in the prescribed form.

Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such one person company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in the prescribed form within the prescribed period.

The basic question is whether it is necessary to provide for such a chain of nominations. What are they intended to achieve, when a nominee may withdraw his consent? Is a nomination the only answer or should the subscriber to the memorandum of a one person company be asked to make a more stable arrangement?

Will the nominee pay for the shares? What can be shown, by the company, as the consideration for which the nominee became the owner of the shares. If they are not fully paid, will the nominee be willing to pay the balance amount? Rule 4[3] provides for the withdrawal by the nominee of his consent. Should he not be required to state the reason for his withdrawal of consent so that an arrangement for a certain period can be assured?

Article 27 of Table F of Schedule I of the Act relating to a company limited by shares states that in the case of a one person company: (i) on the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member; (ii) the nominee on becoming entitled to such shares in case of the member's death shall be informed of such event by the Board of the company; (iii) such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable; (iv) on becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of the company.

In the first place, it should be noted that Table F of Schedule I, like other forms is to be used by a company, as may be applicable to it, and that it is not a statement of the substantive law relating to the title of a person to the shares in the company and other consequential rights. In the absence of a specific provision as to the rights of a nominee in the text of the Act, why should anyone

nominate another to take his place in the one person company?

Rule 6: Rule 6[1] states that where the paid up share capital of a one person company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company. The following sub-rules set out that the one person company, in that event, shall convert itself into either a private company or a public company and state the procedure for doing so.

In the first place, this requirement being a condition of incorporation should have been stated in the Act itself, so that a person arranging for incorporation of a one person company would be in a position to decide, at that stage, whether to go for incorporation of the one person company or straightaway form a private company pure and simple or a public company. Then the basis for requiring conversion has not been explained as to how the paid up capital or the turnover would be inconsistent with the principle of a one person company as determined under the Act".

THE COMPANIES ACT, 2006, UK

Section 123 of this Act deals with single member companies. The first sub-section is the relevant section. It is as follows: "(1) If a limited company is formed under this Act with only one member there shall be entered in the company's register of members, with the name and address of the sole member, a statement that the company has only one member".

That Act does not contain any of the restrictions relating to the one person company as in the 2013 Act. Section 38 of the UK Act states that any enactment or rule of law applicable to companies formed by two or more persons or having two or more members applies with any necessary modification in relation to a company formed by one person or having only one person as a member. This would not arise under the 2013 Act as the legal status of a one person company has been stated with necessary conditions and qualifications in the Act and the Rules.

SUMMING UP

One should watch with interest, the graph of one person companies under the 2013 Act. It is still far from clear as to when a person would think of the one person company to meet his business needs when there are so many restrictions under the Act and the Rules. Unless there is some advantage, like for example, tax benefits, why choose incorporation?

As for legislation, it is axiomatic that legislation should neither lag far behind when problems have become unmanageable nor should it be far ahead of the actual realities, when there is no urgent need for any legislation.

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One Person Company – Boon in Pursuit of Professional Excellence

- Allowing practicing company secretaries to form OPC and render various corporate law related services is desirable as it will remove the nagging fear of unlimited liability of the PCS and would also give a moral boost to the PCS without the need to bother about as to who would succeed him, since the OPC will be treated as a separate legal entity with perpetual succession.

The Companies Act, 2013 (in short 'CA 2013' or 'the new Act') has introduced many innovative legislative provisions which have, *inter-alia*, brought about a significant change in the way business would be conducted in India. Keeping pace with the already-well established practice in the US and UK, the CA 2013 also now provides for one innovative mode of doing business through formation of 'one person company' (OPC), although the provisions in relation to the same are radical in themselves. While the professionals like the chartered accountants, company secretaries and the cost and works accountants are gearing up by upgrading their knowledge base as to how to cope with the new changes in the CA, 2013, the stakeholders are generally happy that the new Act will usher in better corporate governance, prevent corporate frauds, improve transparency, enhance accountability and motivate self-regulation and will make the corporate sector socially responsible. The significant changes in





➤ However, the flexibility and numerous benefits associated with formation and running of a OPC cannot be taken advantage of by the practising company secretaries (PCS) because the law as it stands at present does not afford any latitude.

the new Act about the clarity in defining the role and responsibility of the company directors and independent directors and appointment of woman directors in listed companies also augur well for the corporate sector.

Since OPC is a new concept and a gift from the new Act, it is important to understand some of its salient features and how best the professionals can expand their activities by forming OPC. Till now professionals have been more comfortable working either as sole-proprietorships or partnerships or by forming 'limited liability partnership' or often times, through an unwritten code of understanding and arrangement between the partners. However, the new structure of doing business through OPC has opened up vast opportunities before the professionals and other entrepreneurs. Broadly, the beneficial aspects of the OPC structure are its separate legal entity, perpetual succession, limited liability and freedom from complying with numerous formalities associated with doing business otherwise through the traditional limited liability structure.

As per Section 2(62) of the new Act "One Person Company" means a company which has only one person as a member. Thus, an individual can form an OPC and carry on his chosen business driven by his commitment and passion and such an individual gets personal freedom to develop his professional or entrepreneurial skills as he/she may deem fit and proper. Since the liability of a OPC promoter-director is limited to the extent of the paid up value of the shares held by him/her in the OPC, such a person is not unusually worried about the liability aspect as it may not endanger his/her personal assets. This is a significant relief and would prompt the professional or any enterprise-driven individual to get going without the need for complicated formalities.

As per Section 3 of the new Act, OPC can be formed as a private company by an individual by subscribing his/her name to a Memorandum of Association and by complying with the requirements of the new Act with regard to its registration. However, it is mandatory for the Memorandum of OPC to indicate the name of another person, with his/her prior written consent in the prescribed form, who shall, in the event of death of the subscriber or in the event of incapacity of such subscriber to contract, become the member of such OPC. Such written consent from the other person shall be filed with the Registrar of Companies (ROC) at the time of incorporation

along with other prescribed documents. The law now prescribes that such other person can withdraw his consent in the prescribed manner or even the main subscriber to the Memorandum of such OPC can also change the name of such other person by fulfilling the prescribed formalities. The law prescribes that any such change in the name of the 'other person' will not be construed as alteration of the Memorandum of Association of an OPC. As per Section 7 of the new Act, the prescribed documents are to be filed with the ROC of the State where the company is being registered and such documents shall be accompanied by a declaration by an advocate, a chartered accountant, cost accountant or a company secretary in practice, who is engaged in the formation of the company and by the person named as Director of such a company that the requirements of the Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with. Furnishing any false or incorrect particulars of any information or suppressing material information with relation to the documents filed in connection with registration of the company, shall constitute commission of 'fraud' as defined in section 447 of the new Act.

In relation to an OPC, section 92 of the new Act stipulates that the Annual Return prepared by the company shall be signed by the company secretary or where there is no company secretary, by the director of the company. Further, section 96 of the new Act stipulates that every company, other than OPC, shall in each year holding in addition to any other meetings, a general meeting as its annual general meeting. Section 122 of the new Act talks of non-applicability of certain sections of the new Act to a OPC. The provisions of section 98 and 100 to 111 of the new Act shall not apply to an OPC. Where there is only one director on the Board of an OPC, for any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if the resolution by such director is entered in the Minutes Book required to be maintained under Section 118 of the new Act and be signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under the new Act.

As stipulated in section 134 of the new Act, the financial statements





Article

ONE PERSON COMPANY – BOON IN PURSUIT OF PROFESSIONAL EXCELLENCE

and the Board of Directors' Report shall be signed only by one director of the OPC. In case of OPC, the report of the Board of Directors to be attached to the financial statement under section 134 of the Act shall mean a report containing explanations or comments by the Board on any qualification, reservation or adverse remark or disclaimer made by the auditor in his report. With regard to filing of copy of the financial statement with the ROC as required under section 137 of the new Act, in the case of a OPC it shall file a copy of the financial statements duly adopted by its members along with all the documents which are required to be attached to such financial statements within one hundred eighty days from the closure of the financial year.

The requirement of the law regarding the company having a Board of Directors (section 149) stipulates, *inter-alia*, that every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eightytwo days in the previous calendar year. With regard to the requirement of having meetings of the Board of Directors, as mandated in section 173 of the Act, it is stated that the OPC shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days; provided that nothing contained in section 173 and in section 174 shall apply to OPC in which there is only one director on its Board of Directors.

Further, section 193 of the new Act stipulates that where an OPC limited by shares or by guarantee, enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into the contract; provided that nothing in the sub-section (1) of section 193 shall apply to contracts entered into by the company in the ordinary course of its business. The company shall inform the ROC about every contract entered into by the company and recorded in the Minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

However, the flexibility and numerous benefits associated with formation and running of a OPC cannot be taken advantage of by the practising company secretaries (PCS) because the law as it stands at present does not afford any latitude. For instance, Section 26 of the Company Secretaries Act, 1980 (in short 'CS Act, 1980') clearly stipulates that "companies not to engage in Company Secretaryship and no company, whether incorporated in India or elsewhere, shall practice as Company Secretaries." The explanation to this section also makes it clear that "for the removal of doubts, it is hereby declared that 'company' shall include any limited liability partnership which has company as its partner for the purposes of this section. Any company contravening the provisions

of the sub-section (1) of section 26 shall be punishable on first conviction with fine, which may extend to one thousand rupees, and on any subsequent conviction with fine which may extend to five thousand rupees."

Further, section 2(24) of the new Act states "company secretary" or "secretary" means a 'company secretary' as defined in clause (c) of sub-section (1) of section 2 of the CS Act, 1980 who is appointed by a company to perform the functions of a company secretary under the new Act. Also, section 2(27) of the new Act stipulates that "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the CS Act, 1980.

As per section 2(1)(c) of the CS Act, 1980, a 'company secretary' means a person who is a member of the Institute. Sub-section (2) of section 2 of CS Act, 1980 states that 'save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, he in consideration of remuneration received or to be received –

- a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company ; or
- (b) offers to perform or performs services in relation to the promotion, forming incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or
- (c) offers to perform or performs such services as may be performed by—
 - (i) an authorised representative of a company with respect to , registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,





- (ii) a share transfer agent,
 - (iii) an issue house,
 - (iv) a share and stock broker,
 - (v) a secretarial auditor or consultant,
 - (vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973, (46 of 1973), or under any other law for the time being in force,
 - (vii) issuing certificates on behalf of, or for the purposes of, a company; or
- (d) holds himself out to the public as a Company Secretary in practice; or
- (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
- (f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

and the words “to be in practice” with their grammatical variations and cognate expressions, shall be construed accordingly.

A perusal of the aforesaid provisions of the CS Act, 1980, as amended from time to time, reveals that the law recognizes that the practicing company secretary (PCS) can perform various functions and render valuable assistance to the companies in complying with the provisions of the Companies Act, but also with other Acts as enumerated in the said section of the CS Act, 1980. However, since the new Companies Act, 2013 is a significant departure from the way business was done hitherto-before by companies, and the new Act has introduced many innovative ways and means aimed towards good corporate governance and prevention of frauds, it is felt that the professionals, including the PCS can play significant role. Therefore, there is a serious need to relook and re-examine the provisions of the CS Act, 1980 and relax and remove some of the restrictions in the functioning of the PCS. This becomes all the more necessary because the new Act has opened new business structure like OPC which were not permitted earlier and could not have been considered while framing the CS Act, 1980. Further, since the definition of PCS in the CS Act, 1980 allows the PCS to perform important functions which have been enlarged/augmented by the new Act, allowing the PCS to form OPC and render various corporate law related services will be a welcome move. This will at least remove the nagging fear of unlimited liability of the PCS and would also give a moral boost to the PCS without the need



to bother about as to who would succeed him, since the OPC will be treated as a separate legal entity with perpetual succession.

Of course, while recommending the opening up the new form of rendering professional services by the PCS by forming OPC, the Institute of Company Secretaries of India (ICSI) and the Ministry of Corporate Affairs can introduce suitable clauses which would not dilute the personal commitment and involvement of the PCS and continue to make the PCS amenable to the jurisdiction of the ICSI with regard to professional ethics and good conduct. Since there are over one million companies in the country who are the custodians of huge resources of the country, the PCS can play an important role in the operations of the companies to ensure that they comply with the laws and contribute to the prosperity of the economy and the society at large and balance the interests of various stakeholders.

CONCLUSION

The Companies Act, 2013 has opened the new form of doing business through formation of OPC and it is time that the PCS is also enabled to form OPC and increase his horizon of professional services by taking advantage of the OPC. More than 24 years have already elapsed since the enactment of the CS Act, 1980 and there is a need to relook and reexamine the various provisions governing the profession of company secretaries, keeping in view the expectations of the stakeholders from the professionals towards the growth and development of the economy. Views and opinions of all the professional bodies and the chamber of commerce and industry may also be sought and considered while advising suitable legislative changes in the CS Act, 1980. CS





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One Person Company – A Legal Fiction

- In view of the fact that the OPC can command only limited resources, it is not suitable for business entities – particularly medium and large scale. This form of business organisation is suitable for professionals for pursuing their profession. This will benefit them for it affords them security in the form of limited liability. If otherwise, the professional would be liable to an unlimited extent and even their personal assets would be in jeopardy.

Generally a company means an association of persons joined for a common objective, usually commercial, incorporated under the legislation regulating the affairs of companies, so that the liability of the members of the company is limited to the extent of the capital contributed by the members composing it. Such a company is managed by a body of persons known as directors who are elected by the members or appointed in terms of the provisions in its Articles of Association, which regulate the day to day working of the company. The Directors, unless power therefor is delegated to them by the Board, i.e. the collective body of directors, cannot act individually. They have to act through a meeting of the directors. Again the meeting of the Board is regulated by the enactment by which the company is incorporated.

The overall object of a company is fixed at the time of its incorporation and this object could be modified or varied by the members only under stated circumstances stipulated in the Act under which it is incorporated. Of course, the members cannot individually interfere in the day to day affairs of a company and in taking policy and major decisions for achieving the object of the company and they can act only through meetings, the conduct of which are also regulated by the enactment referred to earlier. What the term 'company' means in common parlance is adequately stated at page 380 of The Shorter Oxford Dictionary on Historical Principles (Third Edition) as 'a body of persons combined or incorporated for some common object; especially to carry on some commercial or industrial undertaking'. Thus general attributes of a company is that comprises of more than one person and is controlled by two organs – General Meeting and Board of Directors, and the liability of its members is limited and that the two



organs controlling the affairs of the company act through meetings and individual members comprised in the Board or in the general meeting have no powers and all the powers vest in them could be exercised collectively in the Board Meeting and general meeting, as the case may be. Because a company is an association of persons – in the case of giant companies the persons run into lacs – they are able to command wealth in the form of capital contributed by the members and consequent to this they are able to get loan capital to an appreciable extent to run the business for which the company is formed.

ESSENTIAL CHARACTERISTICS OF INCORPORATED COMPANIES

Thus the essential characteristics of a company incorporated under company legislation is:



➤ As the OPC would comprise of only one member it can safely be said it is in effect a sole proprietorship entity given the status of a company through a legal fiction. While the liability of sole proprietorship entity is unlimited, it is not the case with the entity owned by a 'One Person Company'. The ability of a OPC to attract loan capital is limited as the capital contributed by the sole member of an OPC would be small as compared to companies having more than one member – in some cases it runs into lacs.

- a. The company comprises of many persons who are its members and contribute to its capital
- b. The liability of its members is limited
- c. It is managed by Board of directors, largely elected by the members or appointed by interests who have been conferred powers to nominate or appoint directors by its Articles of Association
- d. Its policy decisions are set by the objects clause contained in its Memorandum of Association, which can be varied or modified by the company in general meeting only for achieving the stated purposes in the company legislation.
- e. Being comprised of many members who have contributed to its capital it is able to get a good amount of loan capital in the form of loans from banks and financial institutions for meeting the fund requirements of its business.

ADVENT OF OPC IN INDIA

The aforesaid essentials have been given a go by, by the Companies Act, 2013 (the Act), which has given birth to one more form of a company, viz. One Person Company. (OPC) Sub-section (62) of section 2 of the Act defines an OPC to mean a company, which has only one person as a member. The term 'Company' has been defined in sub-section (20) of section 2 of the Act to mean a company incorporated under the Act or under any previous company law. There was no provision under the previous company laws for incorporation of a 'One Person Company'. As such the 'One Person Company' referred to in the Act can only be incorporated under the Act. As the OPC would comprise of only one member it can safely be said it is in effect a sole proprietorship

entity given the status of a company through a legal fiction. While the liability of sole proprietorship entity is unlimited, it is not the case with the entity owned by a 'One Person Company'. The ability of a OPC to attract loan capital is limited as the capital contributed by the sole member of an OPC would be small as compared to companies having more than one member – in some cases it runs into lacs. In view of the fact that the OPC can command only limited resources, it is not suitable for business entities – particularly medium and large scale. This form of business organisation is suitable for professionals for pursuing their profession. This will benefit them for it affords them security in the form of limited liability. If otherwise, the professional would be liable to an unlimited extent and even their personal assets would be in jeopardy.

IRANI COMMITTEE RECOMMENDATIONS

This form of business organisation has been given legal status in the Act, on the recommendation of an expert committee set up by the Ministry of Corporate Affairs, in December 2004 under the Chairmanship of Dr. J.J. Irani. The Committee submitted its report in May 2005 and recommended the introduction of the concept of OPC in the Act with the following characteristics: viz.:

- a. OPC may be registered as a private company with one member and may also have at least one director.
- b. Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original director the nominated director will manage the affairs till the date of transmission of shares to legal heirs of the deceased member.
- (c) Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish them from other companies.

PROVISIONS IN THE COMPANIES ACT, 2013

In keeping with (a) above, section 3(1)(c) of the Act permits of the formation of an OPC by a resident individual by subscribing





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ONE PERSON COMPANY – A LEGAL FICTION

his name to the Memorandum of Association of the OPC and complying with the other requirements in this regard spelt out in this Act. As recommended by the Irani Committee section 3(1) (c) further provides that an OPC can be incorporated as a private limited company. Consequently at the time of incorporation it should have a minimum paid up share capital of Rs.1 lac. The relevant period for this purpose would mean the immediately preceding three consecutive financial years. As the reference is to share capital, it would include preference capital also. It should, however, be noted that the Memorandum of an OPC shall indicate the name of a person with his written consent who shall in the event of subscriber's death or incapacity to contract become a member of the company. The member of an OPC after due intimation to the OPC can change his nominee. It needs no saying that the new nominee should give his consent to act as such nominee. The nominee, after giving notice to the company, can always withdraw his nomination. The incapacity generally arises out of insolvency. A minor cannot form an OPC nor he can be a nominee of the member of an OPC. The Act does not provide as to what would happen to the OPC if the member and his nominee simultaneously die. It has also not addressed the situation if in the case of death of the sole member of the OPC, he leaves behind more than one legal heirs. Which one of such legal heirs would step into his shoes in the OPC? These require addressing by the Ministry of Corporate Affairs at an early date so as to enable proper functioning of OPCs registered under the Act. A person can form only one OPC and the question of formation of an OPC by a company, which is an artificial person, would not arise.

TRANSACTION OF BUSINESS

As set out earlier two organs, viz. the Board of Directors and the General Meeting are vital in the functioning of companies. The Board of Directors is in charge of the day-to-day functions of companies. Majority of the Board of Directors have to be elected by the members. The company in general meeting has to approve major policy decisions of a company. All the decisions of the Board of Directors and of the general meeting are taken in meetings of the respective organs. Both these organs are combined in the case of an OPC in its sole member. Of course, the sole member could through appropriate provision in the Articles of Association of the OPC, reserve himself the right to nominate more than one director on the Board of Directors of the OPC. In the absence of such a provision in the Articles of the OPC the sole member would be its director, its Board. Composing of only one member in whom both the vital organs of a company are combined, it would be a farce to hold a meeting of the Board of Directors and of the General Meeting. For a meeting there should always be more than one person and one person cannot meet himself. Recognising this the Act in section 96(1) provides that an OPC need not hold an Annual General Meeting in each year. Like wise section 174 of the Act provides that if there is only one director in an OPC then it need not hold Board Meetings as stipulated in section 173 of the Act. That section further provides that in case an OPC has more

than one director it would be enough for the purpose of meeting the requirements of that section if it holds board meeting in each half year and that the gap between two Board Meetings is not less than ninety days.

There are number of provisions in the Act which stipulates that for doing certain things, the approval of the Board in a meeting and, as the case may be, the approval of the general meeting by special or ordinary resolution is required. To meet these requirements and also to give concrete measures to the legal fiction created by it, section 122 of the Act provides that if an OPC has only one director on its Board it would be enough if the resolution by such director is entered in the minutes book and signed and dated by such director and such date shall be deemed to be the date of the Board Meeting for all the purposes under the Act. For this purpose it would be advisable that the director communicates his decision in regard to the matter, which can be dealt with only at a meeting of the Board of Directors to the OPC formally and that his decision is duly written and signed in the minutes book. Likewise in the case of matters to be done only at a general meeting the member of the OPC would communicate his resolution which would be signed and dated by the member and such date shall be deemed to be date of the meeting for all the purposes under this Act. In other words, it has been provided in section 122 of the Act that there is no need to hold a formal meeting of the two organs for complying with the requirements of the Act and it would be enough if the member communicates his decision on the matter in the form of a resolution which should be entered and signed in the minutes book. Significantly both in regard to the Board Meetings and General Meetings it has not been expressly mentioned that these should be done before the act is performed with the result there is bound to be some shortcomings in this regard. At times the minutes would be prepared after the event. Of course the intention is that it should be done before the event but it would have been prudent to provide so in section 122 itself to avoid any confusion in the matter. Possibly the Ministry could come out with a clarification in this regard. Appropriately this section 122 of the Act exempts OPCs' from the provisions of section 98 and sections 100 to 111 (both inclusive) of the Act. These provisions relate to conduct of general meetings of companies.

The report of the Board of Directors in relation to an OPC under section 134(4) means a report containing explanations or comments by the Board (i.e. the sole member of the OPC) on every qualification, reservation or adverse remark or disclaimer made by the Auditor in his report. Such a report should appropriately be signed by the single director.

Instead of making those at the helm of affairs of a company to wade through the ocean of provisions in the Companies Act, 2013 to find out which of those provisions are applicable to them and need compliance by the OPC it would be ideal if a simple and comprehensive Act like the Limited Liability Partnership Act, 2008, is legislated in respect of OPCs.

CS





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One Person Company (OPC) – New Opportunity to Start a Venture

- OPC is like One Man Army. The compliance burden is very less and the liability of the members is very limited is an added advantage. OPC is expected to benefit people who are into self-employment and many small scale sectors. It is a remarkable feature of the Companies Act, 2013. "OPC should boost the confidence of small entrepreneurs"

INTRODUCTION

Individuals doing business as sole proprietors can avail the benefits of limited liability as the Companies Act, 2013 ("the Act") has introduced the concept of "One Person Company" (OPC). Under the prevalent law in India, minimum two members are required to form a private company and minimum seven members required for public company. This was looked upon as a barrier in forming private limited company by businessmen who do not want any other participant in their business.

BENEFITS

- i. **OPC provides benefit of both forms of business - Proprietorship And Company.**

With OPC, business can be run same way as proprietorship, of course by complying with limited by share guarantee, as the case may be. At the same time it has casted responsibility on the society and market players to recognize OPC as a company and not another form of proprietorship business.





Article

ONE PERSON COMPANY (OPC) – NEW OPPORTUNITY TO START A VENTURE

COMPARISON OF PROVISIONS APPLICABLE TO OPC, SOLE PROPRIETORSHIP AND PRIVATE COMPANIES:-

One Person Company	Sole Proprietorship	Private Company
1. Governing Law		
Companies Act, 2013. Income Tax Act, 1961.	Income Tax Act, 1961.	Companies Act, 1956. Income Tax Act, 1961.
2. Liability		
Limited to the extent of unpaid amount of shares held by the sole member.	Unlimited. Risk is higher as compared to OPC or Private Company.	Limited to the extent of unpaid amount of shares held by the member.
3. Registration		
Mandatory	Not applicable	Mandatory
4. Number of Members Required		
Only one member is required to incorporate a OPC.	Only one person required to form a Sole Proprietorship.	At least two persons are required to incorporate a private company.
5. Number of Directors Required		
At least one director required. The sole member can be the director	Not applicable.	At least two directors are required.
6. Separate Legal Entity		
Separate Legal Status. Has an identity distinct from the members of the OPC.	No distinct entity. Owner and the Proprietorship are not distinguishable.	Separate Legal Status. Has an identity distinct from the members of the Private Company.
7. Perpetual Succession		
Death of the sole member does not affect the OPC. The nominee becomes the member of the OPC in such an event.	Death of the owner amounts to death of the Sole Proprietorship.	Death of the members does not affect the Company. Members may come and go, a Company stays on.
8. Credibility		
Credibility of a OPC can be evaluated on the basis of the past commitments of the OPC.	Credibility of Sole Proprietorship can be evaluated on the basis of the credibility of the Owner.	Credibility of a Company can be evaluated on the basis of the past commitments of the Company.
9. Annual Meetings		
Holding of Annual Meeting is not mandatory.	Not applicable.	Holding of Annual Meetings is mandatory.
10. Name Clause		
The words "One Person Company" in brackets has to be mentioned below the name of the Company wherever it is printed or engraved.	Not applicable.	The name of the Company must end with "Private Limited".
11. Taxation		
Base tax rate of 30% applicable.	Slab Rates as applicable to an individual. Benefit of Tax Deduction under Section 80C can be claimed.	Base tax rate of 30% applicable.
12. Mandatory Conversion		
When the paid up Capital of the OPC exceeds the prescribed limit, it becomes mandatory for OPC to convert to Private or Public Company.	Not Applicable.	Not Applicable as long as all the conditions of Private Company are complied

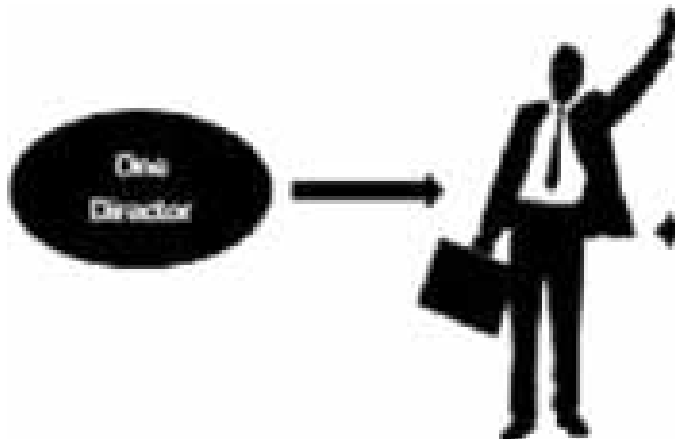


FORMATION

The procedure to form OPC has been described in Section 3(1) (c) of the Act.

- > Three types of companies can be formed as an OPC:
 - Company limited by shares
 - Company limited by guarantee
 - Unlimited company
- > OPC shall be a Private limited company in all respects except that an OPC can be formed by a single subscriber to the MOA (Memorandum of Association).
- > Minimum share capital shall be same as in the case of a private limited company - Rs. 1,00,000/- (Rupees One Lakh)
- > To comply with the basic requirement of perpetual succession and the golden rule "members may come and go, but company must go on", provision has been made to appoint a nominee of original subscriber.

One Person Company (OPC)



- > The Company has to file with the Registrar in the prescribed form, consent of one other person (nominee) who shall become member of the company in the case of death or incapacity of the original subscriber of the company.
- > Such nominee can withdraw his/ her consent by following the procedure which shall be prescribed in rules. At the same time, the subscriber can also change the nominee by giving prescribed notice. Upon changing the nominee, the company shall inform the registrar within 30 days in the prescribed form.
- > No person shall be eligible to incorporate more than a OPC or become nominee in more than one such company.

- > No minor shall become or nominee of OPC or can hold share (s) with beneficial interest.
- > OPC cannot carry out Non Banking Financial Investment activities including investment in securities of any body corporate.
- > Such company cannot be incorporated or converted into a company under Section 8 of the Act.
- > No such company can convert voluntarily into any kind of company unless 2 years have expired from date of incorporation of OPC.

CONDITIONS FOR CESSATION OF OPC STATUS:

As per rule 6(1) of the Companies (Incorporation) Rules 2014, OPC shall cease to be entitled to continue as an OPC if:

1. Its paid - up capital exceeds Rs.50 Lacs; or
2. Its average annual turnover during the relevant period i.e. immediately preceding 3 consecutive financial years exceeds Rs.2 crores
3. Intimation for increase in threshold limit has to be filed.

COMPLIANCE PROCEDURES

1. Proviso to Section 12(3) requires that the words "One Person Company" shall be mentioned in brackets below the name of company.
2. As per Section 149(I)(a), minimum one director required in OPC. However there is no bar on appointment of more than one director. Until director(s) appointed, individual being member shall be deemed director of the company - Section 152(1).
3. Annual return shall be signed by the CS and if there is no CS, it shall be signed by a director of the company.
4. As per Section 96(1), an OPC is exempted from holding the AGM (Annual General Meeting).
5. As per section 122(1), provisions of section 98, 100 to 111 (both inclusive) pertaining to procedural aspects of general meetings and voting at general meetings are not applicable to an OPC.
6. In the case of an OPC having only one director, compliance with provisions of conducting of Board meeting is impracticable, hence it is made not applicable. In that case business which is required to be transacted at a Board Meeting/ General





Article

ONE PERSON COMPANY (OPC) – NEW OPPORTUNITY TO START A VENTURE

Meeting, it shall be sufficient if the resolution is entered into the minutes book, signed and dated. Such date shall be deemed to be the date of meeting of board of directors.

7. Directors' report shall include only explanation on qualification, reservation, disclaimers or adverse remarks of the auditors, if any. All other information as required under Section (3) need not be given in directors' report of an OPC.
8. As per Section 2(68) OPCs have been granted relaxation from preparing Cash Flow Statement and they have to prepare profit and loss account, balance sheet and explanatory notes only. Moreover, as per Section 134, Financial Statements shall be signed by only one director and submitted to the auditor for his report thereon.
9. Time limit of 180 days from the closure of financial statements has been granted to OPC to file financial statement with Registrar.-proviso 3 to Section 137(1).
10. The 3rd proviso to Section 173(5) states that provisions related to minimum board meetings to be conducted during the year by a company and minimum quorum at board meetings shall not apply to OPC having only one director. In case OPC has more than one director, it shall conduct at least one board meeting in each half year and time gap between two meetings should be minimum 90 days.
11. When OPC enters into contract which is not entered into in ordinary course of business with its member who is also director of OPC, it should ensure that the contract is in writing. If such contract is not made in writing, OPC should ensure that terms of the contract are contained in memorandum or recorded in minutes books. Such Minutes should be adopted in the next board meeting - Section 193.

CONVERSION OF PRIVATE COMPANY INTO OPC

1. A Private company other than a company registered under Section 8 of the Act with paid up share capital of Rs.50 Lakhs or less or average annual turnover during the relevant period is Rs.2 crores or less may convert itself into OPC by passing a Special Resolution in the General Meeting.
2. Before passing such resolution, the Company shall obtain No Objection Certificate in writing from members and creditors.
3. OPC shall file copy of the special resolution in prescribed form with the Registrar within 30 days from the date of passing of such resolution.
4. The Company shall file an application for its conversion into OPC along with the prescribed fees, by attaching the

prescribed documents.

5. On being satisfied and complied with the requirements stated, ROC shall issue the Certificate upon conversion.

CONVERSION OF OPC INTO PRIVATE COMPANY

1. When the paid up share capital of an OPC exceeds Rs.50 lakhs or its average annual turnover during the immediately preceding three consecutive financial years exceeds Rs.2 crores, it shall not be treated as OPC.
2. OPC shall be given 6 months time period to implement the changes in constitution to become Private or Public Company and make necessary changes in MOA & AOA by passing resolution u/s 122 of the Act.
2. OPC will inform the Registrar within 60 days from the date of ceasing to be an OPC of the fact that it is no longer an OPC.
3. If an OPC or any officer thereof contravenes the provisions of these rules, the OPC/any officer shall be punishable with fine upto Rs. 10,000 (Rupees Ten Thousand) and with a further fine which may upto Rs. 1,000 (Rupees One Thousand) for everyday after the first during which such contravention continues.
4. If an OPC or any officer thereof contravenes the provisions of these rules, the OPC/any officer shall be punishable with fine upto Rs.10,000 (Rupees Ten Thousand) and with a further fine which may upto Rs. 1,000 (Rupees One Thousand) for everyday after the first during which such contravention continues.

FORMS FILING IN RESPECT OF OPC:

S. No.	Form No.	Purpose of e-form
1.	INC.1	Application for reservation of name
2.	INC.2	Application for Incorporation
3.	INC.3	Nominee - Consent Form
4.	INC.4	Change in Member/Nominee
5.	INC.5	Intimation of exceeding threshold - i.e. ceased to be OPC
6.	INC.6	OPC - Application for conversion

OPPORTUNITIES TO SMALL ENTREPRENEURS:

Small entrepreneurs can carry on their business in form of OPC with





status of separate legal entity. The concept is good for entrepreneurs with new ideas and ventures trying to explore the corporate world with minimum compliances and maximum benefits as exemptions. Various small and medium enterprises, doing business as sole proprietors, might enter into the corporate domain through OPC. The unorganized sector of the economy will find an outlet to show their entrepreneurial expertise. So the small entrepreneurs enjoy the benefit of OPC and can hence boost the economy of our country.

OPCs REGISTERED IN INDIA

As on date, **four (4)** OPCs have been registered in India.

- Corporate Identification Number (CIN) - U93000DL2014OPC267546 - Vijay Corporate Solutions OPC Private Limited incorporated on 28th April, 2014.
- Corporate Identification Number (CIN) - U29219GJ2014OPC079685 - Radhekrishna Fire Protection

OPC Private Limited incorporated on 4th June, 2014.

- Corporate Identification Number (CIN) - U13200GJ2014OPC079764 - Rigveda Metals OPC Private Limited 12th June, 2014.
- Corporate Identification Number (CIN) - U17120DL2014OPC268066 -A.M. Fashions (India) OPC Private Limited incorporated on 18th June, 2014.

END NOTE

OPC is like **One Man Army**.

The compliance burden is very less and the liability of the members is very limited is an added advantage.

OPC is expected to benefit people who are into self employment and many small scale sectors. It is a remarkable feature of the Companies Act, 2013. "OPC should boost the confidence of small entrepreneurs". CS

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One Person Company - A Mixed Blessing

- Doing business under the One Person Company form of business ownership is a mixed blessing to the single entrepreneur. While it avoids frittering away his resources, time and energy by conferring on him certain exemptions/privileges on procedural matters, it results in higher tax liability. It remains to be seen whether the benefits outweigh the cost.

INTRODUCTION:

The object of this article is to discuss the nitty-gritty of the new concept of a 'One Person Company' (OPC) which is the creation of the Companies Act, 2013. Various facets have been discussed with regard to the incorporation, operation, benefits, and limitations as also the legal compliance required under the Companies Act, 2013.

The idea of One Person Company was mooted by JJ Irani Committee. An OPC u/s 2(62) of the Indian Companies Act, 2013 means a company which has only one person as a member. The one person company is a private limited company. OPC is provided with a simpler regime through many exemptions so that a single entrepreneur is not compelled to fritter away time, energy and resources on the procedural matters. The Salient features of an OPC include the following:

An OPC can be formed under any of the following two categories :

- Company limited by guarantee.
- Company limited by shares

An OPC limited by shares shall comply with following requirements :

- Shall have minimum paid up capital of INR 1 Lac

- Restricts the right to transfer its shares
- Prohibits any invitations to public to subscribe for the securities of the company.



* Ex-Dean, CCS University, Meerut.



INCORPORATION OF A ONE PERSON COMPANY

Procedure of incorporating of an OPC is almost the same as for a Private Limited Company with some exceptions. These exceptions are as follows:

1. As per rule 3(1) of the Company (Incorporation) Rules, 2014, an OPC can be incorporated by a natural person. The natural person must be an Indian citizen and resident in India. As per explanation to the above rule, for the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than 182 during the immediately preceding one calendar year.
2. The Memorandum of Association of an OPC must indicate the name of 'other person' with his written consent. Such 'other person' shall become the member of the company in the event of subscriber's death or incapacity to contract. However, such 'other person' may withdraw his consent in the prescribed manner.
3. The written consent of such another person shall also be filed with ROC at the time of its incorporation.
4. Letters 'OPC' to be suffixed with the name of an OPC to distinguish it from other company. As per section 12(3) proviso 2, the words 'One Person Company' must be mentioned in brackets below the name of such company everywhere where its name is printed, affixed or engraved.
5. An OPC needs at least one director [Section 149 (1) (a)]. Adequate safeguard has been provided in case of death / disability of sole persons where another individual is required to be nominated as director. The nominee director will manage the affairs of the company till the transmission of shares to the legal heirs of the demised member.

Source : Saurabh Kalia, "New Concepts & Opportunities under Companies, Act 2013" Presentation on Workshop of NIRC of ICSI, 21st September, 2013.

PRIVILEGES AVAILABLE TO AN OPC

The definition of 'private company' under section 2(68) of the Company Act, 2013 includes OPC. Thus, an OPC will be required to comply with provisions applicable to private companies. However, OPCs have been provided with a number of exemptions and therefore have lesser compliance related burden. Such exemptions include:

1. Cash Flow Statement - An OPC need not prepare Cash Flow Statement as part of its Financial Statements under proviso to section 2(40).
2. Signing of Annual Return/Appointment of Company Secretary - As per proviso to section 92(1) One Person Company and a Small Company, the Annual Return shall be signed by the Company Secretary or where there is no Company Secretary by the Director of the Company.

One Person Company

Definition	Incorporation	Meeting
<ul style="list-style-type: none"> "One person company" means a company which has only one person as a member. 	<ul style="list-style-type: none"> Will be formed as a private company Name of nominee who will continue in event of death to be specified Words "One person company" to be mentioned below name. 	<ul style="list-style-type: none"> No AGM required No board meeting required in case of only one director Entering resolutions in minutes book is sufficient Minute book to be dated and signed.



Article

ONE PERSON COMPANY - A MIXED BLESSING

- As per section 139 (2) No listed company or a company belonging to such class or classes of companies as may be prescribed shall not appoint or reappoint (a) an individual as auditor for more than one term of five consecutive years and (b) the auditor firm for more than two terms of five consecutive years. However, as per rule 5 of Companies (Audit and Auditors) Rules, 2014 section 139 (2) does not apply to an OPC.
3. Annual General Meeting - An OPC is exempt from holding Annual General Meetings as per section 96(1).
 4. Ordinary and Special Resolutions –For the purpose of Section 114, any business which is required to be transacted at an Annual General Meeting or other general meetings of a company by means of ordinary or special resolution, it shall be sufficient for an OPC if the resolution is communicated by the member of OPC and entered in the minute book required to be maintained under section 118 and signed and dated by the member. Such date shall be deemed to be the date of meeting for all the purposes of the Act [Section 122(3)].
 5. Signing of Financial Statements - Under section 134(1), the Financial Statements of an OPC need be signed only by one director for submission to the auditors for their report thereon.
 6. Non-Applicability of Select Sections - Some sections of the Companies Act, 1956 would not apply to an OPC: Section 186, 169, 172 to 173, 174, 175, 176, 181 to 183, 177 to 178, 179 to 185, 188 and 192A. The corresponding section in the Companies Act, 2013 are 98, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110 and 111 respectively.
 7. Board Meetings - Unlike other Public and Private Limited Companies, an OPC, Small Company and Dormant Company are required to hold a minimum of one Board Meeting in each half calendar year with a gap of at least 90 days between two meetings instead of four meetings in a calendar year as per section 173(5).
 8. Loan to Directors – Henceforth, in the matter of loans to Directors etc., the Companies Act, 2013 does not distinguish between a Public and Private Company. An OPC being a private limited company, as per section 185 cannot grant a loan to any Director etc. However, in the following cases loan may be given:
 - (a) To a Managing or Whole Time Director as part of conditions and services extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution.
 - (b) A company may provide loans or give guarantee or securities for due repayment of any loan in the ordinary course of business and in respect of such loans an interest is charged not less than the bank rate declared by RBI.
 9. Disclosure in Board's Report- The Board report of the OPC need not contain the detailed disclosures as are enumerated in section 134(3) but should contain explanations or comments on every qualification, reservation or adverse remark made by the auditor in his audit report.
 10. Quorum of Meetings of Board of Directors - Section 174 is regarding quorum of meetings of Board of Directors. This section will not apply to an OPC which has only one Director in its Board of Directors.
 11. Appointment of Auditors : As per section 139 (2) No listed company or a company belonging to such class or classes of companies as may be prescribed shall not appoint or reappoint (a) an individual as auditor for more than one term of five consecutive years and (b) the auditor firm for more than two terms of five consecutive years. However, this section 139 (2) does not apply to an OPC as per rule 5 of Companies (Audit and Auditors) Rules, 2014.

Source : Saurabh Kalia, "New Concepts & Opportunities under Companies, Act 2013" Presentation on Workshop of NIRC of ICSI, 21st September, 2013.

ADDITIONAL COMPLIANCES BY OPCs

1. Any contract, other than in the ordinary course of business or other than in writing, entered into by an OPC with its Sole Member Director, the Company shall ensure that terms of the contract or offer are contained in its Memorandum of Association or are recorded in the minutes of the next Board Meeting held after entering into contract. An OPC should inform the Registrar of Companies about every such contract with a period of 15 days of the date of approval by the Board of Directors as per section 193(1).
2. The Memorandum of Association of an OPC must indicate the name of another person with his written consent. 'Such other person' shall become the member of the company in the event of subscriber's death or incapacity to contract. However, 'such other person' may withdraw his consent in the prescribed manner. The written consent of such another person shall also be filed with ROC at the time of its incorporation. The member of One Person Company may at any time change the name of 'such other person' in the prescribed manner. This change of 'such other person' shall not be deemed to be an alteration in Memorandum of Association.





As per section 139 (2) No listed company or a company belonging to such class or classes of companies as may be prescribed shall not appoint or reappoint (a) an individual as auditor for more than one term of five consecutive years and (b) the auditor firm for more than two terms of five consecutive years. However, as per rule 5 of Companies (Audit and Auditors) Rules, 2014 section 139 (2) does not apply to an OPC.

CONVERSION OF OPC INTO A PRIVATE OR PUBLIC LIMITED COMPANY

Voluntary Conversion

1. An OPC can convert itself into a private or public limited company after a period of two years from the date of its incorporation by increasing the minimum number of members to two or seven as the case may be. The number of directors would also be increased to two or three respectively. Also the paid-up capital would have to be increased to Rs. 5 Lakhs in case of an OPC is to be converted in a public limited company. However, An OPC cannot convert itself voluntarily into any kind of company for a period of two years from the date of its incorporation unless within that period its paid up share capital increases to more than Rs.50 lakhs OR average annual turnover during the relevant period exceeds Rs.2 crores.

Mandatory Conversion

2. As per Rule 6 of the Company (Incorporation) Rules, 2014, if the paid up share capital of an OPC exceeds Rs. 50 Lakhs or its average annual turnover during the period of immediately preceding three consecutive financial years exceeds Rs. 2 crores, the OPC is required to convert itself into either a private company or a public company in accordance with section 18 of the Companies Act, 2013:
 - (a) within six months of the date on which its share capital exceeds Rs. 50 Lakhs, or
 - (b) The last day of the relevant period during which its average annual turnover exceeds Rs. 2 crore. "Relevant period" means the period of immediately preceding 3 consecutive financial years.

The OPC will have to alter its Memorandum of Association and Articles of Association by passing an ordinary or special resolution in accordance with 114 read with section 122(3) of the Companies Act, 2013 to give effect to the conversion and make necessary changes incidental thereto.

CONVERSION OF PRIVATE COMPANY INTO OPC

1. An existing private company other than a section 8 company

(i.e. not for profit company) having paid up share capital of Rs.50 lakhs or less OR average annual turnover during the relevant period of Rs.2 crores or less can convert itself into an OPC by passing a special resolution in the General Meeting;

2. Before passing such special resolution, the private company should obtain No Objection to conversion in writing from members and creditors;
3. The private company can then start the procedure for conversion by submitting the relevant documents to the ROC.
4. A public limited company cannot obviously convert itself into an OPC.

INCAPABILITIES OF AN OPC

Rule 3 of Companies (Incorporation) Rules, 2014 provide that:

1. Body corporates, foreigners cannot incorporate an OPC;
2. A person cannot incorporate more than one OPC or become a nominee in more than one OPC; (But he can be a member of one OPC and nominee of another OPC)
3. Where a member of an OPC becomes a member of another OPC by virtue of his nomination in that second OPC, he shall opt out of either one within a period of 180 days;
4. A minor cannot become a member or nominee of OPC or holds shares with beneficial interest
5. An OPC cannot be incorporated or converted into a company under section 8 of the Act, which is the erstwhile section 25 companies or not for profit companies;
6. An OPC cannot carry out NBFC activities including investment in securities of any body corporate;

BENEFITS AVAILABLE TO OPCs

Small Entrepreneurs can setup OPC to directly access target markets rather than being forced to share their profits to middlemen. Small entrepreneurs will grow in Indian entrepreneurship, be it weaver, traders, artisans, small to mid level entrepreneurs, OPC is a bright future for them to grow and to get a recognition globally. Foreign Investors will be dealing with one member to establish a corporate relationship and not with a score of shareholders/directors where there are more chances for disparity in ideas, concepts etc. for a business to grow. Any foreign company who wishes to establish in India through an Investment, through a merger or through a Joint venture will have to just lock the deal with the member of an OPC, and the venture will be expected to start sooner with more effective results. In upcoming years the impact of an OPC will be remarkable and it is a promising future for Indian Entrepreneurship. Expectedly, there will be good Foreign





Investments, Joint Ventures, and Mergers etc. An OPC is doing well in European Countries, In United States, Australia the same is resulting in strengthening the economy of the countries. The benefits may be counted such as :

1. Perpetual succession
2. Limited Liability
3. Separate legal entity
4. Easiness in obtaining capital
5. Lesser burden of legal compliance
6. Taxation: From the assessment year 2014-15 surcharge on income tax is leviable. It is interesting to note that rate of surcharge on Income Tax, if the total income ranges between Rs. 1 Crore to Rs. 10 Crore is 10% for individuals, HUF, AOP, BOI and Artificial Juridical Person whereas the same is 5% in case of domestic companies. However, if the total income is above Rs. 10 crores the rate of surcharge on income tax is 10% for both the categories. The indifference point of total income for tax liability purpose is Rs. 128.333 Lakhs including surcharge and cess. However, beyond this total income limit of Rs. 128.333 the tax liability would be lower for a domestic company compared with Individuals, HUF, BOI and Artificial Juridical Person.

DISADVANTAGES TO OPCs

OPC when compared with sole proprietary business has some disadvantages :

1. Compulsory Audit – Audit of accounts of an OPC is compulsory regardless of its turnover or sales revenue.
2. Filing of Financial Statements - One Person Company shall file a copy of Financial Statements, Balance Sheet and Profit and Loss Account separately, duly adopted by its member within 180 days from the close of the financial year as per third proviso to section 137(1).
3. Filing of Annual Return – Under section 92 every OPC shall file with the Registrar of Companies a copy of Annual Return duly signed in prescribed form within the prescribed period.
4. Income Tax Liability – OPC's income will be taxable at a flat rate which is as at present 30.9% of the taxable income. In other words the slabs of tax rates prescribed for an individual will not be applicable of OPC.
5. Dividend Distribution Tax – If an OPC declares dividend it will have to pay dividend distribution tax @ 16.995% (15% + 10% surcharge + 3 % Cess) apart from income tax @ 30.9% whereas for individual assesses only income tax is payable and that too on slab basis.
6. Deemed Dividend – If a sole proprietor makes any drawings

from any business, the same is not treated as deemed dividend notwithstanding that the proprietorship business has profits. However, when the director of an OPC takes a loan and the OPC has distributable income, the loan availed by the director is treated as deemed dividend to the extent of accumulated profits by a closely held company under section 2(22)(e) of the Income Tax Act.

It will not be out of place to say that an OPC being a very very closely held company is more prone to be used as a corporate veil. Thus, it is suggested that what a person cannot do directly can also not do indirectly. In other words it is feared that corporate veil may be used as a shell or a cloak for personal benefit. In that case the corporate veil may be pierced.

CONCLUSION

Doing business under the One Person Company form of business ownership is a mixed blessing to the single entrepreneur. While it avoids frittering away his resources, time and energy by confessing on him certain exemptions/privileges on procedural matters but at the same time results in higher tax liability. It remains to be seen whether the benefits outweigh the cost.

As of now the introduction of One Person Company seems to be a flash in the pan. Where, there are a multiple of advantages flowing to an OPC there are some dark spots also, specially with regard to tax liability. To make the OPC concept workable and acceptable corresponding changes in the Income Tax Act are also required. All that glitters is not gold!

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One Person Company

Prerequisite, Exemptions and Restrictions

- The concept of one person company incorporated in the Companies Act, 2013 has distinct advantages as compared to a sole proprietary concern. This Article elaborates the prerequisite, exemptions and restrictions that are available to OPC.

BACKGROUND

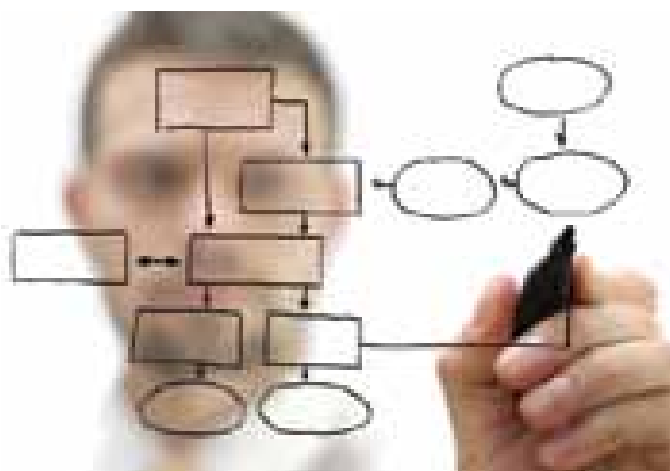
The Companies Act, 2013 ('the Act'), constitution for governance for about a million companies in India, has many new revolutionary concepts. One such concept is introduction of formation of legal vehicle named as One Person Company ('OPC'). OPC can be formed only by a natural person who is an Indian resident citizen. This new form of legal vehicle gives an opportunity to first generation Indian entrepreneur to form an OPC instead of carrying on the business as a Sole-Proprietor. The concept is expected to shift from Sole-Proprietor form of business to OPC as it will have benefits of private limited company e.g., access to bank loan, limited liability with relaxed compliance requirements under the Act. At present, an Indian entrepreneur has to look for another person to implement his / her skills to incorporate a company. The concept of OPC is already in existence in UK, Australia, Singapore, Pakistan etc.

PREREQUISITE

The prerequisite at the time formation and during continuation of OPC are enumerated below:-

At the time of formation of OPC

- OPC, that is to say, a private company, can be formed by one person by subscribing his name to Memorandum of Association ('Memorandum') of the Company.
- The said person should be a natural person who is an Indian resident citizen.



*The views expressed in this article are solely the views of the author and do not reflect in any way the views of the Company/or the Group where he is employed.





Article

ONE PERSON COMPANY PREREQUISITE, EXEMPTIONS AND RESTRICTIONS

➤ On the death of the sole member, the person nominated by such member shall be the person as having title to all the shares of the member and the nominee on becoming entitled to such shares need to be informed of such event by the Board of OPC. Nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member was entitled or liable.

- Memorandum of OPC to indicate the name of the other person, with his prior written consent in the prescribed form INC.3, who shall, in the event of the subscriber's death or his incapacity to contract become the member of OPC.
- Written consent of such nominated person shall be filed in prescribed Form INC.2 at the time of incorporation of OPC along with its Memorandum and Articles ('MOA') with Ministry of Corporate Affairs ('MCA').
- Articles of Association ('Article') of OPC to contain the following provisions:-

TRANSMISSION OF SHARES

On the death of the sole member, the person nominated by such member shall be the person as having title to all the shares of the member and the nominee on becoming entitled to such shares need to be informed of such event by the Board of OPC. Nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member was entitled or liable.

Further, on becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of OPC.

PROCEEDINGS AT GENERAL MEETINGS

The resolution required to be passed at the general meetings shall be deemed to have been passed if the resolution is agreed upon by the sole member; communicated to OPC; entered in the minutes book; and signed & dated by the member. The resolution shall become effective from the date of signing minutes by the sole member.

PROCEEDINGS OF THE BOARD MEETINGS

In case of only one director, all the businesses to be transacted at the Board meeting shall be entered into minutes book signed and dated by the director. The resolution shall become effective from the date of signing such minutes by the director.

DURING CONTINUATION OF OPC

- Wherever name of OPC is printed, affixed or engraved, the words 'One Person Company' shall be mentioned in brackets below the name [Section 12].
- Member of OPC may at any time change, for any reason, the name of person nominated and nominate another person after obtaining prior consent of such another person in Form INC 3. Within 30 days, OPC need to file notice of withdrawal of consent and intimation of another nominated person by the sole member in prescribed Form INC 4.
- The person nominated by subscriber or member of OPC may also withdraw his consent by giving a notice in writing to sole member and OPC.
- Nevertheless, the sole member to nominate another person as nominee within 15 days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to OPC, along with the written consent of such other person so nominated in Form INC.3.
- In case the sole member of OPC ceases to be the member in the event of death or incapacity to contract, his nominee becomes the member of OPC. Such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with MCA an intimation of such cessation and nomination in Form INC.4.
- Any such change in the name of the person shall not be





- If an OPC limited by shares or by guarantee enters into a contract with the sole member who is also the director, OPC shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

deemed to be an alteration of the memorandum.

If an OPC limited by shares or by guarantee enters into a contract with the sole member who is also the director, OPC shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract. Further, every such contract entered into by an OPC and recorded in minutes of the Board meeting shall be filed with MCA within 15 days of the date of approval by the Board [Section 193].

- Where the paid up share capital of an OPC exceeds Rs.50 lakhs or its average annual turnover during preceding three consecutive financial years exceeds Rs.2 crores, it shall cease to continue as an OPC.



Such OPC shall be required to convert itself, within 6 months of the date on which its paid up share capital is increased beyond Rs.50 lakhs or the last day of the relevant period during which its average annual turnover exceeds Rs.2 crores as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act. Further, OPC shall alter its memorandum and articles by passing a resolution to give effect to the conversion and to make necessary changes incidental thereto.

Ensure to file copy of financial statement with MCA within 180 days from the closure of financial year i.e. by 30th September [Section 137]. Companies other than OPC can file their financial statement with MCA within 30 days from the adoption by the members at the Annual General Meeting ('AGM').

EXEMPTIONS/ PRIVILEGES

Apart from the benefits of private limited company, the following exemptions/ privileges attracts the person to form OPC:-

- Financial Statement of OPC may not include cash flow statement. [Section 2(40)].
- OPC can have only one director as against minimum number of three directors in the case of a public company and two directors in the case of a private company [Section 149].
- If there is no provision made in the articles for the appointment of the first director, an individual, being subscriber member, shall be the first director in OPC until the director(s) is duly appointed by the member [Section 152].
- There is no requirement to hold minimum four Board meetings and gap between two consecutive meetings may exceeds 120 days. Further, it would be sufficient if at least one Board meeting is conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.
- The provisions relating to sending of notice atleast 7 days before the Board meeting, participation though video conferencing or other audio visual means, quorum does not apply to OPC if there is only one director on its Board of Directors.
- Company Secretary ('CS') alone can sign the Annual Return of OPC. However, if there is no CS, Director of OPC need to sign the Annual Return. Whereas in case of companies other than OPC, Annual Return need to be signed by a director and the CS, or where there is no CS, by a company secretary in practice.
- Financial statement, Board's report, etc., of OPC can be signed by one director, for submission to the auditors for their report thereon. The Board's reports of OPC means a report containing explanations or comments by the Board on every



Article

ONE PERSON COMPANY PREREQUISITE, EXEMPTIONS AND RESTRICTIONS

qualification, reservation or adverse remark or disclaimer made by the auditor in his report [Section 134].

- OPC need not to hold AGM. [Section 96].
- The provision of Postal ballot, Circulation of members' resolution, Power of Tribunal to call meetings of members, etc. does not apply to OPC.
- Any business which is required to be transacted at general meeting by means of an ordinary or special resolution, it shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 of the Act and signed and dated by the member and such date shall be the date of the meeting.
- The provision relating to appointment of an individual as an auditor for more than one term of five consecutive years; and an audit firm as an auditor for more than two terms of five consecutive years shall not apply to OPC.
- As per the Companies (Share Capital and Debentures) Rules, 2014, share certificate need to be issued under the seal of OPC, which shall be signed by one director or a person authorized by the Board of OPC and CS or any other person authorized by the Board for the purpose. Whereas, in case of companies other than OPC, share certificate shall be issued under the seal of the Company and signed by two directors, one of whom shall be the Managing Director or Whole-time Director; and CS, if there is one or any other person authorised by the Board.

Nevertheless, section 118 of the Act states that every company to observe secretarial standards ('SS') with respect to Board meeting specified by the Institute of Company Secretaries of India. As OPC may not have engaged CS or other expert of company laws, it might find difficulty in ensuring the compliances of such SS. Hence, it would be apt to exempt OPC from observing SS.

RESTRICTIONS RELATING TO OPC

Despite the apparent ease in formation and exemption/ privileges, there are following resections relating to OPC:-

- No person can incorporate more than one OPC or become nominee in more than one such OPC.
- Minor shall not become member or nominee of OPC or can hold share with beneficial interest.
- OPC cannot be incorporated or converted into a section 8 of Act company (i.e., charitable objects etc.).
- OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

- No OPC can convert voluntarily into any kind of company unless two years is expired from the date of incorporation, except if the paid up share capital is increased beyond Rs.50 lakhs or its average annual turnover during three preceding financial years exceeds Rs.2 crores.

CONCLUSION

The introduction of then concept of OPC in the Act is certainly laudable which will induce first generation entrepreneur to shift from sole proprietorship form of business to OPC so that it can have access to bank loan and legal protection as well etc.

Nevertheless, the success of any new concept primarily depends upon its simplicity and exemption available. As the Act intends to improve corporate governance, there is a thrust on prompt disclosures and compliances.

As far as exemptions are concerned, there are enough available for OPC. However, OPC, being smaller set up, might find difficulty in ensuring the enormous disclosures / compliances, envisaged in the Act and voluminous Rules, which certainly require assistance of expert like Company Secretaries and/ or Chartered Accountants.

Further, it would have been apt if there would have been separate chapter in the Act relating to OPC for ease of reference and compliance.

Disclaimer: The views expressed in this article are solely the views of the authors and are not connected in any way with the views of the Company/ or the Group where the authors are employed.

Appointment

REQUIRED

Company Secretary required for Umang Commercial Company Limited, a Non Banking Financial Company (NBFC) engaged in the business of investment, Finance and allied activities. The incumbent should be an ACS with 4-5 years of relevant working experience. Apply with confidence within 15 days stating age, qualification, experience and details of salary drawn and expected to:-

The Director,

Umang Commercial Company Limited, 34A, Metcafe Street, Room No. 6A, 6th Floor, Kolkata - 700013





Part-2
Other Articles



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A Concise Analysis of Section 185 of Companies Act 2013

- In the case of private companies section 185 is acting as an unduly harsh and impractical statutory prohibition and would have the effect of stifling business growth in the country since it is unavoidable that a company funds a new project undertaken by an independent company incorporated as an associate company and banks are not ready to provide funds unless a corporate guarantee or security is provided by a parent or group company. The misgivings of interpretation of section 185 and that of section 186 have all been explained in this article.

Sections 185 and 186 are the hottest topics in the corporate sector today and there are a few misgivings about their interpretation.

Section 185 of the Companies Act 2013 ('2013 Act'), which reads as follows:

185. LOAN TO DIRECTORS, ETC

(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

- (a) the giving of any loan to a managing or whole-time director—
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a

special resolution; or

- (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by



* Past President, The Institute of Company Secretaries of India.





Article

A CONCISE ANALYSIS OF SECTION 185 OF COMPANIES ACT 2013

the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression "to any other person in whom director is interested" means—

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
- (b) any firm in which any such director or relative is a partner;
- (c) any private company of which any such director is a director or member;
- (d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- (e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company."

PROHIBITORY PROVISION

Section 185 is a prohibitory provision and is mandatory in character, which is evident from the negative words 'no company shall'. It is well settled that when a statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature.¹ As stated by Crawford "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience."² In *Mannalal Khetan v. Kedar Nath Khetan* (1977) 47 Comp Cas 185 (SC), the Supreme Court has held (concerning s. 108 of Companies Act 1956) that the words "shall not ..." are mandatory in character. Negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative. The words "shall not register" (in section 108 of the Companies Act) are mandatory in character. The mandatory character is strengthened by the negative form of the language.

Section 185 applies only when any company (public or private) proposes to give a loan to any of the parties mentioned in the Explanation appended to that section, or when a company proposes to provide a guarantee or security in connection with a loan, on behalf of any of the parties mentioned in the said Explanation. The section completely prohibits such loans, guarantees and securities and no company can give such loans and provide such securities even with the approval of members of the company or the Central Government.

As noted before, subsection (1) prohibits any company, directly or indirectly advancing a loan or providing any guarantee or security

in connection with any loan, to any of its directors or to any other person in whom the director is interested or give any taken by him or such other person. The expression 'to any other person in whom director is interested' is defined in the Explanation below subsection (1).

Accordingly, the prohibition contained in subsection (1) will apply to a loan/guarantee/security give by a company ('the lending company') to any of the following parties and, therefore, a company cannot give any loan/guarantee/security to any of these parties, despite that the lending company may be able to give loan/guarantee/security to any of these parties under section 186 since, as will be noted below, this section shall prevail over section 186:

- (1) any director of the lending company;
- (2) any director of the holding company of the lending company;
- (3) any partner of any director of the lending company;
- (4) any partner of any director of the holding company
- (5) any relative of any director of the lending company;
- (6) any relative of any director of the holding company;
- (7) any firm in which any director of the lending company is a partner
- (8) any firm in which any director of the holding company of the lending company is a partner;
- (9) any firm in which any relative of a director of the lending company is a partner
- (10) any firm in which any relative of a director of the holding company of the lending company is a partner
- (11) any private company of which any director of the lending company is director;
- (12) any private company of which any director of the lending company is a member;
- (13) any private company of which any director of the holding company of the lending company is director
- (14) any private company of which any director of the holding company of the lending company is a member;
- (15) any body corporate at a general meeting of which 25% of more of the total voting power is exercised or controlled by any director of the lending company;
- (16) any body corporate at a general meeting of which 25% of more of the total voting power is exercised or controlled by two or more such directors of the lending company, together
- (17) any body corporate at a general meeting of which 25% of more of the total voting power is exercised or controlled by any director of the holding company of the lending company;
- (18) any body corporate at a general meeting of which 25% of more of the total voting power is exercised or controlled by two or more directors of the holding company of the lending company, together;
- (19) any body corporate, the Board of directors, managing director

¹ Principle Of Statutory Interpretation by justice G. P. Singh 11th edition, 2008 pages 390 to 392.

² Vijay Narayan Thatte v. State of Maharashtra 2009 AIR SCW 53153





or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.³

EFFECT OF THE EXPRESSION 'SAVE AS OTHERWISE PROVIDED IN THIS ACT'

So far as the saving clause 'Save as otherwise provided in this Act', at the beginning of subsection (1), is concerned, the word 'save' here means except, other than or excluding or not including. The phrase 'save as otherwise provided in this Act' is employed in statutory drafting when a section using this phrase seeks to exclude the operation some other section or sections which contains a similar provision.

The saving clause, which would seem to have the effect of protecting any other provision of the Act which permits giving loans, guarantees or securities such as section 186 and section 67, does not seem to be suitable in this provision. This saving clause has been copied from the predecessor of this section i.e. section 295 of the 1956 Act; however, there it was used to exclude the operation of subsection (1) by reason of the exemption provided for in subsection (2) and that is why it stated: 'Save as otherwise provided in sub-section (2)'. In section 185, the proviso to subsection (1) contains the exemptions and hence there was no need to say "Save as otherwise provided in this Act'. So, this is clearly a drafting. Indeed, the section should have had a non-obstante clause 'Notwithstanding anything contained in any other provision of this Act'.

Be that as it may, the said saving clause has to be interpreted not by the rule literal construction but by applying the rules of purposive construction and harmonious construction, because if it interpreted by applying the rule of literal construction, it would have the effect of wiping out section 185 since loans, guarantees and securities that this section prohibits are permitted under section 186. In particular, section 186 of the 2013 Act applies to loans to be given to any person or body corporate. If the expression 'save as otherwise provided in this Act' in section 185 is interpreted by the rule of literal construction, to mean that a company may give loans, guarantees and securities to any of the parties falling within the ambit of section 185 (as specified in the Explanation), by resorting to section 186, despite the prohibition under subsection (1), that would render the this section redundant and superfluous and useless, which could not have been the intention of the Legislature. It is a well-settled principle of statutory interpretation that construction which has the effect of rendering any provision of the statute meaningless or ineffective should be avoided; all the parts of the statute must be read together so as to make as far as possible a consistent enactment of the whole statute giving full meaning and effect to every part and not rendering any part

meaningless or superfluous.⁴

While this section opens with the saving clause 'Save as otherwise provided in this Act', section 186 opens with the phrase 'Without prejudice to the provisions contained in this Act'. But this phrase qualifies only subsection (1) of section 186, and not its subsection (2). Accordingly, as stated in the preceding paragraph, the phrase 'Save as otherwise provided in this Act' has to be interpreted without rendering the provisions of section 185 otiose and the rule of interpretation that special provision in an enactment prevails vis-à-vis general provision should prevail inasmuch as section 186 is a general provision, whereas section 185 is a special provision on the same subject; hence section 185 overrides section 186 to the extent of the transactions covered in both.

Needless to say, every loan/guarantee/security to any of the parties mentioned in the Explanation appended to section 185 would attract section 186 because, according to subsection (2) of section 186, No company shall directly or indirectly—

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more, and according to subsection (3), where the giving of any loan or guarantee or providing any security or the acquisition under subsection (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

Thus, a loan to any 'person' or 'body corporate' (indeed 'person' included body corporate) attracts section 186 and guarantees and securities in connection with loans on behalf of any person or body corporate also attracts section 186 and these transactions attract section 185 as well since all the parties mentioned in the Explanation are either persons or bodies corporate.

CLAUSE (C) OF EXPLANATION

According to clause (c) of the Explanation, if a company gives loan or provides a guarantee/security, to any private company of which any director of the lending company is a director or member. This clause does not apply if the borrowing company is not a private company. If a loan is to be given to a subsidiary of a public company, clause (c) will not get attracted since a private company which is a subsidiary of a public company is not a private company;

⁴ Juvansinhji Balusinhji and others v. Balbhadrasinhji Indrasinhji [1962] 32 Comp Cas 1162 (Guj). For more discussion, refer to Essential Rules of Statutory Interpretation at the beginning of this volume.

³ For a detailed discussion on this, refer to the COMMENTARY under section 2(60).





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it is a public company. Therefore when a public company gives loan to its subsidiary (even if they have common director(s) or any director of the lending company is a member of the subsidiary), clause (c) will not get attracted and hence section 185(1) will not apply (unless some other clause of the Explanation is attracted).

CLAUSE (D) OF EXPLANATION

According to clause (d) of the Explanation, if a company gives loan or provides a guarantee/security, to any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together, section 185 will apply. This clause clearly states that twenty-five percent or more voting power must be held by director or two or more directors of the company. The voting power held by relatives of a director is not to be considered for the purpose of clause (d) because that will amount to rewriting of the statute. Therefore, unless 25% more of the total voting power of the borrowing company is held by one or more directors themselves, in their own name(s), clause (d) will not be attracted.

CLAUSE (E) OF EXPLANATION

According to clause (e) of the Explanation, if a loan/guarantee/security is to be given to any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. Simply put, clause (e) will get attracted if the Board of directors, managing director or manager, of S Ltd is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of H Ltd. The situation mentioned here does not seem to be a possibility as S Ltd is a subsidiary of H Ltd and it is inconceivable that the board of directors or managing director or the manager of the subsidiary company is accustomed to act in accordance with the directions or instructions of the board of the holding company or its director(s), unless the S Ltd., has given any right or power to give instructions or directions to the Board of H Ltd.

Since the companies to which loan is to be given or on whose behalf guarantee/security is to be provided are distinct entities with their own independent boards which exercise powers in relation to the affairs of the companies according to law and articles of association and since there is no document indicating that the board of directors of the subsidiary company has been given any right or power to give instructions or directions to the boards of H Ltd, clause (e) of Explanation to section 185 is not applicable and hence section 185 does not apply to the proposed transaction of loan or guarantee.

The expression "accustomed to" means customary; usual; habitual; habituated; acclimated; be used to; being in the habit or custom. The use of this phrase clearly indicates that there must be a regular or

usual practice of issuing directions or instructions by the board or a director(s) of one company to the board of another company and the board of the latter following them and acting in accordance with them. This is a question of fact and there cannot be a presumption in any case, like holding company and subsidiary, even if the subsidiary is a wholly-owned subsidiary or one or more of the directors of the holding company are directors of the subsidiary or one or more employees of the holding company are directors of the subsidiary. Both the requirements of clause (e) will have to be established, namely: (1) that there have been directors or instructions issued by the Board, or of any director or directors, of the lending company regularly; and (2) the Board of directors, managing director or manager, of the borrowing company acting in accordance with the directions or instructions. There has to be evidence of the board or a director(s) issuing directions and instructions and the board of the other company regularly acting according to them.

Thus, to hold that the Board of a company is accustomed to act in accordance with directions or instructions of the board, or of any director or directors of another company, it has to be established that there have been a series of events in which the Board may have acted in accordance with such instructions and a single isolated event or two would not be sufficient. In this regard where service rules provided for disciplinary action against the persons habitually absent, the Supreme Court held that a single instance of absence was not sufficient to fall within the teeth of requirement of habitual absence.⁵

INDIAN CASE LAW

Section 538 of the Companies Act 1956 made laible past and present officers of a company which was being wound-up and subsection (3) of that section provided that "For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act." The definition of 'officer' in section 2(30) of the Act also provided that officer included any person in accordance with whose directions or instructions the Board of directors or any one or more of the director is or are accustomed to act. In *Official Liquidator, Golcha Properties P. Ltd. (In Liquidation) v P. C. Dhadda* [1980] 50 Comp Cas 175 (Raj) the question before the court was whether the secretary, chief accountant and cashier of the company which was in winding-up were 'officers' of the company are not. Answering that question in the affirmative, the court held that,

"The present definition of the word "officer" is wide enough and would include anybody on whose instructions the board or any of the directors of the company is accustomed to act. This is designed to counter the treat whereby dummy directors are appointed on boards of companies to implements policies of a dubious nature, while masterminds mainly instrumented in evolving those policies remain in the background. According to Stroud's Judicial Dictionary

⁵ *Malkiat Singh v State of Punjab* (1996) 7 SCC 634.



"office" means a person under a contract of service; a servant of special status holding an appointment to an office which carries with it an authority to give directions to other servants. Shri P. C. Dhadda was the secretary, Shri . L. Jain, accountant, and Shri K. C. Jain, cashier, in the relevant year 1965, in M/s. Golcha Properties (P.) Ltd. The voucher No. 320 dated 25th August, 1965, was prepared by these persons. Shri P. C. Dhadda signed it as secretary, Shri G. L. Jain signed it as chief accountant and Shri K. C. Jain prepared the same as cashier. From the above discussion, it is apparent that during the relevant period, non-petitioners Nos. 2 and 3 were the officers of the said company as defined in sub-s. (30) of s. 2 of the Indian Companies Act."

Section 2(g)(viii) of the Monopolies and Restrictive Trade Practices Act 1969 defined the expression "inter-connected undertaking" and according to clause (ix) of the Explanation appended to that definition, two bodies corporate, shall be deemed to be under the same management if the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

In *Swastika Textile Mills Ltd In re* [1985] 57 Comp Cas 766 (Bom), Mr M was the chief executive of company L and a director of company A and it was contended that it must be presumed that in his capacity as a director of company A he was acting in accordance with the directions or instructions given to him by the directors of company L. The court, however, held that whether certain persons are accustomed to act in a particular manner or not is something which can be shown by instances of past behaviour or other material facts and not by mere presumptions. Since not a single instance had been given of a person having acted in his capacity as a director of a company pursuant to the directions given to him by the directors of another company, it could not be said that he was accustomed to act in accordance with such directions given by the directors of that other company and therefore, the contention must be rejected.

Section 545 of the Companies Act 1956 empowers the court to direct the liquidator either himself to prosecute any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, if it appears to the Court in the course of a winding up that he has been guilty of any offence in relation to the company. In *Official Liquidator v T. Sudarshan* [2003] 116 Comp Cas 88 (Mad), two persons (eighth and ninth respondents) were group vice president and chairman but no directors of the company and they were also promoters of the company. It was found that they were de facto in charge of the affairs of the company. They had not placed themselves as directors in order to avoid any statutory liability. The person who was the group president and issued directions to the board of directors of a company who were employees of the company and the so-called group president in a letter had accepted the fact

that they were responsible for all the affairs of the company and they were the persons in accordance with whose directions or instructions, the board is accustomed to act, it was held that the group president was liable for prosecution under section 545 of the Companies Act (any past or present officer of the company in liquidation has been guilty of any offence in relation to the company, as an officer of the company).

UK CASE LAW

Section 741 of the UK Companies Act 1985 defined 'shadow director as a person in accordance with whose directions or instructions the directors of the company are accustomed to act. However a person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity. Section 251 of the UK Companies Act 2006 gives the same definition.

In *Hydrodan(Corby) Ltd, In re* (1994) BCC 161 the Chancery Court pointed out distinction between de facto director and shadow director. The court held that de facto and shadow directors were very similar, that their roles overlapped, and that it might not be possible to determine in any given case whether a particular person was a de facto or a shadow director. The terms did not overlap. They were alternatives, and in most and perhaps all cases were mutually exclusive. It was held:

"A shadow director ... does not claim or purport to act as a director. On the contrary, he claims not to be a director. He lurks in the shadows, sheltering behind others who, he claims, are the only directors of the company to the exclusion of himself. He is not held out as a director by the company. To establish that a defendant is a shadow director of a company it is necessary to allege and prove: (1) who are the directors of the company, whether de facto or de jure; (2) that the defendant directed those directors how to act in relation to the company or that he was one of the persons who did so; (3) that those directors acted in accordance with such directions; and (4) that they were accustomed so to act. What is needed is, first, a board of directors claiming and purporting to act as such; and, secondly, a pattern of behaviour in which the board did not exercise any discretion or judgment of its own, but acted in accordance with the directions of others."

In *Re Unisoft Group Ltd (No. 3)* (1994) 1 BCC 609; 1994 BCC 766,





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Harman J. explained the definition of 'shadow director' in section 741 of the UK Companies Act 1985,

"In my view, those words can only mean ... that the shadow director must be, in effect, the puppet master controlling the actions of the board. The directors must be (to use a different phrase) the 'cat's paw' of the shadow director. They must be people who act on the directions or instructions of the shadow director as a matter of regular practice. That last requirement follows from the reference in the subsection to the directors being 'accustomed to act'. That must refer to acts not on one individual occasion but over a period of time and as a regular course of conduct. In my view, there can be no way in which the acts of any one of several directors of a company in complying with the directions of an outsider could constitute that outsider a shadow director of that company. Of course, if the board of the company be one person only and that person is a 'cat's paw' for an outsider, the outsider may be the shadow director of that company. But in a case such as this, with a multi-member board, unless the whole of the board, or at the very least a governing majority of it - in my belief the whole, but I need not exclude a governing majority are accustomed to act on the directions of an outsider, such an outsider cannot be a shadow director. Further, there must be, as I say, more than one act and a course of conduct."

Section 22(5) of the Directors Disqualification Act 1986 (UK) defines the expression 'shadow director' as

'... a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity).'

In *Secretary of State for Trade and Industry v Deverell* and another [2000] 2 All ER 365, it has been held that, for the purposes of s 22(5) of the 1986 Act, the question whether a particular communication constituted a direction or instruction had to be answered in the light of all the evidence, and it was not necessary to prove the understanding or expectation of either giver or receiver. Evidence of such an understanding or expectation might be relevant, but it could not be conclusive. Furthermore, non-professional advice could fall within s 22(5). Such a conclusion appeared to be assumed by the proviso excepting advice given in a professional capacity, and in any event the concepts of 'direction' and 'instruction' did not exclude the concept of 'advice' since all three shared the common feature of 'guidance'. Moreover, although it would be sufficient to show that properly appointed directors had cast themselves in a subservient role or surrendered their discretions in the face of 'directions or instructions' from the alleged shadow director, it would not always be necessary to do so. Such instructions or directions did not have to extend over all or most of the corporate activities of the company, and it was not necessary to demonstrate a degree of compulsion in excess of that implicit in the fact that the board was accustomed to act in accordance with them. Moreover, it was not necessary for the shadow director to lurk in the shadows, although he might frequently do so.

The use of the phrase 'accustomed to' also indicates that there must be regularity in the directions or instructions being followed by the board and no presumption can be drawn based on some relationship between two companies such as holding-subsidiary or where the boards of the two companies have one or more common directors.

Thus, to hold that the board of one company is accustomed to act in accordance with directions or instructions of a person, it has to be established that there have been a series of events in which the board may have acted in accordance with such instructions and a single isolated event or two would not be sufficient. Moreover, there cannot be a presumption, such as in the case of subsidiary company, that its board or managing director or any director is to be presumed to be accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the holding company; there has to be some evidence regarding instances of such acting. On the contrary, there is a presumption that board of every company acts independently in the interest of the company and every director acts in accordance with fiduciary duties and independent judgment uninfluenced by any external force, except when there is evidence that the contrary is true.

MCA'S CIRCULARS

Realising the utter uneasiness in the corporate sector about section 186, the Ministry of Corporate Affairs (MCA) has issued two circulars: Circular No. 18 of 2013 dated 19 November 2011 and Circular No. 3 of 2014 dated 14 February 2014. Both these circulars have, however, created a great deal of confusion everywhere. While no one is clear as to why the former circular was issued and what its purpose was and what it has achieved, the second one says something which the statutory provision enacted by the Legislature does not say, namely that section 185 prohibits guarantee given or security provided by a holding company in respect of any loan by its subsidiary company except in the ordinary course of business and that this 'clarification' will apply to cases where loans are exclusively utilized by the subsidiary for its principal business. Thus, this so-called 'clarification' not only confuses instead of clarifying, but it also rewrites the statute passed by the Legislature (and thereby encroaching upon the Legislature's prerogative).

CONCLUDING REMARK

Section 185 is acting as an unduly harsh and impractical statutory prohibition in the case of private companies and would have the effect of stifling business growth in the country since it is unavoidable that a company funds a new project undertaken by an independent company incorporated as an associate company and banks are not ready to provide funds unless a corporate guarantee or security is provided by a parent or group company. The MCA may exempt private companies from the impact of section 185 in exercise of its powers under section 462 of the Act.

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Performance of the Board, its Committees and Directors - An Appraisal & a Critique

- The Companies Act 2013 has enjoined a novel duty on company boards to evaluate not only their own performance in the previous financial year but also that of their committees and individual directors. Instead of reporting the outcome of such evaluation, Section 134 (which has come into force on 1st April 2014) requires the board only to include in its Report (to be attached to the Financial Statement) the 'manner' in which such evaluation has been made. The author, based on certain international practices in this regard has outlined the course that Indian company boards may follow. It is hoped that the new mandate will improve the effectiveness of our boards.

"If the board is not as effective as it needs to be in today's fast changing and demanding environment, the company could well lose its way. However good your board it is, it can and must improve its effectiveness and adapt to meet the challenges of the future."

-John Harper in "Chairing the Board" 2000 Edn, Kogan Page.

THE NEW MANDATE

Section 134 of the Companies Act, 2013 ('the Act') has come into force on and from 1st April 2014 (vide MCA's Notification dated 26th March 2014) sub-section (3) of which read with Rule 8.4 of Companies (Accounts) Rules, requires every listed company and other public company with paid-up share capital of Rs. 25 crore or more to include in its board's report (to be attached to Financial Statement for the year ended 31st March 2014) a statement indicating the manner in which formal evaluation has been made by the Board of its own performance during the previous FY 2013-14 and that of its committees and individual directors. However, MCA has by its General Circular No. 8/2014 dated 4th April 2014, clarified that the 'Board's report in respect





of the financial year 2013-14 shall be governed by the Companies Act, 1956. The Board's report in respect of the FY 2014-15 will therefore need to include a statement regarding the performance of the Board, Committees and directors during 2014-15. It may nevertheless be beneficial for the Board if the exercise re: performance evaluation is undertaken voluntarily (as a rehearsal) in respect of the FY 2013-14 by way of rehearsal for the mandatory exercise during the next FY 2014-15."

- 1.1 'Statement' signifies a formal and factual declaration. 'Evaluation' means determination of value (efficacy or excellence) while 'Performance' means 'the act of carrying out duly, to act in fulfillment of, to carry into effect' (evidently, of tasks or functions designed to achieve pre-determined plans, programmes, objectives etc. Such functions or actions, in the case of a board, manifest themselves in the form of resolutions, approvals, directions and the like. If the company has to indicate the 'manner' or method of evaluation, it presupposes that its Board has indeed carried out the requisite evaluation. Further, the valuation has to be carried out by the Board which means that it cannot be totally outsourced. The Board may however take the help and assistance of an external agency like a management consultancy firm.
- 1.2 It is significant to note that Section 134 does not require the disclosure of the 'outcome of evaluation' but only the 'manner of evaluation' followed. It is not clear whether information regarding the 'manner of evaluation' (without letting known the outcome of the evaluation) will be of any interest or use to the readers of the Board's report. MCA may perhaps require disclosure of such 'outcome' by a notification under Sec. 134 (3) (q) unless such disclosure is considered to be given under the 'state of the company's affairs' or under the 'Directors' Responsibility Statement'.
- 1.3 As the new mandate marks a novel milestone in the progress of corporate governance in the country, and little is known of this exercise in the corporate circles so far, an attempt is made here to analyse briefly the implications of the new mandate to find out its content, contours and purpose in the light of the information, observations and suggestions provided on this subject abroad by Mr. John Harper, an accomplished Company Director and Past Professional Development Director at the Institute of Directors, in his said book adapted to our background and the provisions of the Companies Act 2013, especially Sec. 134 that deals with content and significance of Board's report, Sec. 166 that lists the duties of directors, Sec. 143 that deals with Statutory Financial Audit, Sec. 149 that deals with the Board, its constitution etc., Secs 152 and 161 that deal with appointment of directors, Secs 177 and 178 that deal with the audit, nomination and remuneration committees of the Board, Sec. 204 that deals with Secretarial audit all of which contain the duties and other overall performance

requirements. Responsibilities etc of directors, in one form or the other.

2.0 Purposes of the Board, and of its evaluation

Purpose of the Board and its achievement

- 2.1 Let us recall, at the outset, the purpose of a company's board. The overreaching purpose of a Board is to be exclusively responsible for the governance of the company, namely 'the accomplishment, manner or system of directing and controlling the affairs, policies, functions and actions of the company to ensure the continued well-being (prosperity) of the company while, at the same time, the company remains a good corporate citizen. It should 'focus on giving leadership, directing the organization's affairs and overseeing what is being done'. It shall however discharge its function and responsibilities within the overall framework of the law of the land, the company's own charters like the MoA and AoA and the other mandatory covenants like shareholders' or collaboration agreements.
- 2.2 The above purpose is achieved through the establishment of a vision, mission and values for the company and through exercise of its accountability to shareholders and discharge of its responsibility to the other relevant stakeholders. The Board which is the repository of all the company's powers save those reserved for the members must therefore delegate its powers suitably for the day to day management of the company led by the MD or the CEO, the whole time directors etc..

Purpose of evaluation by the Board

The performance of a Board has a significant impact on the performance of the company. Improving the effectiveness of the board is thus vitally important for the company's continued prosperity and growth. It therefore becomes necessary for the board to take a rigorous and objective look at itself annually with a view to assessing both the degree and extent of its





achievements, vis-avis the targets and standards that it has set for itself. The Board should likewise review the performance of its committees and performance of the MD and/or WTD all of whom form a team (as directors) for one and the same purpose. Such a review enables the Board to assess its own pertinence for the ongoing needs of the company and to make due changes within itself to meet the challenges of the future. The investors in the company get immensely benefited by the outcome of such a review or evaluation. The new mandate is thus set to raise the standard of board's effectiveness.

3.0 Manner of Evaluation

3.1 John Harper has provided two options. 'Comprehensive appraisal' and 'Active Review'-for evaluating the Board's performance while providing a single method – 'one-to-one method – for the assessment of the performance of the individual Directors. These are detailed below duly adapted to our Indian background including the laws applicable to Indian corporate sector:-

A: 'Comprehensive' appraisal for Board's performance:

"A comprehensive approach of the board to improving its performance starts with a fundamental review of the board's actions in the past financial year and the manner in which they took place. The review must be done from a strategic perspective, against the ever-changing background and likely needs of the company."

5.3.1 The 'Comprehensive' review covers broadly (a) the composition of the Board (b) the matters it addressed during the previous financial year (c) the style and processes it adopted or followed and (d) its focus. The Companies Act contains several Sections dealing with the Board's constitution, the manner of selection of independent directors, duties of directors, appointment of additional, alternate and nominee directors, disqualifications of directors, vacation of office of director, removal of directors etc. in additions to provisions regarding meetings of directors, constitution of audit and other committees, Board's general and specific powers including those in respect of loans, investments etc., restrictions on such powers, non-cash transactions involving directors, prohibition on forward dealings and on insider trading etc. The Board may have delegated some of its powers to directors and committees. Some or all of these subjects may have been attended to by the board during the previous financial year and some of them would have been reviewed by the auditors (financial, secretarial and cost) in their respective reports submitted to the board.

5.3.2 Likewise, the Board would have discharged its statutory duties and responsibilities pertaining to maintenance

of accounts and records, institution of internal controls, compliances with accounting standards, audit of accounts, matters pertaining to profit and loss of its transactions during the year as also dealt with related party transactions or the presentation of 'true and fair' financial statements etc. to the auditors for their report thereon.

5.3.3 The Board may be considered to have the benefit of the contents of or disclosures in the Financial, Secretarial and Cost Audit reports while carrying out evaluation of its own performance and the performance of its committees and of its directors during the past financial year. The Board is enabled to narrow down its focus on the important aspects of these reports and of other highlights relating to corporate governance, legal and ethical compliances, enhancement of personal attributes of directors including the balancing of the board with diverse talents and exposures, high quality of its decisions (measured by the success achieved) effectiveness of communications with internal and external stakeholders, employment of analytical skills, strategic perception and business acumen in the various matters that the Board dealt with in the past financial year.

5.3.4 Style and process: While each Board is known for its own style of functioning and decision-making, it has to be an open (transparent) one. It is important to evaluate the team work displayed by the Chairman, the Managing and/or the Whole-time directors and the other key managerial personnel in helping the Board to function efficiently and effectively. The quality of the agenda may also be evaluated to ensure that subjects falling within the domain of general management have not been included in the board agenda. The efficacy of follow-up of board's and its committees' decisions as well as feed-back on them may also be examined.

5.3.5 Focusing on strategic issues: This would include anticipating the future while decision-making, preserving and promoting matters of established corporate culture and values, thinking and acting strategically on all major issues, considering effective risk management, promoting compliance culture and observance of business ethics.

5.4 The evaluation may be made keeping in view the above matters and the gist of its outcome may be reported to, and considered by, the board, while making a special note of ideas and options for improvement and change that emanate from such consideration by the Board.. The best way forward can then be agreed and plans made, followed by implementation and further review. The Chairman of the Board usually leads this review process



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PERFORMANCE OF THE BOARD, ITS COMMITTEES AND DIRECTORS - AN APPRAISAL & A CRITIQUE

assisted by both the executive and non-executive directors. Independent directors among them can play a pivotal role in this regard.

B: Active review

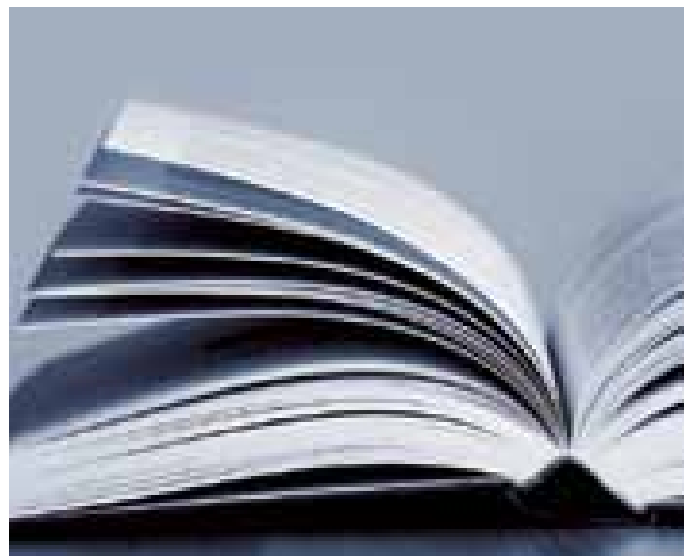
- 6.0 This is a pragmatic method of appraisal – an alternative to the 'comprehensive appraisal'. The Active review is considered to be quicker though less thorough than a 'comprehensive appraisal'. The subjects to be considered include the extent to which the company's objects have been achieved during the past financial year, adequacy of 'information' made available to the board, quality and depth of discussions at the board and committee meetings, effectiveness with which board's tasks have been tackled, whether future prosperity of the company has been taken care of by the Board's actions, etc.
- 6.1 This helps to ascertain how effectively the board functioned during the year under review, what steps are needed to improve the board's performance in this regard, and the time span required to determine and allocate new responsibilities. Progress is then reported and a further review carried out to help ascertain what improvements have taken place and to see what new priorities there may be for improvement. The procedure here is led by the chairman and is carried out by the directors themselves, individually or as small groups depending upon the strength or size and composition of the board.
- 6.2 Each director is given a set of questions about the board and is asked to assess the board's effectiveness in each case by giving a mark, on a scale of 1 to 10. This must be done by each director without colluding with the other director(s). Copies are then given to the chairman, who will examine them for points of consensus and have the responses consolidated. The directors then meet to examine and discuss the results, agreeing and prioritizing which areas need improving and what action shall be taken, by whom and by when.

7.0 Assessing the performance of the individual directors

- 7.1 The performance of individual directors includes that of Chairman, MD, and WTD etc. in their capacity as directors. In other words, the evaluation of a person as Chairman, MD etc. is distinct from his evaluation as director of the company.
- 7.2 The Need: A director, as a member of a Board, should firstly know what specific responsibilities he has as a member of the Board and, next, endeavour to remain competent for the position held by him, always. Only then he can make his own contribution to elevating the overall level and quality of the board's performance and board's effectiveness. The

structured learning methods include distance learning, video and audio recordings, open and in-house courses, seminars and workshops, conferences etc.

- 7.2 What is evaluated & by whom?: The review or evaluation of an individual director's performance consists, basically, of how well he/she has performed as a director, that is to say, as a member of the board against the backdrop of legal duties and self-assumed (agreed) responsibilities over a given period. Each director is expected to bring to the board his own "particular type of contribution and strength to provide the overall balance and range of attributes, skills and knowledge required." The evaluation may be carried out by the Director himself but it is better done by the Chairman with assistance and help from an external expert (who may have been an accomplished director himself for decades earlier).
- 7.2.1 John Harper has, in his book aforesaid, suggested such an evaluation of a director could be based on the Professional Code of Conduct for directors, issued by the Institute of Directors. However, we may base our evaluation of directors against its Indian counterpart of the Code, namely Sec. 166 of the Companies Act 2013 and the additional duties and responsibilities, if any, that the director has agreed to shoulder by virtue of an executive position he may be holding in the company. The IoD Code has thus been given below indicating, in brackets, its correspondence with Sec. 166 :-
- IoD's Professional Code of Conduct for directors with reference to our Sec. 166
- a. Exercise Leadership, enterprise and judgment in directing the company so as to achieve its continuing





prosperity and act in the best interests of the company as a whole and legitimate interests of its shareholders (S. 166 (2))

- b. Follow the standards of good practice set out in the IoD's 'Good practice for Directors- Standards for the Board' and act accordingly and diligently (S.166 (3))
- c. Exercise responsibilities to employees, customers, suppliers and other relevant stakeholders, including the wider community (Sec.166 (2))
- d. Comply with relevant laws, regulations and codes of practice, refrain from anti-competitive practices, and honour obligations and commitments (Sec.134 (5) (f) &
- e. At all times have a duty to respect the truth and act honestly in business dealings and in the exercise of all responsibilities as a director (Sec.166 (1))
- f. Avoid conflict between personal interests, or interests of any associated company or person, and his or her duties to the company.(Sec.166 (4))
- g. Not make improper use of information acquired as a director or disclose, or allow to be disclosed, information confidential to the company (Sec.166 (4))
- h. Not recklessly or maliciously injure the professional reputation of another director and not engage in any practice, detrimental to the reputation and interests of the profession of director
- i. Ensure that he keeps abreast of current good practice in directing (Sec.166 (3) & 134 (5))
- j. Set high standards of keeping aware of and adhering to this code, both in the spirit and in the letter, and promoting it to other directors
- k. Apply the principles of this Code appropriately when acting as a director of a non-commercial organization. (Secs. 166 & 134 (5))

expected to bring to the board to provide the overall balance and range of attributes, skills and knowledge required”.

7.4 Peer review

This method consists of using a universal list of areas of director's responsibility that is drawn up as a result of a discussion on the subject by the whole board, under the chairman's guidance. Every director will have a copy of the said universal list for each colleague, on which an evaluation is made against each criterion, with brief supporting comments. They can be sent to the recipients anonymously or with the identity of the evaluator revealed, whichever is agreed beforehand. Security, discretion, respect and trust must all be evidenced for this process to be effective. Peer review is not discussed between the participating directors. At the end of the peer review, it is up to each individual director to act upon the views expressed by the peers as he considers fit. He is at liberty to bring up one or more of the matters pertaining to his review before the Board for a further debate or discussion. Alternatively, he may also discuss it with the chairman for elaboration.

8.0 Appraisal of Chairman's performance

- 8.1 It is not clear whether clause (p) of sub-section (3) of Sec. 134 includes evaluation of the chairman's role. Pending clarification by MCA, it is considerable advisable to include the evaluation of chairman's role for compliance with Sec. 134 (3) (p).
- 8.2 The Chairman's performance is a crucial one. It can be done in many ways including the peer review by the whole board (excluding the chairman). This peer review is different in the matter of content from the peer review as a director or member of the board carried out separately. The conducting methodology may however be the same as the other peer review. Other 'softer' options would be a feed-back from the MD & Whole-time directors (if the chairman is an executive chairman) or, if the chairman is not an executive chairman,

METHODS/MANNER OF EVALUATION

7.3 Anticipatory Method or Positive Approach

The Chairman's evaluation here is on 'one-to-one basis.' While the past performance of the director is reviewed to ascertain areas that need improvement, focus is laid equally on the personal (additionally agreed) objectives – by way of improvement over the past year's performance - to be accomplished in the future. Says John Harper "This anticipatory method can help to reinforce any particular types of contribution and strength that each director would be





a feed back from the deputy/vice chairman if there is one, or an independent or separate review by a team of one or two non-executive directors (preferably independent directors) and an independent consultant to make observations, take soundings and give feed-back. "Where the chairman is also the chief executive/MD, a senior non-executive director should be the appraiser. The appraisal can be structured around the responsibility specified in the job description and list of powers delegated by the board" says John Harper.

- 8.3 The parameters for evaluation of the successful role of the Chairman would include (a) his having the personal qualities of head and heart (attributes) such as Personal integrity and authority without domination, decisiveness and an insistence to get things done, (b) his/her ability to ensure that the board properly addresses all the major strategic issues that will affect the company's prosperity, viability and reputation (c) having a proper focus on the board's key tasks, and ensuring that they are addressed (d) Successful steering the board in deciding on matters such as corporate vision/aims/mission/objectives etc.(e) acting as an effective mentor, sounding board and adviser to the MD/WTM (f) taking responsibility for the board's constitution and development, including succession matters (g) a sense of purpose with a set of priorities and objectives and skill in guiding the board to focus on the relevant issues (h) representing the company to shareholders and other stakeholders and (i) Securing the confidence and support of the directors.

9.0 Appraisal of the performance of MD or Whole-time Director

- 9.1 The evaluation of the performance of a Managing Director

or a Whole-time director consists of two parts – one that of the executive (management) position held by him and the other as a director or member of the board. It is not clear whether clause (p) of Sec.134 (3) includes evaluation of both the roles.

9.2 Because the MD/WTM has a unique and special role, there are aspects of his or her appraisal that should be carried out in a particular way. Such an appraisal or review is often best carried out formally by the chairman, with or without the support of one or more non-executive directors. Where the chairman is also the MD, a senior non-executive director may act as the appraiser.

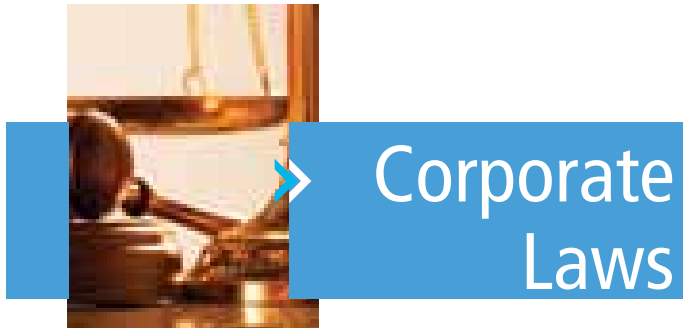
9.3 Since the MD/WTM is charged with carrying through decisions of the board, leading the organization's employees and managing the company day to day, a review of performance of such matters is called for. These embrace issues of company performance in relation to agreed plans and external benchmarks, as well as measures of the underlying health of the company.

- 9.4 There are certain mandatory duties under the Companies Act and other laws for the MD– for example, signing of the Financial Statement, Board's report etc or performing duties as Occupier under the Factories Act etc. The Board-fixed duties and responsibilities include the MD/WTM's responsibility to meet the targets under annual plans and budgets approved by the Board (of which he or she was also a part as a director), obligations under any contract between the company and the MD/WTM etc. The evaluation will be performed with reference to these targets, duties and responsibilities as well as the board's powers delegated to the MD/WTM. The awards or recognitions, if any received by the MD/WTM from outside bodies like the Management Association or the local Chamber of Commerce, State and/or Central Government etc will also count in this regard.

10.0 Tail piece

The new mandate of evaluation of the board performance along with that of its committees and individual directors will surely turn a new leaf in the onward march of corporate governance in the country to greater heights in the years to come. "The benefit will be a really dynamic board where the full weight of collective experience, intellect, wisdom, knowledge, inspiration, creativity and pragmatism come to bear on the company's affairs to shape its future".

CS



LW: 65:08:2014

INDO ROLHARD INDUSTRIES LTD v. M. K. MAHAJAN & ANR [DEL]

CO. APP. NO.25/2014

Reva Khetrapal & Pratibha Rani, JJ. [Decided on 08/07/2014]

Companies Act,1956- Section 433- winding up- whether a company could be wound up without ordering the petition to be published- Held, Yes.

Brief facts:

The respondents filed a winding up petition against the appellant company and the Single Judge admitted the petition passed an order of winding up without ordering the petition to be published. The appellant challenges this procedure adopted by the single Judge in the present appeal.

Decision: Appeal dismissed.

Reason: With regard to the grievance of the Appellant Company that the learned Company Judge was not within his rights to issue orders for advertisement of the citation of the Company and appointment of the Official Liquidator as Provisional Liquidator to take charge of all the assets and records of the Company, learned counsel appearing for Appellant Company has been unable to point out to us any infirmity or error in the said order.

Notwithstanding, we have painstakingly examined the order and are unable to find any reason for setting aside the same. At the risk of repetition, we reiterate that the Division Bench had clarified by its order dated 05.04.2013 passed in Review Petition No.116/2013 that the prima facie observations with regard to the admission of the winding up petition would stand.

In the aforesaid backdrop, we are constrained to hold that we find no flaw in the findings of the learned Company Judge which are to the effect that in view of the categorical findings and observations of the predecessor Company Judge recorded in his order dated 16.02.2009 and the further order dated 05.04.2013 passed by the Division Bench in Review Petition No.116/2013 expressly clarifying that the findings in relation to the admission of the petition would continue to stand, the contention of the Appellant Company that the order dated 05.04.2013 could not be interpreted to mean that the winding up petition stood admitted, cannot be countenanced.

Undoubtedly, the order dated 16.02.2009 was challenged by the Appellant before the Division Bench in Company Appeal No.19/2009 but the said appeal was limited to the procedure to be adopted after the admission of the winding up petition. The merits of the findings which led to the admission of the petition were not assailed in the said appeal nor in fact were considered by the Division Bench. The opening sentence of the order of the Division Bench dated 07.01.2013 further clarifies this, which is reproduced hereunder:

"The short question that arises in this appeal is whether the company court can order winding up of a company without ordering the petition to be advertised."

Subsequent thereto, as already stated by us, by its order dated 05.04.2013, in Review Petition, the Division Bench made it abundantly clear that the findings of fact made by the learned Single Judge in his order admitting the Company Petition and observations on the merits had not been disturbed and would stand, and which undoubtedly point to the fact that the petition needed to be admitted. Thus, the contention sought to be raised before us that the order dated 16.02.2009 passed by the learned Company Judge was set aside by the Division Bench by an order dated 07.01.2013 with the observation that the question of admission of the petition must be decided afresh, is specious to say the least. We have carefully perused the order dated 07.01.2013 and we are unable to deduce therefrom anything which comes to the rescue of the Appellant Company. In any event, it is stated at the risk of repetition that the said order was clarified by the Division Bench by its subsequent order dated 05.04.2013 wherein the Division Bench categorically observed that the point which persuaded the Court to set aside the earlier Single Judge's order dated 16.02.2009 was the rolled up procedure adopted by him in discussing the merits of the case, not advertising the proceedings and straightaway directing winding up. The intent was not to comment and decide upon the merits of the observations of the learned Company Judge "which undoubtedly point to the fact that the petition needed to be admitted."

In the aforesaid scenario, in our view, the learned Single Judge rightly observed that there was no reason why advertisement should be deferred, more so as the Appellant Company had not





availed of the opportunity granted to it by the Division Bench to move an application for deferment of the advertisement of the petition. Even otherwise, there did not appear to be any special circumstances which would warrant deferment or suspension of the publication of advertisement. The petition was filed as far back as in the year 2005 and the Appellant Company had sufficient opportunity to settle the claims of the Respondents. Deferment of publication of advertisement to enable the Appellant to pay to the Respondent the admitted dues was thus no longer warranted, and as a matter of fact publication was immediately called for. Likewise, the prayer for appointment of the Official Liquidator as a Provisional Liquidator to take charge of all the assets and records of the Company was merited given the prima facie findings in the order dated 16.02.2009 wherein this Court had elaborately dwelt upon the details of the manner in which the affairs of the Company were being mismanaged by its Directors and the material on record to show that there was justifiable lack of confidence in the conduct and management of the Company's affairs which completely lacked in probity.

We find no merit in the present appeal which appears to us to be only an attempt to protract the proceedings.

LW: 66:08:2014

INDUSIND BANK LTD v. ITI LIMITED & ORS
[DEL]

W.P. (C) 4350/2013 & C.M. NO. 10067/2013

S. Ravindra Bhat & VibhuBakhru, JJ. [Decided on 11/07/2014]

Article 226 of the constitution of India read with section 19(4) of the Sick Industrial Companies (Special Provisions) Act, 1985- petitioner bank refusing to be part of the consortium of lenders- BIFR rejects the request to withdraw from the consortium agreement and sanctioned the scheme- AAIFR upheld the scheme- whether correct- Held, No.

Brief facts:

The petitioner is one of the lenders of the first respondent company, which became sick. In the proceedings before the BIFR, a consortium agreement was entered into by the participating banks, including the petitioner, on the recommendations of the operating agency. At the time of formulation of scheme itself, the petitioner had alleged to have expressed reservations and decided to exit the consortium arrangement entered into between the participating banks and

financial institutions.

The purpose and underlying objective of the Consortium Agreement was to enable the participating creditors to work in tandem towards the ultimate goal of realization of their dues from the ITI. The petitioner had expressed its intention to withdraw from the consortium at the DRS stage, but the BIFR rejected the request and sanctioned the rehabilitation scheme. The petitioner appealed to the AAIFR, which confirmed the scheme sanctioned by the BIFR. Against the order of the AAIFR, the petitioner came before the High Court by filing a writ petition.

Decision: Petition allowed.

Reason: The question falling for determination by this Court, therefore, is, whether the BIFR and AAIFR could have refused the petitioner Bank's request to withdraw from participating in the consortium and compelled it to thereby continue to extend credit facilities.

It is clear that the Consortium Agreement itself provided for review/opting out by a member bank and the consequence of such decision. Though a bank, a secured creditor, enters into a consortium agreement with the other creditors (which may entail sacrificing its rights to the extent of recovering amounts which are payable to it - a situation which is by and large akin to the sacrifice which a secured creditor has to undertake under a scheme for compromise and arrangement under Section 391 of the Companies Act) in a DRS, something more fundamental is involved. Most rehabilitation packages cast an obligation upon the participating banks/creditors (who might be entitled to claim outstanding dues from the sick company) to not only forego some part of the interest liabilities or even accept a lump-sum settlement, but also to do something positive, i.e. to increase/enhance or continue with recurring funding of a venture which otherwise would be wound-up. The public interest in ensuring the revival and rehabilitation of industrial units, no doubt, cannot be lost sight of; however, at the same time, the contractual rights of the participating creditors, such as a bank (which is also answerable to its shareholders and depositors) to take a commercial decision on whether to continue to extend funding cannot be undermined. The nature of scheme under Section 391 which can override the views of a minority shareholder or creditor is fundamentally different from that of the scheme under the SICA where the creditor may be called upon to make further payments or continue with existing credit limits, thus exposing itself to the real contingency of loss. It is in such circumstances that contractual rights where the consortium participants spell-out their inter se obligations and the consequences thereof have to be recognized and given effect to and there cannot be blanket recourse to the power under Section 19(4). Such power may be appropriately invoked in the given circumstances of a case.

In view of the above discussion, in the present case, since the



consequences of opting out from the Consortium Agreement were factored in by the participating secured creditors, this Court is of the opinion that neither the BIFR nor the AAIFR could have compelled the petitioner Bank to continue in the DRS. The result of its opting-out would mean that it would stand out in respect its rights to realize the outstanding dues from the sick company, which would be postponed in terms of the Consortium Agreement with the other secured creditors. The impugned order is accordingly set aside. The writ petition has to succeed and is allowed without any order as to costs.



Competition Laws

LW: 67:08:2014

FARIDABAD INDUSTRIES ASSOCIATION V. ADANI GAS LTD [CCI]

Case No. 71 of 2012

Ashok Chawla, Anurag Goel, M. L. Tayal & S. L. Bunker. [Decided on 03/07/2014]

Competition Act, 2002- abuse of dominance- anti competitive agreement- cease and desist order passed besides imposing penalty.

The present information under section 19(1)(a) of the Competition Act, 2002 ('the Act') was filed by Faridabad Industries Association (FIA) against M/s Adani Gas Limited alleging inter alia contravention of the provisions of section 4 of the Act. The Commission after considering the entire material available on record vide its order dated 27.12.2012 passed under section 26(1) of the Act directed the DG to cause an investigation to be made into the matter and to submit a report.

Brief facts:

The informant is an association of industries, situated in Faridabad having about 500 members. The members' industries comprise auto component, medical devices, steel, alloys, textile, chemical etc. The opposite party is a company engaged *inter alia* in the business of setting up distribution network in

various cities to supply natural gas to industrial, commercial, domestic and CNG customers.

It is alleged in the information that

- the opposite party by grossly abusing its dominant position in the relevant market of supply and distribution of natural gas in Faridabad has put unconscionable terms and conditions in Gas Sales Agreement (GSA), which are unilateral and lopsided, besides being heavily tilted in favour of AGL. The opposite party (AGL), in the garb of executing GSA, has imposed its diktat upon the buyers of natural gas, who are members of FIA.
- terms of GSA have been drafted unilaterally by AGL, without leaving any scope for the members of FIA, who are hapless buyers of gas and are solely dependent for supplies upon the opposite party.
- AGL being in the driver's seat, is imposing its terms in complete disregard of basic principles of law of contract and has created a situation of 'take it or leave it' for the buyers of gas in Faridabad.
- the various clauses of GSA and conduct of the opposite party are only illustrative examples of abuse of dominant position by the opposite party in imposing unfair and discriminatory conditions in GSAs executed by it with the members of the informant association.

The Commission after considering the entire material available on record directed the Director General (DG) to cause an investigation to be made into the matter and to submit a report within a period of 60 days from receipt of the order. The DG, after receiving the directions and subsequent extensions from the Commission, investigated the matter and filed the investigation report.

The Commission considered the investigation report submitted by the DG and decided to forward copies thereof to the parties for filing their replies/ objections thereto. The Commission also directed the parties to appear for oral hearing, if so desired. Subsequently, arguments of the parties were heard on 19.03.2014.

Decision: Complaint considered.

Reason:

The Commission is of opinion that the opposite party has contravened the provisions of section 4(2)(a)(i) of the Act by imposing unfair conditions upon the buyers under GSA. In view of the above, the Commission passes the following order:

- The opposite party is directed to cease and desist from indulging in the conduct which has been found to be in





contravention of the provisions of the Act in this order.

- (ii) The gas supply agreements are ordered to be modified in light of the observations and findings recorded in the present order.

Furthermore, in terms of the provisions contained in section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse.

Considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on the opposite party at the rate of 4% of the average turnover of the last three years.

LW: 68:08:2014

NARENDER KHANDELWAL v. BPTP LIMITED & ORS [CCI]

Case Nos. 25 of 2014

Ashok Chawla, Anurag Goel, S. L. Bunker, Sudhir Mital & Augustine Peter [Decided on 02/07/2014]

Competition Act, 2002- abuse of dominance-anti competition agreement- dominance not proved- CCI closes the case.

Brief facts:

Informant booked a residential unit with OP 1 in their project known as "Astaire Garden" in Sector 70A, Gurgaon, Haryana, having a plot area of 250 sq. yards, by making an initial down payment of Rs. 7.00 lakhs. Thereafter, OP 1 sent two sets of the Builder-Buyer Agreement ('the Agreement') to the Informant for execution which he did but OP 1 had not handed over the informant's set copy of the said agreement. Despite non-receipt of the Agreement, the Informant made various payments to OP 1 from time to time towards the said unit as per the demand letters issued by them and paid an amount Rs. 36,45,486/- till January, 2012 which was equivalent to 47% (approx.) of the total price.

Thereafter, OP 1 issued demand letters for huge amounts and also set up a claim of interest on the said amount @ 18 % p.a. This was followed by another letter dated 21.9.2012 advising the Informant to clear all the arrears amounting to Rs. 23,26,364.76 within five days failing which the unit would be cancelled. After certain amount of correspondence in this regard, the Informant remitted a sum of Rs. 7,60,989/- on

6.10.2012.

It has been alleged that the unit was cancelled on 21.05.2013 and the OP1 refunded only a sum of Rs.5,59,896/- to the Informant. Besides the above, the Informant also highlighted the following clauses imposed by OP 1 in the Buyer Builder Agreement which were contended to be arbitrary. The clauses include violation of license terms, earnest money being specified as 25% amount of total sale consideration as against the common practice of 10 % of the Basic Sale Price, unreasonable forfeiture policy, punitive penalties in case of delay in payment by the Informant, absence of an exit option for the informant except when OP 1 fails to give possession within the agreed time, right to make unilateral changes in the agreement by OP 1 etc.

Decision: Complaint rejected.

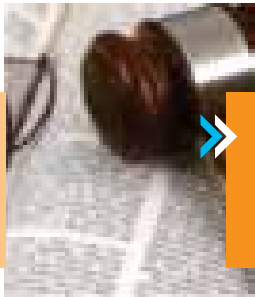
Reason: The Commission considered all the material on record and heard the informant at length. Since the grievance of the informant relates to abuse of dominant position by OPs, relevant market needs to be defined. During arguments the informant argued that the OPs hold a dominant position in the residential projects in Gurgaon and Faridabad. Having regard to the facts of the case, the relevant product market in the present case appears to be market for 'development and sale of residential apartments'. However, the geographic market definition provided by informant i.e. Gurgaon and Faridabad cannot be accepted. The consumers looking for a residential plot in Gurgaon may not prefer Faridabad or any other neighbouring areas. Therefore, on the basis of the relevant geographic market by the Commission in earlier cases, the relevant geographic market in the present case would be Gurgaon. Therefore, the relevant geographical market in the present case appears to be the market for 'development and sale of residential apartments in Gurgaon'.

The Informant alleged that OPs were dominant in the relevant market. However, having regard to the factors stated under section 19(4) of the Act, it does not appear so. Apparently, there are several other real estate developers such as DLF, Ramprastha Group, Anantraj Group, Earth Infrastructure Group etc. which are operating in the relevant market. As per informant's own submissions, the land bank of OPs in the relevant market in Gurgaon is around 778 acres. As per the information available in public domain the land bank of other players e.g. DLF (over 3000 acres), Ramprastha Group (over 1000 acres), Anantraj Group (around 1000 acres) is also enormous. Accordingly, it seems unlikely that with such land bank, the OPs had huge size or resources or any other advantage that could have capacitated them to work independently of their competitors.

Since the case under section 4 of the Act depends primarily on the position of the Opposite Parties i.e. whether they held a dominant position or not, in the absence of OPs holding a dominant position the Commission need not go into the question of abuse.



Based on the foregoing, no prima facie case of contravention of the provisions of section 4 of the Act is made out against the opposite parties. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.



General Laws

LW: 69:08:2014

ANIL GUPTA v. STAR INDIA PVT. LTD & ANR [SC]

Criminal Appeal No.1364 of 2014 (arising out of SLP (Crl.) No.7039 of 2007)

Sudhansu Jyoti Mukhopadhyaya & V. Gopala Gowda, JJ. [Decided on 07/07/2014]

Negotiable Instruments Act, 1881- sections 138 and 141- offence by company-director's vicarious liability- dishonour of cheque- director and drawer company were prosecuted- on appeal prosecution against the company set aside for want of limitation but upheld against the director- whether correct- Held, No.

Brief facts:

The appellant is the managing director of the respondent-2 company which had issued three cheques to the respondent-1 company. As these three cheques were dishonoured, the respondent -1 filed a complaint before the Metropolitan Magistrate, who took cognizance of the offence issued summons on the appellant and the respondent -2 company. Upon appeal, the High Court set aside the prosecution against the respondent-2 company on the ground of limitation but held that the appellant could be still tried for the offence. Against this order of the High Court, the appellant is before the Supreme Court.

Decision: Appeal allowed.

Reason:

In the present case, the High Court by impugned judgment, held that the complaint against respondent no.2- Company was not

maintainable and quashed the summon issued by the Trial Court against respondent no.2- Company. Thereby, the Company being not a party to the proceedings under Section 138 read with Section 141 of the Act and in view of the fact that part of the judgment referred to by the High Court in Anil Hada v. India Acrylic Ltd. (2000) 1 SCC 1 has been overruled by three Judge Bench of this Court in Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. (2012) 5 SCC 661, we have no other option but to set aside the rest part of the impugned judgment whereby the High Court held that the proceedings against the appellant can be continued even in absence of the Company. We, accordingly, set aside that part of the impugned judgment dated 13th August, 2007 passed by the High Court so far it relates to appellant and quash the summon and proceeding pursuant to complaint case No.698 of 2001 qua the appellant.



Industrial & Labour Laws

LW: 70:08:2014

MCLEOD RUSSEL INDIA LIMITED v. RPF COMMISSIONER [SC]

Civil Appeal No. 5927 OF 2014 [Arising out of SLP(C) No.7704 of 2008]

T.S. Thakur & Vikramajit Sen, JJ. [Decided on 02/07/2014]

Employees' Provident Fund & Miscellaneous Provisions Act, 1952- section 7B and 14B- default in depositing contributions- proceedings initiated- during the proceedings management was transferred to another company- transferee company claimed that it is not liable to pay the damages and interest as it is liability the transfer or company as per the MoU- interest and damages imposed- whether correct- Held, Yes.

Brief facts:

The moot issue involved in this case is whether damages for non-payment of PF contributions could be recovered jointly and severally from the transferor and transferee establishments. M/s.





Mathura Tea Estate (Mathura) owned by Saroda Tea Company Ltd (Saroda) is an establishment covered under the EPF Act had defaulted in depositing the PF contributions in time. The RPF Commissioner, Jalpaiguri initiated appropriate proceedings against Mathura.

While the proceedings were going on, the management of Mathura was transferred by Saroda to Eveready Industries (India) Ltd (Eveready) under memorandum of Understanding. Thereafter, discharged the liability of entire principal sum of Provident Fund dues to the tune of Rs.75,76,000/- pertaining to the period prior to the takeover in consonance with the Memorandum of Understanding entered into between it and Saroda Tea Company Ltd. Significantly, the said Memorandum of Understanding also included a clause to the effect that any damages payable for the failure to deposit the dues and accumulations under the EPF Act would be the exclusive liability of Saroda Tea Company Ltd making it palpably evident that the appellant was fully alive to this liability. Eveready Industries (India) Ltd had in the interregnum of this litigation changed its name to Mcleod Russel India Ltd.

It is in these premises that Eveready had undauntedly contended before the RPF Commissioner that proceedings under Section 14B of the EPF Act against it were unjustified as it was not the 'employer' defined under Section 2(e) of the EPF Act, which defaulted in paying contributions. The RPF Commissioner has recorded that Mathura had defaulted in payment of dues and held that on a conjoint reading of Sections 14B and 17B of the EPF Act it was clear that damages under Section 14B were recoverable jointly and severally from Saroda as well as Eveready.

It is this order that travelled up to Calcutta High Court's Division Bench and ultimately came up before the Supreme Court.

Decision: Appeal dismissed.

Reason:

We are not impressed by the argument to the effect that damages under Section 14B are not jointly and separately recoverable from the erstwhile and the present managements under Section 17B as Section 14B moves in its own and independent orbit. Several amendments have been made to the EPF Act so far as the fasciculous of Sections 7A to Section 7Q is concerned. This is also true of the pandect containing Sections 14A, 14AA, 14AB, 14AC, 14B and 14C; and for that matter Sections 17A, 17AA and 17B. Where such widespread amendments and changes are incorporated in a statute, it is always salutary and advisable to reposition the provisions and number them sequentially and logically. The argument that the phrase 'determination of amounts due from any employer' is found in Section 7A as well as in Section 17B is not factually correct. Section 17B speaks of 'contributions and other sums dues from the employer under any provision of this Act'; the latter Section is, therefore, wider in ambit than the previous one. In our opinion, Section 14B is complete in itself so

far as the computation of damages is concerned. It is conceivable that the money due from an employer would have to be calculated under Section 7A, and in the event the default or neglect of the employer is contumacious and contains the requisite *mens rea* and *actus reus* yet another exercise of computation has to be undertaken under Section 14B. Where the Authority is of the opinion that damages under Section 14B need to be imposed, the computations would come within the purview of Section 14B and it would be recoverable jointly and severally from the erstwhile as well as the current managements. A perusal of the Appeals Section, namely, 71 is illustrative of the fact that these exercises are distinct from each other as per the enumerations found in the first sub-Section of Section 71. It also appears logical to us, in the wake of the numerous and different dates of amendments, that Section 7A(2) would also be available to proceedings under Section 14B of the Act. The applicability of Civil Procedure Code, 1908 to proceedings under Section 14B has not specifically been barred by the statute.

It is necessary to clarify that In view of our above analysis, it is our considered opinion that the impugned Judgment deserves to be upheld. It contains a detailed and logical exposition of facts as well as the law pertaining to the present dispute. We also approve the pithy observations of the RPF Commissioner, Jalpaiguri in the subject Order that failure on the part of the employers to make remittances of accumulations and contributions, undermines the objectives and purposes of the statute. We underscore that the liability of the Fund to pay interest to subscribers regardless of whether employers have paid their dues, runs relentlessly. The Commissioner has specifically recorded that he has taken a lenient view in the matter and has eschewed imposition of damages to the extent of 100 per cent of the arrears even though this is envisaged by the EPF Act. The Appellant-Petitioner has, in the circumstances of the case, been also rightly burdened with the payment of interest under Section 7Q of the EPF Act. Accordingly, the Appeal is dismissed and the interim Orders are recalled. Although, it is our opinion that the Appeal is wholly devoid of merit, we refrain from imposing costs.

LW: 71:08:2014

MANAGEMENT OF ASHOK HOTEL v. GOVT. OF N.C.T. OF DELHI & ORS [DEL]

W.P.(C).No. 5053 of 2000

Vibhu Bakhru, J. [Decided on 22/07/2014]

Industrial disputes Act,1957- misconduct- employee found procuring girl for a guest- dismissed from services- whether the punishment of dismissal justified- Held, Yes.



Brief facts:

The respondent no.3 workman (Sohan Pal) was working as a Houseman with the petitioner. During the course of his employment, charges of misconduct with respect to procuring a girl for one of the guest of the petitioner were levelled against him. Disciplinary authority found him guilty of misconduct and recommended dismissal from services. The workman challenged the decision before the labour court which set aside the same on the ground that the punishment of dismissal was disproportionate to the offence of misconduct. Aggrieved by the same, the petitioner has challenged the impugned award in the present petition.

Decision: Petition allowed.

Reason:

It is essential to understand that the provisions of the Act are meant to protect a workman from management's unreasonable actions or from taking advantage of their superior bargaining power. The provisions of the Act cannot be used to impose employees on the pay roll of an establishment with whom the management has decided to disassociate with for good reason. Employment is a matter of contract between an employer and an employee and just as an employee has an option whether to serve a particular employer, the employer also has discretion whether to avail services of a person as an employee. However, given the unequal bargaining power between employer and employee and the limited opportunity of employment in our country, the discretion of an employer to dispense with the services of a specified class of employees has been restricted to ensure that an employer acts reasonably and does not abuse its position of having a superior bargaining power. The provisions of the Act are to prevent unfair labour practices and to ensure that the employees are not victimized and are placed in a position to bargain for their fair share from the enterprise. This being the prime purpose of the Labour Legislation, any intrusion into the discretion of an employer to dispense with the services of an employee who has been found to have misconducted himself should be limited to ensure that the workman has not been unfairly treated, the enquiry against him has been held and in accordance with the principles of natural justice and there is no infirmity in the decision making process. A grossly disproportionate punitive action which is not commensurate with the gravity of the misconduct or is unconscionable would also fall foul of the test of reasonableness and, thus, warrant correction.

Undisputedly, the Labour Court has powers under Section 11A of the Act to examine the decision of a Disciplinary Authority and this includes the power to evaluate the severity of misconduct and assess whether punishment imposed by the employer is commensurate with the gravity of misconduct. However, it is equally well settled that the discretion under Section 11A of the Act is not unfettered and has to be exercised judiciously.

In our view, the Labour Court ought to have considered the matter

from the stand point of the employer. The Labour Court would have to address the question, whether in the given circumstances a reasonable employer would take the measure to terminate the services of an employee who has been found guilty of the charges levelled. Whether the punishment meted out is grossly disproportionate, has to be considered keeping in view the concerns of the employer.

Applying the aforesaid principles in the facts of the present case, it is apparent that the Labour Court misdirected itself and the impugned award is not informed by good reasons. The respondent workman was undoubtedly guilty of the misconduct for which he was charged. The disciplinary authority had, obviously, concluded that such an employee ought not to be associated with the petitioner and it is not hard to imagine why. The petitioner could hardly be expected to continue with the employment of the respondent who contracted with a guest of the hotel to procure a girl for immoral purposes. Although the Labour Court, obviously felt that a lenient view ought to have been taken, the reason for this view is mainly the past record of the workman. As stated earlier, the other reasons as suggested by the learned counsel for the respondent workman are not readily discernible as reasons that persuaded the Labour court to upset the decision of the petitioner and in any view can at best be described as irrelevant.

Although the Labour Court may have a view differing from that of a Disciplinary Authority but that cannot be the reason for supplanting its view over that of the employer and setting aside the punitive measure taken by the management of the petitioner. The Labour Court could only interfere if it found that the punishment was grossly disproportionate and for sufficient reasons. In the present case, the reasons for the Labour Court taking a different view are not easily ascertainable but even if one was to consider the same to be the ones contended by the learned counsel for respondent No.3, it is difficult to accept that the same would sustain a conclusion that the punishment was grossly disproportionate. In my view, the reasons for taking the view that termination of services of respondent No.3 was an excessive measure, are wholly inadequate. The doctrine of proportionality cannot be used by the Labour Court to supplant its view over that of the Disciplinary Authority unless it finds that the punitive measures are grossly excessive and for good reasons.

Accordingly, the impugned award is set aside and the decision of the Disciplinary Authority in terminating the services of the respondent workman is upheld.

LW: 72:08:2014

REGIONAL P.F. COMMISSIONER v. SIEL FOODS AND FERTILIZER INDUSTRIES [DEL]

W.P.(C).Nos. 4034 of 2000 & 4035 of 2000





V. Kameswar Rao, J. [Decided on 14/07/2014]

Employees' Provident Fund and Miscellaneous Provisions Act, 1952- incentive bonus paid to workers who achieved target- whether part of 'wages'- Held, No.

Whether workers of transporters' engaged by the employer are the workers of the employer- Held, No.

Brief facts:

The petitioner's team of Enforcement Officers visited the respondent No. 1-establishment and found that the respondent No. 1-establishment failed to extend Provident Fund benefits to transport contractors' workers and failed to pay Provident Fund contributions on incentive bonus.

Accordingly, demand was imposed on the respondent, which was set aside in appeal by the Tribunal. Against the order of the Tribunal, petitioner came before the High court under a writ petition.

Decision: Petition dismissed.

Reason:

Having considered the rival submissions of the counsel for the parties, the first issue which arises for consideration is whether the transporters' workers can be said to be covered within the definition of 'employees' under Section 2 (f) of the Act.

A perusal of one of the contracts, it is revealed that the payment made by the respondent No. 1 was connected with per trip made by the transporters. There is no reference to any employees to be employed by the transporter. It is the outlook of the transporter to engage a third person as a Driver, Cleaner etc. In other words, it is for the transporter to provide staff in his discretion. What is important is and which has also come on record, is, the transporter was at his liberty to do the work of other establishments.

From the perusal of section 2(f), it is clear that a person would be called as an employee only if he directly or indirectly gets wages from the employer i.e. principal employer. In the present case, there is nothing in the contract or anything on record to suggest that the workers engaged by the transporters are directly or indirectly being paid by the principal employer.

Insofar as the other issue, whether the dues are payable on the bonus being paid by the respondent No. 1 to its employees who achieves above the normal standard is concerned, suffice to state, that it has come on record, that the said bonus is not paid to all the employees. Although, I do not find any ground on that particular aspect in the writ petition since issue has been urged before me, I deem it appropriate to consider the same.

The issue is covered by the judgment of the Supreme Court in the case of *Bridge & Roof Co. (India) Ltd v. Union of India (UOI)*, AIR 1963 SC 1474. In view of the above, there is no iota of doubt that the bonus as was being paid by the respondent No. 1 cannot be included in the definition of 'basic wages' as defined under the Act.

In view of the above, I do not find any merit in the writ petitions filed by the petitioner. The same are accordingly dismissed.



LW: 73:08:2014

MITSUBISHI CORPORATION INDIA v. ADDITIONAL COMMISSIONER OF INCOME-TAX [DEL]

ITA No.322 of 2014

S. Ravindra Bhat & Vibhu Bakhru, J. J. [Decided on 07/07/2014]

Income tax Act, 1961- HC upholds the findings of the ITAT that the transactions between the assessee and Mitsubishi corporation were that of principal to principal and not that of a commission agent or broker.

Brief facts:

The assessee is a wholly owned subsidiary of Mitsubishi Corporation-a company incorporated under the laws of Japan. The Assessing Officer made a reference to the Transfer Pricing Officer (TPO) in respect of international transaction between the assessee and its holding company.

The TPO rejected the Profit Level Indicator (PLI) used by the assessee to benchmark its international transactions which was a ratio of net revenue and operating expenses. The sales and cost of sale had been excluded by the assessee. The TPO computed the Arm's Length Price (ALP) by assuming a margin of 19.6% and held that income of the assessee was to be enhanced accordingly.



The Assessing Officer made a draft assessment order, which was not accepted by the assessee and the assessee filed its objection before the Dispute Resolution Panel (DRP), which was rejected by the DRP. Thereafter, the Assessing Officer passed a final order, which was carried in appeal before the Tribunal by the assessee. The appeal was disposed of by the impugned order and the assessee is appealed to the High Court challenging the ITAT order.

Decision: Appeal dismissed.

Reason:

The international transactions reported by the appellant are of four kinds; services, commission, cost to cost reimbursement as well as from sale of products imported from the Associated Enterprise. While, there is no dispute as to the international transactions resulting in receipts as commission and cost to cost reimbursement for rendering service, the assessee seriously contests the addition made on account of transactions of sale and purchase of goods. The assessee is aggrieved by the margin of 19.6% being applied with respect to transactions of sale and purchase.

It was submitted by the learned counsel that its functional profile was not that of a trader but that of a service provider. It was explained that the assessee places orders for purchase with its parent company on the basis of confirmed orders from its customers. It was submitted that in substance the assessee only fronts the transactions of its parent company. The assessee is, thus, not exposed to the risk of carrying any inventory and/

or deploying any significant working capital. Accordingly, it was claimed by assessee that the cost of goods sold should not be taken into consideration while computing the profit margins which should be calculated on the operating costs and the appropriate ratio to be considered for comparing with other entities would be the ratio of net revenue to operating costs.

It is apparent from the order of the ITAT that the ITAT had concluded that the transaction entered into by the assessee work on principal to principal basis and that the activities were in the nature of trading. Accordingly, the ITAT has held that the activities undertaken by the assessee could not be classified as activities of a commission agent or a broker. It is not disputed that the transactions of purchase and sale between the assessee and Mitsubishi Corporation are done on a principal to principal basis. We find no infirmity with the reasoning of the ITAT that such transactions are akin to trading and cannot be considered activities of a commission agent or a broker. However, the learned counsel for the assessee has expressed his apprehension that in view of the findings of the ITAT, the assessee is likely to be treated as an ordinary trader and compared with other traders who may not be similarly situated. We do not find any ground for such apprehension as the ITAT has made it clear that appropriate comparables would have to be considered for determination of the ALP. This would obviously mean that entities which are similarly placed as the assessee including in respect of their functional and risk profile as well as working capital exposure would be chosen as comparables.

PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2014-2015

The annual membership fee and certificate of practice fee for the year 2014-15 became due for payment w.e.f. 1st April, 2014. The last date for payment of fee was 30th June, 2014 which has now been extended upto 31st August, 2014. However, 31st August, 2014 being Sunday, the last date will be 1st September, 2014.

The membership and certificate of practice fee payable is as follows:

- Annual Associate Membership fee Rs.1125/- (*)
- Annual Fellow Membership fee Rs.1500/- (*)
- Annual Certificate of Practice fee Rs.1000/- (**)

* A member who is of the age of sixty years or above can claim 50% concession and a member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration in writing duly signed that the member

is not in any gainful employment or in practice.

** The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed.

The requisite form 'D' is available on the website of Institute www.icsi.edu.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of: Online mode through payment gateway of the Institute's website (www.icsi.edu) Cash/Cheque at par/Demand draft or Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr.Saurabh Bansal, Asst. Education Officer at email id Saurabh.bansal@icsi.edu.





01 The Companies (Management and Administration) Second Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide F.No.01/34/2013-CL-V Part-I, dated 24.07.2014. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i).]

In exercise of the powers conferred under sub-section (l) of section 88, sub-section (4) of section 88, sub-section (1) of section 89, sub-section (2) of section 89, sub-section (6) of section 89, sub-section (l) of section 91, sub-section (2) of section 92, sub-section (3) of section 92, section 93, sub-section (1) of section 94, sub-section (4) of section 100, sections 101, 102, 105, 108, sub-section (5) of section 109, sections 110, 112, 113, sub-section (2) of section 114, section 115, sub-section (1) of section 117, sub-section (l) of section 118, sub-section (2) of section 119, section 120 and sub-section (1) of section 121 and sub-section (3) of section 186, read with sub-sections (l) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely: -

1. Short title and commencement-
 - (1) These rules may be called the Companies (Management and Administration) Second Amendment Rules, 2014'
 - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Management and Administration) Rules, 2014,'
 - (i) in rule 9, after sub-rule (3), the following proviso shall be inserted, namely:-

"Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India".
 - (ii) in rule 13,-
 - (a) the words "either value or volume of the shares" shall be omitted;
 - (b) the Explanation shall be omitted.
 - (iii) in rule 23, in sub-rule (1), for the words "not less than five lakh rupees", the words "not more than five lakh rupees" shall be substituted;
 - (iv) in rule 27, in sub-rule (l) and in the Explanation, for the word "shall", the word "may" shall be substituted.

Amardeep Singh Bhatia
Joint Secretary

02 The Companies (Specification of Definitions Details) Amendment Rules, 2014.

[Issued by the Ministry of Corporate Affairs vide F. No. 01/13/2013 (Part-I) CL-V, dated: 17.07.2014. To be Published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i)]

In exercise of the powers conferred by sub-clause (ix) of clause (76) of section 2, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

1. (1) These rules may be called the Companies (Specification of definitions details) Amendment Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Specification of definitions details) Rules, 2014, in rule 3, after the words 'a director' the words 'other than an independent director' shall be inserted.

Amardeep Singh Bhatia
Joint Secretary

03 The Companies (Miscellaneous) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide File No 1/25/2013-CL-V, dated: 17.07.2014. To be Published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i)]

In exercise of the powers conferred by sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Miscellaneous) Rules, 2014, namely:-

1. (1) These may be called the Companies (Miscellaneous) Amendment Rules, 2014.
- (2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Companies (Miscellaneous) Rules, 2014 after rule 10, the following rule shall be inserted, namely:-

"11. Applications or forms pending before Central Government, Regional Director or Registrar of companies.- Any application or form filed with the Central Government or Regional Director or Registrar (hereinafter referred to as 'the authority') prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of



in accordance with the rules made under the Companies Act, 1956(1 of 1956)."

Amardeep Singh Bhatia
Joint Secretary

04 The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide GSR No. 424(E), dated 30.06.2014. Published in The Gazette of India, Extraordinary, Part II-Sec. 3(I), dated 01.07.2014]

In exercise of the powers conferred by section 42 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014.
- (2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 14, in sub-rule (2), in clause (a), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that in case of an offer or invitation for non convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules."

Amardeep Singh Bhatia
Joint Secretary

05 Clarification on Transitional Period For Resolutions Passed Under The Companies Act, 1956.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 32/2014, No.1/25/13-CL-V, dated: 23.07.2014]

It has been brought to the notice of the Government that many companies have passed resolutions during financial year 2013-14 under the relevant provisions of the Companies Act, 1956 (Old Act) which are/were at different stages of implementation after coming into force of corresponding provisions of the new Companies Act, 2013 (New Act). Ministry has received suggestions that while section 6 of the General Clauses Act, 1897 protects the validity of such resolutions, it will be advisable if a suitable communication is

also issued in the matter by the Ministry by way of abundant caution.

2. The matter has been examined in the light of similar issues clarified earlier. It is clarified that resolutions approved or passed by companies under relevant applicable provisions of the Old Act during the period from 1st September, 2013 to 31st March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the conditions (a) that the implementation of the resolution actually commenced before 1st April, 2014 and (b) that this transitional arrangement will be available up to expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later. It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the New Act.

This issues with the approval of the competent authority.

KMS Narayanan
Assistant Director

06 Extension of Validity of Reserved Names - Reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 31/2014, F. No. MCA21/152/2014-eGov/Cell, dated: 19.07.2014]

The Service Provider of MCA-21 has brought to the notice of the Ministry that the letters of intimation issued in respect of 9522 cases for reservation of names (INC-1) allow the applicants to use reserved names within 60 days of date of such intimation. This is at variance with the implementation in the MCA-21. This is causing inconvenience to the stakeholders.

In view of this, the validity of 1930 of the above mentioned 9522 cases for reservations of names which have expired as on the date of this circular is hereby extended upto 18th August, 2014. Further, in case of 6864 cases where names have been reserved and are yet to be used, the time period as indicated in the letters of intimations is allowed. All applicants may accordingly be advised to file relevant e-forms for incorporation of companies under the Companies Act, 2013 well before the validity period.

This issues with the approval of the competent authority.

Animesh Bose
Assistant Director

07 Clarifications on matters relating to Related Party Transactions.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 30/2014, No. 1/32/2013- CL-V(Pt), dated: 11.07.2014]





From the Government

Government has received representations from stakeholders seeking certain clarifications on related party transactions covered under section 188 of the Companies Act, 2013. These representations have been examined and the following clarifications are given:-

1. Scope of second proviso to Section 188(1) :- Second proviso to sub-section(1) of section 188 requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.
2. Applicability of Section 188 to corporate restructuring amalgamations etc. It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/ Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.
3. Requirement of fresh approvals for past contracts under Section 188:- Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.
4. This issues with approval of the competent authority.

KMS Narayanan
Assistant Director

08 Registration of Names of The Companies Shall Be in Consonance With The Provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 -Reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 29/2014, File No.2/2/2014- CL-V, dated: 11.07.2014]

In continuation of this Ministry's circular No. 02/2014 and 26/2014 dated 11.02.2014 and 27.06.2014 respectively, it is hereby directed that while allotting names to Companies/Limited Liability Partnerships, the Registrar of Companies concerned should exercise due care to ensure that the names are not in contravention

of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950. To this end it is necessary that Registrars are fully familiar with the provisions of the said Act.

2. This issues with the approval of the competent authority.

Kamna Sharma
Assistant Director

09 Clarification on Form MGT-14 Through STP mode

[Issued by the Ministry of Corporate Affairs vide General Circular No. 28/2014, File No.1/9/2013-CL-V, dated: 09.07.2014]

In order to simplify procedures and with a view to ensure timely disposal of e-Forms in the office of Registrars of Companies and keeping in view the penal provisions for false declaration as contained in section 448 read with section 447, the following e-Forms with the conditions mentioned along with will be processed and taken on record using the Straight Through Process mode.

S.No.	e-Form	Conditions
1	MGT-14	All cases except for change of Name, change of object, resolution for further issue of capital and conversion of companies will be STP Mode.

This circular will be effective from 21.07.2014.

KMS Narayanan
Assistant Director

10 Clarification Regarding Filing of Form DPT4 Under Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide General Circular No. 27/2014, F. No. MCA21/123/2014/e-Gov. Cell, dated: 30.06.2014]

This Ministry has received reference regarding filing of Form DPT4 under the provisions of the Companies Act, 2013. As per section 74(I) (a) of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014 made there under, companies are required to file a statement regarding deposits existing as on date of commencement of the Act within a period of 3 months from such commencement. The time for filing of said statement is expiring on 30-06-2014.

2. After considering the reference, it has been decided to grant extension of time for the period of 2 months i.e. up to 31-08-2014 without any additional fee in terms of section 403 of the Act to enable the companies for filing of statement under Form DPT4 with the Registrar.

M.S. Pachouri
Deputy Director



11 Clarification with Regard to Use of The Words "Commodity Exchange" in A Company- Reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 26/2014, No 2/2/2014-CL-V, dated: 27.06.2014]

In continuation of this Ministry's Circular No. 02/2014 dated 11.02.2014, it is hereby clarified the use of the word "Commodity Exchange" may be allowed only where a "No Objection Certificate" from the Forward Markets Commission (FMC) is furnished by the applicant. All other provisions of the Companies (Incorporation) Rules, 2014 will continue to be applicable.

2. It is also clarified that the certificate from Forward Markets Commission will also be required in cases of companies registered with the words "Commodity Exchange" before the issue of this circular.
3. This issues with the approval of competent authority.

KMS Narayanan
Assistant Director

12 Clarification on Section 58A(9) and Section 58AA of the Companies Act, 1956 - Reg.

[Issued by the Company Law Board vide Circular No. 01/2014, File No. 10/54/2014-CLB, dated: 22.07.2014]

On the commencement of sub-section (2) of section 74 of the Companies Act, w.e.f. 06.06.2014, the corresponding sections namely 58A (9) and 58AA of the Companies Act, 1956 ceased to have effect. Benches of the Company Law Board shall not accept further applications under sections 58A(9) and 58AA of the Companies Act, 1956.

2. All applications under section 58A(9) and 58AA of the Companies Act, 1956 prior to 06.06.2014 pending in the Regional Benches shall be disposed of under the provisions of the said Act on top priority basis.

P.K. Malhotra
Secretary

13 Class of companies for the purposes of the second proviso to section 203(1) Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide File No. 1/5/2013-CL-V, dated: 25.07.2014. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (ii)]

In exercise of the powers conferred by the second proviso to sub-section (1) of section 203 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of section 203 of the said Act.

Explanation. - For the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

Amardeep Singh Bhatia
Joint Secretary

14 The Companies (Removal of Difficulties) Sixth Order, 2014

[Issued by the Ministry of Corporate Affairs vide F. No. 2/14/2014-CL.V, dated: 24.07.2014. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii)]

Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on 29th August, 2013 and section 1 thereof came into force on the same date;

And whereas clause (76) of section 2 of the Act, which provides for definition of the term "related party" has come into force on 12th September, 2013;

And whereas difficulties have arisen in interpreting the said clause due to the absence of the word "relative" in sub-clause (iv), although such word has occurred in sub-clauses (i), (ii), (iii) and (v) of the aforesaid clause (76) resulting in a disharmonious interpretation of the said definition.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

1. Short title and commencement.-
 - (1) This Order may be called the Companies (Removal of Difficulties) Sixth Order, 2014.
 - (2) It shall come into force on the date of its publication in the Official Gazette.
2. Amendment of section 2.- In section 2 of the Companies Act, 2013, in clause (76), in sub-clause (iv), after the word "manager", the word "or his relative" shall be inserted.

Amardeep Singh Bhatia
Joint Secretary



15 The Companies (Removal of Difficulties) Fifth Order, 2014

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O.1820(E), dated 09.07.2014. Published in the Gazette of India, Extraordinary Part II-Sec. 3(ii), dated: 11.07.2014]

Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on 29th August, 2013 and section 1 thereof came into force on the same date;

And whereas clause (76) of Section 2 of the said Act define the term 'related party'. In sub-clause (v) of the said clause, the word 'or' has appeared inadvertently and therefore defeating the intention of that clause.

And whereas difficulties have arisen regarding compliance with the provision.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 470 of the Companies Act, 2013 the Central Government hereby makes the following order to remove the above said difficulties, namely :-

1. Short title and commencement.
 1. This order may be called the Companies (Removal of Difficulties) Fifth Order, 2014.
 2. It shall come into force on the date of its publication in the Official Gazette.
2. In sub-clause (v) of clause (76) of section 2, for the words "or holds", the words "and holds" shall be substituted

Amardeep Singh Bhatia
Joint Secretary

16 The Companies (Removal of Difficulties) Fourth Order, 2014

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O.1460(E), dated 06.06.2014. Published in the Gazette of India, PART II-Section 3-Sub-section (ii), dated: 06.06.2014]

In exercise of the powers conferred by sub-section (1) of Section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order, namely:—

1. (1) This Order may be called the Companies (Removal of Difficulties) Fourth Order, 2014.
 - (2) It shall come into force from the date of notification in the Official Gazette.
2. Jurisdiction, powers, authority and functions of Company Law

Board.- Until a date is notified by the Central Government under sub-section (1) of Section 434 of the Companies Act, 2013 (18 of 2013), the Company Law Board constituted in pursuance of sub-section (1) of Section 10E of the Companies Act, 1956 (1 of 1956) shall exercise the jurisdiction, powers, authority and functions of the Tribunal under sub-section (2) of Section 74 of the said Act.

Amardeep Singh Bhatia
Joint Secretary

17 Inter-Governmental Agreement with United States of America under Foreign Accounts Tax Compliance Act - Registration

[Issued by the Securities & Exchange Board of India vide Circular No. CIR/MIRSD/ 2/2014, dated: 30.06.2014]

1. The Government of India has advised that India and the United States of America (US) have reached an agreement in substance on the terms of an Inter- Governmental Agreement (IGA) to implement Foreign Accounts Tax Compliance Act (FATCA) and India is now treated as having an IGA in effect from April 11, 2014. However, the IGA may be signed in due course. Information on FATCA is available at: [http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance- Act-FATCA](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA).
2. As advised by the Government, the following points may be noted by all SEBI registered intermediaries:
 - a. Indian Financial Institutions would have time upto December 31, 2014 to register with US authorities and obtain a Global Intermediary Identification Number (GUN). This time limit would also be applicable to Indian Financial Institutions having overseas branches in Model 1 jurisdictions, including those jurisdictions where an agreement under Model 1 has been reached in substance. Registration should be done only after the formal IGA is signed. Information in this regard will be communicated to you.
 - b. Overseas branches of Indian Financial Institutions in a jurisdiction having IGA 2 agreement or in a jurisdiction that does not have an IGA but permits financial institutions to register and agree to a Foreign Financial Institution (FFI) agreement, may register with US authorities within the stipulated time period and obtain a GUN in accordance with the requirements to avoid potential withholding under FATCA.
 - c. Overseas branches of Indian Financial Institutions in a jurisdiction that does not have an IGA and does not



permit financial institutions to register and agree to an FFI agreement may not register and their overseas branches would eventually be subject to withholding under FATCA.

- d. The Government has further advised that if registration of the parent intermediary/ head office is a pre-requisite for a branch to register, such intermediaries may register as indicated at (a) and (b) above.
3. The Stock Exchanges and Depositories are advised to bring the contents of this Circular to the notice of the Stock Brokers, Depository Participants, as the case may be, and also disseminate the same on their websites.
4. This Circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 (SEBI Act).

Krishnanand Raghavan
General Manager

18 Dispatch of physical Statements to BOs having Zero Balance and Nil Transactions

[Issued by the Securities & Exchange Board of India vide Circular No. CIR/MRD/DP/21 /2014, dated: 01.07.2014]

1. SEBI had vide circular no. CIR/MRD/DP/ 22 /2012 dated August 27, 2012 introduced the facility of Basic services Demat Account (BSDA) wherein inter alia it was mandated that one annual physical statement of holding shall be sent to the Beneficial Owners (BOs) having zero balance and Nil transaction.
2. Based on the representations from the Depositories and Depository Participants, the relevant provisions of the aforesaid circular are modified as under:

Clause 5 (b) (i)

DP shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that the dispatch of the physical statement may be discontinued if the account continues to remain zero balance even after one year.

Clause 6 (a)

Accounts with zero balance and nil transactions during the year: DP shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that if no Annual Maintenance Charge (AMC)

is received by the DP, the dispatch of the physical statement may be discontinued for the account which continues to remain zero balance even after one year.

3. However, irrespective of the above, the DPs shall send electronic statement of holding to all the BOs whose email ids are registered with them. Also, if a BO requests for a physical statement, the DPs shall provide the same.
4. For the purpose of valuation of holdings in an account as provided in clause 4(b) of the aforesaid circular, it is clarified that the value of suspended securities may not be considered for the purpose of determining eligibility of demat account as BSDA.
5. The Depositories are advised to:-
 - a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/necessary;
 - b) bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website; and
 - c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
6. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Maninder Cheema
Deputy General Manager

19 Delivery Instruction Slip (DIS) Issuance and Processing

[Issued by the Securities & Exchange Board of India vide Circular No. CIR/MRD/DP/22/2014, dated: 04.07.2014]

1. SEBI has vide circular no. CIR/MRD/DP/ 01 /2014 dated January 07, 2014 introduced guidelines to strengthen the supervisory and monitoring role of the depositories and their participants with respect to issuance and processing of Delivery Instruction Slips.
2. In light of the difficulties expressed by the depositories and the depository participants (DPs) and considering their request, it has been decided to make the circular effective from October 01, 2014.
3. Further, with regard to the provision under para 14 that DPs





From the Government

shall not accept old DIS for execution from a Beneficial Owner (BO) who has been issued new DIS, it is clarified that a period of one month may be given for receipt of DIS by the BOs. The DPs may accept old DIS during this transit period. Further, while issuing new DIS the DPs shall intimate the BO that old DIS cannot be used after the new DIS is received.

4. The depositories shall ensure the implementation of the above within the stipulated timelines. Other provisions of the circular would remain unchanged.
5. The Depositories are advised to:-
 - a) bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website; and
 - b) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision as may be applicable/necessary;
 - c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
6. This circular is being issued in exercise of the powers conferred by Section 11(1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Maninder Cheema
Deputy General Manager

20 Clarification and extension of deadline with respect to circular on 'Guidelines on disclosures, reporting and clarifications under AIF Regulations'

[Issued by the Securities & Exchange Board of India vide Circular No. CIR/IMD/DF/16/2014, dated: 18.07.2014]

SEBI had issued a circular No. CIR/IMD/DF/14/2014 dated June 19, 2014 on 'Guidelines on disclosures, reporting and clarifications under AIF Regulations'. In this regard, it is clarified as under:

1. The deadline for sending of annexure to the placement memorandum to the investors under clause 2(a)(iii) is extended till August 31, 2014.
2. With respect to disclosure of disciplinary history under clause 2(a)(ii), the same shall be applicable for the last 5 years and where monetary penalty is involved, in cases where such penalty is greater than Rs. 5 lakhs. With respect to disputed tax liabilities,

the same shall not apply to liabilities in personal capacity of an individual Contingent liabilities shall be as disclosed in books of accounts of the entity.

3. With respect to clause 2(b)(iii), the changes shall include modifications in terms or documents of the fund/scheme and the same may be intimated to investors and SEBI once every six months on a consolidated basis. With respect to clause 2(b)(iv), 'material' changes may be construed as changes in the fundamental attributes of the fund/scheme and the process for exit under the clause shall not apply in cases where the AIF has approval of not less than 75% of unit holders by value of their investment in the AIF with respect to sub-clauses (a) and (b).
4. With respect to clause 3(d), joint investors shall mean where each of the investor contributes towards the AIF. With respect to clause 3(g), such investee company shall hold or propose to hold not less than one project, directly or indirectly.

Barnali Mukherjee
General Manager

21 Change in Government Debt Investment Limits

[Issued by the Securities & Exchange Board of India vide Circular No. CIR/IMD/FIIC/ 17/2014, dated: 23.07.2014]

1. Present debt investment limits available for FPI investments in Government securities (G-Secs) include a USD 20 billion limit for all FPIs and another USD 10 billion limit for Long Term FPIs. While the USD 20 billion limit has been fully utilized, the USD 10 billion limit has been utilized only up to 22.86%.
2. Therefore, in partial modification of para 5 of the SEBI circular CIR/IMD/FIIC/8/2014 dated April 07, 2014, it has been decided to enhance the investment limit in government securities available to all FPIs by USD 5 billion by correspondingly reducing the amount available to long term FPIs from USD 10 billion to USD 5 billion within the overall limit of USD 30 billion.
3. The incremental investment limit of USD 5 billion (INR 24,886 cr) shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years. It is, however, clarified that there will be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years of residual maturity) to the domestic investors.
4. The Government debt investment limit shall now be as follows:



S. No.	Type of limit	Cap (US\$ bn)	Cap (INR Crore)	Eligible Investors	Remarks
1	Government Debt	25	124,432	FPIs	Available on demand. The incremental investment limit of USD 5 billion (INR 24,886cr) shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FII/QFI/FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years.

It is clarified that those FPIs which had acquired debt limits in the auction held on July 22, 2014 may utilise the limit in terms of the SEBI circular CIR/IMD/FIC/8/2014 dated April 07, 2014 i.e. the debt limits purchased in the said auction are grandfathered.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FII clients.

S Madhusudhanan
Deputy General Manager

22 Clarification on position limits of domestic institutional investors for currency derivatives contracts

[Issued by the Securities & Exchange Board of India vide Circular No. CIR/MRD/DP/23/2014, dated: 24.07.2014]

SEBI vide circular no. CIR/MRD/DP/20/2014 dated June 20, 2014 had revised position limits for the market participants in the permitted currency pairs.

- In this regard, it is clarified that domestic institutional investors shall have position limits as mentioned at para 12. (a) of the SEBI circular CIR/MRD/DP/20/2014 dated June 20, 2014, subject to such domestic institutional investors being permitted by their respective sectoral regulators to participate in the currency derivatives segment.

- It is further clarified that banks, whether participating in the currency derivatives segment as clients or as stock brokers, shall be guided by the provisions mentioned at para 3 of the RBI A.P. (DIR Series) Circular no. 147 dated June 20, 2014 while trading in the currency derivatives segment.
- Stock Exchanges and Clearing Corporations are directed to:
 - take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations.
 - bring the provisions of this circular to the notice of the stock brokers / clearing members and also disseminate the same on their website;
 - communicate to SEBI the status of implementation of the provisions of this circular.
- 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.

Maninder Cheema
Deputy General Manager

Appointment

REQUIRED

A QUALIFIED COMPANY SECRETARY

We require a qualified Company Secretary to look after day to day secretarial work & to deal with appropriate authorities. We are a Private Limited Company having capital base of Rs. 6 Crores and engaged in the manufacturing and designing of garments and wearing apparels. We offer a good salary package as prevailing in the industry

Rinku Sobti Fashions Pvt. Ltd.

1249 A/9, Kishan Garh, JNU Road,
Vasant Kunj, New Delhi – 110 070

Contact No. 64647859

Email : csmohan20@gmail.com





E-INITIATIVES IN ICSI*

This is the story of the belief on 'Change is the only Constant'. An organization discovered that it is attracting students in lakhs that could challenge the service and quality levels that it had nurtured for years. The number of students on rolls i.e. 4,13,890 on the last day of the year 2013 was manifold to the corresponding figures of previous year of 2008 i.e. 1,09,309. The number of students taking examination in one session also increased from 29,992 in December 2008 to 1,63,344 in December 2013. The number of members also increased from 18,835 in 2008 to 35,158 in March 2014. With this the challenge to maintain the quality of service which was once prevalent in the organization increased. Still the load generated by the students put pressure on all service entities like finance and postal dispatch across the offices of the organization.



As it is said Change is the only Constant, the organization decided to reinvent itself. Once the decision was taken it was determined that success could only be achieved when the governing council, top management, the working hands across offices and the stakeholders aligned themselves to challenge the *status quo*.

The metamorphosis started with the strengthening of the back end infrastructure. Various small teams were created to cater to the three major aspects which govern throughput of service to the user i.e. Hardware, Application and Network, in any automated system.

The Hardware team worked tirelessly on aspects like upgrading the datacenter, procurement of state of the art servers and switches and integration. An additional data center was created with the latest of servers and storage systems to bear the load of thousands of stakeholders working together on the online systems. To ensure redundancy in the system the site for disaster recovery was identified and real time sync was enabled with the disaster recovery center.

The Application team evaluated the various solutions available in the market and selected a comprehensive Enterprise Resource Planning suit 'Oracle Apps' to cover all back end operations like Finance, Inventory and Human Resource. Customized solution was preferred for the front end operations. The objective for the solution was determined as 'Do-It-Yourself' thus enabling the stakeholders to interact directly with the online platform.

The Network team established uniformity at all levels by integrating state of the art switching equipment. The bandwidth was upgraded

and all major offices of the organization were integrated with the data center through a mesh network. To ensure security of information and data, a set of firewall was implemented in redundant fail over mode and CCTV surveillance was activated.

A comprehensive systems audit exercise was initiated and conducted over a period of one year. Gaps as were identified during the System Audit exercise were then taken up by the three units mentioned above and action was taken to close these gaps successfully one by one. To ensure that the workforce across all offices worked uniformly on the new platform the 'Information Technology Induction Manual' detailing the do's and don'ts was published. To ensure that lakhs of students have ease of use on the new systems 'Online Animated Help Manuals' were published on public platform i.e. 'YouTube'. For work force of



the organization a standard help animation development tool was implemented to ensure that teams sitting across various offices are not only well trained but work uniformly and cohesively. The information technology support system in the form of Facility Management Service was established across all the major offices such that there was consistency of working at all levels and help was just a call away.

A manned call center was established with multiple phone lines at 011 33132333 such that the change management process is well handled. The data connectivity was established through Interactive Voice Response System in this call center. The same was preceded by implementing a Grievance Redressal system with a separate team which reports directly to the top management, monitoring the response time of the workforce.

The last part of aligning the students who run into lakhs was the only challenge remaining now. 50 % of the students moved to the online platform in the very first instance. Initially the manual method of enrollment for examination was also deemed redundant thus giving an indication to the students on the seriousness of organization belief in 'Change is the Only Constant'. In a few months more than 85% of the students moved to online systems. Finally the doors on the manual method were shut on the specified date thus forging in a new era of 'Any Time Anywhere' service with 24 x 7 operations for students.

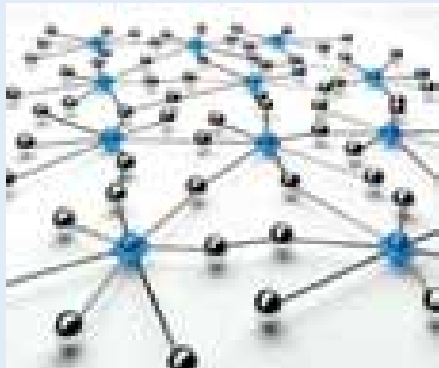
The process of learning and improvement continued after successful roll out also. Value addition like 'challan payment' in addition to payment through credit/debit card and net-banking ensured that the online automated service model became an instant hit with the student community. One after another nearly all services like Denovo, Extension i.e. enabling extension of the registration period was streamlined and automated. A new policy of re-registration was

* Prepared by Ankur Yadav, Joint Secretary (SG), The ICSI.



introduced to bring back the students who could not complete their education during the prescribed timelines. The students also warmly reciprocated to all such changes.

Online education is another area where major forays were made by introducing Web based and Video based training by leveraging technology from third party. The organization again challenged itself by introducing paper less examination by adopting Online Examination through Computer for its Foundation students.



The *status quo* was further challenged by innovating in imparting knowledge/education and video on the 'Primer on Companies Act 2013' was launched which may be considered as the first such enablement on MOOC (Massive Open Online Course). To follow up on the same, E-Library

and Online English learning programmes were introduced through third parties for the student community with the objective of overall development of the students at large.

To follow up on the above all the study materials were made



freely available to one and all in Portable Document Format. All were able to download the same on their desktop irrespective of the fact whether they were registered student or not. For mobile users all the study materials were converted into eBooks for Mobile and made freely available for download. This

made it easy for students to read and listen to the study material contents on mobile phones by using various readers which are freely available on Android and such platforms.

It was imperative that with the above two measures many of the stakeholders desired to participate in the Go Green Initiative of the organization by opting for softcopy of the study material as above and foregoing the physical hardcopy. To recognize this choice of the stakeholders the organization decided to give a sizable discount in the fee structure as charged at the time of registration from these students. The online registration process was suitably modified to reflect the all such options such that the students feel motivated and aligns with the Go Green initiative.

A brief list on online services of this organization i.e. ICSI is given below.

For Students	For Members
<ul style="list-style-type: none"> • All Information related to Student Services • Online services through website • Result through Email • Online Registration - Foundation, Executive and Professional Programme. • Online Examination Enrollment • Online Change Request for Centre, Module, Medium Change • Online Denovo, Extension Request • Online Switch over Request • Online Exemption Request • Online Foundation Examination • E-Mark sheet for Foundation/Executive Programme • Online Enrollment Status • Online E- Admit Card • Online Change of Elective Subject for Professional Programme Students • Online download facility of E-Book (at www.icsi.edu & mobile also) • E-Bulletins(Student Company Secretary & Foundation) • English learning programs 	<ul style="list-style-type: none"> • All Information related to Membership Services • Online services through www.icsi.edu website <ul style="list-style-type: none"> • Request for CSBF Membership • Request for FCS Membership • Removal of Membership • Restoration of Membership • Credit Hours Certificate • Delegate Registration for Events • Placement Services • All Forms • Chartered Secretary (last 12 issues) • Members' Directory • CS Benevolent Fund Directory • Online payment facility of Membership and CP fees • Facility of hiding details from the Members' Directory

Do read the FAQ (Frequently Asked Questions) on the website www.icsi.edu or make use of our Call Center 011 33132333 for any further queries.

We feel proud that we and you were a part of this belief that 'Change is the Only Constant'. With all the above in place your Institute is still challenging itself and trying to set up new benchmarks for itself.





News From the Institute



Institute News

Members Admitted

S. No.	Name	Membership No.	Region
Fellows*			
1	MR. ATUL VILASRAO KULKARNI	FCS - 7592	WIRC
2	MR. VIKAS DNYANESHWAR GAIKWAD	FCS - 7593	WIRC
3	SH. KADAGANDLA NARASIMHULU	FCS - 7594	SIRC
4	MS. ARUNA NITIN DAK	FCS - 7595	NIRC
5	MR. ARVIND KUMAR TIWARI	FCS - 7596	WIRC
6	MS REVATI HRUSHIKESH SATHE	FCS - 7597	WIRC
7	SH. ATUL PARKASH ARORA	FCS - 7598	NIRC
8	SH. RASMI RANJAN NAIK	FCS - 7599	NIRC
9	MR. BALAMURUGAN T NADAR	FCS - 7600	WIRC
10	SH. PS SASTRY	FCS - 7601	SIRC
11	SH. HARI RAMPURE GONABHAVI	FCS - 7602	SIRC
12	SH. B SANKARANARAYANAN	FCS - 7603	SIRC
13	SH AJAY KUMAR AGARWAL	FCS - 7604	EIRC
14	MRS. ISHA SUMIT GUPTA	FCS - 7605	WIRC
15	MS. SUMAN PANDEY	FCS - 7606	NIRC
16	MS. MANISHA SARAF	FCS - 7607	EIRC
17	MR. SAISUNDER N V	FCS - 7608	SIRC
18	SH. DHIRAJ KUMAR MAGGO	FCS - 7609	NIRC
19	SH. MANVENDRA SINGH	FCS - 7610	NIRC
20	MS. AMALA GOUD MUDHAPURAM	FCS - 7611	SIRC
21	SH. JITIN SADANA	FCS - 7612	NIRC
22	SH. RAJEEV VENUGOPAL NAIR	FCS - 7613	WIRC
23	SH. VIVEK KAUSHIK	FCS - 7614	NIRC
24	MS. NRUPA JAYESH PATEL	FCS - 7615	WIRC
25	MS. AMRUTA SURENDRA KSHIRSAGAR	FCS - 7616	WIRC
26	MRS. TEJAL PRATIK SHAH	FCS - 7617	WIRC
27	MS. ARCHANA SHARMA	FCS - 7618	NIRC
28	MR. ARBIND KUMAR SINGH	FCS - 7619	NIRC
29	SH. HEMALKUMAR HIRANBHAI SHAH	FCS - 7620	WIRC
30	MS. APARNA BATRA	FCS - 7621	NIRC
31	MS. SATNAM KAUR	FCS - 7622	NIRC
32	SH. CHAMAN LAL SHAH	FCS - 7623	NIRC

33	MS. RICHA SHARMA	FCS - 7624	WIRC
34	SH. SHRAVAN KUMAR	FCS - 7625	NIRC
35	SH. YOGESH KUMAR SHARMA	FCS - 7626	NIRC
36	SH. S ANANDANARAYANAN	FCS - 7627	WIRC
37	MR. AMAN KUMAR JAIN	FCS - 7628	NIRC
38	SH. KAPIL VERMA	FCS - 7629	NIRC
39	SH. MAHESH KUMAR VERMA	FCS - 7630	NIRC
40	SH. KUNDAN AGRAWAL	FCS - 7631	NIRC
41	SH. MANOJ KUMAR VERMA	FCS - 7632	NIRC
42	SH. AVAYA KUMAR SAMAL	FCS - 7633	NIRC
43	SH. M S MANI	FCS - 7634	WIRC
44	MR. AKSHAY SETHI	FCS - 7635	NIRC
45	SH. VENKAT REDDY KUPIREDDY	FCS - 7636	NIRC
46	MS. SMRITHI A	FCS - 7637	SIRC
47	SH SHANKAR V	FCS - 7638	SIRC
48	MS. MEGHA KAINTH	FCS - 7639	NIRC
49	MS. SRIDEVI B N	FCS - 7640	SIRC
50	SH. SHRABAN KUMAR MISHRA	FCS - 7641	EIRC
51	SH IBRAHEEM SHAIK	FCS - 7642	SIRC
52	SH GYAN SHEEL	FCS - 7643	NIRC
53	MS. NAMITA ASHOKSINGH RAJPUT	FCS - 7644	WIRC
54	MRS. PRIYANKA PURI	FCS - 7645	NIRC
55	SH ANKIT GANDHI	FCS - 7646	NIRC
56	SH. RAKESH DHIRAJLAL SANGHANI	FCS - 7647	WIRC
57	MRS. SHILPI JAISWAL	FCS - 7648	WIRC
58	MR. RABINDRA KUMAR SAMAL	FCS - 7649	SIRC
59	MR. K SRIRAM	FCS - 7650	NIRC
60	SH. MIKET SHASHIKANT BAHUVA	FCS - 7651	WIRC
61	MR. MANOJ ARVIND DERE	FCS - 7652	WIRC
62	MS. SUNITA GANGADHAR JAMKHANDI	FCS - 7653	WIRC
63	MS. DEEPTI GROVER	FCS - 7654	NIRC
64	SH. A R SONAWANE	FCS - 7655	WIRC
65	MR. KRUPESH MEHTA	FCS - 7656	WIRC
66	MRS. SHWETA BANSAL	FCS - 7657	NIRC
67	SH. DINESH SHIVNARAYAN BIRLA	FCS - 7658	WIRC

Associates**

1	MS. SUCHITA DUGAR	ACS - 36194	EIRC
2	MR. PRAVEEN AGARWAL	ACS - 36195	EIRC
3	MS. SHRADHA DUBEY	ACS - 36196	EIRC
4	MR. ANIL KUMAR	ACS - 36197	NIRC
5	MS. ANKITA MATHEW	ACS - 36198	NIRC
6	MR. RAJIT VERMA	ACS - 36199	NIRC
7	MS. PURNIMA BHANDARI	ACS - 36200	NIRC
8	MS. PRIYANKA	ACS - 36201	NIRC
9	MS. SRIMATHI DHANDAPANI	ACS - 36202	SIRC
10	MR. A AMANULLAH	ACS - 36203	SIRC
11	MS. PRAFULLATA JAGDISH PUSALKAR	ACS - 36204	WIRC
12	MS. FORAM HEMANT SHAH	ACS - 36205	WIRC
13	MR. SACHIN RAMCHANDRA MOTGHARE	ACS - 36206	WIRC

*Admitted during the period from 13.05.2014 to 16.06.2014

**Admitted during the period from 16.05.2014 to 16.06.2014





14	MS. SHILPA ANIL BHARGAVA	ACS - 36207	WIRC	63	MS. PRATIKSHA BHANDARI	ACS - 36256	NIRC
15	MS. RASHIDA ALI	ACS - 36208	WIRC	64	MS. SHANU AGRAWAL	ACS - 36257	NIRC
16	MS. POOJA PANKAJ SANGHVI	ACS - 36209	WIRC	65	MS. PUNITA SAHAL	ACS - 36258	NIRC
17	MR. DHRUV PRADIP SAMPAT	ACS - 36210	WIRC	66	MS. AKANKSHA MUNDRA	ACS - 36259	NIRC
18	MR. NUTANKUMAR RAJENDRA THAKKAR	ACS - 36211	WIRC	67	MR. GANESH SHENOY	ACS - 36260	SIRC
19	MS. HREDYA K J	ACS - 36212	SIRC	68	MR. GAUTAM MUKHOPADHYAY	ACS - 36261	EIRC
20	MS. SHVETA SHARMA	ACS - 36213	NIRC	69	MS. NISHA SARAF	ACS - 36262	EIRC
21	MR. DANISH REZA	ACS - 36214	EIRC	70	MR. MANDEEP MODI	ACS - 36263	NIRC
22	MS. SHALINI	ACS - 36215	NIRC	71	MR. RAKESH KAILAS GAIKWAD	ACS - 36264	WIRC
23	MS. RANJANA INDOLIA	ACS - 36216	NIRC	72	MR. THOMAS MATHEWS	ACS - 36265	WIRC
24	MS. SAKSHI NIRMAL	ACS - 36217	NIRC	73	MS. SONALI ANIL GUPTA	ACS - 36266	NIRC
25	MS. HIMANI SOOD	ACS - 36218	NIRC	74	MS. APARNA KESHAVA BORKAR	ACS - 36267	WIRC
26	MS. PREETI KHEPAR	ACS - 36219	NIRC	75	MS. PRIYANKA RAMESH MISHRA	ACS - 36268	WIRC
27	MS. HARLEEN KAUR	ACS - 36220	NIRC	76	MS. MURTHY HEENA VASANT	ACS - 36269	WIRC
28	MS. MADHU CHOPRA	ACS - 36221	NIRC	77	MS. POOJA MAHENDRAKUMAR PUNMIYA	ACS - 36270	WIRC
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30	MR. AMIT KUMAR	ACS - 36223	NIRC	79	MS. DIMPLE AJAY MALKAN	ACS - 36272	WIRC
31	MS. ANKITA SINGH	ACS - 36224	EIRC	80	MS. ANITA GYANPRASAD BARAI	ACS - 36273	WIRC
32	MS. YAMINI KHEMKA	ACS - 36225	EIRC	81	MS. SWATI NANHELAL SINGH	ACS - 36274	WIRC
33	MS. SHWETA SADAKA	ACS - 36226	EIRC	82	MS. NOOPUR RAJESH TRIVEDI	ACS - 36275	WIRC
34	MS. SANGEETA DEO	ACS - 36227	EIRC	83	MR. ANAND KUMAR SHARMA	ACS - 36276	WIRC
35	MS. VARSHA RANI AGARWAL	ACS - 36228	EIRC	84	MS. SWATI SUREKA	ACS - 36277	EIRC
36	MS. SUCHITA TIWARI	ACS - 36229	EIRC	85	MR. DINESH A ASHARA	ACS - 36278	WIRC
37	MS. KHUSHBOO SETHIA	ACS - 36230	EIRC	86	MR. BIRENDER SINGH	ACS - 36279	NIRC
38	MR. NRUSINGHA CHARAN BEHERA	ACS - 36231	EIRC	87	MR. PRITESH KANTILAL SHAH	ACS - 36280	WIRC
39	MS. SHIVANI AGARWAL	ACS - 36232	NIRC	88	MS. AVNI JAYESH GAGLANI	ACS - 36281	WIRC
40	MS. MUKTA SHIV	ACS - 36233	NIRC	89	MR. CHINTAMANI SADASHIV MALKAR	ACS - 36282	WIRC
41	MS. BHARATI TYAGI	ACS - 36234	NIRC	90	MS. MOUMITA BHOWMICK	ACS - 36283	EIRC
42	MS. NEHA SINGH	ACS - 36235	NIRC	91	MS. DIPIKA SAHU	ACS - 36284	EIRC
43	MR. RAJAT KATHPALIA	ACS - 36236	NIRC	92	MR. PIYUSH LOHIA	ACS - 36285	SIRC
44	MR. SANJAY KUMAR SAINI	ACS - 36237	NIRC	93	MS. KAVITA NAHATA	ACS - 36286	EIRC
45	MS. HONEY GOENKA	ACS - 36238	NIRC	94	MS. DIVYA JAISWAL	ACS - 36287	EIRC
46	MS. NEHA SHARMA	ACS - 36239	NIRC	95	MS. GANGA MAHARSHI	ACS - 36288	EIRC
47	MR. SURAJ	ACS - 36240	NIRC	96	MRS. OISHWARYA BHATTACHARYA AUDDY	ACS - 36289	EIRC
48	MS. ARTI RAWAT	ACS - 36241	NIRC	97	MS. NEHA DUGAR	ACS - 36290	EIRC
49	MS. SIMRAN JEET KAUR	ACS - 36242	NIRC	98	MS. RITU CHANDAK	ACS - 36291	EIRC
50	MS. SONAM NATANI	ACS - 36243	NIRC	99	MS. SHANU PATANIA	ACS - 36292	EIRC
51	MS. NISHA	ACS - 36244	NIRC	100	MS. ANKITA NIGAM	ACS - 36293	EIRC
52	MR. VINIT GOYAL	ACS - 36245	NIRC	101	MS. SUSHMITA MAZUMDER	ACS - 36294	EIRC
53	MS. SONIKA	ACS - 36246	NIRC	102	MR. YATANDRA SINGH PAL	ACS - 36295	NIRC
54	MR. VIKAS SINGHAL	ACS - 36247	NIRC	103	MS. SHEETAL SHARMA	ACS - 36296	NIRC
55	MR. DEEPAK GUPTA	ACS - 36248	NIRC	104	MS. KANCHAN SHARMA	ACS - 36297	NIRC
56	MS. BHAVNEET TOOR	ACS - 36249	NIRC	105	MS. SONAL RAMESH THAKAR	ACS - 36298	WIRC
57	MS. ANJALI MANWANI	ACS - 36250	NIRC	106	MR. AJAYAN M P	ACS - 36299	SIRC
58	MS. KANNUPRIYA JINDAL	ACS - 36251	NIRC	107	MR. ARVIND KUMAR PANDEY	ACS - 36300	NIRC
59	MS. ISHA MALIK	ACS - 36252	NIRC	108	MS. PRIYANKA AGARWAL	ACS - 36301	EIRC
60	MS. MONA GUPTA	ACS - 36253	NIRC	109	MS. KOMAL KHANDELIA	ACS - 36302	EIRC
61	MS. VANSHIKA	ACS - 36254	NIRC	110	MRS. MEGHA SOMANI	ACS - 36303	NIRC
62	MR. HARSHIT JAISWAL	ACS - 36255	NIRC	111	MS. JYOTI KAUR	ACS - 36304	NIRC





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114	MR. ANIL KUMAR	ACS - 36307	NIRC	164	MR. KHANJAN BHARAT SONI	ACS - 36357	WIRC
115	MS. PRERNA JAIN	ACS - 36308	NIRC	165	MS. GAYATHRI M	ACS - 36358	SIRC
116	MS. MONA SRICHANDANI	ACS - 36309	NIRC	166	MS. MADHAVI KISHORE JAWALE	ACS - 36359	WIRC
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118	MR. SANDEEP NATH MODI	ACS - 36311	NIRC	168	MS. MINAL NANDAKUMAR PATIL	ACS - 36361	WIRC
119	MS. BHANU PRIYA	ACS - 36312	NIRC	169	MR. SATYAM OMER	ACS - 36362	NIRC
120	MS. ANKITA DUNEJA	ACS - 36313	NIRC	170	MS. VAISHALI RAMADAS NAIK	ACS - 36363	WIRC
121	MR. SANDEEP JAIN	ACS - 36314	NIRC	171	MR. RAHUL BANSAL	ACS - 36364	NIRC
122	MR. DEVNATH PODDAR	ACS - 36315	NIRC	172	MS. MANISHA CHADHA	ACS - 36365	NIRC
123	MS. KANIKA KHANDELWAL	ACS - 36316	NIRC	173	MR. LOKESH KUMAR BHAKOO	ACS - 36366	NIRC
124	MR. PRITESH BADOLA	ACS - 36317	NIRC	174	MS. SUNITA SINGH	ACS - 36367	EIRC
125	MS. B BHAVANI YADAV	ACS - 36318	SIRC	175	MR. NITIN MADAAN	ACS - 36368	NIRC
126	MS. DIPTI RAJAN THAKKER	ACS - 36319	WIRC	176	MR. G PATTABHI RAMA CHARYA	ACS - 36369	SIRC
127	MS. SHLOKA BHARAT PANCHOLI	ACS - 36320	WIRC	177	MS. SAMREEN ZAMAN	ACS - 36370	NIRC
128	MR. SARANSH DHIMAN	ACS - 36321	WIRC	178	MRS. PRIYANKA AGARWAL	ACS - 36371	EIRC
129	MS. ITI TIWARI	ACS - 36322	WIRC	179	MR. SAMITABH SARKAR	ACS - 36372	EIRC
130	MS. PAYAL SUNIL LAKHANI	ACS - 36323	WIRC	180	MR. VISHAL KAUSHAL	ACS - 36373	EIRC
131	MR. HAJIWALA ABDULQUADIR SOYAB	ACS - 36324	WIRC	181	MS. SHRUTI PODDAR	ACS - 36374	EIRC
132	MS. GREENA MAHESH KARANI	ACS - 36325	WIRC	182	MS. MANISHA CHOPRA	ACS - 36375	EIRC
133	MS. PRAGATI LAAD	ACS - 36326	WIRC	183	MR. NITIN KUMAR AGRAHARI	ACS - 36376	NIRC
134	MR. SUNIL MULCHANDANI	ACS - 36327	WIRC	184	MR. MOHIT SIKKA	ACS - 36377	NIRC
135	MR. YASH DILIP KUMAR SHETH	ACS - 36328	WIRC	185	MR. ANAND CHOBEY	ACS - 36378	NIRC
136	MR. GAJENDRA SINGH SENGAR	ACS - 36329	WIRC	186	MR. NIRAJ KUMAR JHA	ACS - 36379	NIRC
137	MS. MINAKSHI GUPTA	ACS - 36330	EIRC	187	MS. TRIPTI GARG	ACS - 36380	NIRC
138	MS. YAMINA ALMAS	ACS - 36331	NIRC	188	MS. VARSHA MALANI	ACS - 36381	NIRC
139	MR. SUMIT GUPTA	ACS - 36332	NIRC	189	MS. ANKITA JAIN	ACS - 36382	NIRC
140	MS. PRIYANKA SRIVASTAVA	ACS - 36333	NIRC	190	MR. SPARSH JAIN	ACS - 36383	NIRC
141	MR. MOHD AADIL	ACS - 36334	NIRC	191	MS. MOKSHADA NANDER	ACS - 36384	NIRC
142	MS. KRATI TEWARI	ACS - 36335	NIRC	192	MR. KARTHEEK CHINDLOOR NAGARAJ	ACS - 36385	SIRC
143	MS. GIGYASA AGRAWAL	ACS - 36336	NIRC	193	MR. AMAR HANUMANTH SHETTAB	ACS - 36386	SIRC
144	MR. ANIKESH KEROTHIYA	ACS - 36337	NIRC	194	MR. VINEETH VIJAYA KUMAR	ACS - 36387	SIRC
145	MS. AARTI SHARMA	ACS - 36338	NIRC	195	MS. SONAL SHEKARAN	ACS - 36388	WIRC
146	MR. UPENDRA MANI TRIPATHI	ACS - 36339	NIRC	196	MR. RISHI MAHENDRA DAVE	ACS - 36389	WIRC
147	MS. NOOPUR	ACS - 36340	NIRC	197	MS. DHRUPA NAVNEETBHAI THAKKAR	ACS - 36390	WIRC
148	MS. PRABHDEEP KOUR	ACS - 36341	NIRC	198	MS. MANALI SITOKE	ACS - 36391	WIRC
149	MS. KHUSHBU MITTAL	ACS - 36342	NIRC	199	MR. JATIN SEHGAL	ACS - 36392	WIRC
150	MR. ABHILASH C	ACS - 36343	SIRC	200	MS. MEGHANABEN PRAVINKUMAR PATEL	ACS - 36393	WIRC
151	MS. ANUSHA RAJESWARAN	ACS - 36344	SIRC	201	MS. MANEESHA KUMARI	ACS - 36394	NIRC
152	MR. KANGITI KARTHEEK	ACS - 36345	SIRC	202	MR. DURGA PRASAD YADAV	ACS - 36395	WIRC
153	MS. POOJA M PARMAR	ACS - 36346	SIRC	203	MR. PRAVEEN KUMAR BIRSINGH SAHARAN	ACS - 36396	WIRC
154	MRS. SAPNA RADHESHAM RATHI	ACS - 36347	SIRC	204	MS. BHAVANA RAVINDRA OSWAL	ACS - 36397	WIRC
155	MR. R MUTHU KUMAR	ACS - 36348	SIRC	205	MR. DARSHAN DEVENDRABHAI SHAH	ACS - 36398	WIRC
156	MS. DIMPLE JAGDISH SHAH	ACS - 36349	SIRC	206	MS. AMBILY PADMANABHAN NAIR	ACS - 36399	SIRC
157	MRS. SHAMIKA CHETAN MHATRE	ACS - 36350	WIRC	207	MR. MAHESH KUMAR TUNGA	ACS - 36400	SIRC
158	MR. SAMEER SHIVAJI KADAM	ACS - 36351	WIRC	208	MS. BINNI	ACS - 36401	NIRC
159	MR. SINGH SANDEEPKUMAR AWADESH	ACS - 36352	WIRC	209	MS. ANKITA PAREEK	ACS - 36402	NIRC
160	MS. UNNATI LAKHNORI	ACS - 36353	WIRC	210	MR. AMIT GUPTA	ACS - 36403	NIRC
161	MS. KOMAL MANGHARAM KESHWANI	ACS - 36354	WIRC				





211	MR. KAILASH PURUSHOTTAM PUROHIT	ACS - 36404	WIRC	261	MS. NUPUR GUPTA	ACS - 36454	NIRC
212	MR. G MANIKANDAN	ACS - 36405	SIRC	262	MS. CHANCHAL SHARMA	ACS - 36455	NIRC
213	MR. DHANANJAY KUMAR SINGH	ACS - 36406	NIRC	263	MS. KHUSHBOO VIJAY	ACS - 36456	NIRC
214	MR. UNNIKRISHNAN P S	ACS - 36407	SIRC	264	MS. MONIKA KHURANA	ACS - 36457	NIRC
215	MR. NAVEEN SHARMA	ACS - 36408	NIRC	265	MS. ISHA JAIN	ACS - 36458	NIRC
216	MR. ANUJ SARASWAT	ACS - 36409	EIRC	266	MS. LEENA GANDHI	ACS - 36459	NIRC
217	MR. ANKIT HIRAN	ACS - 36410	NIRC	267	MR. DESIKAN B	ACS - 36460	SIRC
218	MR. AVINASH NOLKHA	ACS - 36411	NIRC	268	MR. DATTANAND MADHUKAR RAIKAR	ACS - 36461	SIRC
219	MS. POOJA ANKIT SHAH	ACS - 36412	WIRC	269	MS. PATEL SHEFALI RASIKLAL	ACS - 36462	WIRC
220	MS. NEHA GARG	ACS - 36413	NIRC	270	MS. ANURADHA ACHARYA	ACS - 36463	NIRC
221	MS. DIVYA SUDRANIA	ACS - 36414	NIRC	271	MRS. SHITAL PRITAM BAGMAR	ACS - 36464	WIRC
222	MS. TINA SAMUEL	ACS - 36415	NIRC	272	MR. VISHAL RAMESHBHAI DHOLIYA	ACS - 36465	WIRC
223	MS. PRAKRITI THAKUR	ACS - 36416	NIRC	273	MR. PRAGAT VASANT SHETTY	ACS - 36466	WIRC
224	MS. BABITA	ACS - 36417	NIRC	274	MR. NIKHIL DINESH RATHI	ACS - 36467	WIRC
225	MS. SWATI KABRA	ACS - 36418	NIRC	275	MS. AARTI VERMA	ACS - 36468	NIRC
226	MS. ASTHA MOHAN	ACS - 36419	NIRC	276	MS. MEENU GOYAL	ACS - 36469	NIRC
227	MR. ANKIT JAIN	ACS - 36420	NIRC	277	MR. NISHITH KIRIT DOSHI	ACS - 36470	WIRC
228	MS. K SHAILA NAYAK	ACS - 36421	SIRC	278	MR. KARTIK KISHORKUMAR BAVISHI	ACS - 36471	WIRC
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230	MR. ABHILASH T	ACS - 36423	SIRC	280	MS. JAHNAVI GANDHI HARISH	ACS - 36473	WIRC
231	MR. DEEPAK M J	ACS - 36424	SIRC	281	MR. DHAWAL SHRIVASTAVA	ACS - 36474	WIRC
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233	MR. DATTARAJ SUBHASH TILVE	ACS - 36426	WIRC	283	MR. RAVI KUMAR TL	ACS - 36476	SIRC
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235	MS. MONALI P JOSHI	ACS - 36428	WIRC	285	MS. SHWETA KISHOR KALGUTKAR	ACS - 36478	WIRC
236	MS. REENA SHIVRAM YADAV	ACS - 36429	WIRC	286	MR. ASHISH KUMAR AGRAWAL	ACS - 36479	EIRC
237	MR. RITU RAJ	ACS - 36430	WIRC	287	MS. PRIYANKA AGARWAL	ACS - 36480	NIRC
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240	MS. VEDANT MANALI KISHOR	ACS - 36433	WIRC	290	MRS. NIKITA SAMEER MODI	ACS - 36483	WIRC
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242	MS. NEHA SHARAD KALPANDE	ACS - 36435	WIRC	292	MS. SONAL GAUTAM SHUKLA	ACS - 36485	NIRC
243	MR. DEEPAK DEEWAN SINGH	ACS - 36436	NIRC	293	MR. ADARSH KUMAR AGARWAL	ACS - 36486	EIRC
244	MR. SHALIN SUNANDAN DIVATIA	ACS - 36437	WIRC	294	MS. SHRADDHA JAIN	ACS - 36487	EIRC
245	MS. NAMRATA JOHARI	ACS - 36438	NIRC	295	MR. NITESH SRIVASTAVA	ACS - 36488	EIRC
246	MS. SHUBHA SHANDILYA	ACS - 36439	NIRC	296	MR. BIJAY AGARWAL	ACS - 36489	EIRC
247	MS. SUDHA JAIN	ACS - 36440	EIRC	297	MS. NIKITA DHANUKA	ACS - 36490	EIRC
248	MS. SWETA DARUKA	ACS - 36441	EIRC	298	MS. CHANDRANI BHATTACHARJEE	ACS - 36491	EIRC
249	MS. PRIYANKA SINGH	ACS - 36442	EIRC	299	MS. GAZAL RUWATIA	ACS - 36492	EIRC
250	MS. RITIKA VIDYASARIA	ACS - 36443	EIRC	300	MS. SHRISTI AGARWAL	ACS - 36493	EIRC
251	MS. MINU MISHRA	ACS - 36444	EIRC	301	MR. ANKIT YADAV	ACS - 36494	NIRC
252	MS. ALPANA KUMARI AGARWAL	ACS - 36445	EIRC	302	MR. SURANJAN BARIK	ACS - 36495	NIRC
253	MS. SNEHA GORISARIA	ACS - 36446	EIRC	303	MR. MANISH KUMAR MISHRA	ACS - 36496	NIRC
254	MS. JYOTI PANDEY	ACS - 36447	NIRC	304	MR. NISHANT KHOKHAR	ACS - 36497	NIRC
255	MS. SURBHI BANSAL	ACS - 36448	NIRC	305	MS. RATIKA KHANDELWAL	ACS - 36498	NIRC
256	MR. SANDEEP YADAV	ACS - 36449	NIRC	306	MR. SUMIT SEHGAL	ACS - 36499	NIRC
257	MR. PREM KANT JHA	ACS - 36450	NIRC	307	MRS. RICHA GARG	ACS - 36500	NIRC
258	MS. ROOPAL JAIN	ACS - 36451	NIRC	308	MS. SURUCHI UTTAM	ACS - 36501	NIRC
259	MS. MEENAKSHI VARSHNEY	ACS - 36452	NIRC	309	MR. AMIT GOYAL	ACS - 36502	NIRC
260	MR. SIMARJIT SINGH	ACS - 36453	NIRC	310	MR. INEET SINGH ARORA	ACS - 36503	NIRC





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313	MRS. KAINAAZ FARHAD BHARUCHA	ACS - 36506	WIRC	21.	SH. KEDAR RAM R LADDHA	FCS-4550	WIRC
314	MR. KEVIN MARCEL LEWIS	ACS - 36507	WIRC	22.	SH. VINEET KUMAR TRIPATHI	FCS-5542	NIRC
315	MR. MANISH SHIVRAM RAVAL	ACS - 36508	WIRC	23.	MS. PRAGYA SURESH JAIN	ACS-26965	NIRC
316	MS. PREETAM GOUDAPPA PATIL	ACS - 36509	WIRC				
317	MS. SAROJ SHARMA	ACS - 36510	WIRC				
318	MR. MITEN NARESH SHAH	ACS - 36511	WIRC				
319	MS. PRATIKA VISHNU SHENVI DESSAI	ACS - 36512	WIRC				
320	MS. MAYURI PANNALAL PUROHIT	ACS - 36513	WIRC				
321	MS. NAMITA CHANDRASHEKHAR PHATAK	ACS - 36514	WIRC				
322	MS. HEENA RAJENDRA JAYSINGHANI	ACS - 36515	WIRC				
323	MS. MEENAL MAHENDRA KHALADKAR	ACS - 36516	WIRC				
324	MR. MEHUL LALIT CHHAJED	ACS - 36517	WIRC				
325	MS. CHARMI RASHMIKANT SHAH	ACS - 36518	WIRC				
326	MR. JAY SODANI	ACS - 36519	WIRC				
327	MS. SHIKHA BANSAL	ACS - 36520	WIRC				
328	MR. SUNIL PAVANKUMAR MURARKA	ACS - 36521	WIRC				
329	MS. SONU AGRAWAL	ACS - 36522	WIRC				
330	MR. SIVA KIRAN KUNCHAM	ACS - 36523	SIRC				
331	MR. N R SRINIVASA RAGHAVAN	ACS - 36524	SIRC				
332	MS. MONIKA MALOO	ACS - 36525	EIRC				
333	MR. SHOBHIT BANSAL	ACS - 36526	NIRC				
334	MR. NARAYANAN SHIVARAMAKRISHNAN	ACS - 36527	WIRC				
335	MS. RENUKA DEEPAK KOWALE	ACS - 36528	WIRC				
336	MS. BHUMI HASMUKH SHAH	ACS - 36529	WIRC				
337	MR. SHYAM SINGH RANSINGH TOMAR	ACS - 36530	WIRC				
338	MS. MANISHA CHOUDHARY	ACS - 36531	NIRC				

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6.	SH. PRATEEK KATIYAR	ACS-20351	NIRC
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8.	SH. T RADHAKRISHNAN	ACS-372	SIRC
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10.	SH. DEEPAK VENKATESAN	ACS-14546	WIRC
11.	SH. RAMESH KUMAR VIRMANI	ACS-1802	NIRC
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13.	SH. SANDEEP RAWAL	ACS-14849	SIRC
14.	SH. PRADEEP BANSAL	ACS-23069	SIRC
15.	SH. SUNIL MISHRA	ACS-18396	SIRC
16.	SH. V PASHUPATIKUMAR	ACS-9302	SIRC
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7	MS. POOJA VAIKUNTH BHATT	ACS - 35945	13287	WIRC
8	SH. NARESH KUMAR GOEL	FCS - 3760	13288	NIRC
9	MR. SHREEVATHSA G P	ACS - 35801	13289	SIRC
10	MR. LAKHAN SUKHDANI	ACS - 35510	13290	WIRC
11	MR. GOVERDHAN CHANDAK	ACS - 36019	13291	SIRC
12	MR. AVIRAL GOYAL	ACS - 31068	13292	NIRC
13	SH. RAKESH KUMAR JAIN	FCS - 7386	13293	NIRC
14	SH. KRITEE ANAND	ACS - 25713	13294	NIRC
15	MR. MAYANKKUMAR CHIMANBHAI PADIYA	ACS - 34847	13295	WIRC
16	MR. MANOJ KUMAR YADAV	ACS - 35674	13296	NIRC
17	SH SHYAMAL YOGESH RAVAL	ACS - 19907	13297	WIRC
18	SH. CHITTARANJAN K ANANTRAO	ACS - 8054	13298	SIRC
19	MS. NUPUR CHOUDHURY	ACS - 35884	13299	EIRC
20	MR. SATISH KUMAR JAIN	ACS - 35998	13300	WIRC
21	MS. SHWETA GARG	ACS - 34258	13301	NIRC
22	SH. C K RIJU	ACS - 25109	13302	SIRC
23	SH. AJAY KUMAR JAIN	FCS - 5826	13303	NIRC
24	MRS. MIHIKA SHALIN JAIN	ACS - 35308	13304	WIRC
25	MS. DEEPIKA SRIVASTAV	ACS - 28526	13305	EIRC
26	MR. ASHISH DINESH PATEL	ACS - 35980	13306	WIRC
27	MS. SILVIA GUMBER	ACS - 25960	13307	NIRC
28	MS. ANSHITA JAIN	ACS - 35667	13308	NIRC
29	MR. RAHUL KISHOR VED	ACS - 34791	13309	WIRC
30	MS. NIKITABEN RASHMINKUMAR SHAH	ACS - 31650	13310	WIRC
31	MS. PRAGYA CHHAWCHHARIA	ACS - 35412	13311	EIRC
32	MS. SUBHASREE G	ACS - 21014	13312	SIRC
33	MS. RAJNI KOHLI	ACS - 35298	13313	NIRC
34	MR. DESAI MANTHAN PRAKASH	ACS - 35250	13314	WIRC
35	MR. VIKASH MEHTA	ACS - 35610	13315	EIRC
36	MR. RAJESH KUMAR YADAV	ACS - 35400	13316	EIRC
37	MS. CHAITRA K	ACS - 29201	13317	SIRC
38	MS. MADHAVI MITHIPATI	ACS - 21910	13318	SIRC
39	MR. DEVENDRA KUMAR JAIN	ACS - 31994	13319	WIRC
40	MR. SHYAM SUNDER R	ACS - 35867	13320	SIRC
41	MR. ANANT PRAKASH	ACS - 29224	13321	NIRC



42	MS. SUMAN KANAYALAL MAKHIJA	ACS - 31535	13322	WIRC	93	MR. TAPAN KUMAR PADHY	ACS - 35857	13373	WIRC
43	MS. APARNA RAI	ACS - 36060	13323	NIRC	94	MR. ANKUR GUPTA	ACS - 28253	13374	NIRC
44	MS. HIMA BINDU DULIPALA	ACS - 35703	13324	SIRC	95	MS. SARANYA R	ACS - 35827	13375	SIRC
45	MR. YOGENDRA SHARMA	ACS - 36035	13325	WIRC	96	MRS. BHAVIKA AASHISH BHATT	ACS - 36181	13376	WIRC
46	MRS. ANKITA AGARWAL	ACS - 35403	13326	EIRC	97	MR. UDIT VERMA	ACS - 34801	13377	NIRC
47	MS. NEETU YADAV	ACS - 35387	13327	NIRC	98	MR. MANPREET SINGH	FCS - 7518	13378	NIRC
48	MR. BHANU MISHRA	ACS - 35858	13328	NIRC	99	MR. ANIL KUMAR SOMANI	ACS - 36055	13379	NIRC
49	MS. KHUSHBOO MAHESHWARI	ACS - 32493	13329	NIRC	100	MR. BHIMESWARA RAO APPANA	ACS - 35521	13380	SIRC
50	SH. ANANG KUMAR SHANDILYA	FCS - 6693	13330	NIRC	101	MR. VASUKI S	ACS - 36138	13381	SIRC
51	SH. NITIN KUMAR GARG	ACS - 17034	13331	NIRC	102	MS. VANITA ARORA	ACS - 34930	13382	NIRC
52	MR. JAMIR NAZIR SHAIKH	ACS - 33882	13332	WIRC	103	MS. K LAKSHMI PRIYA	ACS - 36135	13383	SIRC
53	SH. ATIUTTAM PRASAD SINGH	ACS - 24437	13333	NIRC	104	MS. PRACHI VIRANCHI SHUKLA	ACS - 29747	13384	WIRC
54	MR. ASIT KUJUR	ACS - 36031	13334	WIRC	105	MS. SHILPA BANSAL	ACS - 34923	13385	NIRC
55	MR. PRAMOD S	ACS - 36020	13335	SIRC	106	MRS. SHWETA JAIN	ACS - 35360	13386	NIRC
56	MS. NIKETA SINHA	ACS - 21556	13336	EIRC	107	MR. SAJAL SAXENA	ACS - 28315	13387	NIRC
57	MR. MOHD SADIQUL MEHDI	ACS - 36125	13337	NIRC	108	MS. GAYATRI CHAWLA	ACS - 25487	13388	NIRC
58	MR. SAURABH TALWAR	ACS - 36045	13338	NIRC	109	MS. R KANAKATHARA	ACS - 36147	13389	SIRC
59	MS SAVITA RANI	ACS - 21386	13339	NIRC	110	MS. HIMANI SHARMA	ACS - 29851	13390	NIRC
60	MR. SOURAV AGARWAL	ACS - 35960	13340	EIRC	111	MS. PUJA GUPTA	ACS - 30271	13391	EIRC
61	MS. MEENU CHAUHAN	FCS - 5340	13341	NIRC	112	SH. DILIP KUMAR NIRANJAN	FCS - 6632	13392	NIRC
62	MS. NEHA PAHUJA	ACS - 31747	13342	NIRC	113	MRS. LATIKA DATTARAJ KULKARNI	ACS - 27221	13393	WIRC
63	MR. SIDDHARTH SHARMA	ACS - 33578	13343	WIRC	114	MRS. JINAL PANKEEL SOLANKI	ACS - 27938	13394	WIRC
64	SH. VIMAL KUMAR SHARMA	ACS - 3475	13344	SIRC	115	MS. SHRUTI AGGARWAL	ACS - 34159	13395	NIRC
65	SH. PANKAJ MISRA	ACS - 8411	13345	NIRC	116	MS. PRIYA WASON	ACS - 29815	13396	NIRC
66	MS. SAKINA DICKENWALA	ACS - 28747	13346	WIRC	117	MS. NEETU MAHESHWARI	ACS - 24954	13397	NIRC
67	MRS. SIMMI MITTAL	ACS - 25182	13347	EIRC	118	MR. LOVLESH VERMA	ACS - 34171	13398	NIRC
68	MS. MONIKA RAMCHAND BHATIA	ACS - 36052	13348	WIRC	119	MS. AMISHA VIJAY SHAH	ACS - 20745	13399	WIRC
69	MS. SUPRIYA DILIP SAWANT	ACS - 36143	13349	WIRC	120	MS. PRIYANKA GUPTA	ACS - 23749	13400	WIRC
70	MS. PRIYANKA CHUGH	ACS - 35991	13350	NIRC	121	MRS. KRUTI KUNAL GOGRI	ACS - 21498	13401	WIRC
71	MS. ANKITA GOENKA	ACS - 36059	13351	EIRC	122	MR. DEEPAK P JAIN	ACS - 33393	13402	SIRC
72	MS. ARCHANA JOSHI	ACS - 33940	13352	NIRC	123	MR. ANKUR SHARMA	ACS - 31833	13403	EIRC
73	MR. MUKESH SUTHAR	ACS - 34800	13353	NIRC	124	MR. MAYANK NIGAM	ACS - 35514	13404	NIRC
74	MS. BHOOMIKA RAMESH THAKORE	ACS - 24465	13354	WIRC	125	MS. MEGHA KHANDLWAL	ACS - 35990	13405	NIRC
75	MR. DINESH KUMAR MAURYA	ACS - 35880	13355	NIRC	126	MS. NEHA NARENDRA SUREKA	ACS - 32175	13406	WIRC
76	MS. SONAM CHANDAK	ACS - 31521	13356	NIRC	127	MR. RAGHAVENDAR RAO DEPURU	ACS - 35788	13407	SIRC
77	MRS. SHRUTI AGARWALA	ACS - 35886	13357	EIRC	128	MS. ANJU AGARWAL	ACS - 29059	13408	EIRC
78	MR. HIMANSHU PANCHAL	ACS - 30994	13358	NIRC	129	MS. JYOTI TANDON	ACS - 19009	13409	SIRC
79	MR. CHINTAN HARENDRAKUMAR VAKIL	ACS - 36074	13359	WIRC	130	MS. BANDANA RAI	ACS - 34975	13410	EIRC
80	MR. VINAY DIXIT	ACS - 32770	13360	NIRC	131	MR. PARVEEN KUMAR GOYAL	ACS - 35494	13411	NIRC
81	SH. T V GOVINDARAJAN	ACS - 11179	13361	SIRC	132	MS. GEETANJLI AGGARWAL	ACS - 35328	13412	NIRC
82	MR. NAWAJ WAHAB SAYYAD	ACS - 35715	13362	WIRC	133	MS. SHWETA JAIN	ACS - 23314	13413	EIRC
83	MR. ANKIT JAIN	ACS - 35551	13363	EIRC	134	MS. NISHA KHATER	ACS - 30486	13414	NIRC
84	MS. NEELU DHINGRA	ACS - 17464	13364	WIRC	135	MR. SAKET RAJENDRA SUGANDH	ACS - 34266	13415	WIRC
85	MS. NAINA R DESAI	FCS - 1351	13365	WIRC	136	MR. KODE HEMACHAND	ACS - 35463	13416	SIRC
86	SH. K C SUBRAMANIAN	ACS - 11497	13366	SIRC	137	MR. SHIVAM SHARMA	ACS - 35727	13417	WIRC
87	MS. KRUTI SHAH	ACS - 29550	13367	WIRC	138	MR. MANJEET SINGH	ACS - 30925	13418	NIRC
88	MS. PAVEET	ACS - 35743	13368	NIRC	139	MR. RAJKUMAR RAMLANI	ACS - 35872	13419	WIRC
89	MR. ASHUTOSH KUMAR	ACS - 26486	13369	NIRC	140	MS. VARSHA RANI AGARWAL	ACS - 36228	13420	EIRC
90	MR. SUSHIL CHOUDHARY	ACS - 36170	13370	NIRC	141	MR. VISHAL MANTRI	ACS - 36127	13421	NIRC
91	MS. JAGRITI MANISH JAGETIA	ACS - 32419	13371	WIRC	142	MS. JYOTSNA GULATI	ACS - 17359	13422	NIRC
92	MS. PRIYANKA JAIN	ACS - 35719	13372	WIRC	143	MS. URVI PRAVINCHANDRA SHAH	ACS - 34602	13423	WIRC





News From the Institute

144	MR. DHURV PRADIP SAMPAT	ACS - 36210	13424	WIRC
145	MS. BHARATI TYAGI	ACS - 36234	13425	NIRC
146	MR. PRAVEEN AGARWAL	ACS - 36195	13426	EIRC
147	MR. GOPAL GHANSHYAMBHAI VAIRAGI	ACS - 36032	13427	WIRC
148	MR. VINU THOMAS	ACS - 36049	13428	SIRC
149	MR. KAPIL NAYYAR	ACS - 34169	13429	NIRC
150	MS. N NAGALAKSHMI	ACS - 20839	13430	SIRC
151	MS. TRIPTI BHARDWAJ	ACS - 32845	13431	NIRC
152	MRS. POONAM MAKAR	ACS - 16486	13432	NIRC
153	SH. SANTOSH J R	ACS - 22695	13433	SIRC
154	MR. TARIN RAWAT	ACS - 35015	13434	NIRC
155	MS. KHOSBOO AGARWAL	ACS - 35165	13435	EIRC
156	SH. SIDHARTH BAID	ACS - 17677	13436	EIRC

CANCELLED**

S L No.	NAME	MEMB NO	COP NO.	REGION
1	Ms. BHAWNA PAMNANI	ACS 34595	12808	NIRC
2	MR. GAURAV MEHTA	ACS 16820	12582	NIRC
3	MS. PAYAL SHARMA	ACS 32222	12108	NIRC
4	MRS. LEENA AMIT FALNIKAR	ACS 22154	8854	WIRC
5	MR. V DEVARAJU	FCS 6195	13039	SIRC
6	MR. VISHAL MEHTA	ACS 22991	8274	WIRC
7	MS. NEHA DEWAN	ACS 24010	11187	NIRC
8	MRS. MAYURI RAJA	ACS 26022	9392	EIRC
9	MR. AKH LAQUE AHMAD	ACS 25001	11845	EIRC
10	MR. JAIRAJ VIKAS VERMA	ACS 35019	13038	NIRC
11	MR. AKSHAT MAHESHWARI	ACS 35021	13036	NIRC
12	MR. VARUN KUMAR JINDAL	ACS 31601	11761	NIRC
13	MS. AMRITA BALRAM CHANDWANI	ACS 35011	13167	WIRC
14	MS. TAPASI DAS	ACS 22310	10030	WIRC
15	MS. KANIKA PHOPHALIA	ACS 33291	12505	NIRC
16	MR. SHABBIR A VAZIRY	FCS 4962	11507	WIRC
17	MS. KIRTI MUKKESHKUMAR GOHIL	ACS 25800	9219	WIRC
18	MS. PALLAVI VINOND VAIDYA	ACS 33437	12325	WIRC
19	MR. SURESH V JOSHI	FCS 4077	12556	WIRC
20	MS. GUNJAN SALUJA	ACS 27677	12103	NIRC
21	MRS. RICHA AGARWALLA	ACS 23743	10645	EIRC
22	MR. NISHANT SRIVASTAVA	FCS 6207	12797	NIRC
23	MS. PRIYANKA SARAF	ACS 26836	11101	WIRC
24	MS. NEHA BAJAJ	ACS 34584	12804	NIRC
25	MR. VIKAS GARG	FCS 4777	4441	NIRC
26	MR. N RANGANATHAN	FCS 1274	6274	SIRC
27	MS. MANISHA ARAVIND KULKARNI	ACS 24552	10696	WIRC
28	MRS. DEBIKA CHATERJEE	ACS 27822	12166	EIRC
29	MR. CHAMPA LAL BANTHIA	FCS 453	7568	WIRC
30	MR. KARTIK AGRAWAL	ACS 25481	12609	NIRC
31	MS. USHA	ACS 31341	12156	NIRC
32	MR. SANJEEV SHARMA	ACS 16382	9672	NIRC
33	MR. VINEET KUMAR TRIPATHI	FCS 5542	4839	NIRC

34	MR. ABHISHEK PERIWAL	ACS 26745	9631	NIRC
35	MRS. VINEETA BARMECHA	ACS 23936	12733	EIRC
36	MR. V R VENKATA KRISHNAN	ACS 13302	12147	WIRC

LICENTIATE ICSI*

NAME	NUMBER	REGION
MS. REEMA CHOPRA	6651	NIRC
MR. SHANKARANARAYANA A.S.	6652	SIRC
Mr. MADHUKAR GOYAL	6653	NIRC
MR. NAMAN JHALANI	6654	NIRC
MR. ASHOK BABANRAO GAWARI	6655	WIRC
MR. KAPIL KHADELWAL	6656	NIRC
MR RAJAT RANJAN JANA	6657	WIRC
MR. VISHAL V TAKALKAR	6658	WIRC
MS. GEETHA R	6659	SIRC
MS. CHINKI JALAN	6660	EIRC
MR. ABHILASH DARDA	6661	NIRC
MR. SAGAR DHAMANI	6662	NIRC
MR. PRASANNA SHENOY MANGALPADY	6663	SIRC

*Admitted during the month of May, 2014

Appointment

REQUIRED

COMPANY SECRETARY

A full time qualified Company Secretary proficient in English and well acquainted with Company Law and legal matter with minimum experience of 3 years, is required for a Private Limited MNC in Bawal, Haryana.

Interested candidates may send in their applications with detailed resume giving information about professional experience.

Interested candidates may please mail resume on following address.

The Manager Human Resources
SKP Business Consulting LLP

B-376, 3rd Floor, Nirman Vihar, New Delhi - 110092

Tel: +91 (0) 11 22428454/55





Company Secretaries Benevolent Fund



**MEMBERS ENROLLED
REGIONWISE AS LIFE
MEMBERS OF THE
COMPANY SECRETARIES
BENEVOLENT FUND***

Region	LM No.	Name	Member Number	City
EIRC				
1	10432	SH. SUBRAMANIAN P. VENKATA	ACS - 4585	KOLKATA
2	10444	MR. CHANDAN TRIPATHI	ACS - 28159	KOLKATA
3	10452	SH. SUSANTA KUMAR PADHI	ACS - 14758	BHUBANESWAR
NIRC				
4	10441	SH. YOGESH KUMAR TYAGI	ACS - 17016	NOIDA
5	10442	MR. PRITESH BADOLA	ACS - 36317	AJMER
6	10446	SH. ABHINAV MATHUR	ACS - 22613	JAIPUR
7	10453	MR. JITENDER SINGH	ACS - 33610	NOIDA
SIRC				
8	10431	SH. V J BALAKRISHNAN	ACS - 23831	MYSORE
9	10433	MR. N V RAMAN	ACS - 35100	CHENNAI
10	10434	MS. KANAK KABRA	ACS - 17561	HYDERABAD
11	10436	MS. A LALITHAKUMARI	ACS - 10449	HYDERABAD
12	10437	MS. SHUCHI SHARMA	ACS - 18712	HYDERABAD
13	10438	SH. N MEERA MOHIDDIN SYED	ACS - 19395	HYDERABAD
14	10439	MR. KRISHNA KUMAR C	ACS - 35819	COIMBATORE
15	10445	SH. D HEM SENTHIL RAJ	ACS - 25451	CHENNAI
16	10448	MR. VIGNESA SOMATHURAI PANDIAN	ACS - 31579	COIMBATORE
17	10451	MR. AJAYAN M P	ACS - 36299	KANNUR
18	10454	MS. HEMADRI BAI	ACS - 35634	HOSPET
19	10456	MR. SURENDER BEZINI	ACS - 36472	HYDERABAD

Region	LM No.	Name	Member Number	City
20	10457	MR. SENTHIL KUMAR K	ACS - 29924	CHENNAI
21	10459	SH V SWAMINATHAN	ACS - 20447	CHENNAI
22	10460	MS. V UMA MAHESHWARI	FCS - 4151	CHENNAI
23	10461	SH. A J ATHINDRANATH	ACS - 16095	CHENNAI
24	10462	MR. TARA NATH BINGIMALLA	ACS - 33306	HYDERABAD
25	10463	MS. KARPAKAM SUNDARARAJAN	ACS - 34669	HYDERABAD
26	10464	MR. SIVA KIRAN KUNCHAM	ACS - 36523	HYDERABAD
27	10466	MS. SNEHA PRABHAKAR PATIL	ACS - 31653	BELGAUM
WIRC				
28	10435	MR. PARESH SUNIL VASTE	ACS - 32668	PUNE
29	10440	SH. AMIT KUMAR HASMUKHBHAI BHALODI	ACS - 19079	RAJKOT
30	10443	MS. SHAMALEE MANDAR VAZE	ACS - 22306	PUNE
31	10447	SH. RAJENDRA C PARAB	FCS - 5579	MUMBAI
32	10449	SH. SANTOSH JAIN	ACS - 7640	MUMBAI
33	10450	MR. VIRAL DINESH DEDHIA	ACS - 30226	MUMBAI
34	10455	MR. PRASHANT GANGADHAR TAYSHETE	ACS - 35869	MUMBAI
35	10458	MR. SOHANLAL SARDA	ACS - 35160	MUMBAI
36	10465	MS. NEHA MAHESH KHOKHANI	ACS - 33674	MUMBAI
37	10467	SH. MURLI SHRINIWAS LAHOTI	ACS - 18206	NAGPUR

*Enrolled during the period from 21.06.2014 to 20.07.2014





News From the Institute



List of Companies/ organizations Registered During June, 2014 For Providing Training to The Students of ICSI

Name Of The Company	Training Period	Stipend
Shri Damodar Yarn Manufacturing Pvt Ltd. 161, Mittal Estate, Bldg No. 6 1 st Floor, Sir M V Road Andheri (East), Mumbai-400059 Maharashtra	15 Months	Suitable
Kirloskar Brothers Investments Ltd 13/A, Karve Road, Kothrud Pune-411038, Maharashtra	15 Months	Suitable
Sss Sai Shipping Services Pvt Ltd A-304, Classique Centre Plot No-26, Mahal Industrial Estate Off Mahakali Caves Road Andheri (E), Mumbai-400093	15 Months	Suitable
D.E.Shaw India Securities Pvt Ltd. Fortune 2000, Third Floor, B Wing Bandra Kurla Complex Bandra (E) Mumbai-400051	15 Months	Suitable
Shelcon Properties Pvt Ltd Niladri Shikhar Building, 7 th Floor, Hill Cart Road Siliguri-734001	15 Months	Suitable
Dmicdc Neemrana Solar Power Company Ltd Room No.341B, 3 rd Floor Main Building, Hotel Ashok 50B, Chanakyapuri New Delhi-110021	15 Months	Suitable
Mss India Private Limited H-8, Midc Area, Ambad Nasik-422010, Maharashtra	15 Months	Suitable
Ifmr Capital Finance Private Limited 10 th Floor, Phase-I Iit-Madras Research Park, Kanagam Village, Taramani	15 Months	Suitable
Esk Commerce & Trade Pvt Ltd. Plot No-229/239, Rectangle No.51, Khasra No.-02, Village Kherki Daula, Before Manesar Toll, Nh-8 Service Lane, Near Groz Tools Factory, Gurgaon-122004	15 Months	Suitable

Ruchira Papers Limited Trilokpur Road, Kala- Amb-173030 Distt. Sirmaur (H.P)	15/03 Months	Suitable
Dun & Bradstreet Information Services India Pvt Ltd. Icc Chambers, Saki Vihar Road, Powai, Mumbai-400072 Maharashtra	15/03 Months	Suitable
Central Railside Warehouse Company Ltd. Warehousing Bhawan, 4/1, Siri Institutional Area August Kranti Marg Hauz Khas, New Delhi-110016	15 Months	Suitable
Shapoorji Pallonji Infrastructure Capital Co Ltd. Sp Centre, 41/44, Minoo Desai Marg, Colaba, Mumbai-400005	15/03 Months	
M.K. Gupta Trade Marks Co. Consultants & Advocates A-73, Iiird Floor, Silver Complex Guru Nankpura, Main Vikas Marg Laxmi Nagar, Delhi-110092	15 Months	
Bihar Rajya Pul Nirman Nigam Ltd 7, Sardar Patel Marg, Patna-14	15/03 Months	
Onward Technologies Limited Sterling Centre, 2 nd Floor, Dr. Annie Besant Road, Worli, Mumbai-4000018	15 Months	
Tilaknagar Industries Ltd P.O. Tilaknagar, Tal. Shrirampur, Dist Ahmednagar, Maharashtra-413720	15 Months	
Maha India Automotive Testing Equipment Pvt Ltd 205, Jian Bhawan 18/12 Wea, Karol Bagh, New Delhi-110005	15 Months	
Rail Vikas Nigam Limited Plot No. 25, First Floor, August Kranti Bhawan Bhikaji Cama Place, R. K. Puram New Delhi - 110066	15 Months	Suitable
Tata Elxsi Limited Itpb Road, Whitefield Bangalore-560048	15/03 Months	Suitable
Control Print Limited C-106, Hind Saurashtra Industrial Estate, Andheri-Kurla Road Marol Naka, Andheri (E) Mumbai-400059	15 Months	Suitable



Axis-It&T Limited D-30, Sector-3, Noida-201301 U.P.	15/03 Months	Suitable	Radaan Mediaworks India Limited 10, Paul Appasamy Street T Nagar, Chennai-600017 Tamil Nadu	15/03 Months	Suitable
Bhandari Hosiery Exports Limited Bhandari House, Village Meharban Rahon Road, Ludhiana-141007 Punjab	15 Months	Suitable	Xrbia Developers Ltd. Office No. 125/126 Patil Plaza Saraus Baug Mitramandal Chowk, Pune-411009	15/03 Months	Suitable
Eli Lilly & Company (India) Pvt Ltd. Plot No.92, Sector-32 Gurgaon-122001, Haryana	15 Months	Suitable	Spml Energy Ltd. 22 Camac Street, Block A 3 Rd Floor, Kolkata-700016 West Bengal	15 Months	Suitable
Indospace Capital Advisors Private Limited One Indiabulls Center, 16 Th Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai-400013	15 Months	Suitable	Deswal Energy Private Limited Sco-98, Sector-47-C Chandigarh-160047	15/03 Months	Suitable
Camlin Fine Sciences Limited D-30, Sector-3 Noida-201301 U.P.	15/03 Months	Suitable	Wonder Cement Limited Makrana Road, Madanganj Kishangarh-305801 Dist Ajmer, Rajasthan	15/03 Months	Suitable
Nashik Vinters Private Limited Á Wing, 3 Rd Floor, Todi Estate, Above Post Office Sun Mill Compound, Lower Parel Mumbai-400013	15 Months	Suitable	Sapient Consulting Limited 104, Ashoka Estate Barakhamba Road New Delhi-110001	15/03 Months	Suitable
Vulcan Engineers Limited Trade Centre, " C'wing, 104, 105 & 106, North Main Road, Koregaon Park, Pune-411001 Maharashtra	15 Months	Suitable	Rsb Industries Limited Ubale Nagar, Nagar Road Wagholi, Pune-412207	15/03 Months	Suitable
Daulat Securities Limited 86, Canning Street, 3 Rd Floor, Kolkata-700001	15 Months	Suitable	Jagran Developers (P) Ltd. 41, Shakespeare Sarani, Room No.2, 3 Rd Floor Kolkata-700017	15 Months	Suitable
Ajanta Pharma Limited Ajanta House Charkop, Kandivli West Mumbai-400067	15 Months	Suitable	Jindal Realty Private Limited 1104, 11 Th Floor, 89, Nehru Place New Delhi-110019	15 Months	Suitable
Vna & Partnership Llp 1309, Vikram Tower Rajendra Place New Delhi-110008	15 Months	Suitable	National Commodity & Derivatives Exchange Limited Ackruti Corporate Park Lbs Road, Kanjur Marg (W) Mumbai-400078	15 Months	Suitable
Reliance Innoventures Private Limited 502, Plot No. 91/94 Prabhat Colony, Santacruz (East) Mumbai-400055	15/03 Months	Suitable	Spa Lifestyle Pvt Ltd. 6/41, Wea 209, 2 Nd Floor Sunder Kiran Building Karol Bagh, New Delhi-110005	15/03 Months	Suitable
Shree Govardhan Cot-Gin Pvt Ltd. Swastik Trading Co. Bb-9, New Sardar Market Yard, Gondal-360311 Gujurat	15 Months	Suitable	Normet India Private Limited 21 Dayanand Road, Daryaganj New Delhi-110002	15 Months	Suitable
			Cb Cold Storage Private Limited B-11, Chandpole Anaj Mandi Jaipur-302001 Rajasthan	15 Months	Suitable





News From the Institute



List of Practising Members Registered For the Purpose of Imparting Training During The Month of June, 2014

CS VIKAS GANDHI
COMPANY SECRETARY IN PRACTICE
262F, GANDHI AWAS YOGNA
SONEPAT – 131 001

PCSA- 4017

CS SUBHASHINI GHANTOJI
COMPANY SECRETARY IN PRACTICE
NO.4, DATTA SKANDA NIVAS
22ND MAIN, 1ST CROSS
'T' MUNESHWAR A BLOCK, GIRINAGAR
BANGALORE – 560085

PCSA- 4018

CS DUDHELA ROHIT SHANTILAL
COMPANY SECRETARY IN PRACTICE
3 KANAN FLATS, NAVRANGPURI
AHMEDABAD – 380 009

PCSA- 4019

CS AJMAL ANSARI
COMPANY SECRETARY IN PRACTICE
B-25, JOSHI COLONY
I P EXTN., PATPARGANJ
DELHI – 110 092

PCSA- 4020

CS PUNIT SANTOSHKUMAR LATH
COMPANY SECRETARY IN PRACTICE
A/802, PRERNA VIRAJ –II
OPP. CHANDAN FARM, JODHPUR GAM,
SATELLITE, AHMEDABAD – 380 015

PCSA- 4021

CS DHAVAL ASHVINKUMAR VACHHANI
COMPANY SECRETARY IN PRACTICE
"SHIVAM" JALARAM -3, SHRIJINAGAR
B/H CANARA BANK, 150- FEET RING ROAD
RAJKOT – 360 005

PCSA- 4022

CS RAKESH KUMAR
COMPANY SECRETARY IN PRACTICE
F-221/B, SUBHASH CHOWK
LAXMI NAGAR

PCSA- 4023

CS LAXMI AGARWAL
COMPANY SECRETARY IN PRACTICE
MILE STONE BUILDING
1ST FLOOR SHOP NO12-B
CHECK POST ,SEVOKE ROAD
SILIGURI

PCSA- 4024

CS RUCHI PRABHAKAR
COMPANY SECRETARY IN PRACTICE
8/33, 3RD FLOOR ,WEA KAROL BAGH
NEW DELHI-110005

PCSA- 4025

CS MEGHANA VISHAL MHATRE
COMPANY SECRETARY IN PRACTICE

PCSA- 4026

CS NISHI JAIN
COMPANY SECRETARY IN PRACTICE
3/83, JAWAHAR NAGAR
JAIPUR – 302004

PCSA- 4027

CS AAKANSHA JAIN
COMPANY SECRETARY IN PRACTICE
A-301, TIRUPATI APARTMENTS
PACHPEDI NAKA
RAIPUR – 492 001

PCSA- 4028

CS MEGHA AGARWAL
COMPANY SECRETARY IN PRACTICE
2, NEW RADHA NAGAR
BALKESHWAR
AGRA – 282 005

PCSA- 4029

CS SUNIL KUMAR KWATRA
COMPANY SECRETARY IN PRACTICE
67, SECOND FLOOR
PINK FLATS, PAKHOWAL ROAD
LUDHIANA -141 001

PCSA- 4030

CS VIJAY L. VYAS
COMPANY SECRETARY IN PRACTICE
'SHIVAM', 49, PARSHURAM NAGAR SOCIETY
SAYAJIGANJ
VADODARA – 390 020

PCSA- 4031

CS ARUN GOEL
COMPANY SECRETARY IN PRACTICE
H.NO.- 837, SECTOR- 37
FARIDABAD -121 003

PCSA- 4032

CS REEBA VARUGHESE
COMPANY SECRETARY IN PRACTICE
FLAT NO IC, GOLDEN CITY NEST
NAGAMPADAM
KOTTAYAM -686 502

PCSA- 4033

CS CHINTAN JAGDISHGIRI GOSWAMI
COMPANY SECRETARY IN PRACTICE
A-2/D, HARIDWAR , MATHURADAS ROAD
MUMBAI -400 067

PCSA- 4034





CS ATIUTTAM PRASAD SINGH COMPANY SECRETARY IN PRACTICE D-10, GALI NO. 20 MADHU VIHAR NEW DELHI -110 092	PCSA- 4035	CS ANKIT SHARMA COMPANY SECRETARY IN PRACTICE 89, VRINDAVAN COLONY KHATIPURA ROAD, JHOOTWARA JAIPUR- 302 012	PCSA- 4044
CS UMESH CHANDRA JOSHI COMPANY SECRETARY IN PRACTICE OFFICE NO. 304, JAI GANESH VISHWA, VISHRANTWADI SQUARE PUNE -411 015	PCSA- 4036	CS K NARAYANA SWAMY COMPANY SECRETARY IN PRACTICE 'AMUDHASURABI' NO.48, 8TH CROSS AKASH NAGAR, B. NARAYANAPURA EXTN. BANGALORE – 560 016	PCSA- 4045
CS SAJINI V. K. COMPANY SECRETARY IN PRACTICE PRANAVAM AVENUE HOUSE NO.14 VAZHAVALAPPIL HOUSE KANNAMKULANGARA P.O. KOORKKANCHERY THRISSUR – 680 007	PCSA- 4037	CS NIRALI PATEL COMPANY SECRETARY IN PRACTICE "DHYAN", B/H NATVAR GOPAL SOCIETY NEAR CHANDOLA CANAL ROAD MANINAGAR AHMEDABAD – 380 008	PCSA- 4046
CS VIJAY KUMAR SINGHAL COMPANY SECRETARY IN PRACTICE HOUSE NO. 81, BLOCK F-2, SUNDER NAGRI DELHI – 110 093	PCSA- 4038	CS ANANG KUMAR SHANDILYA COMPANY SECRETARY IN PRACTICE 3830, LAL KOTHI, 3RD FLOOR DARYAGANJ, DELHI – 110 002	PCSA- 4047
CS KUMAR ANIKET COMPANY SECRETARY IN PRACTICE GROUND FLOOR, C-227 PARYAVARAN COMPLEX NEW DELHI – 110 016	PCSA- 4039	CS AJIT SINGH COMPANY SECRETARY IN PRACTICE # 1144, SECTOR- 44/B CHANDIGARH – 160 047	PCSA- 4048
CS C.R. KRISHNAN COMPANY SECRETARY IN PRACTICE NO:11, KUMARAN COLONY 8TH STREET, VADAPALANI CHENNAI – 600 026	PCSA- 4040	CS JYOTIRMOY MISHRA COMPANY SECRETARY IN PRACTICE M-5/16 , ACHARYA VIHAR BHUBANESWAR – 751 013	PCSA- 4049
CS ANKITA DAMANI COMPANY SECRETARY IN PRACTICE 9, JADULAL MOLLIICK ROAD MALAPARA, KOLKATA – 700 006	PCSA- 4041	CS AKARSHIKA GOEL COMPANY SECRETARY IN PRACTICE 1/10769, SUBHASH PARK, NAVIN SHAHDARA, DELHI – 110 032	PCSA- 4050
CS NAVEEN KUMAR JAIN COMPANY SECRETARY IN PRACTICE FLAT NO.207 OJAS VALLYS 59 KALALI MOHHALLA SHRADHANAND MARG CHHAWNI INDORE	PCSA- 4042	CS NARESH KUMAR GOEL COMPANY SECRETARY IN PRACTICE SHOP NO. 128, VARDHMAN STAR MALL, SECTOR 19 FARIDABAD – 121 002	PCSA- 4051
CS NEELAM AGARWAL COMPANY SECRETARY IN PRACTICE HOUSE NO. A-23, 2 ND FLOOR, SECTOR-11 FARIDABAD – 121 006	PCSA- 4043	CS ULHAS BALAKRISHNA SHETTY COMPANY SECRETARY IN PRACTICE 33, GROUND FLOOR, ECSTASY BUSINESS PARK J.S.DOSA ROAD, NEAR EASTWEST BRIDGE, MULUND (WEST), MUMBAI -400 080	PCSA- 4052
		CS G. SUBHASREE COMPANY SECRETARY IN PRACTICE 172, COLD NO. 492 RAMA STREET, NUNGAMBAKKAM CHENNAI – 600 034	PCSA- 4053





News From the Institute

CS S. D. BHATTBHATT COMPANY SECRETARY IN PRACTICE 103, KRISHNA TOWER, OPP. BANK OF BARODA, R V DESAI ROAD, VADODARA – 390 001	PCSA- 4054	CS BHATIA MONIKA RAMCHAND COMPANY SECRETARY IN PRACTICE 226, NAYAN NAGAR NR. JAIN DERASAR, KRISHNA NAGAR SAIJPUR BOGHA AHMEDABAD – 380 045	PCSA- 4064
CS DINESH KUMAR MAURYA COMPANY SECRETARY IN PRACTICE RZ-441, 1st FLOOR, RAJ NAGAR –2 OPP. NIRANKARI BHAWAN RAJ NAGAR -II, PALAM COLONY NEW DELHI – 110 077	PCSA- 4055	CS PRIYANKA GUPTA COMPANY SECRETARY IN PRACTICE 302, SANKET APARTMENT AHILYAPURI COLONY RESIDENCY INDORE – 452 001	PCSA- 4065
CS SUSHIL KUMAR GOYAL COMPANY SECRETARY IN PRACTICE OLISA HOUSE, 4TH FLOOR, CHAMBER - 4I 4, GOVT PLACE (NORTH) KOLKATA – 700 001	PCSA- 4056	CS KANTA BINWAL COMPANY SECRETARY IN PRACTICE S-22 A, PANDAV NAGAR DELHI – 110 092	PCSA- 4066
CS ABRAHAM PINGLE COMPANY SECRETARY IN PRACTICE ELIZABETH HOUSE, OPP PARSİ AGİYARI, KHAMASA, AHMEDABAD – 380 001	PCSA- 4057	CS SOURABH GUPTA COMPANY SECRETARY IN PRACTICE FLAT # 201, PLOT # 309 GYAN KHAND -1, INDIRAPURAM GHAZIABAD- 201 014	PCSA- 4067
CS RAVINDRA BAHADUR SINGH COMPANY SECRETARY IN PRACTICE 5/96, VINAY KHAND, GOMTI NAGAR LUCKNOW – 226 010	PCSA- 4058		
CS ROHINI VARMA K COMPANY SECRETARY IN PRACTICE FLAT NO. GD, 248/A, CORAL ORCHIDS KILPAUK GARDEN ROAD, KILPAUK CHENNAI – 600 010	PCSA- 4059		
CS MOHAMMAD TAUSIF SHAMIM COMPANY SECRETARY IN PRACTICE 32, PILKHANA, FIRST LANE 2ND FLOOR HOWRAH – 711 101	PCSA- 4060		
CS NITIN BHATIA COMPANY SECRETARY IN PRACTICE HOUSE NO. 2109, B BLOCK S G M NAGAR, FARIDABAD – 121 001	PCSA- 4061		
CS MANISH COMPANY SECRETARY IN PRACTICE D-1039, GOWRI ROAD BHAJANPURA, DELHI- 110 053	PCSA- 4062		
CS KRISHNA MURARI JETHLIA COMPANY SECRETARY IN PRACTICE 28, SHREE PLAZA, COLLEGE ROAD INFRONT OF JAY MANDIR CINEMA BEAWAR – 305 901, AJMER DISTT	PCSA- 4063		

Appointment

REQUIRED

Company Secretary required for Nilkanth Engineering Limited, a Non Banking Financial Company (NBFC) engaged in the business of investment, finance and allied activities. The incumbent should be an ACS with 2-3 years of relevant working experience in an NBFC of repute.

Apply with confidence within 15 days stating age, qualification, experience and details of salary drawn and expected to:-

The Director, Nilkanth Engineering Ltd.
407, Kalbadevi Road, Daulat Bhavan, 3rd Floor
Mumbai - 400002





News From the Regions

EASTERN INDIA REGIONAL COUNCIL

Half-Day Workshop on Proposed Exemption to Private Companies – Issues, Resolution & Accounting Treatment

On 27.6.2014, ICSI - EIRC organized a Half Day Workshop on the above topic at its premises.

CS Vinod Kothari, Past Chairman, ICSI-EIRC, Practising Company Secretary in his address stated that under Section 76 “A private Company cannot accept loans or deposits from any person other than its Directors”. According to him “A Company shall not give directly or indirectly any loans to any person or give any guarantee acquired by way of subscription of securities of any other company exceeding 60% of its paid up capital and free reserve or 100% of its free reserve or more”. CS Kothari further mentioned that under section 184 every director is required to disclose his concern or interest in any company or companies or bodies corporate, by giving a notice in form MBP-1. CS Kothari also covered other relevant sections 152/2 & 152/5, 160&162, 73 to 76, and Section 185 to 186.

BHUBANESWAR CHAPTER

Image Building Exercise of The Chapter

On 26.06.2014, a team led by CS A Acharya, Chapter Chairman met Anshuman Das, Chairman & Managing Director, National Aluminium Company Limited, Bhubaneswar wherein CS K.N. Ravindra, Company Secretary, NALCO was present. The meeting was arranged to apprise the dignitary about the ICSI, role of CS both in practice and employment and the various activities being organized by the Chapter in the State of Odisha. The services being provided by the Institute to the members, students, corporate houses and the society were also apprised. Further Chapter Chairman invited Anshuman Das, CMD, NALCO to address the full day workshop of the Chapter on Companies Act, 2013 on

5.7.2014. Das was very happy to meet the delegation and advised that ICSI can better serve the Corporate Sector and the Society through development of proper software. Further, the delegation of the Chapter also met CEOs, Directors and Managers of various state and central PSUs in Odisha to apprise them about the programme of the ICSI on “Companies Act, 2013” to be organized during July-September, 2014.

Celebration of Capital Market Week – 2014

The Chapter celebrated ICSI Capital Market Week – 2014 in the month of June, 2014. On 28.06.2014 the Chapter organized two programmes. In the morning hour, the Chapter organized a programme on “Capital Market – Growth Engine” wherein CS A. Acharya, Chairman of the Chapter addressed. In the evening hours, the programme was addressed by CS B.K. Sahu, Addl. Company Secretary, M/s. Nalco Ltd, Bhubaneswar on “Role of Company Secretary in the Capital Market”. On 30.06.2014, two more programmes were organized at the Chapter premises. While Binod Sharma, SEBI Official, Bhubaneswar addressed in the morning hours on “Regulatory Changes & Investor Activism & Class Action Suits”, CS K.N. Ravindra, Company Secretary, M/s. Nalco, Bhubaneswar addressed on “Convergence of Company Law and Securities Laws” during the evening hours. A large number of members, students and investors attended the Capital Market Week celebration.

Annual General Meeting of The Chapter

On 30.06.2014, the AGM of the Chapter was convened at the Chapter premises wherein the annual report & the audited accounts of the Chapter were placed for approval of the members. Before the meeting the above documents were sent to all the members residing in Odisha for information. After having discussion the members approved the annual report and the accounts of the Chapter for the financial year 2013-2014. Further, the internal and statutory auditors of the Chapter for the year were also appointed in the meeting.

Full Day Workshop on Companies Act, 2013

On 5.7.2014, a full day workshop on Companies Act, 2013 was organized at Bhubaneswar. Chief Guest Anshuman Das while addressing a gathering of about 200 participants, stressed on the need of Governance in the Management of Companies where the role of a Company Secretary is vital. Further he said that the role of a Company Secretary has now been clearly defined in the New Act and they will play a very pivotal role in ensuring proper Governance and Compliance of various laws. Guest of honour, CS A Murarka, Central Council Members and Past President, the ICSI said that the ICSI is organizing series of Seminars, Workshops, Symposia and study circles etc. through its Regional Councils and Chapters to keep the professionals, investors, public, entrepreneurs familiar





News From the Institute & Regions

with the provisions of the new Companies Act.

CS A Acharya, Chairman, Bhubaneswar Chapter in his address, mentioned that the New Companies Act will facilitate long term growth of the Corporate Sector in an era of Self-governance. He said that this workshop will be followed by Master Classes Programmes for the Professionals being organised by the Bhubaneswar Chapter to sensitize them to the requirements of the Regulators.

During the full day programmes eminent speakers Lalit Kumar, Partner, J Sagar Associates, Gurgaon and CS Kaushik Mukherjee, Company Secretary & General Manager of Phillips Carbon Black Limited Kolkata addressed during the technical sessions. CS J.B. Das, Practising Company Secretary and CS K.N. Ravindra, Company Secretary, NALCO, Bhubaneswar chaired and also addressed in the 1st & 2nd technical sessions of the programme respectively. During the technical sessions, the speakers addressed on the topic "Management and Administration, Responsibility, duties and liabilities of Board of Directors, Growing role and responsibilities of Directors & Independent Directors (Role, responsibility and risk), Critical issues in Board meetings, Performance Evaluation of Directors and Role of company, Related party transactions, Enhanced disclosure Norms in accounts and audit with accountability of management and auditor". The full day workshop was followed by question hour session in both the technical sessions. The workshop was attended by a large number of professionals along with Directors, CFOs, KMPs, Company Secretaries, Chartered Accountants, Cost & Management Accountants and Senior Management Executives and students.

Views/Suggestions On Draft SS-I & SS-II

On 5.7.2014, the Chapter organized a meeting of its members with CS Anil Murarka, Central Council Member and Past President, the ICSI at Bhubaneswar. The meeting was arranged to ascertain views and suggestions on draft SS-I & SS-II. The programme was attended by 35 members including students. During the meeting, views and suggestions given by the members were noted for sending the same to the Institute.

Talk on Union Budget – 2014

On 12.07.2014, Bhubaneswar Chapter organized an evening talk on Union Budget – 2014 at its premises which was attended by about 85 members, students of the Chapter and also invited guests. CA A.K. Sabat, Practising Chartered Accountant, Bhubaneswar, Dr. D.V. Ramana, Professor of Finance, XIMB, Bhubaneswar and Debasish Mohapatra, Managing Director, Verve Consulting, Bhubaneswar were the panelists of the programme. Dr. Ramana said that fiscal deficit per se is not bad if it is creating capital asset to generate revenue for the future. Therefore, the Budget should have capex programme which would generate revenue in future which would reduce the fiscal deficit. CA A.K. Sabat discussed at length various tax provisions of the Budget and its impact on the

common man and the Nation. Debasish Mohapatra expressed that the new Budget is in the right path and hoped that it will facilitate entrepreneurs in the days ahead. While CS A. Acharya, Chairman briefed about the topic, dwelt upon the general purpose of the Budget by explaining that Budget is a continuous process and implementation is more important than its preparation. The programme was followed by question hour session wherein queries raised were nicely replied by the speakers. The programme was attended by 80 members, students and invited guests.

Workshop Series on Companies Act, 2013

The Chapter, organized its series of programme on "Companies Act, 2013" on 13.07.2014 which was a one day workshop at its premises amidst presence of 70 participants. The whole day workshop was addressed by CS Anjan Kumar Roy, Past Chairman, EIRC of the ICSI. During the workshop topics of Private placement of shares, Preferential allotment, Loan to Directors, Inter corporate loans, Related Party Transactions in the perspective of AS-18, Clause 49 and IFRS-24 were discussed. After conclusion of each of the topics, the workshop was followed with floor participation and question hour session. CS A Acharya, Chapter Chairman during the inaugural session of the workshop briefed the participants about the content of the workshop series to be organized in the month of July-September, 2014. He further informed that the Chapter is looking for best faculty for the workshop series for more interactive and meaningful programmes to be organized by the Chapter.

HOOGHLY CHAPTER Study Circle Meetings

On 24.5.2014 the 5th Study Circle Meeting of 2014 on Provisions related to incorporation of Company and CSR under the Companies Act, 2013 was held. The Moderator of the programme was CS Siddhartha Murarka. Thirty eight participants attended the programme.

On 25.05.2014 the 6th Study Circle Meeting of 2014 was held on "Decoding the terms of newly inducted policies under the Companies Act, 2013". The Moderator was CS Ravi Varma. Around 35 participants attended the programme.

On 01.06.2014 the 7th Study Circle Meeting of 2014 was held on "Analysis of different aspects of Related Party Transactions". The Moderator was CS Anjan Kumar Roy. A total of 33 participants attended the programme.

On 14.06.2014 at the 8th Study Circle Meeting of 2014 a discussion on Compliance Report to be submitted by a Company Secretary to the Board of Directors in respect of Compliance of All Applicable Laws was held. The Moderator was CS Shabnum Zaman. The study circle was attended by around 80 participants.



On 15.06.2014 at the 9th Study Circle Meeting of 2014 a discussion was held on the provisions related to Private Companies under the Companies Act, 2013. The Moderator was CS Mohan Ram Goenka. Forty five participants attended the programme.

On 22.06.2014 at the 10th Study Circle Meeting of 2014 a discussion on Electronic Governance under the Companies Act, 2013 was held. The Moderator was CS Shikha Gupta and the study circle was attended by 34 participants.

Discussion on Draft Secretarial Standards

On 15.06.2014 a Discussion meeting on Draft Secretarial Standards to gather and compile the recommendations of the members/students was held for forwarding the same to the Secretarial Standards Board (SSB) of the Institute for its consideration. A total of 33 participants were present on the occasion.

Career Awareness Programmes

On 5.7.2014 a Career Awareness Programme was held at Howrah Hindi High School, Howrah. On 7.7.2014 the career awareness programme was held at Ratnakar North Point School, Howrah. On 15.7.2014 the Career Awareness Programme was held at Salkia Vikram Vidyalaya, Howrah.

Seminar on Union Budget-2014

On 13.7.2014 a Seminar on Union Budget-2014 was organised by the Chapter. The moderator of the programme was CA R.D. Daga and CA R.K. Vyas. A total of sixteen participants attended the programme.

Annual General Meeting

On 30.6.2014 the 6th Annual General Meeting of the Chapter was held. Around ten members were present on the occasion.

NORTHERN EASTERN CHAPTER

Full day workshop on Companies Act, 2013

From 27.6.2014 to 29.6.2014 the North Eastern Chapter, Guwahati of EIRC of The ICSI organized a full day workshop on Companies Act 2013 at Guwahati for CS Members, students and others. The details of the programme were as under: The first day of the programme dealt with the topic New concepts under the Companies Act 2013 - Company Incorporation, allotment of Securities - Chapter I, II, and III. The speaker was CS Siddhartha Murarka, Company Secretary from Kolkata. The topic Impact of Companies Act 2013 on Private Ltd. Companies Key non-transaction based compliances Entrenchment provision - A Discussion was dealt by CS Mamta Binani, Past Chairperson, EIRC

of ICSI and practising Company Secretary from Kolkata. Seventy Five participants attended the programme. At a discussion on Share Capital, Debentures, Acceptance of Deposits, Meetings of Board and its Powers, Loans and Advances, Investments Entrenchment - Chapter IV, V and XII a total of 123 participants attended. The Speaker was CS Manoj Banthia, Past Chairman, EIRC of ICSI and Practising Company Secretary from Kolkata. The topic Charges, Management and Administration, Signing of Annual Return, Appointment of Directors and Managerial Remuneration - Chapter VI, VII, XI and Chapter XIII was dealt by CS Anjan Kumar Roy, Past Chairman, EIRC of ICSI and Practising Company Secretary from Kolkata. Chief Guest on the occasion was CS Arun Kumar Khandelia, Chairman, ICSI-EIRC. Seventy Five participants were present. The topic Dividend, Accounts, Audit and Auditors and Directors Report - Chapter VIII, IX, X was addressed by the Speaker Dr. Debasis Mitra, Past Chairman, EIRC of ICAI and practising Chartered Accountant. The topic E-forms and Certification of E Forms - Checks and balances was dealt by the speaker CS Deepak Khaitan, Past Chairman, EIRC of ICSI and practicing Company Secretary from Kolkata.

The queries of the participants were satisfactorily responded by the Speakers. The three days workshop received overwhelming response.

RANCHI CHAPTER Career Awareness Programmes

Career Awareness Programmes were conducted at DAV School, Gandhinagar, CCL and another at Kendriya Vidyalaya, Hinoo on 30.6.2014, Kendriya Vidyalaya, HE Con 05.7.2014 and at Army Public School, Dipatoli Cantt. on 16.7.2014, by S. Sreejesh, Administrator, S.B. Prasad and Shri Sumanta Dutta. The officials of ICSI gave a presentation to the students of Class XI and XII on "Career as a Company Secretary" and replied the queries of the students about the course, subjects, prospects of the profession. The Principal and other teachers of the schools appreciated the efforts of ICSI for creating awareness on CS course and profession.

NORTHERN INDIA REGIONAL COUNCIL

South Zone Study Group Meeting on Prospectus and Allotment of Securities & Share Capital (Chapter III & IV) of the Companies Act 2013

On 13.6.2014 the South Zone Study Group had a meeting on "Prospectus and Allotment of Securities & Share Capital (Chapter





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III & IV) of the Companies Act 2013". CS Atul Mittal, Director, Tax and Regulatory – Deloitte Touche Tohmatsu India Pvt. Ltd. was the guest speaker.

One Day Mega Workshop on the Challenging Aspects of Companies Act 2013

On 14.6.2014 at the One Day Mega Workshop on "The Challenging Aspects of Companies Act 2013" CS B Murli, Senior Vice President – Legal & Company Secretary, Nestle India Limited, CS N K Sinha, Company Secretary, ONGC Ltd. and CS (Dr.) S Kumar, Corporate Law Expert were the guest speakers.

Two Day Induction Programme for Company Secretaries in Employment

On 14 and 15.6.2014 at the two Day Induction Programme for Company Secretaries in Employment, CS Manoj Agrawal, Corporate Law Expert; CS A K Dixit, Director (Discipline) The ICSI; Dr. Bhavna Barmi, Sr. Clinical Psychologist; Suneel Keswani, Corporate Trainer; CS Rajiv Bajaj, Past Chairman, NIRC-ICSI and Ravish Bateja, Corporate Trainer were the guest speakers.

North Zone Study Group Meeting on Companies Act, 2013 & Responsibilities of CS

On 15.6.2014 the North Zone Study Group in its meeting discussed the topic "Companies Act, 2013 & Responsibilities of CS". CS Jitesh Gupta was the guest speaker.

Fifteen Day Class Room Series on Companies Act, 2013

From 17.6.2014 to 7.7.2014 the Regional Council conducted the Fifteen Day Class Room Series on Companies Act, 2013. The guest speakers were CS Ranjeet Pandey, CS R. S. Bhatia, CS S Chandrashekar, CS Vishal Lochan, CS Lalit Jain, CS Nitin Somani, CS Ilam Kamboj, CS Suchita Koley, CS Rajiv Bajaj and CS Devender Jain.

Study Circle Meeting on General Meeting including Postal Ballot & E-voting

On 20.6.2014 a Study Circle Meeting on General Meeting including Postal Ballot & E-voting was organised by the Regional Council. CS Ilam Kamboj, A.V.P. - Legal & Company Secretary, Hero MotoCorp Ltd. was the guest speaker.

Campus Placement

On 21.6.2014 the Regional Council conducted Campus Placement for 15 months training/modified training structure for students.

West Zone Study Group Meeting on Prospectus and Allotment of Securities & Share Capital

On 21.6.2014 the West Zone Study Group Meeting discussed the topic "Prospectus and Allotment of Securities & Share Capital". CS Harish Kumar, Sr. Corporate Laws Consultant at Amarchand & Mangaldas & Suresh A. Shroff & Co., Advocate and Solicitors was the guest speaker.

Two Day Induction Programme for Company Secretaries in Practice

On 21 and 22.6.2014 the Regional Council conducted the Two Day Induction Programme for Company Secretaries in Practice. CS S Kumar, Corporate Law Expert; CS K K Singh, PCS; CS Sharad Rajwanshi, PCS & CS Ranjeet Pandey, Past Chairman, NIRC-ICSI were the guest speakers.

Inauguration of 194th MSOP

From 27.6.2014 to 15.7.2014 the Regional Council conducted its 194th Management Skills Orientation Programme. CS P K Aggrawal, Vice President (F&A), ITDC Ltd. was the Chief Guest of the programme.

One Day Seminar on Company Secretary - A Strategic Professional

On 28.6.2014 the Regional Council conducted a one day seminar on the above topic. The Chief Guest, Guest of Honour and the Guest Speakers of the programme were CS Ajit Yadav, President and Group General Counsel, Vedanta Resources; CS Ilam C Kamboj, A V P Legal and CS, Hero MotoCorp Ltd.; CS G P Maddan, Past Chairman NIRC-ICSI and Founder & CEO, Corporate Knowledge Foundation, CS Atul Mittal, Central Council Member, ICSI; CS P K Rustagi, VP (Legal) & CS, JK Tyre & Industries Ltd.

Meeting of CSP on Latest Circulars Issued by MCA under the Companies Act, 2013

On 30.6.2014 at a meeting of the company secretaries in practice on the above topic organised by the Regional Council CS Vineet K Chaudhary, Regional Council member, NIRC-ICSI was the guest speaker.

GURGAON CHAPTER 19th Management Skills Orientation Programme (MSOP)

Gurgaon Chapter organized its 19th MSOP from 25.06.14. Chief Guest CS Jayant Sood, Sr. Vice President, Indo Rama Synthetics Ltd. addressed the students by sharing his knowledge with them and enlightened them about the importance of MSOP training. The valedictory programme was held on 12.07.14. CS Pankaj Tandon,



Chapter Secretary addressed the students and informed them about their role in the corporate world. This was followed by the address of the Chief Guest CS Som Prakash Batla who shared his valuable experience with the students. Certificates to all the participants were distributed.

20th Management Skills Orientation Programme (MSOP)

Gurgaon Chapter organized its 20th MSOP from 18.07.2014. on the occasion the Chief Guest was CS S.K. Agrawal, GM-Finance, Maruti Joint Venture, Machino Plastics Ltd. and CS Shyam Aggarwal, Chairman-NIRC was the Guest of Honor.

CS Dhananjay Shukla in his address while congratulating the students on reaching the level of MSOP training also emphasized on the importance of discipline in the MSOP training. He then informed the students about the importance of CS in the corporate world. This was followed by a speech by CS Shyam Agarwal who emphasized the importance of MSOP training and advised students to approach the preparation of project report during MSOP seriously. Lastly, CS S.K. Agrawal addressed the students and shared his valuable experiences with them.

JODHPUR CHAPTER 1st National Seminar on New Companies Act 2013-Rules Made thereunder and its Implementation.

On 6.7.2014, Jodhpur Chapter of ICSI The Council of the Institute of Company Secretaries of India and the Ministry of Corporate Affairs, New Delhi organised the Seminar--in order to build capacities -develop skills of the Members and Students of the ICSI profession. The National seminar covered the topics -Disclosure and Transparency, Loans to Directors -Inter Corporate Loans and Investment -Inter Party Transactions, Accounts -Audits-Corporate Governance Provisions -Secretarial Audits -CSR -Public Issues & Private Placements -Delegations of Powers-e-forms and issues thereon.

Inaugural Session: Hon'ble Justice Rajesh Balia (Rtd), Chief Justice, Patna High Court was the Chief Guest and CS P K Mittal, Centre Council Member, ICSI, New Delhi was the key note speaker with CS Mukesh Bansal, Chairman Jodhpur Chapter of ICSI as the presiding guest.

Justice Balia in his address said that a Company Secretary is better known in the Industry as Corporate Governance Professional. He must abide by all the laws and must follow the same. He is responsible to shareholders, government, society and others. The New Act has provided both challenges and opportunities. A Company Secretary must remain ready.

CS P K Mittal set the tone of the session by highlighting main

provisions of the new Companies Act. CS Mukesh Bansal in his welcome address said that Opportunities have been provided, it is upto CSs whether they can grab it or not. ICSI and MCA have taken a great initiative to reach to the members.

In the first technical session CS P K Mittal was in Chair. P K Mittal spoke on Loans, Investments and Related Party Transactions. Hitender Mehta, Partner, Vaish Associates, Gurgaon spoke on One Person Company and CS Deepak Kukreja, Ex Chairman NIRC addressed on Accounts and Audits.

In the 2nd Technical Session, Bhaskar Subramaniam from Infosys, New Delhi addressed on e-forms and issues thereon. B K Sharma, Ex Chairman NIRC threw light on Enhanced Disclosures. At the behest of CS Mukesh Bansal, an open house was also organised where all the participants raised various queries which were ably replied by the panel members.

VARANASI CHAPTER Career Awareness Programme

On 11.7.2014 the Chapter conducted the Career Awareness Programme at Central Hindu Girls School, Kamachha Varanasi for commerce students. CS Sushil Kumar Kandoi, Chapter Chairman detailed the students about qualification, duration, structures, employment, importance, prospects of the CS Course and role of Company Secretaries. A film on role of Company Secretary was shown and Power Point Presentation was given by CS Richa Gupta & CS Sonali Gupta. After his detailed presentation about career as a Company Secretary, Manjula Pande, Principal Central Hindu Girls School also addressed on role of Company Secretaries in India. Ashish Kumar Tiwari, Chapter In-Charge explained the online registration in the CS Course and also the activities of the Institute and Chapters. He clarified the queries raised by the students during the interactive session.



SOUTHERN INDIA REGIONAL COUNCIL

39th Regional Conference of Company Secretaries

Inaugural Session: On 18 and 19.7.2014, the SIRC of The ICSI organized the 39th Regional Conference of Company Secretaries at Camelot Convention Centre, Alleppy. The theme of the conference was 'Versatility meets the Paradigm Change – CS & The Act'. The conference was inaugurated by B K Bansal, Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai.

In his presidential address, CS Sridharan R, President, The ICSI congratulated the SIRC for organizing the Regional Conference





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in a grand manner at Kerala. The President urged the members to take the Companies Act and the rules positively, explore the various opportunities under it and take the profession to new height.

Gopalkrishnan Iyer, Senior General Manager, Bombay Stock Exchange, Mumbai delivered the key note address. Iyer narrated the role that can be played by the CS in the capital market arena. He observed that the CS has more potential when compared to other professionals to play a key role in the capital markets.

In his inaugural address, B K Bansal, Regional Director, Southern Region, MCA, Chennai indicated various measures taken by the Ministry to sort out the issues that have arisen after the implementation of the Companies Act 2013.

Prizes and medals were distributed to the meritorious students on various categories. A souvenir marking the 39th Regional Conference was also released.

1st Day

1st Technical Session: The first technical was on 'Governance – Not a Tick Box', addressed by Praveen Trivedi, OSD [CD & Law], Department of Economic Affairs, Ministry of Finance, New Delhi and Suresh B Menon, General Manager & Regional Head, Southern Region, Securities Exchange Board of India, Chennai. CS Sahoo M S, Secretary, The ICSI was the moderator for the session. The speakers observed that there is lot to be observed and followed in the Companies Act 2013 as it brings in more changes in the way the corporates are governed in India. The Companies Act 2013 enhances significantly the role and responsibilities of the Board of directors by making them more accountable for their actions while protecting shareholder interest. By mandating a woman director on the board, the intent of the 2013 Act is to improve gender diversity and increase transparency. They observed that The Companies Act 2013 sets an example in corporate governance for other economies to emulate us.

2nd Technical Session: CA G Ramaswamy, Chartered Accountant, Coimbatore & Past President, The ICAI and CS M R Thiagarajan, Company Secretary in Practice, Coimbatore were the speakers for the second technical session on 'Related "as if they are unrelated" Transactions. Shri Ramaswamy observed that The Companies Act 2013 prescribes that a corporate should get the approval of the audit committee on all related party transactions and subsequent modifications thereto and this is irrespective of whether they are in the ordinary course of business and consummated at arm's length price or they are below prescribed thresholds. M R Thiagarajan explained the term related party as the parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions. He explained the related party transaction as a transfer of resources or obligations between related parties, regardless of

whether or not a price is charged.

The first day concluded with the cultural programmes.

2nd Day

President, The ICSI's interaction with members: CS Sridharan R, President, The ICSI interacted with the members on The Companies Act 2013 and the initiatives taken by the Council on the professional developments. The members were very interactive and they complemented the President and the Council for their efforts in getting back the recognition on KMP. The President briefly described on the expectations of MCA and other regulatory bodies from the CS and urged all the members to maintain the dignity and ethical standards of the profession.

3rd Technical Session: The topic for the third technical session was 'New thinking, new possibilities...' Dr. Vinod Surana, Chief Executive Officer, Surana & Surana International Attorneys, Chennai was the moderator for the session. Nitin Ambure, Vice President, National Securities Depository Limited, Mumbai, CS U K Chaudhary, Senior Advocate, New Delhi & Past President, The ICSI and CS Pavan Kumar Vijay, Managing Director, Corporate Professionals Capital Private Limited, New Delhi & Past President, The ICSI were the speakers for the session.

Nitin Ambure also explained in detail the role that can be played by CS both in employment and in practice in the arena of capital markets. CS U K Chaudhary elucidated the members on the various areas to be looked into in the Companies Act 2013, where the CS can exhibit their wide knowledge and succeed. He observed that a positive view on the Act will surely be challenging to the professionals. In his speech, CS Pavan Kumar Vijay opined that Secretarial audit will surely take the profession of CS to new heights. As a governance professional, the CS can prove himself as the right person in implementing the governance procedural in the corporate which he is employed.

4th Technical Session: Sajeev Nair, Entrepreneur, Author, Life Coach & Motivational Speaker was the speaker for the fourth technical session on 'Also ran to podium finish'. Sajeev Nair insisted the members to take time away from the busy schedule of profession, to take of their physical and mental health. He stressed them to maintain a work life balance and provided easy tips to follow that.

Valedictory Session: George L Mathew, Chairman and Chief Executive Officer, Duroflex Private Limited, Alleppy delivered the valedictory address. Mathew opined that, in the prevailing scenario, the CS can truly be termed as the back bone of any company, as they are corporate governance professionals who take care of all the legal matters pertaining to a company. He also invited the CS professionals to be entrepreneurs and explore the plethora of new avenues to exhibit their professionalism. The 39th Regional Conference concluded with the summing of the two day



sessions by CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC.

Half Day Joint Seminar on Raising of Capital and Related party transactions under the Companies Act, 2013

On 2.6.2014, SIRC of ICSI organized a half day joint seminar jointly with Coimbatore Chapter of SIRC of ICSI on “Raising of Capital and Related party transactions under the Companies Act, 2013 at Coimbatore.

The programme was inaugurated by CS R Sridharan, President, ICSI. CS C Sudhir Babu, Central Council Member and CS Baiju Ramachandran, Chairman, SIRC of ICSI also attended the inaugural function. CS Baiju Ramachandran, Chairman, SIRC of ICSI in his welcome address elaborated various initiatives taken by the ICSI-SIRC by organizing many professional development programmes and workshops for the benefit of the members and students at large in view of making understand the rule of Companies Act 2013.

The President, in his inaugural address expressed various opportunities available under the Companies Act, 2013 for members, both in employment as well as in practice. Further he detailed the initiatives of the Council and ICSI in restoring the position of the Company Secretaries under the Companies Act, 2013. He also highlighted the expectations of the Government from the CS Professionals. He advised the members and students to attend many professional development Programmes and workshops as much as possible for better understanding of new Companies Act and to improve the ability and quality to meet the expectations of trade and industry. CS R Sridharan further informed about the initiatives taken by Institute in conducting induction programmes for fresher members who are in practice as well as in employment and advised them to attend the induction programmes organized by the Institute to get an exposure to understand the industry and the new Act. CS C Sudhir Babu in his address stated Company Secretaries' responsibility under the Companies Act, 2013. He also spoke on Master Class programme and workshops initiated by the institute to better understand the key provisions of new Companies Act 2013.

CS S Kannan, Practising Company Secretary from Bangalore addressed the delegates on “Raising of Capital under the Companies Act, 2013”. During the course of his presentation explained various modes available for raising capital under the Companies Act. CS S Kannan while addressing the participants explained the provisions regarding Private Placement of Share, Sweat Equities and also dealt with issue of Debentures under the New Act. He further highlighted the opportunities in IPO for raising the capital and gave a brief summary of IPO market activities.

CS M R Gopinath, Practising Company Secretary from Bangalore, addressed on provisions of related party transaction and also highlighted the importance of interpretation of law in

right manner. The speaker compared the provisions on related party under the Companies Act, 1956, Accounting Standard and also under the new Act. He highlighted the course of action to be initiated by the Corporate to comply with the provisions of the Companies Act, 2013 regarding ‘Related Parties’. Participants were well informed on both topics and members and students nearly forty in number attended the seminar. A video on Company Secretaries Benevolent Fund [CSBF] was screened at the end of the Half Day Seminar. CSBF banner and standee were also displayed at the venue of the programme.

World Environment Day Special Programme

The World Environment Day is celebrated worldwide on the 5th of June every year to create awareness among the people about the evils of non-protection of the environment. The ICSI – SIRC organized a special programme to commemorate the World Environment Day.

On 5.6.2014, the ICSI-SIRC organized the programme at its premises. ‘Padmashri’ Shiny Wilson, former Indian Star Athlete and General Manager, PR, Food Corporation of India, Southern Region, Chennai was the Chief Guest for the programme. T Mohan, Advocate, Chennai spoke on ‘Role of Company Secretaries under the Environmental Laws’. Earlier, CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address observed that the United Nations environment programme theme for this year's World Environment Day focusses on raising our voice against the rise of sea-level.

To commemorate the World Environment Day Celebrations, saplings were planted in the ICSI-SIRC campus by Shiny Wilson, Dr. Baiju Ramachandran, T Mohan and CS Ramasubramaniam C. In her address, Shiny Wilson emphasized the need of protecting our environment. While sharing the obstacles she faced in her career, she emphasized that the success has no shortcut to achieve, but can be achieved only through hard work and practice.

Mohan T, in his address, explained that environmental due diligence analyses environmental risks and liabilities associated with an organization and this investigation is undertaken before a merger, acquisition, management buy-out, corporate restructure, etc. He observed that this exercise of environmental due diligence provides the acquirer with a detailed assessment of the historic, current and potential future environmental risks associated with the target organizations sites and operations. He highlighted the various acts in which the CS should be updated regarding the environmental protection.

One Day Programme on Intellectual Property Rights

On 7.6.2014, ICSI-SIRC organized a one day programme on ‘Intellectual Property Rights’. Surana & Surana International Attorneys, Chennai was the knowledge partner for the programme.





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Hon'ble Justice K N Basha, Chairman, Intellectual Property Appellate Board, Chennai, inaugurated the programme. CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address opined that the technology and knowledge are the key factors of production in the recent eras and hence the members should be updated on the laws. He added that the CS can be termed as guardians of IPR of the concern they work for and hence they should advise their board accordingly.

Dr. Vinod Surana, Chief Executive Officer & Partner, Surana & Surana International Attorneys, Chennai mentioned that high growth and development are not possible without innovation and both the Government and Industry has understood this fact and are encouraging the above factors. He also observed that it is the duty of CS in helping the management to make it to understand about IPR and make the company more valuable. Dr. Vinod Surana also complimented the Chairman, SIRC and the Regional Director, SIRO for organizing various valued added programmes for the members.

In his inaugural address Justice K N Basha observed that, with increased mobility of information and the global work force, the knowledge and expertise can be transported quickly around the world and advantage gained by a company can be eliminated by competitive improvements over night. He explained that the major challenge before organizations in the coming years would be to create a culture for IPR regime, so that creative work and innovations get duly protected. He also highlighted the role of CS in a company relating to the IPR. He suggested that the CS should play a pivotal role in explaining the board about the various updates on the IPR and related issues.

Niyati Ojha, Advocate, Surana & Surana spoke on 'Understanding Trade Mark Law' at the first session. She explained about the history and kinds of trademarks and also the procedures to apply for the same. The second session was on 'Indian Patent Act' addressed by Venkatesh Vishwanath, Patent Agent, Surana & Surana, Chennai. Venkatesh elaborately explained the contents of the Act with examples and case studies. Deepak Vaid, Senior Associate, Surana & Surana spoke on the IP Management and the various Litigation Strategies.

Study Circle Meeting on Issues in Corporate Taxation

On 10.6.2014, the ICSI-SIRC organized a Study Circle Meeting. B Ramana Kumar, Advocate, Chennai addressed the members on 'Issues in Corporate Taxation'. Ramana Kumar observed that there has been a robust growth in the economic activity in the last decade and hence the rising GDP has fostered increase in direct tax revenues. In this complex regulatory environment, tax forms an important component of cost for the corporates, he added. When the corporates resort to tax planning measures, the issues starts rising, he observed. Ramana Kumar suggested that the CS professionals can play a role in sorting out these issues of taxes

in corporates. He spoke elaborately on the tax issues pertaining to the litigation on commencement of business, date of set up, litigation at the operational stage, Minimum Alternate Tax, litigation during expansion of business, litigation on exit and capital gains on exit. The members actively interacted with the speaker during the programme.

One Day Workshop on the theme The Companies Act 2013: Anchoring, Growing and Sustaining

On 14.6.2014, SIRC of The ICSI & Calicut Chapter of SIRC of The ICSI jointly conducted a full day workshop on "The Companies Act 2013 - Anchoring, Growing and Sustaining" at Calicut. CS Dr. Baiju Ramachandran, Chairman, SIRC of The ICSI inaugurated the workshop. He informed about the initiatives by SIRC to help the members interpret and understand the provisions of Companies Act 2013. He added that seminars and workshops of this nature enable us to improve our skills and understanding of the new Act and also update our knowledge to respond to raising expectations of the stakeholders.

In the first technical session, CS Dr. K. S. Ravichandran, Company Secretary in Practice, Coimbatore, handled a session covering matters such as Issue of shares, Acceptance of Deposits, Foreign Companies under Companies Act 2013. In the second technical session, Shri Jose Kutty V E, Deputy Registrar of Companies, Kerala addressed on the Incorporation of Companies, OPC and also clarified practical queries of the delegates. In the third and last technical session, CS Soy Joseph, from Chennai, took a session detailing the provisions of the Companies Act 2013 with respect to Managerial Remuneration to Directors and KMP. The workshop was attended by around 80 delegates.

Half Day Workshop on Payment Risk Management, Letter of Credits, UCP 600 and INCOTERMS

On 20.6.2014, the ICSI-SIRC, in association with Federation of Indian Export Organization, Southern Region, Chennai organized a Joint Half Day Workshop at ICSI-SIRC House, Chennai. The speaker of the workshop was V Sridharan, Assistant General Manager [Retd.], International Banking, State Bank of India, Chennai. K Unnikrishnan, Joint Deputy Director General, Federation of Indian Export Organizations, Southern Region, Chennai thanked the ICSI-SIRC for partnering with them in organizing the workshop. He also briefed the delegates about the export and import scenario in India and the role of FIEO.

The speaker of the workshop, V Sridharan spoke elaborately and vividly on the topic. He explained that a letter of credit [LC] is an arrangement under which one bank acting at the request of its customer promises to pay to a third party against submission of stipulated documents. He opined that it will be useful both to the buyer and seller, provided both of them understand



the LC procedure and accordingly decide the trade contract. Sridharan also threw light on the various types of LC, duties and responsibilities of various parties and issues relating to LC. While speaking on the UCP (Uniform Customs and Practices for Documentary Credits), he explained that it is Issued by ICC (International Chamber of Commerce) headquartered in Paris and the present version is UCP 600 and contains 39 rules (Articles). Though it is not a law, countries across the globe have accepted this and hence, it has become a global rule, he opined.

V Sridharan explained that the International Commercial Terms (Incoterms), when incorporated in the contract, clearly specifies who has the obligation to arrange for carriage or insurance, which cost the parties are responsible, etc. He observed that choosing a particular incoterm depends upon the nature of the goods, means of transport and on whom obligations for certain acts are to be put.

Interaction meeting of members with President, ICSI

On 20.6.2014, ICSI-SIRC organized an interaction meeting of CS Sridharan R, President, The ICSI with the members on the issues relating to the representation made to the MCA.

The President elaborated the various steps taken by the Central Council in sorting out the issues that arose on implementing the Rules pertaining to The Companies Act 2013. The President also explained the members the various opportunities available to the members under the Act and requested them to represent their grievances in a gentle manner and any negative ways adopted will create a negative view about the Institute, to the new Ministry.

The members lauded the efforts taken by the Council and also actively interacted with the President. The President also aptly clarified various points raised by the members on various issues.

Two Day Induction Programme for Company Secretaries in Employment

On 21 and 22.6.2014, a Two Day Induction Programme for Company Secretaries in Employment was organized by the ICSI-SIRC. The programme was inaugurated by CS Sridharan R, President, ICSI. He addressed on the scope available to the CS in employment. The President also addressed the members on various steps taken by the Council in sorting out the issues that arose due to the implementation of the Rules under The Companies Act 2013.

Earlier CS Dr. Baiju Ramachandran, Chairman, ICSI-SIRC in his welcome address explained the delegates about the various compliances that the CS in employment should adhere. The Chairman observed that, as a KMP, the CS in employment has a vibrant role to play. Sarah Arokiaswamy, in her address presented an overview and need for the Induction Programme.

CS A Mohan Kumar, Assistant General Manager, Legal and

Company Secretary, Allsec Technologies Limited, Chennai was the speaker for the first session on the topic, 'Independent Directors & Role of KMP and his liabilities'. He explained in detail about the companies that need to appoint KMP and managerial remuneration.

The second session was handled by CS Prakash R, Deputy General Manager & Company Secretary, HCK Kothari Group of Companies, Chennai on the topic, 'Guidance note on Board's Report and Practical aspects of handling Board's Report'. CS Prakash explained the delegates about Section 134, which deals with the Board's Report.

CS B Chandra, Company Secretary in Practice, Chennai spoke on 'Compliance Management in an Organization' in the third session. The various compliances that an organization has to comply with and the role of CS in employment to oversee that they were well explained by CS Chandra.

2nd Day

In the fourth session, Sarah Arokiaswamy, Regional Director, ICSI – SIRO explained the delegates elaborately about the Code of Conduct & Professional Ethics for the Company Secretaries.

The fifth session was addressed by CS A M Sridharan, Company Secretary in Practice on 'Issues in Management and Administration'. In his address, CS Sridharan explained the members on various provisions relating to the electronic voting and meetings.

T V Shiv Kumar, Corporate Trainer, Chennai spoke on 'Art of Managing Yourself & The Art of Personal Effectiveness' at the sixth and final session. He gave valuable tips to the delegates on public speaking, body language and self-confidence.

Half Day Seminar on The Companies Act 2013: Directors, Accounts & CSR and Meet the Regulator Programme

On 23.6.2014, ICSI-SIRC and the Kochi Chapter jointly organized a seminar on "The Companies Act, 2013: Directors, Accounts & CSR followed by Meet the Regulator Programme" at Kochi Chapter of ICSI. The seminar had two technical sessions which were followed by meet the regulator programme. The objective of the seminar was to provide an overall insight into the Companies Act, 2013 to the corporate professionals specifically covering the areas, viz, Role, Duties & Responsibilities of Directors and Financial Statements, Directors Report & Corporate Social Responsibility.

Dr. Baiju Ramachandran, Chairman, SIRC of ICSI in his special address shared that the Companies Act 2013 provides for substantive oversight role to Company Secretaries as against a traditional compliance role. He added that the need of the hour is that we should adopt responsible compliance as a manthra while being assertive in taking advantage of enhanced role.





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The speaker of the first technical session was CS N Balasubramanian, Partner, BVR & Associates, Kochi. He enunciated on the topic "Role, Duties & Responsibilities of Directors" from The Companies Act, 2013 perspective. He took presentation on the topics Scope of Companies Act, 2013, officer in default, enhanced disclosures to be made in Board Report & Annual Returns, Directors Provision in Companies Act, 2013 – duties of Directors, resident director, women directors, Resignation of directors, Key Managerial Personnel, Independent Directors, Small shareholder directors, procedure for appointment of directors, disclosure of interest, related party transactions, loan to directors and DIN requirement.

The speaker for the second technical session was CA Jomon K George, Partner, JVR Associates, Kochi. He took presentation on financial statement, Boards report, accounts and audit, Corporate Social responsibility and schedule VII. The speaker clarified all the queries raised by the members during the session.

This was followed by 'Meet the Regulators programme'. K G Joseph Jackson, Registrar of Companies, Kerala & Lakshadweep and V E Josekutty, Deputy Registrar of Companies, Kerala & Lakshadweep were the guests. K G Joseph Jackson, Registrar of Companies, Kerala & Lakshadweep delivered the introductory remarks. The members actively interacted with the regulators and all their queries were clarified by them.

Launching of Kochi Chapter Growth Fund

On 23.6.2014 "Kochi Chapter Growth Fund" launching session was held at the premises of Kochi Chapter. CS P. Sivakumar, Chapter Chairman gave the opening remarks and welcomed the gathering. Kochi Chapter Growth Fund was launched by CS Dr. Baiju Ramachandran, Chairman, SIRC of the ICSI by handing over his personal contribution to Kochi Chapter. K G Joseph Jackson, Registrar of Companies, Kerala received the first contribution cheque on behalf of Kochi Chapter.

Capital Market Programme

The Institute of Company Secretaries of India organised a programme on "Capital Market- The Growth Engine" as part of the Capital Markets Week, June 2014 as declared by The Institute of Company Secretaries of India which consummated into a mega full day event on 25.6.2014 at Mangalore. After winding up with the registration formalities, the programme started with a silent prayer and inauguration by the Chief Guest R. K. Dubey, Chairman & Managing Director, Canara Bank, CS R Sridharan, President, ICSI, CS M.S. Sahoo, Secretary, ICSI, CS Sutanu Sinha, Chief Executive, ICSI, CS Sudhir Babu, Programme Director and Council Member, ICSI, Dr. Baiju Ramachandran, Chairman, SIRC of the ICSI and CS Ullas Kumar Melinamogaru, Chairman, Mangalore Chapter of ICSI.

After the inaugural session CS Sudhir Babu, Programme director

and Council Member with his welcoe address setthe tone for the technical sessions and give the background of the capital market and the current situation. The inaugural session was further continued by CS M. S. Sahoo, Secretary, ICSI who gave the Key note address, addressing the latest notification and their probable impact on the corporate world and ways through which it can be tackled and met. CS R. Sridharan, President ICSI in his Presidential address stated need, impact and goals achieved through the declaration of the Capital Market Week by ICSI and various other steps that ICSI would initiate in the future for the betterment of the profession. The inaugural session was next graced by the address of the Chief Guest Dr. R. K. Dubey, Chairman & Managing Director, Canara Bank who enlightened all regarding the impact of the new notification as declared by various regulators and the new Companies Act 2013 on the Banking Companies. CS Sutanu Sinha thereafter gave the concluding remarks regarding the Capital Market.

The first technical session was addressed by Chairman of the session V Nagappan, Former Director, Madras Stock Exchange and speakers for the session were Sunil Kadam, General Manager SEBI and Parth Shah, Assistant Manager, BSE SME Platform on the topic SME: The Growth Driver. The presentation concentrated on the emerging SME, the opportunities of getting listed on SME Exchange, the various provisions and rules to be complied with for getting listed and most importantly the benefits that will be drawn towards their growth and the kinds of Investors which invest in the SME Exchange and their expectations out of the market. Finally, ending the presentation by keeping the panel open for discussion, the queries raised were replied with great enthusiasm.

Post Lunch, the gathering was addressed by Guest Speakers J. N. Gupta, Managing Director, Stakeholders Empowerment Services and Former Executive Director, SEBI and CS Sutanu Sinha, Chief Executive, ICSI on 'Regulatory Changes and Challenges'. The first phase of the Technical session was addressed by J. N. Gupta explaining the need of Regulators to be equipped with capability, decision to be arrived only after the consultation of all stakeholders. The need to set up Expert Committee and collaborations with various intermediaries for better functioning. He also opined that India has the best regulated market and needs implication of the rules on ground level. The presentation also touched upon the 2006-07 IPO fraud case, resulting into the need to develop the various code of conduct. The second phase of the session was addressed by CS Sutanu Sinha describing the New Listing Agreement, responsibility of the independent directors under the new Listing Agreement and the Auditor's responsibility associated with the Agreement. He also highlighted the topic of abusive related party transaction, delisting regulation consequences and differential tax rates for both Listed and Unlisted Company. Finally, ending the presentation by keeping the panel open for discussion, the queries raised were replied with great enthusiasm.

The Third and last Technical session was addressed by Suresh B Menon, Chief General Manager, SEBI and also the Chairman



for the Technical session and speakers Praveen Trivedi, OSD (CD & Law), Ministry of Finance and Shyam Sekhar, President, Tamilnadu Investor's Association on Investor Activism & Class Action Suits. The presentation concentrated on Proxy Advisory firms, their voting structure and voting pattern, voting pattern disclosures. The presentation also included a brief discussion on the Infosys case and Satyam merger. It was also made known to the gathering that class action suits originated from USA. Further discussion was regarding the changes in the 2001 voting right by postal ballot and SEBI mandatory implementation of recording Investor's grievance on website of exchange. The various case laws were discussed for better understanding of the concept like the complaint of Roshan Lal to SEBI leading to the developments in the Sahara Case, etc. Emphasis was drawn towards Related Party Transaction disclosures, making sure that the gathering understands the class action suits as a way of peaceful conflict. Various other case laws like, Herbal Life Company case were explained for better understanding. Finally, ending the presentation by keeping the panel open for discussion, the queries raised were replied.

Meet the Regulator Programme with Service Tax Officials

On 29.6.2014 R.Bhagya Devi IRS, Commissioner, Customs, Central Excise and Service Tax (Chennai III Commissionate) and R.Renugan, Superintendent (Technical), Service Tax were invited at the Meet the Regulator Programme organised by the SIRC at the ICSI-SIRC House, Chennai. The welcome address was delivered by CSS Hari, Member, Professional Development Committee of SIRC.

Bhagya Devi, IRS, in her address, spoke on various activities of the Commissionerate, representations before adjudicating authorities, etc. R.Renugan, Superintendent (Technical), Service Tax, Chennai discussed and interacted with members on place of provision of services, point of taxation, issues in reverse charge and joint charge mechanism, general exemption and exemption to specific services. Queries raised by the members were beautifully clarified by the department officials to the satisfaction of the members.

Career Awareness Programmes

During the month of June 2014, the ICSI-SIRC conducted seven career awareness programmes at [1] Saveetha School of Management, Saveetha University, Chennai, [2] P S Higher Secondary Main School, Chennai, [3] Rajah Serfoji Government Arts and Science College, Thanjavur, [4] Kundhavai Naachiar Government Arts & Science College for Women, Thanjavur, [5] Department of Post Graduate Studies in Commerce, Government Arts & Science College, Karur, [6] Valluvar College of Arts & Science, Karur and [7] DRBCCC Hindu College, Chennai. The programmes were addressed by Dr.V.Balaji, Assistant Education Officer, ICSI – SIRO, Chennai. CS K V Srinivasan, Company Secretary in Practice, Chennai also addressed at DRBCCC Hindu College, Chennai.

BANGALORE CHAPTER 17th Management Skills Orientation Programme

On 2.6.2014 The Bangalore Chapter of SIRC of the ICSI organised the inaugural function of the 17th Management Skills Orientation Programme (MSOP) at the Chapter Premises. Ravi Raman, Chief Operations Officer, InfraHedge Ltd., Bangalore was the Chief Guest who inaugurated the programme. The 30 Participants then introduced themselves. The Chief Guest, in his address shared his rich experience of over 25 years in the Banking, Finance and Insurance sectors and highlighted the importance of Compliance, Role of Board, Board Meeting. He also touched upon how to gain respect as Compliance Officer.

On 18.6.2014 at the valedictory session held at the Chapter premises, R. Ramakrishnan, Principal Associate, Group Chairman's Office, GMR Group was the Chief Guest who started his address with a suggestion that this programme should be called as Leadership Skills instead of Management Skills and then briefly explained leadership skills, attitude, human values and meeting challenges. His address was motivating and inspiring to all the students.

Earlier CS C. Drawarakanath, Immediate Past Chairman, SIRC of the ICSI advised the soon to be members not to focus only on company law but to upgrade their knowledge with other current laws applicable as well.

Ramakrishnan then distributed the Best Participant Award to Shrikanth M, and prizes for the Best Project to the team consisting of Srinivasan V.S., Jyoti Pandey and Prem Kant Jha, Shreevathsa G.P., Akanksha Gupta, Rahul Murthy and Shivangi Amitabh for their project on "Carbon Credits and its Trading". He also distributed the Course Completion Certificate to the participants. Shaila Nayak and Ravikumar, participants, shared their positive feedback about the MSOP programme.

Open House Sessions on Companies Act, 2013

On 3 and 4.6.2014 the Chapter organised the Open House Sessions on Companies Act, 2013 on "Chapter XV – Compromises, Arrangements & Amalgamations". CS R. Ramachandran, Associate, SwiftIndiaInc, Nishith Desai Associates, Bangalore was the speaker who in his presentation made a comparative analysis of the Companies Act, 2013 vis-a-vis the Companies Act, 1956 and highlighted the grey areas, contradictions and new provisions. On the concluding day, CS Karthik Ranganathan, Advocate highlighted the provisions relating to M & A under the Income Tax Act, 1961 which added an interesting flavour to the Open House Session. There was a lively interaction by the Members present throughout the sessions.





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Interactive Session with RoC, Karnataka And his Team

On 5.6.2014, the Chapter organised an Interactive Session on "Companies Act, 2013, Rules & e-form thereunder" with M.R. Bhat, Registrar of Companies, Karnataka and his Team. CS Gopalakrishna Hegde, Central Council Member threw light on the latest developments with respect to the representation of the ICSI to MCA.

M.R. Bhat, replied the queries raised from the Open House Sessions held during the months of March, April & May 2014 on Appointment of Auditor, Appointment and qualification of Directors, Definition & Appointment of Independent Director, Meetings of Board and its Powers, Appointment and Remuneration of Managerial Personnel, Definition of financial year, Transfer and Transmission, Refusal of registration and appeal against refusal, Related Party Transactions, Voting Rights, Register of members, refund from MCA, and CLSS.

Sehar Ponraj, Dy. Registrar of Companies, Karnataka and KeerthiTej, Asst. Registrar of Companies, Karnataka were also present.

As part of its e-initiative the Bangalore chapter ensured that the whole proceedings were webcast live using Google hangout. The maiden attempt was quite successful.

Tree Planting Activity at Spoorthivana

On 14.6.2014 the Chapter organised a special Half Day "Tree Planting Activity" to commemorate World Environment Day (5th June), World Oceans Day (8th June) & World Desertification Day (17th June) at Spoorthivana, BWSSB – Thippagondana Halli, Tavarekere Hobli, Bangalore Rural District. This first-of-its-kind programme was organised for promoting "DO GREEN" rather than just "GO GREEN" with a paperless office and emails. It was meant to encourage members to undertake some CSR activity together with family as an outing-cum-learning apart from just advising corporates and clients to comply with the new CSR Act and Rules. 30 members with their family participated (in total 45 people) in the "Tree Planting Activity" and 25 saplings were planted. There was 1 hour talk by an environment expert on the objectives of Spoorthivana, a 500 acre Govt owned forest area as well as importance of environment protection.

Master Class-I on Ca2013

The Bangalore Chapter of the ICSI organized a series of 4 full day sessions on 4 consecutive Saturdays spanning June and July, 2014 on the New Companies Act, 2014 and Rules & Forms etc. The Master Class on "Companies Act, 2014 and Rules & Forms" was inaugurated by CS R. Rajagopalan, Past President of ICSI who lauded the Chapter about this unique capacity building initiative. He went down the memory lane touching upon the scenario in the pre-liberalisation era and the role of CS during command economy and how it has undergone a drastic change

in the post-licence raj.

First Technical Session: CS Dwarakanath C, (Immediate Past Chairman, SIRC of the ICSI), Company Secretary in Practice, Bangalore was the speaker for the Session on "Incorporation of Companies under the Companies Act, 2013". In his presentation he explained which kind of companies may be incorporated, required forms and documents. He also highlighted the major provisions relating to incorporation of Public, Private, Sec 8, OPC, Dormant Company, Drafting of MOA and AOA, Alteration, Entrenchment provisions, Registered Office, its verification, Commencement of Business etc. under the Companies Act, 2013.

Second Technical Session: CS G.V. Srinivasa Murthy, (Past Chairman, Bangalore Chapter of ICSI), Company Secretary in Practice, Bangalore was the speaker for the Technical Session on "Acceptance of Deposits & Charges". He started his presentation by stating that the Companies (Acceptance & Deposits) Rules 2014 is not applicable to banking company, non-banking financial company registered with RBI, housing finance company established under NHB Act and Class of companies specified by the Central Government and explained what is not a deposit. He also elaborated on Repayment of Deposits accepted under the Companies Act 1956, Damages for Fraud and Deposits from Public.

He then went through a detailed presentation on Chapter VI - Section 77 to Section 87 dealing with Charges. He explained the Registration of Charges and Penalty for contravention of provisions of Chapter VI.

Third Technical Session: Topic for this Technical Session was "Independent Directors and Key Managerial Personnel". CS Satish Menon, Principal Consultant, Menon Associates, Bangalore was the speaker. He started his presentation with the requirement of minimum number of directors for Public, Private, OPC, and Prescribed Class of Companies. He briefly touched upon the mandatory provision relating to appointment of Woman Director, how to fill up such a vacancy, justification for such provision etc. Later explained at length on Director, Indian Resident Director, and Independent Director, their prescribed Qualifications, Obligations, Guidelines for Professional Conduct, Key Roles and Functions, Manner of appointment, Reappointment / Resignation / Removal / Evaluation, Separate Meetings, Term & Tenure. He then highlighted the appointment of KMP, their Remuneration and functions & duties of CS.

Fourth Technical Session: CS J. Sundharesan, (Past Chairman, Bangalore Chapter of ICSI), Founder & Chief Advisor, J Sundharesan & Associates, Bangalore handled the Fourth technical Session on "Board Meetings and Process – An Overview". In his presentation the speaker covered how many board Meetings are to be held in a year, time gap between two Board Meetings, provisions of Board Meeting of One Person Company and Small Company, notice for board meetings, is it required to



issue agenda before seven days, can a board meeting be held at shorter notice, can a director participate in board meetings via Video Conferencing? Will it be counted for the purpose of quorum, can the board meeting be held on a public holiday, is it mandatory for directors to attend board meeting in person, can the financials and Board report be adopted in a meeting held through video conference, what should be the venue for a Board Meeting held through Video Conference, provisions with regard minutes of the board meeting held through video conference, time limit within which the minutes of the board meeting shall be finalized and signed and several other practical issues relating to Board meetings, minutes & processes.

32nd Annual General Meeting

The Bangalore Chapter of the ICSI conducted its 32nd Annual General Meeting on 27.6.2014 at its premises. The meeting commenced with a welcome address by CS S.C. Sharada, Chairman of the Chapter, who also highlighted the major activities of the Chapter for the year under review and the role of Chapter staff in ensuring its smooth functioning. CS S.C. Sharada read out the Notice and the Auditor's Report. Thereafter, Chairman presented the Managing Committee Report and Audited Accounts to the members and invited their comments and suggestions on the accounts.

Study Circle Meeting

On 27.6.2014, the Bangalore Chapter of the ICSI organised a Study Circle Meeting on "Introduction to International tax for CS" at the Chapter premises. Karthik Ranganathan, Tax Consultant & Lawyer, Bangalore was the speaker. Karthik Ranganathan began with what is International Tax and explained the International aspects of Indian Income tax, Tax Treaties, Transfer Pricing, Taxation of Merger and Amalgamation. He then touched upon DDT, BBDDT and Liquidation. The session was lively, interactive and well received by the members present.

Master Class-II On Ca2013

On 28.6.2014 the Bangalore Chapter of the ICSI organised the 2nd Master Class on "Companies Act, 2013 and Rules & Forms". CS Gopalakrishna Hegde, Council Member, the ICSI shared some new developments at the Institute and MCA on New Companies Act, 2013.

First Technical Session: CS L V V Iyer, Corporate Lawyer & Partner, L V V Iyer & Associates, Hyderabad handled the session on "Managerial Remuneration". In his address he elaborated the overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profit and goaded the members to study the Act deeply and thoroughly and interpret the provisions in the true spirit of the legislation. He was appreciative of the new Act and highlighted several provisions that are more liberal than the old Act with respect to Managerial Remuneration and suggested that members should approach it with an open mind. He also replied all the written queries on the

topic that were received from the members and collated by the Chapter.

Second Technical Session: CS A. M. Sridharan, Practicing Company Secretary, Chennai was the speaker for this technical session on "A Bird's Eye View of the Companies Act, 2013 & Rules of Interpretation". In his presentation the speaker took the members through Entrenchment of Articles, Deemed Prospectus, Private placement, rights issue, preferential allotment, Voting rights of preferential shareholders, Repayment of Deposits, Registration of Charges, Loans to Directors, Inter-corporate Investments and Borrowings, E-voting & Postal Ballot (with respect to section 35B of SEBI Act), Beneficial Interest, Register of Members etc., focusing on contentious issues and how to interpret the law applying Rules of Interpretation of Statutes.

Third Technical Session: CS R. Vittal, Advocate, Bangalore was the speaker for the Technical Session on "Directors". He started his presentation with Types of Directors and then explained the method of Appointment of various types of Directors, Tenure of various types of Directors, Rotation, Compensation; Duties of Directors in general & Duties of Independent Directors in particular, Liabilities and Accountability of Directors; Vacation of Office and Disqualification of Directors. He also replied all the written queries received on the topic from the members.

Fourth Technical Session: "CSR" was the topic for this Technical Session and Indira Varadarajan, Former Executive Director, SNS Foundation, Bangalore was the speaker. She dwelt on why CSR, formulation of CSR Policy, Committee formation, how to choose projects and also presented a few successful CSR case studies/projects that she had driven during her 30+ years of CSR experience. She also briefly explained the role of Company Secretaries in CSR and what value add they can deliver to corporates.

Career Awareness Programme

The Bangalore Chapter of the ICSI participated in a Career Fair organised by K2 Learning Pvt. Ltd. on 29.6.2014 at the Taj Vivanta. CS S.C. Sharada, Chapter Chairman was invited to address the gathering. Two hundred students & parents attended the programme. CS S.C. Sharada, explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. She also highlighted the importance of making the right career choice so as to be successful in life.

She then spoke about the role of Company Secretary and importance of the profession of Company Secretaries in the changing economic scenario. She also highlighted the opportunities available to anyone who has completed Company Secretaryship course. She further enumerated the emerging areas of practice and the changing role of a Company Secretary.

Institute's video on the CS course and opportunities was played





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during the session. CS Sharada clarified the various doubts and issues that were raised by the participants and thanked the management for providing the Institute this opportunity.

COIMBATORE CHAPTER Series of Discussion Meetings - Second Discussion Meeting on Companies Act, 2013

On 22.5.2014, Coimbatore Chapter of SIRC of the ICSI, as part of a series of Discussion meetings on Companies Act, 2013, organized its Second Discussion Meeting, on "Directors, Meetings of Board and its Powers" under the Companies Act, 2013 at the premises of ICSI-Coimbatore Chapter. The Objective of this programme was to create a platform for the members to discuss and update the knowledge/Sharing of knowledge on Companies Act, 2013. CS G Balasubramaniam, Past Chairman, Coimbatore Chapter of SIRC of ICSI and Company Secretary, Roots Multiclean Ltd, Coimbatore was the moderator. The moderator explained all the provisions of the Companies Act, 2013 with respect to above topic in detail. He envisaged the practical difficulties that may arise in implementation of some of the provisions of the Act, and also suggested some innovative steps that may be taken to overcome all these difficulties. The participants interacted with moderator, and also with other fellow participants. The lively interaction meeting was attended by about 18 Company Secretaries.

Series of Discussion Meetings – 3rd Discussion Meeting on Companies Act, 2013

On 22.5.2014, the Third Discussion Meeting was held on "Deposits" under the Companies Act, 2013 at the premises of ICSI-Coimbatore Chapter. CS M R Thiagarajan, Practising Company Secretary, Coimbatore was the moderator. During the discussions, each section and rule thereof relating to acceptance of deposits under the Companies Act, 2013 was thoroughly analysed. The participants interacted with the moderator, and also with other fellow participants. The lively interaction meeting was attended by about 19 Company Secretaries. Company Secretaries Benevolent Fund [CSBF] banner and standee were displayed at the venue of the programme.

Annual General Meeting

AGM of Coimbatore Chapter of SIRC of the ICSI was held on 30.06.2014. Members approved the Annual Accounts for the year ended 31.03.2014, Reports of Management Committee and auditors thereon. The Annual General Meeting was followed by discussion on draft notification dated 24.06.2014 issued by the Ministry of Corporate Affairs, seeking public opinion on applicability of certain provisions of the Companies Act, 2103.

Professional Development Programme

On 04.07.2014, Coimbatore Chapter organized a Professional Development Programme on "Chapter IV (Share Capital and Debentures), Chapter VII (Management and Administration) of Companies Act, 2013, implementation thereof, and analysis of the clarifications issued by MCA" at Coimbatore. CS. B. Narasimhan, Central Council Member, ICSI, New Delhi, was the speaker of the programme and during his presentation explained the subjects in detailed manner. The queries raised by the participants were replied satisfactorily by the speaker. The chapter received enthusiastic appreciation and complimentary notes from participants of the programme. The programme was actively attended by 65 participants.

Joint Programme on Union Budget 2014

On 11.07.2014, a Joint Programme "Union Budget 2014" organised by Coimbatore Chapter of ICSI, Coimbatore Chapter of the Institute of Cost Accountants of India, and The Auditor's Associations of Southern India was held at Coimbatore.

First Session on Union Budget 2014 was handled by K.Ravi, FCA, ACS, Chief Financial Officer of Roots Group of Companies and Director in Roots Multiclean Ltd. K Ravi highlighted the points on how Budget is affected on Indian Economy, Highlights on Union Budget, Indian GDP annual growth, Sectoral Share in GDP, FDI, Indian Foreign Exchange Trade, Administrative Reforms, Sector Impact, Banking & Financial Service, etc.

Second Session on Union Budget 2014 was handled K.Badri Narayanan, FCA, ACS, Practicing Chartered Accountant, Coimbatore. K. Badri Narayanan, elaborated the Financial Bill 2014 - Provisions relating Direct Taxes.

Third Session on Union Budget 2014 was handled by A R Vishwanathan, ACS, Practising Advocate, Coimbatore. A R Vishwanathan explained Proposals on Indirect Taxes on Union Budget 2014-15 and also explained Central Excise, Service Tax and Customs on Budget proposals.

The programme was very interactive and the queries raised by the participants were duly addressed by all the speakers in their respective sessions, and the programme was actively attended by around 100 participants.

Career Awareness Programme

On 15.07.2014, Coimbatore Chapter conducted a Career Awareness Programme at Sankara College of Science and Commerce. CS G Balasubramaniam, Past Chairman & Company Secretary, Roots Multi Clean Ltd, Coimbatore was the Chief Guest and Speaker. The Chief Guest explained the course in detail and also highlighted the importance of CS course in the new economic scenario. The students were apprised about



the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice. The speaker also explained Career prospects of the profession, placement services, course contents, fee structure and oral coaching facilities being provided to the students. He then highlighted the opportunities available to those who complete the Company Secretaryship Course. Further he enumerated the emerging areas of practice and the changing role of Company Secretary. Nearly 200 students from Deptt. of Commerce attended the Career Awareness Programme. The programme concluded after a question – answer session.

Investor Awareness Programme

On 14.07.2014, Coimbatore Chapter organized Investor Awareness Programme at ICSI-Coimbatore Chapter premises. V P Sivadasan, Asst. Registrar of Companies, Tamilnadu, Coimbatore delivered the inaugural address and K.Thangaraj, CEO, Aashirvaadh Financial Service, Coimbatore delivered the special address. Chapter had given an advertisement in the leading Tamil Daily Dinathanthi. The information about the programme reached the public at large. The programme was very interactive and the queries raised by the participants were duly addressed by the speakers. The programme was attended by 110 participants including CS members, students and public.

KOCHI CHAPTER Companies Act 2014 and its Rules: Group Discussion Series

Kochi Chapter has been organizing a series of group discussions on various topics of the Companies Act, 2013. On 16.6.2014 CS Rajiv K made a presentation on Chapter II – Incorporation of Company and matters incidental thereto. CA Prashant Mohan handled two sessions, one on 12.06.2014, on Chapters IX (Accounts of Companies) and X (Audit and Auditors) and the second one on 30.06.2014 on Chapter XIII -Appointment and Remuneration of Managerial Personnel. The programmes were well attended by students and members.

Seminar on The Companies Act 2013: Directors, Accounts & CSR

The ICSI-SIRC and the Kochi Chapter jointly organized a seminar on The Companies Act, 2013: Directors, Accounts & CSR followed by Meet the Regulator Programme on 23.6.2014 at the Chapter premises. The seminar consisted of two technical sessions which were followed by meet the regulator programme. The main intention of the seminar was to provide an overall insight into the Companies Act, 2013 to the corporate professionals specifically covering the areas: Role, Duties & Responsibilities of Directors and Financial Statements, Directors Report & Corporate Social Responsibility.

The speaker for the first technical session was CS N Balasubramanian, Partner, BVR & Associates, Kochi, who enunciated on “Role, Duties & Responsibilities of Directors” from The Companies Act, 2013 perspective. He made a presentation on the topics Scope of Companies Act, 2013, officer in default, enhanced disclosures to be made in Board Report & Annual Returns, Directors Provision in Companies Act, 2013 – duties of Directors, resident director, women directors, Resignation of directors, Key Managerial Personnel, Independent Directors, Small shareholder directors, procedure for appointment of directors, disclosure of interest, related party transactions, loan to directors and DIN requirement.

The speaker for the second technical session was CA Jomon K George, Partner, JVR Associates, Kochi. He took presentation on financial statement, Boards report, accounts and audit, Corporate Social responsibility and schedule VII. The speaker clarified all the queries raised by the members during the session.

This was followed by meet the regulators programme. K G Joseph Jackson, Registrar of Companies, Kerala & Lakshadweep and V E Josekutty, Dy. Registrar of Companies, Kerala & Lakshadweep was present during the session. K G Joseph Jackson, Registrar of Companies, Kerala & Lakshadweep delivered the introductory remarks. They clarified all the queries raised by the members.

This was followed by “Kochi Chapter Growth Fund” launching session. Dr. CS Baiju Ramachandran, Chairman, SIRC of the ICSI launched the growth fund by handing over his first contribution to K G Joseph Jackson, Registrar of Companies.

MANGALORE CHAPTER ICSI President's Meeting with Members and Students of the Chapter

A meeting and interaction session was organized between the members and students of ICSI with CS R Sridharan, President, ICSI, CS M. S. Sahoo, Secretary, ICSI, CS Sutanu Sinha, Chief Executive, ICSI, CS Sudhir Babu C, Council Member, ICSI and Dr. Baiju Ramachandran, Chairman, SIRC of the ICSI. The session was first addressed by CS Sudhir Babu C, regarding their visit to Mangalore and their vision behind the Capital Market Week, June 2014 as declared by ICSI. Dr. Baiju Ramachandran, shared the various programmes being initiated by SIRC and its Chapters for the benefit of members and students. He finally showed enormous faith in the talent and capabilities of the Mangalore Chapter. CS Sutanu Sinha, Chief Executive, ICSI explained the foreground of the Capital Market, the impact of the new Companies Act, 2013 on the market and the increased roles and opportunities for Company Secretaries after the enactment of the new Act. CS M. S. Sahoo, Secretary, ICSI was next to address the students regarding the general working of the Capital Market, the various changes taking place in the regulatory market, the impact of the new Listing Agreement and various declaration and notifications





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issued by MCA on the company secretaries workings. Finally ICSI President, CS R. Sridharan started the interaction session with the members and students by inviting them to raise their queries faced by them in their profession. The queries raised were regarding the difficulties in implementing the provisions of Companies Act, queries being specifically addressed on e- voting, role of company secretary in family enterprises, questions raised by students were directed towards the availability of guideline answers, evaluation pattern by the examiners and New Act for December 2014 session of examinations. Once, the entire questions were addressed, Presidents adhered to each query and addressed those queries. During the interaction, the gathering was educated regarding the various new initiatives started by ICSI in the form of Integrated Course being offered at Mumbai, various representations being made to MCA, new user friendly options available at the institute's website. CS R. Sridharan concluded the interaction session emphasizing on the fact that Company Secretary is a fast growing profession having a lot of opportunities for future professionals.

Seminar on Secretarial Standards on Board Meeting and General Meeting

On 21.6.2014 the Chapter conducted a programme on the above topic at Mangalore. The Seminar was addressed by CS Ahalada Rao, Member, Secretarial Standards Board on "Secretarial Standards on Board Meeting and General Meeting", the main agenda behind the seminar was to present the draft secretarial standards and receive suggestions from the gathering.

The first half of the session was dedicated for Secretarial Standard-1 (SS-1) on The Meetings of the Board. The meeting was divided into two phases, first where a brief knowledge regarding the text of the standards were provided and in next questions based on probable situations were put and the need of standards to satisfy those questions were made clear to the audience and afterwards, the topics were made open for suggestions. Topics discussed in the first half included the quorum for the meeting, resolution by circulation, participation by video conferencing in Board Meeting, period for sending notices etc. Discussion was held on meaning of clear days, public holiday for notice preparation, Time & place for adjourned meeting, registered address of directors etc. The discussion was further improved towards the inclusion of 'assent', 'dissent', 'requirement for meeting' in the circulation for resolution to be passed and its implication on different situation and the majority required to successfully pass the resolution.

The second half of the session was dedicated for Secretarial Standard-2 (SS-2) on Secretarial Standards on General Meeting. Topics discussed in the second half included the need of notice of the General Meeting being sent to shareholder, members, auditors as well as secretarial auditors, several discussion and suggestion regarding the same was received. The discussion further progressed in the direction of Proxy regulations and requirements for correct compliance; suggestion regarding the same was

received. Finally the session concluded with a brief discussion on e-voting for General Meeting and overall suggestions being received from the gathering.

MYSORE CHAPTER Half Day Seminar on Standard Board Meetings & General Meetings

Mysore Chapter of ICSI conducted a Half Day Seminar on "Standard Board Meetings & General Meetings – Views & Reviews of Members" on 28.6.2014 at the Chapter premises. CS Ahalada Rao V, Secretarial Standards Board Member of ICSI was the speaker of the seminar. He explained the topic in detail to the delegates & clarified the doubts raised by the participants. A large number of delegates participated & discussed the topic.

Career Awareness Programmes

On 05.07.2014 Mysore Chapter of ICSI organised a Career Awareness Programme at Rangarao Memorial PU College, Mysore. Fifty-three students from various streams attended the programme. CS Sabareeshan C K, Member of the Mysore Chapter addressed the participants. Again on 18.07.2014 the Career Awareness Programme was held at GSSS Simha Subba Mahalakshmi First Grade College, Mysore. Forty-four students from various streams attended the programme. CS Pracheta M, Member of the Mysore Chapter addressed the students. Yet again on 19.07.2014 the Programme was held at Vidhyaashram First Grade College, Mysore. Around 50 students from various streams attended the programme. CS Pracheta M, Member of the Mysore Chapter & CS Ajay Madaiah B B, Chairman, Mysore were the speakers.

During the career awareness programmes the speakers explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. Brochures explaining brief details of the Company Secretaryship Course were also distributed to the participants.

Live Union Budget 2014-15 & Post Budget Analysis

On 10.07.2014 Mysore Chapter of ICSI in association with CII Mysore conducted a Live Union Budget 2014 session & Post Budget Analysis in SDMIMD Institute, Mysore. In the programme Subramanian Krishnamani, Senior Director, Deloitte Haskins & Sells along with his team made the Post Budget Analysis to enable the members to understand the implications of the Budget on various sectors. The key objective of the session was to analyse the budget from the view of various industries and to enlighten the members on the key aspects of the Direct & Indirect Taxes. A large number of Members, Students and Industrialists participated in the session and discussed the key issues in the Budget with the experts.



SALEM CHAPTER

Joint Seminar on the Companies Act, 2013

On 17.5.2014 the Chapter in association with Salem Branch of SIRC of the ICAI and the ICoAI conducted a one day Seminar on the Companies Act, 2013 at ICAI Bhawan, Salem. Members and Students of these three professions together with representatives from industries in large numbers participated in the Seminar and got benefitted. CA Chinnasamy Ganesan, Chartered Accountant from Chennai presented his technical paper on "Audit and Accounts" under the new Companies Act 2013. He highlighted the provisions relating to the Internal Audit, Secretarial Audit and Accounts Audit which the corporates are required to conduct. CS A.M. Sridharan, Practising Company Secretary from Chennai dealt with the Issues on Management and Administration under the Companies Act 2013. He dealt with e-voting and postal ballot with particular reference to the SEBI guidelines. CS R. Kannan, Company Secretary and Dy. General Manager, Karur Vysya Bank Limited, Karur dealt with the Corporate Governance principles with particular reference to Clause 49 of the Listing Agreement of SEBI. He discussed the role and appointment of Independent Directors and their tenure, duties and remuneration.

CA P.R. Suresh, Member, SIRC of ICAI made a comparative analysis of the Companies Act, 1956 vis-a-vis the Companies Act 2013. He quickly passed through almost all the important definitions and provisions revisiting the entire Act. Members and students raised a lot of queries and the respective faculties replied them. Prizes were distributed to those who raised queries as a token of encouragement.

Study Circle Meetings

A Study Circle Meeting for Members and Students was organized on 20.5.2014 at Chapter premises. The session was led by CS Solaiyappan. S, Chairman and CS Santhanam. N, Secretary of the Chapter. The discussion regarding the Appointment of Managing Director and Payment of Managerial Remuneration was useful to the members participated and doubts were clarified in the session. The session concluded after rendition of National Anthem.

Again on 30.5.2014 a Study Circle Meeting was held on "Incorporation of Companies under the Companies Act, 2013". In the meet, the provisions of the Act relating to this chapter together with the Rules notified by the MCA thereon were discussed at length by the office bearers, members and students of the Chapter. The practical aspects concerning the Incorporation of a company like documentation, filing with ROC and the difficulties faced thereon were also deliberated. Members of Salem Chapter participated and made the study circle meet gracious.

Yet again on 6.6.2014 the Chapter conducted a Study Circle Meeting on "Acceptance of Deposits Rules, 2014" under the Companies Act, 2013. In this meet, the provisions of the Act

relating to this Chapter together with the Rules notified by the MCA thereon were discussed at length by the office bearers, members and students of the Chapter. The practical aspects concerning the acceptance of new deposits by both the public and private companies, the separate procedures to be followed by public companies and private companies in accepting deposits, the filing of returns with ROC as to the existing deposits accepted by companies and lying as on 31.3.2014 in the books of the Company on or before 30th June 2014 as a compliance requirement and the repayment schedule up to the actual date of repayment of such deposits or the period of one year whichever is earlier were also deliberated upon. Members participated and made the study circle meet fruitful.

Another study circle meet was held on 20.6.2014 at the Chapter premises on Board Meetings & General Body Meetings under the Companies Act, 2013. In the study circle the provisions of the Act relating to this chapter together with the Rules notified by the MCA thereon were discussed at length by the office bearers and members of the Chapter. The deliberations regarding Board Meetings and its Power, Notice, Matters not to be dealt with in a Meeting through Video Conferencing or other Audio visual means, Compliance with Secretarial Standards, Formation of Nomination & Remuneration Committee under Listing Agreements were discussed which was useful to all the participants. Members participated and made the study circle meet fruitful.

Investor Awareness Programme on Recent Developments in Capital Markets

An Investor Awareness Programme on "Recent Developments in Capital Markets" was organized by the Salem Chapter of the ICSI & National Stock Exchange of India Limited, Chennai on 13.6.2014 at Shri Sakthikailash Women's College, Ammapet, Salem in which around 300 persons participated. Sangamesh Parthiban, Assistant Manager, National Stock Exchange of India Limited, Chennai presented the key note address. He described the situation that has changed with the introduction of online trading in stock exchanges and investors need not visit the stock exchanges but need only to key in online or trade through the stock brokers through demat account. He also highlighted the role and functions of the National Stock Exchange of India Limited and stated that the investors have to be very careful in identifying the type of investment they are interested, understand the instrument and the pros and cons and take a final decision without being influenced by others. There was a good and lively interaction from the participants and their doubts were clarified.

Another programme on the same day (13.6.2014) was organized by the Salem Chapter of the ICSI & National Stock Exchange of India Limited, Chennai at A.V.S. College of Arts & Science, Ramalingapuram, Salem which was attended by around 200 participants. In the key note address Sangamesh Parthiban, highlighted the role and functions of the National Stock Exchange





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of India Limited and said that there was a team formed to educate the investors by their organisation. Investors present expressed that they were not fully aware of the role and functions of the National Stock Exchange of India Ltd. He also highlighted the NSE CPSE Index, derivatives trading, Currency trading, ETF, Gold ETF, Mutual Fund, Balancing Fund, etc. for education of the investors present. He advised the investors to be very careful in identifying the type of investment they are interested, understand the instrument and the pros and cons and take a final decision without being influenced by others. They should not be in a hurry to invest but should be careful in studying the instruments, the corporate that issue such shares/debentures etc. The presentation was very informative and the queries raised were satisfactorily replied.

On 14.6.2014 another investor awareness programme was held at Krishnagiri. About 70 investors participated in the programme. M.S.O. Annamalai, Investment Consultant, Salem presided over the function and Sangamesh Parthiban, Assistant Manager, National Stock Exchange of India Limited, Chennai gave the key note address.

Annamalai in his address recalled the days when the scrip's were dealt with physically on the stock exchange platforms and deal occurred after a few days of conclusion. The situation has undergone a change with the introduction of online trading in stock exchanges and investors need not visit the stock exchanges but need only to key-in online or trade through the stock brokers through demat account. The volume of transactions, the number of instructions, the number of participants, etc. made the dealing in stocks and securities very cumbersome and difficult. Hence the investors have to be very careful in identifying the type of investment they are interested, understand the instrument and the pros and cons and take a final decision without being influenced by others. They should not be in a hurry to invest but should be careful in studying the instruments, the corporate that issue such shares/debentures etc. They should not borrow money to invest but rather their savings should be invested and not saved to earn a better rate of return preferably more than what the banks could offer.

In his key note address, Sangamesh Parthiban highlighted the role and functions of the National Stock Exchange of India Limited and said that this is the first time they enter the tier-2 cities to educate the investors. Investors present expressed that they are not fully aware of the role and functions until they heard from Sangamesh. The capital market instruments, the type of security and returns they offer, the online trading introduced first time in India and how the NSE played a key role in the securities market in enhancing the speed and accurate delivery of instruments and cash and how it helped the buyers and sellers of instruments through the stock exchange portal. He also highlighted the NSE CPSE Index, derivatives trading, Currency trading, ETF, Gold ETF, Mutual Fund, Balancing Fund, etc. for the education of the investors gathered. The presentation was more informative and educative. There was a good and lively interaction from the participants and Annamalai

and Sangamesh clarified their doubts.

Career Awareness Programme

On 13.6.2014 a Career Awareness programme was conducted by the Chapter at Shri Sakthikailassh Women's College, Salem. Around 250 B.Com and M.Com students participated. On the same day another programme was conducted for 3rd Year B.Com (CA) & BBA students at AVS College of Arts & Science, Attur Main Road, Ramalingapuram, Salem. Around 175 students participated in this programme. In both the programmes CS Gnanasekharan, S, Vice – Chairman, Salem Chapter of SIRC of the ICSI explained about the Institute, Vision & Mission and the functions. In addition, he briefly explained the structure of the Company Secretaryship course, duration, employment opportunities, scope of the Company Secretary in Practice the Campus Interviews conducted by the Chapter, Regional Offices and the Head Quarters. Sundar Swamy S, Chapter In-charge explained various online processes like registration, examination enrolments, e-learning & e-library facilities available at the Institute's website, training structure of the course and also Library & Oral Coaching facility at the Chapter. The queries raised by the participants were also clarified by the speakers.

Career Fair

Career Fair was conducted by the Chapter in the Guidance Programme for Higher Studies organised by Salem Nagarathar Sangam, Salem at Salem on 6.7.2014. Around 400 students with their parents participated in the programme. Chief Guests of the programme were SP Muthuraman, Director, Tamil Films, S. Raja and Bharathi Bhaskar, the Leading Speakers. CS Solaiyappan, Chapter Chairman explained various functions of the Institute and its Regional Council and Chapters and importance of the Company Secretaries Course and its Stages, Fee details, etc. Institute's pamphlets were issued to the students & parents participated. Doubts were clarified at the end of the programme and contact details of the Chapter were also provided.



WESTERN INDIA REGIONAL COUNCIL

Two Day Workshop on the Companies Act, 2013

ICSI-WIRC organised a Two Day Workshop on the Companies Act, 2013 at its premises at Nariman Point. During the first technical session CS Yogesh Chande and Vinayak Burman, Associate Partners of Economic Law Practice, Advocate and Solicitors collectively spoke on the subject "Companies Act, 2013 provisions pertaining to M&A and Private equity." The post lunch session on "Board Powers and Duties" was addressed by B. Renganathan,



Sr. Vice President & Company Secretary of Edelweiss Financial Services Limited who explained the major changes in the Companies Act, 2013 compared to the provisions in the erstwhile Companies Act, 1956. He explained the provisions under Section 179 read with the rules which necessarily required resolutions to be passed at a duly convened Board meeting and not merely by a circular resolution. The new requirement relating to filing of the particulars of resolutions, exercising of the powers of the Board, on the MCA portal was also highlighted. He then dealt with the new provisions which specify the duties of the directors and the penal provisions/damages that could arise as a consequence of any breach of these duties. He also replied the queries of the participants.

The post tea session on the subject “Cost Accounts and Cost Audit” was taken up by PCS, A Sekar. He opined that there has been significant disconnect between the Act and the Rules as also the migration from the Companies Act, 1956 to Companies Act, 2013, which has been a major source of discomfort to the Costing professionals. While dealing with in detail the apparently curtailed scope with respect to cost accounts and cost audit, he also explained that a new window of opportunity has been thrown open by the new provisions in hitherto uncovered areas such as infrastructure, real estate, health care & education services. He then dealt with the new procedure relating to appointment and remuneration of cost auditors under Section 148 and the Companies (Cost Accounts and Cost Audit) Rules, 2014. The main features of the new e-forms notified under this section was also presented. The session was interactive and there was enthusiastic participation. Various queries posed were replied by the speaker during the course of the session.

On 6.7.2014 during the first technical session Suresh Vishwanathan, Founder & Chief Consultant, Finteglaw Knowledge Solutions Private Limited spoke on “Related Party Transactions”. He dealt with in detail the provisions under Section 188 of the Companies Act, 2013, which in reality was a combination of Sections 297 and 314 of the Companies Act, 1956. The facts regarding substantially enlarged scope of the provisions to transactions of immovable properties, greater transparency and disclosure requirements, new requirement relating to Arm’s length nature of transactions, somewhat curtailed definition of “relative” under the new Act and non-participation of interested director on resolutions in which such director is interested and non-exercise of voting power by a member if he is a related party under certain circumstances were highlighted. The speaker also highlighted the extension of the provisions even to private companies and replied the queries of the participants in the Question-Answer session.

The Pre-lunch session on “Issue of Securities & Deposits” was addressed by Rishikesh Vyas, Director, Sarthi Capital Advisors Private Limited. He highlighted the provisions in the Companies Act, 2013 relating to issue of securities which included the provisions relating to private placement, time limit for refund/allotment from the date of receipt of share application money, issue

of securities on rights basis, issue of sweat equity and Employees Stock option scheme. He stated that the Act now does not make any distinction between a private company and a public company. As regards deposits, he explained that the provisions are made extremely stringent. A private company can no longer accept or renew deposits from members and relatives of directors, unless it complies with the provisions of the Act relating to issue of circular/advertisement. The provisions relating to filing of the DPT-4 return were also explained. He replied the queries of the participants in the question-answer session.

PCS, Surendra Kanstiya, in the last session took up the topic relating to Board and General Meetings under the Companies Act, 2013. He highlighted the major changes in the Companies Act, 2013 including the requirement relating to notice for Board meeting, non-presence of interested directors when resolutions on matters in which they are interested are discussed, new elaborate provisions relating to conduct of Board meetings through video conferencing, matters which cannot be transacted through video conferencing, provisions relating to preparation of minutes of the proceedings of the Board meetings, etc. As regards general meetings, he highlighted the new provisions relating to quorum for public companies, which now depend upon the number of members of the company, provisions relating to passing of resolutions by postal ballot, applicability of e-voting facility, conduct of poll, etc. He also replied the queries raised by the participants.

Programme on Loans, Investments, Deposits and Related Party Transactions

ICSI-WIRC organised a full day Programme on Loans, Investments, Deposits and Related Party Transactions on 12.7.2014 at its premises. CS Robert Pavrey, Practising Company Secretary spoke on Loans. CS Makarand Lele, Former Chairman, ICSI-WIRC and PCS spoke on the Related Party Transactions.

Post Lunch CS Deep Shridharani, Advocate spoke on Investments and Deposits. All the sessions were well received. The participation was exemplary and participants suggested to conduct more such programmes in future.

INDORE CHAPTER Full Day Seminar on Key Provisions of Companies Act, 2013 – Implementation Perspective

Indore Chapter of WIRC of ICSI organized a Full Day Seminar on “Key Provisions of Companies Act, 2013 – Implementation Perspective” on 22.6.2014 at Indore. The Seminar was inaugurated in the presence of Vipin Kumar Maheshwari, IG Indore (Chief Guest), CS Mahavir Lunawat and M V Phadke (Guest Faculties), Members of the Managing Committee of the Chapter, other Members & Students of the Institute.





News From the Institute & Regions

Vipin Kumar Maheswari shared his valuable thoughts with the members and students of the Institute. At the outset he explained the evolution of the Companies Act, 2013, provisions relating to Issue of Shares, Private Placement, Further Issue of Capital, Employees Stock Option Scheme, Sweat Equity Shares, Private Issues, Public Issues, Global Depository Receipt, Issue of Bonus Shares, Secretarial Audit. He also apprised the members about the Report of Dr. J.J. Irani Committee and Report of JPC dated 26.06.2012.

The Second Session was addressed by M. V. Phadke who in his address explained various provisions of the Companies Act, 2013 relating to loans.

PUNE CHAPTER Study Circle Meeting on Practical Aspects of ECB & FCCBS

Pune Chapter organized a Study Circle Meeting on Practical Aspects of ECB & FCCBs on 28.06.2014 at Pune. The programme was attended by 41 delegates. CS C S Kelkar was the faculty for the programme. The session was very informative and well appreciated by the gathering. The members and the students who attended the programme were awarded One (1) PCH and two (2) PDP respectively.

Master Class on Company Law-I

Pune Chapter announced a chain of programmes on the Companies Act, 2013, to be conducted on every Saturday starting from July, 2014 with a dedicated topic under The Companies Act, 2013. On 5.7.2014, a session was organized on One Person Company, Small Company, KMP, ID's, Valuation, Preliminary Commencement of Act, Broad Overview on Rules etc. CS Makarand Lele, Practising Company Secretary was the speaker of the session. The Programme was organized at MCCIA, Pune which was attended by 106 delegates. Two (2) PCH were awarded to the members who attended the session.

Master Class on Company Law-II

Second session of Master Class was organized on 12.7.2014 on Incorporation of Companies, Formation of One Person Company, Registered office of Company, Commencement of Business. CS Jayvant Bhawe, Practising Company Secretary was the eminent speaker for this session. The Programme was attended by 114 delegates. Two (2) PCH were awarded to members who attended the session.

Master Class on Company Law-III

Continuing with the sessions of Master Class series, next session of the class was organized on 19.7.2014 in which topics viz. Raising of Capital, Prospectus, Public Offer, Private placement, Sweat Equity, Debentures were covered. CS Vivek Sadhale, was the eminent speaker for the session. The Programme was attended

by 102 delegates. Two (2) PCH were awarded to members who attended the session.

Career Awareness Programmes

Two Career Awareness programmes were organized in H V Desai College, Pune on 21.7.2014 to apprise the students about the CS course, its scope, prospects, etc. CS Girish Paralikal was the faculty for these sessions. In total 110 students attended the career awareness programmes. Brochures were distributed amongst the students present.

Investor Awareness Programme

Pune Chapter of ICSI in collaboration with Ministry of Corporate Affairs organized an Investor Awareness Programme on 5.7.2014 at MCCIA, Pune. Vijaykumar Khubchandani, Registrar of Companies, Maharashtra, Pune and Dr. AmolShinde, Asst. Registrar of Companies, Maharashtra, Pune were the speakers of the programme which was guided by CS Rajas Bodas, Practising Company Secretary, Pune.

Study Circle Meeting on Strategic Management: Tool in the hands of KMP

Pune Chapter organized a Study Circle Meeting on Strategic Management: Tool in the hands of KMP which was held on 14.06.2014 at the Chapter premises. The programme was attended by 47 delegates. CS Arvind Chittora was the faculty for the programme. The session was very informative and well appreciated by the gathering. The members and the students who attended the programme were awarded One (1) PCH and two (2) PDP respectively.

Two Days Residential Workshop on Critical Issues in Corporate Laws

Two Days Residential Workshop on Critical Issues in Corporate Laws was held on 20.06.2014 and 21.06.2014 at Panchgani. CS Dr. K R Chandratre, Past President, the ICSI and Practising Company Secretary was the faculty who Chaired and facilitated all the discussions during these 2 days of the workshop. The programme was attended by 69 delegates from Pune, Mumbai and out of Maharashtra. Eight (8) PCH were awarded to members who attended the workshop.

Study Circle Meeting on IPR Laws – Practical Aspects & Career Opportunities for CS

Pune Chapter organized a Study Circle Meeting on IPR Laws – Practical Aspects & Career Opportunities for CS which was held on 21.06.2014 at Pune. The programme was attended by 38 delegates. Advocate Shailendra Pathak was the faculty for the programme. The session was very informative and well appreciated by the gathering. One (1) PCH and two (2) PDP were awarded to the Members and the Students respectively who attended the programme.

12th July 2014

Launching of CS Integrated Company Secretary Course (Full Time) at ICSI – CCGRT*

12th July 2014 is a landmark in the academic voyage of ICSI, as it marked the commencement of new era of 'Governance Wisdom' with the launch of Integrated Company Secretary course at the auspicious hands of the EY World Entrepreneur of the year 2014 Shri Uday Kotak, the 31 students who have joined the first batch are not merely human souls; rather they will be the future 'Conscience Keepers of Corporates'. The challenges for them will be immense but at the same time opportunities galore. The Integrated CS Course possesses all the attributes to arm the young governance professionals with requisite knowledge, foresightedness and analytical capability. As with the passage of time we are witnessing flurry of changes in corporate structures, regulatory frameworks governing the corporate houses etc, it becomes imperative to develop a deep insight pertaining to the dynamic corporate environment.

As the adage goes, "Half Begun is Well Done" and in this regard the inaugural event of the Full-time CS Program already exhibited that pilot batch of this program are no less than 'Mavericks', meaning thereby that each one of them have limitless potential of thinking out of box, agile in grasping the environment prevailing around them and possessing the quality of adapting to the new environment. All these qualities were reflected when students shared their sparse but impact oriented experience in their brief stint at the centre.

The launch program started with the welcome address by CS Atul Mehta, Council Member and Co-chairman, ICSI-CCGRT Management Committee. In his inaugural address he referred to the Chief Guest and Guest of Honour as 'Gurus' of Financial Markets. After welcoming the two financial market gurus he requested CS Vikas Y Khare to introduce the Guest of Honour

and Chief Guest to the eclectic erudite gathering.

CS Vikas Y Khare, Vice-President, The ICSI and Chairman, ICSI-CCGRT Managing Committee then introduced to the participants, the Chief Guest Shri Uday Kotak, Executive Vice-Chairman and MD, Kotak Mahindra Bank & World Entrepreneur of the year 2014, followed by a video played in his honour with a short screening of the award ceremony organized by E & Y, wherein Shri Uday Kotak was presented with Entrepreneur of the World 2014 award.

The Chief Guest was then felicitated by ICSI. After the felicitation, CS MS Sahoo gave an overview of the Integrated CS course in which he mentioned that the Companies Act, of 2013 has enhanced the role of Company Secretaries in the Corporate Sector in order to build a niche cadre of professionals who can shoulder the responsibilities assigned to them in an evolving business environment and ensure governance in true letter and spirit. The course will be imparted through experts from Academia/Industry and Practice. The students will get a good chance to meet the industry experts. Moreover, this course will facilitate the students in getting trained and understanding the industry requirement and playing a vital role as Governance Professionals.

CS R.Sridharan, President ICSI, in his address briefed the audience about the Integrated CS course and he conveyed his heartfelt gratitude to the dignitaries and other guests. While delivering Presidential address on the occasion he informed that Integrated Company Secretary Course is a knowledge initiative for developing well round Governance Professionals. The course is an interactive program focusing on experiential



*Prepared by Dr. Rajesh Kumar Agrawal, Director, ICSI-CCGRT.





learning and combining class room lecture, discussion, class exercises, case studies etc. He concluded by quoting Carl Rogers - "The only person who is educated is the one who has learned how to learn and change."

Mr. Ashishkumar Chauhan, MD & CEO BSE Ltd., in his speech gave due importance to the burgeoning role of intellectual property rights and technology. The eye-catching segment in his address was about the invention of zero and how our indifferent approach benefitted the globe at large. The crux of his talk on zero very aptly pointed towards not giving due weightage and value to our inventions which later became a blessing in global financial transactions.

While speaking about technology, he explained the scope of nano technology & how it has assisted in fostering trades in stock market. In the last leg of his speech he emphasized upon the role of corporate governance & corporate social responsibility by the Company Secretaries, to the society & stressed on the "de facto & de jure" factors of the phenomenon.

Mr. Uday Kotak the Chief Guest acknowledged the gathering on a light note with the phrase "ache din aane wale hain", wishing the students all success as they embarked on their new phase of life – he also explained that ICSI is the one institution that has to be the pillar of the maximum governance with the new concept of minimum government and maximum governance.



He quoted "the future is of what is called professional entrepreneurship". A good leader has to have the ability of being both professional with an entrepreneurial trait in him or her. He also advised the students to know the processes, basic academics but more importantly, they should develop the judgemental skills, when it comes to choose between right and wrong.

In his speech he referred to four quadrants, i.e. Rama quadrant, Krishna quadrant, Duryodana quadrant and Ravana quadrant. These quadrants refer to two important elements i.e. Right in letter and spirit. The first quadrant i.e. Rama quadrant implies right in letter and spirit both. The second quadrant i.e. Krishna quadrant signifies what is right in spirit but not right in letter. The third quadrant i.e. Duryodana depicts what is right in letter but not right in spirit and fourth quadrant i.e. Ravana quadrant indicates what is wrong in letter and also wrong in spirit.

While sharing about his experience he gained at Ernst & Young World Entrepreneur Award ceremony, he referred to the question asked to him by the jury, which comprised of ten judges representing various corners of the globe, regarding "How his bank is different from others". To this question, his answer was, a good bank for future demands- three humane qualities viz; Prudence (no excessive leverage): Simplicity (keeping product simple): Humility (complete absence of arrogance). He concluded his address by quoting George Bernard Shaw's words -

"A reasonable man adapts himself to the world, the unreasonable man expects the world to adapt him, progress depends on the unreasonable man."

In conclusion, vote of thanks was proposed by CS Gopal Chalam, Dean, ICSI-CCGRT.

IMMEDIATE AND URGENT ELECTION MATTER

30th July, 2014

Sub: Determination of Regional Constituencies under Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006

The duration of the 11th Council and the Regional Councils shall expire on 18th January, 2015. The elections for constitution of a new Council and Regional Councils are tentatively scheduled on 12th December, 2014 at all places except Delhi and Mumbai. The elections at Delhi and Mumbai are tentatively scheduled for two days, i.e., on 12th and 13th December, 2014.

2. Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006 provides that a member, whose name is borne on the Register of Members on 1st day of April, 2014 shall be eligible to vote in 2014 elections from the regional constituencies within whose territorial jurisdiction his/ her professional address falls on the said date provided that his/ her name has not been removed from the Register on the date of publication of the list of voters. If the professional address is not borne on the Register on the relevant date, the residential address borne on the register shall determine his/her regional constituency.
3. In the case of members having their professional addresses outside India and eligible to vote, their regional constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register of Members on the relevant date, whichever is later.
4. The professional addresses of the members whose names are borne on the register as on date are available on the website of the Institute at: <http://www.icsi.edu/Facilities/MembersDirectory/tabid/1575/Default.aspx>. The members are advised to check their professional addresses and intimate at email Id: vikash.srivastava@icsi.edu by 21st August, 2014, if any correction in the same is required.
5. A CD carrying the list of members as on 1st April, 2014 is available to a member on payment of Rs.250 (Rupees two hundred and fifty only). A member interested in having a copy of the CD may remit Rs.250 by way of cheque at par or demand draft payable at New Delhi favouring "The Institute of Company Secretaries of India", to the Membership Directorate of the Institute at 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi 110 003.
6. The annual membership fee for the year 2014-15 became due on 1st April, 2014. The last date for payment of fee has been extended upto 31st August, 2014. The 31st August, 2014, being a Sunday, the last date will be 1st September, 2014. The names of members, who do not pay annual membership fee for 2014-15 by 1st September, 2014, shall stand removed from the Register of Members w.e.f. 2nd September, 2014 and such members will not be eligible to vote or stand for election even though their names appeared on the Register of Members as on 1st April, 2014. In order to exercise their franchise, the members are advised to pay the annual membership fee for 2014-15, if not already paid, by 1st September, 2014.
7. A member who has not yet obtained Identity Card may apply for the same by sending a scanned image of his/ her latest photograph in .jpeg format indicating his/her name and membership number at email Id: meena.bisht@icsi.edu
8. This Notice has been hosted on the website of the Institute at www.icsi.edu. This is being published in August, 2014 issue of 'Chartered Secretary' and the forthcoming issues of Newsletters of the Regional Councils.

(CS M. S. Sahoo)
Returning Officer, 2014 Elections





THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

18th July, 2014

NOTICE UNDER RULES 5 AND 21 READ WITH CLAUSE (3) OF SCHEDULE 2 OF THE COMPANY SECRETARIES (ELECTION TO THE COUNCIL) RULES, 2006.

As you are aware, the duration of the 11th Council and the Regional Councils shall expire on 18th January, 2015. The election for constitution of a new Council and Regional Councils are tentatively scheduled on 12th December, 2014 at all places except Delhi and Mumbai. The elections at Delhi and Mumbai are tentatively scheduled on two days, i.e., on 12th and 13th December, 2014.

- In pursuance of Rule (3) (i) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006, it is proposed to have polling booths at addresses given in column 3 of the following table at places which would have more than one polling booth:

Table: Addresses of Polling Booths

Place	Booth No.	ADDRESS
1	2	3
Kolkata	E-1	Eastern India Regional Office of the ICSI ICSI-House, 3A, Ahiripukur, 1st Lane, Kolkata 700 019
	E-2	The Park Institution, 12, Mohanlal street Shyambazar, Kolkata – 700004
	E-3	Anglo-Arabic Secondary School 46/7, Mahatma Gandhi Road, Kolkata – 700009
	E-4	Khalsa High School 73, Paddapukur Road, Bhowanipur, Kolkata – 700 020
	E-5	Sarada Prasad Institution 108/18 Bidhan Nagar Road, Kolkata – 700067
Delhi/New Delhi	N-1	Northern India Regional Office of the ICSI ICSI-NIRC Building, Plot No 4, Prasad Nagar Institutional Area, New Delhi 110 005
	N-2	Banga Sanskriti Bhawan 18 - 19, Bhai Veer Singh Marg, Gole Market, New Delhi-110 001
	N-3	Delhi TB Association 9, Institutional Area, Lodhi Road, New Delhi-110 003

Delhi/New Delhi	N-4	The College of Vocational Studies Triveni Nagar, Sheikh Sarai Phase II, New Delhi 110 017
	N-5	Jagan Institute of Management Studies 3, Institutional Area, Sector-5, Rohini, Delhi-110 085
	N-6	AVB Public School Near Bathala Apartment, 43, I P Extension, Delhi 110 092
Gurgaon	N-7	Deenbandhu Sir Chhoturam Bhawan Jharsa Road, Behind Shiv Mandir, Gurgaon – 122 002
	N-8	Alpine Convent School Behind Jalvayu Towers, Sector - 56, Gurgaon-122 011
	N-9	DLF city club Moulsari Road, DLF City Phase III, Near Ambience Mall, Gurgaon-122 002
Ghaziabad	N-17	Ghaziabad Chapter of NIRC of the ICSI 23B, Nehru Apartments, Nehru Nagar, Near Nasirpur Railway Crossing, Ghaziabad-201 001
	N-18	Vaishali Public School Plot No.216 &216/01, Sector-IIIA, Rachna Vaishali, Ghaziabad-201 010
Jaipur	N-19	Jaipur Chapter of NIRC of the ICSI ICSI House, A-5/A, Institutional Area, Jhalana Doongri, Jaipur 302 004
	N-20	University Maharani's College Ram Singh Road, Jaipur 302001
Noida	N-27	Jaipuria Institute of Management A-32/A, Sector – 62, Noida 201301
	N-28	Rockwood School B-67, Sector 33, Noida-201 303



Chennai	S-1	Madras Stock Exchange Limited, Second Line Beach, Chennai – 600 001	Mumbai	W-6	Mehta Institute 202, B-Laran Centre, M A Road, Near Andheri Railway Station, Andheri (West), Mumbai 400 058
	S-2	Southern India Regional Office of the ICSI ICSI House, No 9, Wheat Crofts Road Nungambakkam, Chennai 600 034		W-7	Smt. P N Doshi Women's College Cama Lane, Ghatkopar (West), Mumbai 400 086
	S-3	Dr. M G R Janaki College for Women Durgabai Deshmukh Road, Chennai – 600 028		W-8	Muland College of Commerce Sarojini Naidu Road, Mulund (West) Mumbai 400 080
	S-4	The Industrial Estate Manufacturer's Association, Guindy, Chennai – 600 032		W-9	ICSI-CCGRT Plot No.101, Sector-15 Institutional Area, Palm Beach Road CBD Belapur, Navi Mumbai-400 614
Bangalore	S-5	Bangalore Chapter of SIRC of the ICSI No. 5, 1 st Main Road, Rajajinagar Industrial Estate, West of Chord Road, Rajajinagar, Bangalore - 560 044	Pune	W-10	Pune Chapter of WIRC of the ICSI 23, Mukund Nagar, Corner of Lane No.1, Above Dr. Joshi Hospital Gupte Market, Pune 411 037
	S-6	Institution of Agricultural Technologists No. 15, Queen's Road, Bangalore – 560 052		W-11	Mahratta Chamber of Commerce, Industries & Agriculture Pimpri Chinchward Wing Building Plot No J-462, TELCO Road, MIDC Area, Ganesh Nagar, Bhosari, Pune 411 026
	S-7	The Institute of Cost Accountants of India Bangalore Chapter, No. 81, Mallikarjuna Temple Street, Basavanagudi, Bangalore - 560 004		W-12	SNDT Arts & Commerce College for Women Karve Road, Pune-411038
	S-8	Rotary Bangalore Indiranagar Rotary House of Service 2143, 16 th E Main, HAL II Stage, (Opp. BDA Park & Near Lohit Hospital), Indiranagar, Bangalore – 560 008	Ahmedabad	W-13	Ahmedabad Chapter of WIRC of the ICSI ICSI-Maneklal Mills Complex, S-2, B-Tower, Chinubhai Towers, Opp. Handloom House, Ashram Road, Ahmedabad - 380 009
Hyderabad	S-9	Hyderabad Chapter of SIRC of the ICSI No.6-3-609/5, Anandnagar Colony, Khairatabad, Hyderabad-500 004		W-14	Idea Institute of Management & Technology, 4th floor, Nakshatra Building Above HDFC Bank, Maninagar Char Rasta Maninagar, Ahmedabad - 380008
	S-10	Hyderabad Chapter of the Institute of Cost Accountants of India CMA Bhavan, Beside Dena Bank, Post Office Road, Sanath Nagar Industrial Estate, Hyderabad - 500018			
	S-11	YMCA S P Road, Secunderabad- 500003			
Mumbai	W-1	Western India Regional Office of the ICSI 13, Jolly Maker Chambers No II, First Floor and Nos. 56 & 57 (5 th Floor), Nariman Point, Mumbai 400 021			
	W-2	Indian Merchants' Chamber, IMC Building, Churchgate, Mumbai 400 020			
	W-3	Maharashtra Chambers of Commerce & Industries Oricion House, 6 th Floor, 12, K .Dubhas Marg, Kala Goda, Opp.Lion Gate, Fort, Mumbai- 400 001			
	W-4	Hindalco Industries Limited Century Bhawan, 3rd Floor, Annie Besant Road, Worli, Mumbai 400 018			
	W-5	Pinge's Classes Pvt. Ltd Janardhan Building, Near Ideal Book Depot, Opp.Chhablidas School, Near Shri Krishna Wada Center, Dadar (West), Mumbai-400 028			

- In pursuance to clause (3) (ii) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006, a voter in any of the places listed in Column 1 of the above table wishing to vote at a particular polling booth listed in column 3 of the said table may send a request in writing to the Returning Officer, 2014 Elections, The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodhi Road, New Delhi by 18th August, 2014, alongwith a copy by e-mail at e-mail ID melect2014@icsi.edu
- This Notice has been hosted on the website of the Institute at www.icsi.edu. This is being published in August, 2014 issue of 'Chartered Secretary' and the forthcoming issues of Newsletters of Regional Councils.



(CS M. S. Sahoo)
Returning Officer, 2014 Elections





PERSONAL GUARANTEES UNDER INTERNATIONAL COMMERCIAL TRANSACTIONS

(RW: 01.08.2014)

In case of international commercial transactions including transactions pertaining to (i) external commercial borrowing (ECB) by Indian entity from recognized foreign lender; (ii) borrowing by overseas joint venture company (JVC) / wholly owned subsidiary (WOS) of an Indian entity from recognized foreign lender; or (iii) supply of goods or rendering of services by foreign party/entity to Indian party or its overseas JVC / WOS; sometimes, foreign party/foreign lender insists upon the personal guarantee of individual promoters in order to secure the financial obligations and/or to ensure the performance of the Indian entity or its overseas JVC / WOS under the international commercial contract for the reason that such transactions are generally entered into between the parties on the strength and capability of the individual promoters of an Indian party.

Since, Indian Government has not fully allowed the capital account transactions under Indian foreign exchange laws, now; the question arises whether such personal guarantee by the individual promoters (direct/indirect promoters) is legally permitted under Indian foreign exchange laws? If yes, then what are the conditions that need to be complied with by the Indian party in this regard?

In terms of the provisions of 'Master Circular on Guarantees and Co-acceptances' dated July 1, 2013, and 'Master Circular on Direct Investment by Residents in joint venture or WOS' dated July 1, 2013, as issued by Reserve Bank of India (RBI) (collectively referred to as "FEMA Circulars"), individual promoters of Indian party are allowed to give their personal guarantee within the total financial commitment of 400% of net worth of Indian party (Financial commitment exceeding USD 1 (one) billion would require prior approval of RBI) in relation to the joint venture/WOS abroad provided that:

- (i) Such personal guarantee should not be open ended i.e. the amount and the period of guarantee should be specified upfront;
- (ii) If such personal guarantee also ensures the performance of relevant party under any contract (performance guarantee), then in that case, time specified for completion of the contract shall be the validity period of related performance guarantee; and
- (iii) Such personal guarantee is required to be reported to RBI in form ODI – Part II.

In terms of the relevant provisions of FEMA Circulars, 'indirect individual promoters of the Indian party' are also allowed to give their personal guarantee; however, the aforesaid guarantee by the individual promoters should be made for the purpose of business of JVC or WOS abroad. The term 'promoter' is not defined in the Foreign Exchange Management Act, 1999 ("FEMA") / FEMA Circulars, therefore, its reference can be taken from Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations"). As per ICDR Regulations, the word 'promoter'

inter-alia includes the person or persons who are in control of the issuer. If we take the aforesaid definition of 'promoter' into consideration then the individuals ultimately controlling the Indian party would also be eligible to provide the personal guarantee in favor of foreign party in relation to the business of JVC or WOS. The aforesaid position is illustrated in the diagram below:



Further, in terms of the provisions of 'Master Circular on External Commercial Borrowings and Trade Credits' dated July 1, 2013, as issued by RBI, personal guarantee by individuals is also permitted to secure the ECBs availed by Indian entity from recognized foreign lender. However, in this regard, ECB borrower (Indian party) is required to obtain 'no objection' from the authorized dealer. It is pertinent to note that the period/tenure of personal guarantee must also be co-terminus with the maturity of the underlying ECB.

Except in case of ECB transaction or transaction pertaining to JVC or WOS as mentioned above, there are no other instances under foreign exchange laws whereby the RBI has allowed the individual promoters of the Indian party to give personal guarantee in favor of foreign party/lender in other international commercial transaction. Hence, issuance of personal guarantee (except as mentioned above) in relation to any other international commercial transaction will require the prior permission from the RBI.

Indian entities while structuring any international commercial transaction must keep in mind that the personal guarantee of the individual promoters is not permitted in every commercial international transaction except with the prior approval of RBI or as mentioned above. There is no specific provision under FEMA / FEMA Circulars, whereby, the personal guarantee given by the individual promoters in violation of the provisions of FEMA is considered as void. However, in case of violation of any provisions of FEMA including FEMA Circulars, the defaulting party shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Sharad Tyagi, ACS



INSIDER TRADING OF SECURITIES UNDER THE COMPANIES ACT, 2013

(RW: 02.08.2014)

In India, Insider Trading cases are of a recent origin and of course are not rampant. SEBI cannot hold any one as an insider merely on the fact that it has gathered certain information which might presumably be termed as an Insider Trading. SEBI also cannot arbitrarily create any nexus between erratic movements of share prices with those of transactions carried out by the officials connected with the company. There must exist clinching evidence proving someone as Insider Trader.

The Companies Act, 1956 has been enacted with the object to consolidate and amend the law relating to the companies and certain other associations. The said Act has been in force for about fifty- five years and had been amended several times.

In view of changes in the national and international economic environment and expansion and growth of economy of our country, the Central Government after due deliberations decided to repeal the Companies Act, 1956 and enact a new legislation to provide for new provisions to meet the changed national and international, economic environment and further accelerate the expansion and growth of our economy. And for this purpose a Bill, namely, the Companies Bill, 2009 was introduced on 3rd August, 2009 in the Lok Sabha along with the Statement of Objects and Reasons appended to the said Bill outlining its salient features. The said Bill was referred to the Parliamentary Standing Committee on Finance for examination and report and the Committee gave its Report on the 31st August, 2010.

Subsequent to the introduction of the Companies Bill, 2009 in the Lok Sabha, the Central Government received several suggestions for amendments in the said bill. The Parliamentary Standing Committee on Finance also made numerous recommendations in its report. The Central Government has accepted in general the recommendations of the Standing Committee and also considered the suggestions received by it from various stakeholders and consequently therefore, the Government withdrew the Companies Bill and introduced a fresh Bill including the recommendations of the Standing Committee, suggestions of the stakeholders in the revised Bill 2011 incorporating important ingredients like e- governance, Corporate Social Responsibility, Enhanced Accountability on the part of the Companies, additional disclosure norms, Audit accountability including Secretarial Audit and Cost Audit, Protection of the minority shareholders, Investor protection with class action suits, introduction of woman Directorships, Recognition of National Company Law Tribunal, facilitating Mergers/ Acquisition, Managerial Remuneration and constitution of Serious Fraud Investigation Office (SFIO), etc.

The most significant and spectacular provision, perhaps inserted for the first time in the Companies Act, 2013 passed in the Lok Sabha on 18.12.2012 and Rajya Sabha on 08.08.2013 and assented to by the President of India on 29.08.2013 is insertion

of a clause on prohibiting Insider Trading of securities. Section 195 of said Act inter alia prohibits Insider Trading by company directors or Key Managerial Personnel and declares it an offence with criminal liability. No director or key managerial personnel shall enter into insider trading.

Save as otherwise the aforesaid restrictions do not apply, however, to any communication required in the ordinary course of business or profession or employment or under any law. Hitherto, the phrase insider trading was never defined under the Companies Act, 1956 and amendments made thereto. However, SEBI Insider Trading Regulations Act, 1992 defined insider means any person who is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to access to unpublished price sensitive information in respect of securities of company or has had access to such unpublished price sensitive information.

Price sensitive information means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of the company. The Companies Act, 2013 seeks to modify the existing regulation under the Insider Trading Regulation Act, 1992 having regard to the experience gained by Government in administering the affairs related to the insider trading in India as well as under the global stint.

While the phrase Price Sensitive Information, in terms of the context and meaning remains the same in both the legislations, the text of the definition of Insider Trading per se has undergone radical refinements to mean

- (i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or KMP or any other officer of a company either as principal or agent if such director or KMP or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
- (ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person. A far reaching change contemplated under this clause relates to interpretation of definition like KMP in the definition of Insider Trading. While KMP is not referred to in the Insider Trading Regulation Act, Section 203 of the Companies Act, states: Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—
 - (i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;





(ii) Company secretary

(iii) Chief Financial Officer :

A glaring factor of the Companies Act, 2013 which has nexus to insider trading is in relation to the prohibition on forward dealings in securities of company by director or key managerial personnel. No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company-

- a) A right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
- b) A right, as he may elect, to call for delivery or to make delivery at a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

There is no mention at all of this in the Insider Trading Regulation Act or SEBI Act or S/E/R Act. The other notable features of the definition of Insider trading is under the Companies Act, 2013 is the terminology non- public price sensitive information. Under the SEBI regulation no such terminology is confounded, while it stipulates unpublished price sensitive information. A question arises as to whether a mere access to a piece of trial balance of the company 5 days prior to the Board meeting would tantamount to Insider

Trading? In the light of the new definition under the Companies Act, 2013 access to a Trial Balance is not access to Unpublished price sensitive information. (through conversion into Balance sheet and Profit and loss account financial statement) they can definitely be not termed as non- public Price sensitive information. A trial balance is not a public document or for that matter its contents are not non public.

Applying the same analogy to the definition under both the statutes, it is abundantly clear that there is deep contrast between meaning of Insider Trading in the Companies Act as compared to what is contemplated under the Insider Trading Regulations. In the background of the changed definition SEBI having regard to non- identification of any clinching evidence would have to call for revision. Even in the current scenario if SEBI does revisit on the issue, companies may find difficult to appoint Key Managerial or Independent Director and other officials.

It is imperative therefore in view of the foregoing analysis, judicially speaking SEBI in co ordination with MCA must legislate Insider Trading Regulation at par with the sharp and stringent regulation in UK & USA, in the absence of which those not guilty would be punished. In this context, the MCA must be complemented for introducing penal provision for any contravention with an imprisonment of 5 years or a fine not less than 5 lakhs and not exceeding 25 Crores or 3 times of the amounts of profits made out of the insider trading whichever is higher or with both.

KG Saraf, FCS

QUERY

(RW: 03.08.2014)

Many companies are printing Attendance Slip for members attending Annual General Meeting of the Company alongwith the Entry Pass carrying EVSN (E-Voting Sequence Number), User ID and Password in the same page, without any perforation and Name of the Company, etc in the bottom half of the sheet carrying the Entry Pass.

My query is, does this amount to good Secretarial Practice on the following grounds:

1. Handing over the Attendance Slip at the Registration counter *in toto* would mean handing over the user-id and password of the member which would be a violation of secrecy norms and against the interest of the member, as there is no perforation to separate the entry pass from the attendance slip.
2. Assuming a member tears off the attendance slip and hands it over to the company, the bottom half with his user id and password, does not carry the name of the company and other particulars, in which case the member will be subjected to lot

of inconvenience at a later date, when he may find it difficult to identify the company to which this user id and password relates more so when the user id in demat form carries only the DPID and Client ID of the member with a merchant banker and not the details of the company to which it relates.

3. Subsequent notices issued by a company to its members only informs them to use their existing password and hence it becomes all the more important to protect and preserve the first notice received from a company.

I invite my learned colleagues to share their experience elaborately.

Regards,

CS M.S.VAIDYANATHAN

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CONGRATULATIONS

JITESH GUPTA, FCS

On being included in the 'Course Committee of School of Management & Commerce' of K. R. Mangalam University, Gurgaon.

SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out special issues of Chartered Secretary on the following topics during the remaining period of 2014.

- Secretarial Standards and Secretarial Audit (October, 2014) and
- Direct Taxes Code, 2013 (November, 2014).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

The articles may kindly be forwarded to :

The Joint Director (Publications), The ICSI, 22, Institutional Area, Lodhi Road, New Delhi 110003

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RECOGNITION OF CS AS POST GRADUATE QUALIFICATION FOR PURSUING PH.D.

Company Secretaries Qualification has been recognised as a Post Graduate Qualification for pursuing Ph.D. by MATS University of Chhattisgarh.

ANNUAL LICENTIATE SUBSCRIPTION

The Annual Licentiate Subscription for the year 2014-15 became due for payment w.e.f. 1st April, 2014. The last date for payment of fees was 30th June, 2014 which has now been extended till 31st August, 2014. However, 31st August, 2014 being Sunday, the last date will be 1st September, 2014.



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OBITUARIES

"Chartered Secretary" deeply regrets to record the sad demise of the following members:

Shri M. R. GOPINATH, (20.04.1941–24.07.2014), a Fellow Member of the Institute from Bangalore and the Management Committee Member of Bangalore Chapter from 1989 to 1991, Vice-Chairman of Bangalore Chapter from 1992-1994 and Regional Council Member of SIRC from 1998 to 2000.

Shri N. MGULRAJANI, (13.04.1935 – 17.08.2011), a Fellow Member of the Institute from New Delhi

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

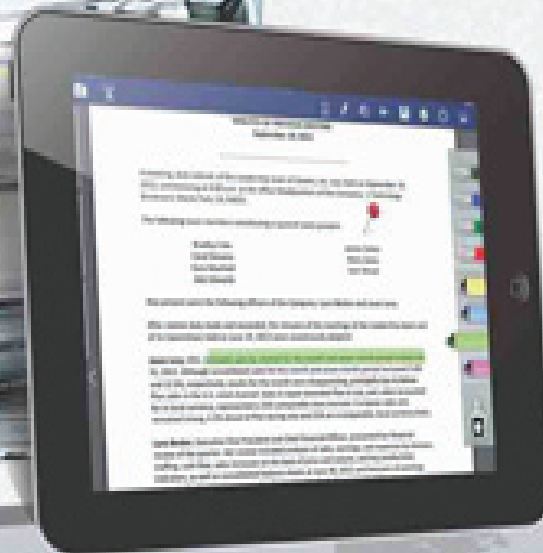
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