The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

**CSBF**
- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 10,000

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

**How to join**
- By making an application in Form A (available at [www.icsi.edu/csbf](http://www.icsi.edu/csbf)) along with one time subscription of ₹ 7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute’s web portal: [www.icsi.edu](http://www.icsi.edu). Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹ 7500 drawn in favour of ‘Company Secretaries Benevolent Fund’, at any of the Offices of the Institute/ Regional Offices/Chapters.

**Benefits**
- ₹ 5,00,000 in the event of death of a member under the age of 60 years
- Upto ₹ 2,00,000 in the event of death of a member above the age of 60 years in deserving cases
- Upto ₹ 40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹ 60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

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

For more details please visit [www.icsi.edu/csbf](http://www.icsi.edu/csbf)
Focus on Secretarial Standards

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01 >> Meeting of ICSI delegation with Railway Minister – Group Photo – Standing from Left: CS Shyam Agrawal, CS Atul H Mehta, Suresh Prabhu (Hon'ble Union Minister of Railways) and CS Sutanu Sinha.

02 >> SIRC – Hyderabad Chapter - Meeting of ICSI delegation with Member of Parliament – Group photo – Standing from Left: CS Venkata Ramana R, CS Ahalada Rao V, Dr. Burra Narasiah Goud (Member of Parliament), CS Issac Raj P.G., CS Ravi Kumar M, CS Mahadev T and CS KPC Rao.

03 >> WIRC – Ahmedabad Chapter - Seminar on SEBI Listing Regulations (LODR) – Sitting on the dais from Left: CS Chetan Patel, CS S Sudhakar (Sr. VP, Reliance industries Ltd.), Hitesh Desai (DGM, BSE), CS V K Sharma, Khushro Bulsara (Sr. GM, BSE), CS Ashish Doshi and CS Tushar Shah.


05 >> WIRC - Aurangabad Chapter – Opening of ICSI – Jalgaon Study Centre – Exchange of MOUs – Standing from Left - Prof. Rahul Trivedi (GHRIBM), Subhash Bappi Sinha, CS Prof. Rajkumar Ashokchand Kankariya (Co-ordinator GHRIBM), Dr. Preeti V. Agarwal (Director-GHRIBM), CS Prem Chand Agrawal, CS Sagar Ramraodeo, CS Mahesh Vinod Baheti and Prof. Makarand Wath (HoD - MBA Deptt. GHRIBM).

Forty-third National Convention of Company Secretaries on Make in India – Innovate, Excel and Grow


09 >> Release of Convention Souvenir.


13 >> Best Regional Council Award to NIRC.

08 >> Inaugural Session – Sitting from Left: CS Sutanu Sinha, CS Shyam Agrawal, Ashish Chauhan (MD and CEO, BSE Ltd.), CS Atul H Mehta, Ashok Chawla (Chairman, Competition Commission of India), CS Mamta Binani, CS Vineet K Chaudhary and CS N P S Chawla.

10 >> Release of brochure of Certificate course in Internal Audit.

12 >> Release of ICSI publication titled Guidance Note on Annual Return(Revised Edition).

14 >> National Best Chapter Award to Bhubaneswar Chapter.
15 >> Best A+ Grade Chapter award to Hyderabad Chapter.
16 >> Best A Grade Chapter award to Indore Chapter.
17 >> Best B Grade Chapter award to Bhilwara Chapter.
18 >> Best C Grade Chapter award to Bhubaneswar Chapter.
19 >> Best D Grade Chapter award to Visakhapatnam Chapter.
20 >> Collections made by Hyderabad Chapter towards donations to Company Secretaries Benevolent Fund.
21 >> International Session on Capital Markets Regulation and Development – On the dais from Left: CS Makarand M Lele, Carina Wessels (Past President, Chartered Secretaries Southern Africa (CSSA)), Dr. N K Letting (Chairman, Institute of Certified Public Secretary of Kenya), Prashant Saran (Whole Time Member, SEBI), Gopal Krishna Agarwal (Council Member, ICSI and National President, Association of National Exchanges of India), Amar J Ghimire (Vice Chairman, Nepal Institute of Company Secretaries) and CS Mahavir Lunawat.

Cultural Evening of the First Day – Chief Guest Dr. Mahesh Sharma {Hon’ble Minister of State (I/C) for Tourism and Culture and Civil Aviation}, Guest of Honour A K Chaturvedi (RD, North, MCA), seen with the President, Vice President, some of the Council Members and CE & OF the Institute.

First Technical Session on Digital India - On the dais from Left: CS C Ramasubramaniam, Premkumar Seshadri (Executive VC & MD, HCL Infosystems Ltd.), PK Malhotra (Secretary, Ministry of Law and Justice), Kiran Murthi (CEO, AskBazaar.com), Ashish Chandra (General Counsel, Snap Deal) and CS Vineet K Chaudhary.

Second Technical Session – Panel Discussion on Ease of Doing Business in India - Sitting on the dais from Left: CS Ashish Garg, Ketan Dalal (Regional Managing Partner, PWC Pvt. Ltd.), Rajeev Talwar (IAS Retd.), CEO, DLF Ltd., R Sukumar (Editor, HT Mint) and CS S K Agrawala.

Release of Guidance Notes on Meetings of the Board of Directors and General Meetings.

Women’s Power Breakfast on second day of the Convention - Sitting from Left: CS Monika Kohli, Carina Wessels, CS Mamta Binani, Anita Sehgal (Life Coach) and Ruby Bhatia (Fashion Stylist and Image Consultant).

Release of the e-Governance Academic Programme reference material.

Third Technical Session on Skills Development and Entrepreneurship – Meenakshi Lekhi (Member of Parliament) addressing. Others sitting on the dais from Left: Dr. Pawan G Agrawal (Agrawal Group of Institutes), CS Mamta Binani, Alok Sharma (CMD, Air One Aviation Pvt. Ltd.) and CS Satwinder Singh.
Forty-third National Convention of Company Secretaries on Make in India – Innovate, Excel and Grow


33 >> Interactive Session: Sitting on the dais from Left CS Ashish C Doshi, CS V Vahala Rao, CS Gopalakrishna Hegde, CS Ashish Garg, CS Shyam Agrawal, CS C Ramasubramaniam, CS Sutanu Sinha, CS Atul H Mehta, CS Mamt Binani, CS Vineet K Chaudhary, CS Makarand M Lele, CS Rajiv Bajaj, CS Ranjeet Pandey, CS Satwinder Singh and CS S K Agrawala.

35 >> Release of Skill Development Academic Program reference material.

37 >> Release of ICSI Publication titled NCLT and NCLAT Convergence of Corporate Jurisdiction.

32 >> Cultural Evening of the Second day – Guest of Honour U C Nahta (Member, CCI) and A K Chaturvedi (RD, North, MCA) seen among others with the President, Vice President, some of the Council Members of the Institute.

34 >> Fourth Technical Session on Make in India – legal Social and Financial Reforms – On the dais from Left: CS Ashish Doshi, Yamal A Vyas (Central Council Member, ICSI, Govt. Nominee), Manoj Fadnis (President, ICAI), M S Sahoo (Member, CCI), Justice Vibhu Bakshu (Hon’ble Judge, Delhi High Court), CS U K Chaudhary (Past President ICSI and Sr. Advocate), Bharat (Vishahka Group for Women Education & Research), Rajesh Sharma (Central Council Member, ICSI, Govt. Nominee) and CS Gopalakrishna Hedge.

36 >> Valedictory Session – On the dais from Left: CS Sutanu Sinha, CS Vineet K Chaudhary, Rajesh Sharma, CS Atul H Mehta, Hon Justice Mahesh Mittal Kumar (Chairman, CLB), CS Mamt Binani, Yamal A Vyas, CS Shyam Agrawal and CS N P S Chawla.

38 >> A view of the invitees, dignitaries and delegates.
E-Governance for Board Processes and Maintenance of Documents, Timestamp

Geetika Anand
Under the Companies Act, 1956, compliance records of a company were mostly required to be maintained in the physical form. However, the Companies Act, 2013 has turned the tables around. Companies Act, 2013 provides express recognition to maintenance of records in electronic format. In this context the importance of timestamping of electronic documents is explained here.

Exemptions granted by the Notification dated 5th June, 2015 issued by the Ministry of Corporate Affairs with regard to Private Limited Companies

S C Vasudeva
In June 2015 the Ministry of Corporate Affairs issued a Notification granting exemptions to private companies, Government companies, Nidhis etc. from certain requirements and compliances stipulated by the Companies Act, 2013. These exemptions are briefly outlined in this article for ready reference.

Board Process Period and Significance of Secretarial Standards

Dr.K.S. Ravichandran
Secretarial Standard No.1 on Board Meetings contains a complete code for Board Process. It defines Board Process. It declares commencement of Board Process from the date of issue of notice of a Board Meeting and also the end of Board Process signified by the dispatch of signed minutes of the meeting to the directors. It sets the tone, quite strongly, in favour of the argument that decisions of the Board must go through a full-fledged Board Process. It indirectly, in a subtle manner, discourages the practice of taking up items not included in the agenda, calling meetings at short notice and passing of circular resolutions. Board Process will indicate the persons who had knowledge. It would be dangerous to understand it lightly. Secretarial Standard seeks to ensure the integrity of procedures leading to decisions taken at Board Meetings and assures stakeholders.

Secretarial Standards and Corporate Governance

Dipti Mehta
Secretarial Standards are notified by ICSI. It is appreciated as a step towards Corporate Governance. While it is also criticized as micro management of the administrative matters of the company. Both the opinions are correct. However, to instil Corporate Governance in various kinds of companies with different level of compliance or non-compliance it is important to have Secretarial Standards. Secretarial Standards try to achieve two purposes – one to protect the rights of stakeholders of the company and restrict their responsibilities to their action or inaction. Second – to reduce the litigation by providing necessary information at reasonable time to all stakeholders.

Introduction of Secretarial Standards - A new Era of Corporate Governance

Divesh Goyal
The Ministry of Corporate Affairs accorded approval for compliances of Secretarial Standards 1 & 2 framed by Institute of Company Secretaries of India w.e.f. 1st July 2015. The Secretarial Standards 1 & 2 establish benchmarks for the Corporates and simultaneously embark responsibilities on the Company Secretaries to ensure the compliance of the same. This article aims to provide a brief overview of the impacts of the newly introduced Secretarial Standards 1 & 2 on the corporate world and the responsibilities cast on the Company Secretaries.

Secretarial Standard 1 (SS - 1) – Enhancing Board’s Integrity

Subhash Setia & Raju Paul
Board Room conduct deserves highest level of integrity. An effective Board is concerned about integrity inside and outside the Board Room. Integrity in the Board Room is based on factors such as organizational values, the need to uphold the board’s fiduciary responsibilities and a willingness to be accountable. The article delves into these issues.

The Indispensability of Addressing Directors’ Duty of Boardroom Confidentiality and Sanctity of Board Minutes through SS-1

Sathyanarayana Reddy P & Dr. V. Balachandran
Confidentiality of board minutes is an important commercial interest. The directors’ duty of loyalty requires that directors maintain the confidentiality of corporate information. There is no explicit source for a director’s duty of confidentiality. It is usually inferred from the duty of care, the duty of loyalty, or both. Some corporations adopt a policy of confidentiality or a policy limiting those people who are allowed to speak to outsiders. If such policy is in writing and in sufficient detail, there is an explicit understanding among the directors and the investors as to the limits on disclosure. In many companies, a confidentiality policy and its exact parameters, limits, and exceptions are not explicit or in writing. As a result, disputes may emerge concerning how
much or to whom a director may reveal information. Legislations and cases governing corporates have not established a separate duty of confidentiality. The present article is intended to address directors’ duty of boardroom confidentiality and sanctity of board minutes through SS-1.

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Ahalada Rao V, Sonakshi Jain & Divya Madupu

2015 AGM Season Review  P-68
Lucy Newcombe

A Study on Microfinance and Its Contribution to Weaker Sections of Society in India with Reference to Nalgonda, Telangana State, India  P-72
Research Team ICSI-CCGRT

Legal World  P-78
LW: CS: LMJ: 3/01/2016 A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. [SC] LW: 01:01:2016 Thus, if it is a transfer or assignment within the meaning of clauses aforesaid of the Lease Deed, as is contended by appellants L&DO, unearned increase would be payable thereon. [Del] LW: 02:01:2016 In view of above said reasons, the Court is of the view that defendant No.1 could have, if necessary, revoked the membership only in accordance with the procedure laid down in the Articles of Association. The plaintiff is entitled to continue as member unless he is disqualified in terms of Article 34 and 35 of the defendant No.1. [Del] LW: 03:01:2016 The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy. [SC] LW: 04:01:2016 The conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure. [SC] LW: 05:01:2016 The period of limitation would, though, commence from the date of the last defaulted EMI, which is made the subject matter of the notice and not from the date of the notice itself. [Del] LW: 06:01:2016 Supreme Court upholds the non-recognition of the trade union. [Del] LW: 07:01:2016 High Court reduce the quantum of pre-deposit. [Del] LW: 08:01:2016 While entertaining an appeal under section 7Q and 14B of the EPF Act, the Appellate Tribunal has power to direct the appellant to make some pre-deposit of the impugned demand. [Del-DB]

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Members Admitted / Restored  Certificate of Practice Issued / Cancelled  Licentiate ICSI Admitted  Company Secretaries Benevolent Fund  Our Member  Research Corner  Proceedings of the 43rd National Convention of Company Secretaries  NCLT Corner
“If you think in terms of a year, plant a seed;
if in terms of ten years, plant trees;
if in terms of 100 years, teach the people.”
- Confucius

Dear Professional Colleagues,

As I sat down to write this last communiqué as President of the Institute, I was struck by how short a time a year can be. I experience how much I’d hoped to do, and how much of it lies relatively undone in the “to-do” stack. Nevertheless, I feel a great sense of satisfaction that during the last one year, we succeeded to take the profession and the Institute to a new echelon. Let me share with you glimpses of major initiatives and developments relating to the profession of Company Secretaries during the last one year.

The year 2015 was the year of transformation and a defining moment in the annals of the profession. A number of initiatives have been taken during 2015 which were the collective efforts of the Council, Members, and Employees. I am sure that we will persevere with our efforts to achieve further aspirations.

NEW INITIATIVES

1. Infrastructure Development
   I am pleased to inform you that the Institute has acquired new premises at Sector 62 Noida. Further, the renovated building of Vadodara Chapter has been inaugurated on October 14, 2015; the building of Faridabad Chapter is being inaugurated on January 10, 2016.

2. Mentorship Programme
   The mentorship programme was launched whereby the Heads of Directorates of the Institute (HODs) have been assigned specific Chapters in four regions to regularly monitor the activities of these Chapters and extend their full support in resolving the issues. This mechanism worked well and ensured better coordination between the Headquarters, Regional Councils and Chapters under three tier structures.

3. New Examination centres
   The institute with a view to facilitate the students opened ten new examination centres at Rourkela, Chittorgarh, Beawar, Jhansi, Panipat, Ahmednagar, Akola, Amravati, Gandhinagar and Ujjain w.e.f. June 2015 examinations. The Institute has also opened new examination centres
for conduct of Executive Programme, Professional Programme and Foundation Programme examinations, from December, 2015 session at Bilaspur (Chhattisgarh), Bhayander (Maharashtra), Pimpri-Chinchwad (Maharashtra), Satara (Maharashtra). In addition, the examination centres have also been opened at Jalgaon (Maharashtra), Jamnagar (Gujarat), Patiala (Punjab), Rohtak (Haryana), Sagar (Madhya Pradesh), Tumkur (Karnataka) for conduct of Computer Based Examination for Foundation Programme from December, 2015 examination session and Surendernagar (Gujarat) from June, 2016 examination session. It will be the endeavour of Institute to open more examination centres to facilitate the students to appear in the examinations with ease and comfort.

4. **Institution of new prize awards**
With a view to encourage the students to perform with flying colors in their examinations and to develop a sense of competition amongst them, the Institute has been instituting various prize awards in different subjects of the ICSI curriculum. I am pleased to inform you that the Institute has instituted three more prize awards. For more details you may visit the website of the ICSI.

5. **Study Centres**
In order to augment the reach and level of services being provided to the students of the Institute through its Regional Councils & Chapters, “ICSI Study Centre Scheme” has been launched on 2nd October, 2015. The Study Centres are being established in collaboration with reputed Colleges/ Universities in multiple locations wherein the Institute’s Regional / Chapter Office are not in existence. All Smart cities as proposed by the Government of India will be covered in this scheme. Through such Study Centres all the basic services like facilitating registrations, organising career counselling programmes, etc. would be provided for the benefit of students besides arranging for Class Room Teaching of students. With this initiative the Institute is hoping to break the distance barrier and spread the reach and level of communications with the prospective and existing students across eighty three more towns and cities across India.

6. **CS Olympiad**
It has been decided by the Institute to organise a ‘CS Olympiad’ with the objectives of reaching out to the prospective students, schools located in various parts of the country and also for attracting best talent to the profession. The first ‘CS Olympiad’ will tentatively be held in the month of September, 2016. It is expected that in the times to come CS as a brand will be established in the minds of the students before they pass their 12th Board examinations.

7. **Financial Assistance to Economically backward and academically bright students**
The Institute has established ICSI Student Education Fund Trust with a view to encourage and motivate economically backward and academically bright students to pursue the CS Course. During the calendar year 2015, financial assistance and scholarships have been released/ due to be released to about 500 students.

8. **Social Media Policy**
Social media has come up as the most convenient way for information propagation and peer to peer networking. Platforms like Twitter, Facebook and Google Plus are not only being used by the students but ICSI has also started the use proactively to reach out to its stakeholders. Keeping in view the dynamic changes taking place in today’s Social Media, a policy has been developed by the Institute so that all the constituents of the Institute use such platform uniformly.

9. **Revisionary papers and practice manual**
The Institute has introduced Module wise Revisionary Papers containing solved model question papers, in the subjects of Executive programme and Professional programme. Practice Manual for Financial, Treasury and Forex Management (Professional programme) and Company Accounts and Auditing Practices (Executive programme) have also been launched to usher competency in practical oriented subjects by aiding the CS students with a collection of ‘solved’ practical problems.

10. **Reference Material on Professional Skill Development Program and e-Governance**
ICSI is continuously striving to inculcate ‘self-confidence’ and ‘self-discipline’ through ‘self education’ in its students. A novel attempt has been made by introduction of a 15 day academic program for students passing executive level which aims to equip the CS students with all those skills that are supposed to fill them up with the self confidence and self discipline while they set their foot in the corporate world. Reference Material on Professional Skill Development Program
and e-Governance aims to nourish the participants' knowledge and provide them practical point of view.

11. Launch of Certificate Courses

The following certificate courses were launched during the year:

- **Certificate Course on Compliance, Governance and Risk Management in Insurance**: ICSI and Insurance Institute of India jointly launched an academic course titled “Certificate Course in Compliance, Governance and Risk Management in Insurance” focusing on regulatory compliance in the Insurance industry with the objective to create a cadre of professionals in the Insurance industry.

- **Certificate Course in Goods and Services Tax**: We believe that our members have a key role in acting as a catalyst in smooth transition and implementation of GST in a number of ways. Therefore, to enhance the expertise of the members in the sphere of GST, this certificate course has been launched to gain the required knowledge in this area.

- **Certificate Course in Internal Audit**: The Companies Act, 2013 has introduced the concept of Internal Audit to the forefront and widened its scope enormously by making it mandatory for all listed companies and certain class of unlisted and private companies too. With a view to develop expertise of the Company Secretaries to conduct Internal Audit including Compliance and Operational Audits, ICSI launched Certificate Course in Internal Audit for its members.

**KNOWLEDGE SHARING FOR STUDENTS**

With the continuous developments in the external environment, the role of professionals is being redefined continuously demanding us to prepare our students to face the challenges in a better manner. In a constant endeavour to make our students more competitive, the Institute has taken a number of initiatives in the past year to provide efficient services to its students. To provide better academic support to the students and members, the Institute has started MOOCs (Massive Online Open Courses), a knowledge repository with the presentations made by experts in various programmes and the videos on various topics of interest. The Institute has also organized regular webcasts for the students on various subjects of the curriculum particularly just before the examination.

**CAPACITY BUILDING FOR MEMBERS**

Acknowledging the fact that Secretarial Audit as mandated by Companies Act, 2013 is one of the thrust areas of Company Secretaries, the Institute undertook a number of capacity building programmes on Secretarial Audit.

The Institute also held consultative meetings and national seminars in the areas such as competition law, Information security, banking, insurance, mutual fund, intellectual property, and arbitration for capacity building of its members in other areas.

As part of capacity building initiatives and in order to provide an insight into the contours of the proposed Goods and Services Tax regime, the Institute organized National Symposia and Seminars on Goods and Services Tax at various locations of the country.

The Institute has also taken initiatives to organise workshops for regulators and legislators in the States. In this direction, the Institute conducted workshops for the officials of the Reserve Bank of India, Securities and Exchange Board of India, Swami Vivekanand State Police Academy, Barrackpore, West Bengal. The response from these workshops have been very encouraging.

Keeping in view, the era of globalisation and e-technology the Institute has organised a series of National level IT – Legal Conclaves. I appreciate my colleague on the Council Mr. C. Ramasubramaniam for this initiative.

**16TH NATIONAL CONFERENCE OF PRACTICING COMPANY SECRETARIES**

The 16th National Conference of Practicing Company Secretaries was held at Kochi during August 13-14, 2015 on the theme “PCS-Calibrating Competence for Achieving Excellence”. The Conference was attended by over 350 delegates and other dignitaries. Justice (Retd.) P. Sathasivam, Hon’ble Governor of Kerala was the Chief Guest and inaugurated the Conference. Mr. Oomen Chandy, Hon’ble Chief Minister of Kerala was the Chief Guest and Mr. Benny Behanan, Member of Legislative Assembly, Kerala was the Guest of Honour at a Special Session on grooming for startups – Role of CS organized on August 14, 2015. Prof. K V Thomas, Member of Parliament, Ernakulam Constituency was the Chief Guest and Mr. Ali Asgar Pasha, IAS, Managing Director, Kerala Tourism
From the President

Development Corporation Ltd. (KTDC) was the Guest of Honour at the Valedictory Session. The technical sessions at the Conference were very informative, offering insights and perspectives about the emerging opportunities for Practicing Company Secretaries. The Conference served as a platform for mutual exchange of ideas and sharing of experiences among the professionals from across the country. The institute has also launched a free online assessment for members on ‘Secretarial Standards’ in collaboration with NSEIT at the Conference.

CAPITAL MARKETS WEEK, 2015

The Institute observed Capital Markets Week during May 25-31, 2015, on the theme ‘Capital Markets – The Engine for Economic Growth’. The sub-themes deliberated during the Capital Markets Week included Microfinance- Growth Engine for Tiny Industry; Empowering India’s MSME Sector; Indian Debt Markets: Small Investor Perspectives; Investor Protection and Rebuilding Investor Confidence; Convergence of Company Law and Securities Laws; Role of Company Secretary in Capital Markets. The Institute organized eight Mega Programmes starting from Jodhpur on 25th May 2015 and concluding at Mumbai on June 2nd 2015. Other mega programmes were organized at Chennai, Ahmedabad, Delhi, Kolkata, Madurai and Guwahati. The nationwide events such as Academic Development Programmes, Panel Discussions, Lectures, Interactive Meetings with Regulators/Stock Exchanges, Investor Awareness Programmes were also organised by all Regional Offices and Chapters during the Capital Markets Week.

SEMINAR(S) ON SEBI LISTING REGULATIONS, 2015

SEBI notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide notification dated 2nd September, 2015 effective form 01 December 2015. To sensitise the stakeholders about the SEBI Listing Regulations, the Institute of Company Secretaries of India (ICSI) in association with BSE Ltd. is organizing series of Seminars on the subject. The Institute has already organized seminars at Mumbai (November 20, 2015), Delhi (November 26, 2015), Pune (December 05, 2015), Ahmedabad (December 12, 2015), Chennai (December 26, 2015), Hyderabad (December 29, 2015), Bangalore (January 02, 2016).

SYMPOSIUM OF QUALITY REVIEW BOARD

The first Symposium of Quality Review Board was organized on May 01, 2015 at New Delhi on Quality of Audit and Attestation Services rendered by professionals. The programme had around 200 participants. Mr. S L Bunker, Member, Competition Commission of India was the Chief Guest. Mr. U C Nahta, Chairman, Quality Review Board gave the Inaugural Address. The expert faculty deliberated on Quality of Audit / Attestation Services through audit documentation, importance of quality in professional services, professional discipline and code of conduct.

TRAINING PROGRAMMES FOR PEER REVIEWERS

With numerous regulatory changes likely to take place, the time has come for practicing members to strengthen the quality of services to provide requisite assurance to the corporate sector and the regulatory authorities. It is hoped that Peer Review mechanism will rejuvenate Practicing Company Secretaries and help them raise the bar and usher in an improved level of professional excellence. The Institute has been organizing Training Programmes for Peer Reviewers across the country. A resource pool of reviewers is being created. During the year such training programmes were conducted at Bhubaneswar, Mumbai, Delhi, Kolkata, Coimbatore, Jaipur, Ahmedabad, Pune and Navi Mumbai. As on date the number of Peer Reviewers empanelled by the Board is close to the 500 milestone. The number of Peer Reviewed Units is fast increasing and is expected to surpass the milestone of 500 in the near future.

RECOGNITIONS

The Secretarial Standards on Meetings of the Board of Directors (SS-1) and Secretarial Standards on General Meetings (SS-2) issued by the Institute of Company Secretaries of India (ICSI) were made applicable to the companies w.e.f. 1st July 2015 and the Company Secretaries in employment as well as in practice are entrusted to ensure the compliance of the applicable Secretarial Standards. The Secretarial Standards are a codified set of good governance practices which seek to integrate, harmonize and standardise the diverse secretarial practices followed by companies with respect to conduct of Meetings. It is worth mentioning that Secretarial Standards have been introduced for the first time in the world and
we are sure that time will prove the indispensable role of Secretarial Standards in enhancing the corporate culture and governance.

SEBI notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) on September 2, 2015 whereby Company Secretary has been designated as Compliance Officer and all listed entities are required to appoint a qualified Company Secretary (CS) as the Compliance Officer.

SECRETARIAL AUDIT

The Secretarial Audit Reports of listed companies for the financial year 2014-15 are being observed in terms of the reporting format (MR-3), scope of the Secretarial Audit as laid down by Council and observations/qualifications made by the Secretarial Auditors. It has been observed that the compliance of Sector Specific Laws as applicable to the companies is generally not covered in the Secretarial Audit Reports. Based on our observations, advisory letters to the Secretarial Auditors are being issued to conduct the whole process of Secretarial Audit in letter and spirit, in the best interest of the profession and to maintain the confidence reposed on the profession by the regulators and the stakeholders.

GUIDANCE NOTES ON SS

The Institute has released the Guidance Notes on Meetings of the Board of Directors and General Meetings at the 43rd National Convention, which aims to explain certain procedures and practical aspects in respect of the Secretarial Standards and to facilitate compliance thereof by the stakeholders.

INTERNATIONAL DEVELOPMENT

CSIA Council Meeting

The ICSI is one of the founding members of CSIA. I along with the Chief Executive and Officiating Secretary of the Institute attended Corporate Secretaries International Association (CSIA) Council Meeting on October 29-30, 2015 at Johannesburg, South Africa and participated in Annual Corporate Governance Conference on October 27-28, 2015. ICSI has been inducted as member of the Executive Committee of CSIA.

ICSI representation on International Programmes

A delegation of the ICSI represented the Institute at G20/OECD Corporate Governance Forum held on 10th April, 2015 at Istanbul (Turkey). Before the OECD meeting, ICSI delegation also met the representatives of Capital Market Board of Turkey and Corporate Governance Association of Turkey to discuss the ICSI initiatives in promoting good corporate governance and to explore the international level cooperation in areas of mutual interest.


10th International Professional Development Fellowship Programme organised in Scandinavian countries, covering Denmark, Sweden, Estonia and Finland - As part of Fellowship Programme, 10th International Conference on the theme “Make in India: New Imperatives in Corporate Governance” was also organised on 22nd June, 2015 at Stockholm (Sweden) with the principal support of National Foundation for Corporate Governance (NFCG).

The Institute of Certified Public Secretaries of Kenya (ICPSK) invited two trainers from ICSI to facilitate a whole day session on Governance Audit as a part of its four day Training of Trainers (ToT) Programme (ICPSK) organized in collaboration with the International Finance Corporation (IFC).


Meetings of mutual interest were held with the Institute of Chartered Secretaries and Administrators (ICSA), UK and Chartered Institute of Securities and Investment (CISI), UK, our MOU partner and International Corporate Governance Network (ICGN) our network partner.

ICSI delegation represented the Institute at OECD Asian Roundtable on Corporate Governance held on 29-30 October, 2015 at Bangkok, Thailand. The members of ICSI delegation were the panelist at the session on “Family-Controlled Businesses in Asia” and lead discussant at the Breakout session on “Board Nomination and Election” respectively.

ICSI delegation attended 8th Meeting of the Asia Network on Corporate Governance of State Owned Enterprises (SOEs) and Regional Workshop in Asia on Knowledge
Sharing Programme on Public Finance Management Reforms in Asian Countries at Hanoi, Viet Nam hosted by the Vietnam Institute for Development Strategies (VIDS) and the Korea Development Institute (KDI) with the support of the Ministry of Strategy & Finance of Korea held on 16 and 17 November, 2015.

15TH ICSI NATIONAL AWARD FOR EXCELLENCE IN CORPORATE GOVERNANCE

I am pleased to inform you that the Jury headed by Hon’ble Mr. Justice M N Venkatachaliah at its meeting held on December 15, 2015 at New Delhi selected the winners of the ICSI National Awards for Excellence in Corporate Governance and the ICSI Lifetime Achievement Award for Translating Excellence in Corporate Governance into Reality. The awards will be presented at a glittering presentation ceremony at 5:00 P.M. on January 6, 2016 at BSE Convention Centre, Mumbai. I cordially invite all the members to the presentation ceremony and make the event a grand success.

43RD NATIONAL CONVENTION

I am happy to inform you that this year, the 43rd National Convention of Company Secretaries on “Make in India-Innovate, Excel and Grow” was successfully organised at Delhi on December 17-19, 2015. The Convention was attended by approximately 1600 delegates and other dignitaries. Mr. Ashok Chawla, Chairman, Competition Commission of India, was the Chief Guest and inaugurated the Convention. Special International Session on “Capital markets regulation and development” was chaired by Mr. Prashant Saran, Whole Time Member, SEBI. The technical sessions were addressed by esteemed dignitaries, such as Mr. Amar Jibi Ghimire, Vice Chairman, Nepal Institute of Company Secretaries; Dr. Nicholas K. Letting, Chairman, Institute of Certified Public Secretary of Kenya; Ms Carina Wessels, Past President, Institute of Certified Public Secretary Southern Africa (CSSA); Mr. Gopal Krishna Agarwal, (Council Member, ICSI), National President, Association of National Exchanges of India; Mr. A K Chaturvedi, RD North, MCA; Mr. Pavan Kumar Vijay, Past President, The ICSI and Chairman, Secretarial Standards Board; Mr. P K Malhotra, Secretary, Ministry of Law and Justice; Mr. Premkumar Seshadri, Executive Vice Chairman & Managing Director, HCL Infosystems Ltd.; Mr. Kiran Murthi, Chief Executive Officer, AskmeBazaar.com; Mr. Ashish Chandra, General Counsel, Snap Deal; Mr. Rajeev Talwar, IAS (Retd.), CEO DLF LTD.; Mr. R Sukumar, Editor, HT Mint; Mr. Ketan Dalal, Regional Managing Partner, PricewaterhouseCoopers Pvt. Ltd.; Smt. Meenakshi Lekhi, Member of Parliament; Dr. Pawan G. Agrawal, Agarwal Group of Institutes; Mr. Alok Sharma, Chairman & Managing Director, Air One Aviation Pvt. Ltd.; Mr. Justice Vibhu Bakhru, Hon’ble Judge, Delhi High Court, Delhi; Mr. M S Sahoo, Member, Competition Commission of India; Mr. U K Chaudhary, (Past President, ICSI) Senior Advocate; Mr. Manoj Fadnis, President, The Institute of Chartered Accountants of India; Mr. Bharat, Vishakha Group for Women Education & Research. The technical sessions at the convention were very informative, offering insights into the government policies and how they will transform India. Mr. Justice Mahesh Mittal Kumar, Chairman, Company Law Board was the Chief Guest at the Valedictory Session. The Convention served as a platform for mutual exchange of ideas and sharing of experiences among the professionals from across the country.

CONVOCATION-2015

For the last couple of years, the Institute is organizing convocation for awarding certificate of membership at various places throughout the country. In 2015, we have organized/scheduled eight convocation functions, two in each region, viz. on 23.05.2015 (two sessions) and 30.12.2015 (two sessions) at New Delhi; 12.06.2015 and 04.01.2016 at Kolkata; 03.07.2015 and 07.01.2016 at Mumbai and 11.07.2015 and 23.12.2015 at Chennai. In all 1969 persons received the membership certificates and some more will receive the certificates in the convocations to be held at Kolkata and Mumbai in early 2016. The events were wonderful and the following dignitaries who graced the convocation function at the respective convocation have complimented CS profession for its role in governance architecture.

1. Mrs. Sushma Berlia, Co-Promoter & President, Apeejay Stya & Svan, Group President, Apeejay Education Society, Co-Founder & Chancellor, Apeejay Stya University and Ms. Kiran Maheshwari, Cabinet Minister, Govt. of Rajasthan.
2. Hon’ble Mr. Justice Siddharth Mridul, Judge, Delhi High Court and Mr. C R Chaudhary, Member of Parliament.
3. Hon’ble Justice Amitava Lala, Former Acting Chief Justice, Allahabad High Court & Presently Commission
From the President

of Enquiry, West Bengal.

4. Mr. Ashish Kumar Chauhan, MD & CEO BSE Ltd.

5. Hon’ble Justice Thiru V Ramasubramanian, Madras High Court.


On this occasion, meritorious (National) students and winners of all India competitions were also awarded at the functions. During this function, we also disseminated information about CSBF.

PUBLICATIONS

Following publications of the Institute were released during the year:

- Guidance Note on Secretarial Audit Release 1.2
- A Guide to Board Valuation
- SS 1 - Secretarial Standard on Meetings of the Board of Directors
- SS 2 - Secretarial Standard on General Meetings
- Referencer on Boards Report
- Amendments Rules Circulars Notifications and Orders under Companies Act, 2013
- Incorporation of Companies
- Practice Manual
- Revisionary Test Papers for Executive and Professional Programme
- NCLT and NCLAT (Convergence of Corporate Jurisdiction)
- Referencer on Goods and Services Tax (GST)
- Governance Academic Programme – Reference Material
- Skill Development Academic Programme – Reference Material
- Guidance Note on General Meetings
- Guidance Note on Meetings of the Board of Directors
- Guidance Note on Annual Return (Revised Edition)

WAY FORWARD

It might be appropriate for my last column to describe what I hope for the better future of the Institute. There are many perspectives that contribute to the success of the Institute - most important of which is what we offer our stakeholders. We are reminded daily of the changes the industry is facing, It is true that it is often difficult to adapt to change yet it could not be avoided.

The present dynamic milieu requires us to continue to have the courage and conviction to act proactively, keep on evaluating our offerings and seek out opportunities to meet emerging needs of our stakeholder to keep our program attractive and members engaged.

I once again emphasize that the vigor of our Institute and profession lies in the hands of each one of us. We have over forty-two thousand members many of whom have never considered participating in leadership. I encourage members to represent Institute, take initiatives in leadership and partake in enriching our profession with diverse and innovative ideas. I would urge each one of you to take full ownership of the Vision and Mission and extend all possible support in realizing our vision. With your commitment and support, I am sure, we will succeed in taking our profession on the highest pedestal.

ACKNOWLEDGEMENTS

I would be demitting the Office of President on 18th January, 2016, and the new incumbent will take the lead. I am sure that the successive leaders would put their efforts for the success and the multifaceted growth of the profession and take the profession to the new pinnacle. Before I Conclude I would like to thank my colleagues on the Council who were with me especially in times of challenges for which I am grateful to them.

My gratitude is also to Mr. Rajnath Singh, Hon’ble Union Minister of Home Affairs; Mr. Arun Jaitley, Hon’ble Minister of Finance, Corporate Affairs and I&B; Mr. V Sadanand Gowda, Hon’ble Union Minister of Law and Justice; Mr. Bandaru Dattatreya, Hon’ble Union Minister of State I/C of Labour and Employment; Mr. Bashir Ahmed, Advisor, EC; Mr. Satish Chandra, Member Secretary, Empowered Committee of State Finance Ministers on GST; Mr. Piyush Goyal, Hon’ble Minister of State I/C for Power, Coal and New and Renewable Energy; Justice P Sathasivam, Hon’ble Governor of Kerala; Mr. Oommen Chandy, Hon’ble Chief Minister of Kerala; Dr. General (Retd.) V K Singh, Minister of State I/C for External Affairs, MOS I/C for Statistics and Programme and MOS I/C for Overseas Indian Affairs; Mr. Arvind Kejriwal, Hon’ble Chief Minister of Delhi. Ms. Sumitra Mahajan, Hon’ble Speaker, Lok Sabha; Ms. Meenakshi Lekhi, Member of Parliament; Mr. U K Sinha, Chairman, SEBI; Justice Vibhu Bakhru, Hon’ble Judge,
Delhi High Court; Justice Delep Raosaheb Deshmukh, former Chairman, CLB; Mr. Rupal Singh Sekhaawat, Hon’ble Minister of Urban Development and Housing, Govt. of Rajasthan; Mr. Jitesh Khosla, Chief Secretary (Retd.), Govt. of Assam; Mr. Ashishkumar Chauhan, MD & CEO, BSE Ltd; Mr. Prashant Saran, Whole time Member, SEBI; Mr. Ashok Chawla, Chairman, CCI; Mr. Tapan Ray, Secretary, MCA; Mr. Naved Masood, Secretary, MCA; Ms. Anjuly Chib Duggal, Special Secretary, MCA; Mr. Amardeep Singh Bhatia, Joint Secretary, MCA; Mr. Pritam Singh, Additional Secretary, MCA; Mr. A K Chaturvedi, RD, MCA; Mr. P K Malhotra, Law Secretary, Ministry of Law and Justice; Mr. N K Bholu, RD(ER), MCA; Mr. Dhan Raj, Member(Technical), CLB; Mr. R K Meena, RoC and OL, Jaipur, Rajasthan. Mr. S L Bunker, Member, CCI; Mr. U C Nahta, Member, CCI; Mr. M S Sahoo, Member, CCI; Mr. N Sivasailam, Additional Chief Secretary to Govt. Public enterprises Dept., Govt. of Karnataka, other officers of the Central/State Governments particularly the Ministry of Corporate Affairs, Ministry of Finance, Ministry of Commerce and Industry and SEBI, Stock Exchanges, RBI, IRDA, CBDT, CBEC and other regulatory authorities for their guidance and support towards the growth and development of the profession. I am equally thankful to my predecessors for their valuable guidance as and when required.

I am thankful to the dignitaries who have graced the Institute’s programmes on various occasions. I also wish to place on record my sincere thanks to Hon’ble Justice Mr. M N Venkatachaliah, former Chief Justice of Supreme Court of India and Chairman of the Jury of the 15th National Award for Excellence in Corporate Governance. I also express my sincere thanks to Team – ICSI both at head Quarters and other Regional & Chapter Offices for their enthusiastic co-operation and unbridled commitment.

I also take this opportunity to thank Mr. Pavan Kumar Vijay, former President of ICSI and Chairman, SSB and its other members for their valuable contributions in respect of work relating to Secretarial Standards, Mr. R Sridharan, Chairman, Expert Advisory Board, Mr. S Balasubramanian, Chairman, Editorial Advisory Board and Mr. U C Nahta, Chairman, Quality Review Board.

My sincere thanks are also to the Chairmen and Members of the Regional Councils and Chapters for implementing the plans and strategies of the Central Council of the Institute. I might have missed many names from whom I received suggestions and advise in discharging my responsibilities as President of the Institute. I express my sincere thanks to all of them. Lastly, I would like to place on record my sincere thanks to my wife Mrs. Dipti Mehta, a Member of the Institute who understood the demand of the post from the day of my President ship and showed enormous patience and always encouraged me to devote my time to justify my post even ignoring the family.

Before I conclude I would like to wish you all a Very Happy and Prosperous New Year 2016. May the New Year give each one of us enthusiasm and strength not only to face all the challenges but also the courage to convert them into opportunities. I would like to close this communication with the inspiring words by William Wordsworth:

“Life is divided into three terms - that which was, which is, and which will be. Let us learn from the past to profit by the present, and from the present, to live better in the future.”

With kind regards,

Yours sincerely,

January 05, 2016.

(CS ATUL H MEHTA)

president@icsi.edu
Articles in Chartered Secretary

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E-Governance for Board Processes and Maintenance of Documents, Timestamp

Under the Companies Act, 1956, compliance records of a company were mostly required to be maintained in the physical form. However, the Companies Act, 2013 has turned the tables around. Companies Act, 2013 provides express recognition to maintenance of records in electronic format. In this context the importance of timestamping of electronic documents is explained here.

Timestamping consists of affixing a legally-binding time and date to any type of digital file (text, audio, video, etc.), in the form of an electronic seal. A timestamp seal guarantees that:

- a file existed on a given date
- the file has not changed since that date (not a single bit)

In other words, a timestamping seal allows to electronically “seal” a document and affix a date to it that is both reliable and unfalsifiable. It is the electronic equivalent of a traditional seal.

Data Integrity here means that no one – not even the owner of the document – should be able to change it once it has been recorded, provided that the timestamer’s integrity is never compromised.

The idea of timestamping information is actually centuries old. For example, when Robert Hooke discovered Hooke’s law in 1660, he did not want to publish it yet, but wanted to be able to claim priority. So he published the anagram ceiiinosssttuv and later published the translation ut tensio, sic vis (Latin for “as is the extension, so is the force”). Similarly, Galileo first published his discovery of the phases of Venus in the anagram form.

Sir Isaac Newton, in responding to questions from Leibnitz in a letter in 1677, concealed the details of his “fluxional technique” with an anagram:

The foundations of these operations is evident enough, in fact; but because I cannot proceed with the explanation of it now, I have preferred to conceal it thus:
6accdae13eff7i3l9n4qrr4s8t12ux. On this foundation I have also tried to simplify the theories which concern the squaring of curves, and I have arrived at certain general Theorems.

In India, Information Technology Act, 2000, has given recognition to electronic records, digital signatures and carrying out transactions through electronic mode.

Under the Companies Act, 1956, compliance records of a company were mostly required to be maintained in the physical form. However, the Companies Act, 2013 has turned the tables around. Companies Act, 2013 provides express recognition to maintenance of records in electronic format. The provisions pertaining to maintenance of records in electronic form under the Companies Act, 2013 and rules made thereunder are as under:

1. Maintenance of Records in Electronic Form

   Section 120 of the Companies Act, 2013 enables the maintenance and inspection of documents in electronic form. Any document, record, register, minutes, etc. required to be kept by a company; or allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form.

   Section 2(36) defines the term “document” which includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

   Rule 27 of the Companies (Management and Administration) Rules, 2014 provides that every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made there under, in electronic form. In the case of existing companies, data may be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

   The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit, provided

   a. Records have to be maintained in the same formats as prescribed by the Act and the rules made thereunder. All provisions applicable to the maintenance of records in physical form would be applicable to the maintenance of records in electronic form as well.

   b. Information must be adequately recorded for future reference.

   c. Records must be capable of being readable, retrievable

   and reproducible in printed form.

   d. Records must be capable of being dated and signed digitally wherever it is required.

   e. Records, once dated and signed digitally, should not be capable of being edited or altered.

   f. Records should be capable of being updated and the date of such updating should get recorded.

   The term "records" here means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company.

2. Security of Electronic Records - Role and Responsibility

   The Managing Director, Company Secretary or any officer of the company, as authorised by the Board of Directors from time to time, is responsible for guarding the security of electronic records.

   The following is required to be ensured by the respective person responsible:

   a. Adequate protection should be ensured against unauthorized access, alteration or tampering of records.

   b. Ensure against loss of the records.

   c. Ensure that computer systems, software and hardware are adequately secured.

   d. Ensure that records are accurate, accessible, and capable of being reproduced for reference later.

   e. Ensure that records are at all times capable of being retrieved to a readable and printable form.

   f. Ensure records are kept in a non-rewriteable and non-erasable format.
since Secretarial Standards prescribe particular time-limits to be followed in conducting Board and General Meetings like sending notices, agenda, draft minutes, circulation of certified true copy of minutes, e-Governance initiative can be of an added advantage to any type of Corporate Structure.

g. Ensure that at least one backup, taken at a periodicity of not exceeding 1 day is authenticated taken and dated. Ensure that such backups are securely kept at such places as may be decided by the Board.

h. Limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf.

i. Ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved.

j. Arrange and index the records in a way that permits easy location, access and retrieval of any particular record for the authorised and permitted persons only.

k. Take necessary steps to ensure security, integrity and confidentiality of records.

3. Inspection and copies of Records maintained in electronic form

   1. Records should be made available for inspection in electronic form;

   2. Wherever copies are to be made available, the same should be given on payment of not exceeding Rs. 10 per page

4. In case of company maintaining such books on Cloud, the company is required to intimate the Registrar of Companies, annually, the following:

   a. Name of the service provider

   b. Internet protocol address of the service provider

   c. Location of the service provider and

   d. Cloud address.

The spirit of law is crystal clear and deeply thought to bring in more transparency in Company management and administration and also to curb possible manipulation or fraud.

This is really a welcome step towards real Corporate Governance as introduction of e-Governance has worked wonders in our Country. Functioning of Depository is live example for a new concept which was introduced to maintain shares in electronic form instead of handling of physical shares way back in mid-nineties. The concept got statutory recognition due to introduction of Depositories Act, 1996.

The unique concept took some time to be accepted and welcomed by Industry and investors. Dematerialization of shares or maintaining shares in electronic format became more and more acceptable due to effective steps taken by the market regulator SEBI to make it mandatorily in a phase wise manner and now for all new IPOs shares are issued in electronic format. Gone are the old days of maintaining that important piece of paper to be stored in your locker. We really wonder, have today’s new tech savvy generation dealing in capital market as investor have ever seen shares in physical format.

However even before introduction of Section 120 of the Companies Act, 2013, many multinationals/listed companies/Tech-Savvy companies had already adopted the practice of sending Board agenda electronically instead of sending bulky Board agenda in paper format.

Adopting the practice of e-Governance voluntarily leads to:

1) Saving of paper. “Save paper-save tree.” Generally one Audit Committee and Board meeting of a Listed Company having at least 5 directors generates more than 1,000 pages which due to confidentiality nature can’t be recycled and need to be trashed.

2) No need to prepare multiple sets of physical agenda for Directors. One electronic agenda in PDF format can be sent to all directors by e-mail.
With the introduction of Secretarial Standards, it has become mandatory to include the time of commencement and the time of conclusion of the meetings held. In order to avoid discrepancies, the use of timestamp has been introduced so as to enable the maintenance of minutes of the meetings in electronic form in timely and chronological manner.

3) Security feature by introducing password protection for opening agenda when sent by outlook express or general e-mail. Alternatively, one can upload agenda on company’s central server through which can reach special board portal developed for Board meetings and accessed by Directors through their unique Login id and Password on their TABs/i-PADs.

4) Easy storage and back-up facility than physical storage.

5) No risk loss, mutilation or tearing off of papers.

Apart from the advantages mentioned above, since Secretarial Standards prescribe particular time-limits to be followed in conducting Board and General Meetings like sending notices, agenda, draft minutes, circulation of certified true copy of minutes, e-Governance initiative can be of an added advantage to any type of Corporate Structure.

Few other advantages of introduction of e-governance in Board processes and maintenance of documents are enlisted below:

1. Creating alerts in advance for sending notices, agenda, draft minutes, circulation of certified true copy of minutes by simply adding it in Task Manager of Outlook express or creating event in calendar and delegating task to the concerned officer.

2. The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given in advance before the date of the Meeting.

Further, in case the company sends the Agenda and Notes on Agenda by post or courier, additional two days shall be added for the service of Agenda and Notes on Agenda. These two days can be saved, if Agenda and Notes on Agenda sent by e-mail. For e.g. if Board meeting was scheduled on September 30, 2015, as per SS-1, agenda and notes on agenda can be given to the Directors on or before September 23, 2015. However, if the same is sent by speed post or by registered post or by courier, it needs to be sent on or before September 21, 2015.

Same concept is applicable for sending agenda, minutes and also for sending General meeting notice under SS-2.

Also, retaining evidence of sending e-mail through sent logs is much easy and convenient than obtaining receipts and delivery proof for documents sent by post or courier.

3. Sending documents through electronic form helps in making the task of maintaining and retrieval of data much easier.

4. Can affix DSC on Minutes and Statutory Register which bears date and time stamp of putting signature and has unique sequence number every time it is affixed, which can avoid possible manipulation and enables exact proof of entering minutes and making entry in register.

5. Electronic mode of communication is admissible as valid evidence in the court of law.

The Secretarial Standards issued by the Institute of Company Secretaries of India have further clarified on the electronic aspects pertaining to conducting of Board Meeting and General Meeting.

The important aspects covered in the Secretarial Standards pertaining to electronic mode of conducting Board and General Meetings are as under:

1. Notice in writing for every Meeting is required to be given to every person entitled to receive it. Such notice can be delivered by hand or can be sent by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. The proof of sending notice and its delivery must be maintained by the Company.

2. Any director may participate in the Board Meeting through Electronic mode, if the Company provides such a facility. In such case, the Meeting notice should specify that such facility is available and the place where the recordings of such meetings would be done.
It is necessary under the Act and rules made thereunder that the proceedings of the meeting held through electronic mode (audio-visual mode) are recorded. It is clear from the provisions that audio-conference meetings are not recognised as a valid meeting under the Act. Given the phrase used in the statute, it is necessary that meetings are held through audio-visual mode or video conferencing.

It is important to ensure that where the meetings held through third party service provider providing facilities of video conferencing meetings, they have secured server. Given the confidentiality and sensitivity of the discussion being taking place at the Board meetings, it is necessary that the company ensures adequate safeguards and have proper systems in place while conducting meetings through electronic mode.

3. A director shall not be reckoned for quorum in respect of an item in which he is interested and he shall not be present whether physically or through Electronic Mode during discussions and voting on such item.

4. Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form are required to be maintained with Timestamp.

5. The draft Minutes of the Board Meeting are required to be circulated within 15 days of the meeting to the Board / Committee members by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means for comments.

6. Any document, contract, agreement, the Memorandum of Association or Articles of Association, as referred in the explanatory statement to the notice of the general meeting shall be made available for inspection in physical or in electronic form during specified business hours at given Offices of the company and also at the Meeting.

With the introduction of Secretarial Standards, it has become mandatory to include the time of commencement and the time of conclusion of the meetings held. In order to avoid discrepancies, the use of timestamp has been introduced so as to enable the maintenance of minutes of the meetings in electronic form in timely and chronological manner.

WHAT IS A TIMESTAMP

The TIMESTAMP data type is used for values that contain both date and time parts. A timestamp is the current time of an event that is recorded by a computer. A timestamp is an international standard technology based on public key infrastructures (PKI) that enable the verification of the time at which a given electronic document was created and whether it is authentic or not. As such, a timestamp allows us to verify that a given electronic document had existed at some point, and whether its data has not been altered or forged. Timestamps are also routinely used to provide information about files, including when they were created and last accessed or modified.

The time as recorded by timestamps can be measured in terms of the time of day or relative to some starting point and it is measured.
with high precision in small fractions of a second. The accuracy of the time is maintained through a variety of mechanisms, including the high-precision clocks built into computers and the network time protocol (NTP). NTP uses coordinated universal time (UTC) to synchronize computer clock times to a millisecond (and sometimes to a fraction of a millisecond) and uses UDP (user datagram protocol), one of the core Internet protocols, as its transport mechanism. Such precision makes it possible for networked computers and applications to communicate effectively.

The timestamp mechanism is used for a wide variety of synchronization purposes, such as assigning a sequence order for a multi-event transaction so that if a failure occurs the transaction can be voided.

HOW DOES IT WORK

Timestamps are employed extensively within computers and over networks for various types of synchronization. A timestamp column is automatically updated each time the details are modified. Using a timestamp column is one way to ensure this doesn't happen, by comparing the value of the timestamp originally retrieved with the current value in the database. A great example of DATETIME being used where TIMESTAMP should have been used is in Facebook, where their servers are never quite sure what time stuff happened across time zones.

A timestamp-based protocol ensures serialability by selecting a document and works in the following manner:

a) first a unique fixed timestamp is associated with each document in the system;

b) these timestamps of the documents determine the serialability order;

c) if the timestamp (date day time) of document A is earlier than the timestamp (date day time) of document B, then the scheme ensures that the document A appears before document B, thereby ensuring the chronological order;

d) it does so by rolling back a document whenever such an order is violated.

The introduction of timestamp for the use of maintenance of the minutes of the meeting in electronic form will reduce the work load of updating the details manually.

BENEFITS OF TIMESTAMP

a) By implementing timestamp it is impossible to manipulate or forge data, since it is issued by a trusted third party (time-stamping authority)

b) The use of timestamp provides objective, trusted evidence for the existence of a given document

c) Verification of the document becomes easier

d) The authenticity of the document is maintained

e) The time-stamped document exists and is managed in the user's computer.

f) Visual information is included as part of the document (which is kept intact in its original form).

g) Timestamp is kept intact for a long time

h) The applied software is user-friendly and allows easy visual identification of time-stamped files and permits various file formats.

EXAMPLES OF TIMESTAMP:

- Tue 01-01-2009 6:00
- 2005-10-30 T 10:45 UTC
- 2007-11-09 T 11:20 UTC
- Sat Jul 23 02:16:57 2005
- 12569537329
- 07:38, 11 December 2012 (UTC)

While the ultimate aim of timestamping is to establish and implement a corporate governance framework which would ensure timely compliance, avoid delays caused due to interpretative deviation and contribute to the growth of companies, electronic maintenance of records and conducting the meetings, is set to play a pivotal role in the way corporate governance functions in the coming future.

REFERENCE

https://en.wikipedia.org/wiki/Trusted_timestamping
Exemptions granted by the Notification dated 5th June, 2015 issued by the Ministry of Corporate Affairs with regard to Private Limited Companies

In June 2015 the Ministry of Corporate Affairs issued a Notification granting exemptions to private companies, Government companies, Nidhis etc. from certain requirements and compliances stipulated by the Companies Act, 2013. These exemptions are briefly outlined in this article for ready reference.

The Ministry of Corporate Affairs issued a Notification on 5th June, 2015 announcing some exemptions to private limited companies, not for profit companies registered under section 8 of the Companies Act 2013, Nidhis and Government Companies. This article attempts to provide information in brief with regard to exemptions granted to private companies.

1. Section 43 of the Act requires that the share capital of a company limited by shares shall be of two kinds i.e. equity and preference. This section shall not apply to a private limited company where the Memorandum and Articles of Association so provide for a class of shares other than equity / preference. Further, if the Memorandum and Articles of Association of the company so provide, provisions relating to voting rights as contained in section 47 of the Act will not be applicable to a private limited company.

2. Section 62 of the Act deals with issuance of further shares and provides that the same shall be issued to the holders of the equity shares in the same proportion in which they are holding shares in the capital of the company. Sub-clause (a)(i) of sub-

*Member SSB of ICSI, 2015.
Sub-section (2) of section 184 deals with disclosure of interest by a director in a contract or arrangement and restrains him from participating in the meeting of the Board in which such contract or arrangement is discussed. It has been provided in the notification that in case of private limited company such a director may participate in the meeting after disclosure of his interest.

Section (1) of the said section provides that the offer shall be made by a notice specifying the number of shares offered and requiring the shareholder to subscribe for such shares within a time not being less than 15 days and not exceeding 30 days from the date of the offer. A proviso has been added by the aforesaid notification so as to provide that in case 90% of the members of a private company have given their consent in writing or in electronic mode, a period less than that specified in the above sub-clause may be given for issuance of such shares. Similarly, the period of 3 days specified in sub-section (2) of section 62 of the Act for dispatch of notice for making the aforesaid offer can be reduced, if the approval is taken in a similar manner from the members of a private limited company.

3. Section 62 (1)(b) of the Act deals with issuance of shares to employees under a scheme of employees' stock options. These can now be issued by passing an ordinary resolution instead of a special resolution by a private limited company.

4. Section 67 of the Act which deals with the restrictions on purchase by company or giving loans by it for purchase of its shares, shall not apply to a private company which complies with the following conditions:-

a) No other body corporate has invested any money in such a company.

b) The borrowings of such a company from banks or financial institutions or any body corporate are less than twice its paid up share capital or fifty crore rupees, whichever is lower.

c) It is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

5. Acceptance of deposits from members of a private company has been simplified by providing that clauses (a) to (e) of sub-section (2) of section 73 of the Act shall not apply to a private company which accepts deposits from its members not exceeding one hundred per cent of the aggregate of the paid up share capital and free reserves. It has been clarified that such company shall have to file return of the money so accepted with the Registrar of Companies in such manner as may be specified.

6. Sections 101 to 107 and section 109 of the Act shall apply to a private company unless otherwise specified in respective sections or the Articles of Association of the company provide otherwise. These sections deal with the following aspects:-

101 – Notice of General Meeting
102 – Explanatory statements
103 – Quorum
104 – Chairman of the Meeting
105 – Proxies
106 – Restrictions on voting rights
107 – Voting by show of hands
109 – Demand for a poll.

This implies that Articles of Association can provide its own regulations, if so desired with regard to the provisions contained in the above section.

7. Section 117 of the Act deals with filing of resolutions and agreements with the Registrar of Companies. A resolution is required to be filed with the Registrar for exercise of certain powers by the Board to make calls, to authorize buy back of securities etc; required under section 179(3) of the Act. Such a resolution need not be filed with the Registrar of Companies in case of a private limited company by virtue of the aforesaid notification.
8. The restrictions imposed for being appointed as an auditor for more than 20 companies has been made inapplicable to one person companies, dormant companies, small companies and private companies having paid up share capital of less than Rs. 100 crores.

9. Section 160 of the Act deals with provisions relating to the right of persons other than retiring directors to stand for directorship. The same has been made inapplicable to a private limited company.

10. Provisions relating to appointment of directors to be voted individually contained in section 162 of the Act have been made inapplicable to a private limited company.

11. Provisions of section 180 of the Act deal with restrictions on powers of Board in respect of sale, lease of undertaking, borrowings in excess specified limits, making of investments etc.; these powers can be exercised by passing a special resolution. The provisions as contained in the said section would not be applicable to a private limited company.

12. Sub-section (2) of section 184 deals with disclosure of interest by a director in a contract or arrangement and restrains him from participating in the meeting of the Board in which such contract or arrangement is discussed. It has been provided in the notification that in case of private limited company such a director may participate in the meeting after disclosure of his interest.

13. Provisions relating to loans to directors have been made inapplicable to following category of private limited companies:

   a) companies in whose share capital no other body corporate has invested any money;

   b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and

   c) such a company has no default in repayment or such borrowings subsisting at the time of making transactions under this section.

14. Section 188 of the Act deals with Related Party Transactions. Henceforth, any company which is a holding, subsidiary or an associate of such company or a subsidiary of a holding company to which it is also a subsidiary shall not be considered a related party in case of a private limited company for the purposes of ascertaining Related Party Transaction under section 188 of the Act.

   Further, the second proviso to the said section requires that no member of the company shall vote on such resolution to approve any contract or arrangement which may be entered into by the company, if such member is a related party. This proviso has been made inapplicable to a private limited company.

15. Section 196 of the Act deals with the appointment of Managing Director, Whole Time Director or Manager. Sub-section (4) of the said section provides for the approval of the appointment by a resolution at the next General Meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule-V which deals with the terms of appointment and remuneration to aforesaid managerial personnel. Sub-section (5) of the aforesaid section provides where the appointment of such managerial personnel is not approved by the company at the General Meeting, any acts done by him before such approval shall not be deemed to be invalid. These two subsections i.e. sub-section (4) and (5) of section 196 of the Act have been made inapplicable to a private company.
The Secretarial Standards seek to maintain integrity of the procedures leading to decisions taken at Board thereby offering assurance to Stakeholders. The Secretarial Standards on Board Meeting operating as the Board Process Code helps the company secretary to ensure that the company institutionalizes a very safe, reliable and robust Board Process.

The Companies Act, 2013 (the Act), the Rules issued under the Act and the Secretarial Standards are important instruments. Put together, the applicable provisions of the Act, the relevant Rules and the standards form the Board Process Code. As they are mandatory, Directors owe a duty to comply with the entire provisions in a manner that would bring out the purpose for which these provisions have been introduced.

At a time when the Securities and Exchange Board of India has introduced the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and when Business Responsibility Report has become mandatory, all the more, it is necessary to understand the role that Secretarial Standards play in formulating, shaping, ensuring a viable Board Process. This is not to suggest that secretarial standards have relevance only for large companies. They too have a lot in store. It is not without application of thought that the Secretarial Standards Board has adopted a very laudable objective of institutionalizing Board Process and complementing the Corporate Governance Systems. The Secretarial Standards, inter alia, seek to maintain integrity of the procedures leading to decisions taken at Board thereby offering assurance to Stakeholders.

Para.2.5 of the Report of the Cadbury Committee on the Financial Aspects of Corporate Governance, 1992 said that "Corporate governance is the system by which businesses are directed and controlled". Identifying those who form part of the Corporate Governance System, the defacto directors, the shadow directors will be the real challenge. Therefore three new expressions have to be studied viz., the Board Process Papers; Board Process Procedures and Board Process Period. Secretarial Standard 1

*Member SSB of ICSI, 2015.
Basically, compliance of statutory obligations in general is different from compliance of Secretarial Standards. Company Secretary occupies therefore a very important position in Corporate Governance system. It makes his position very vulnerable also in certain circumstances. The Secretarial Standards on Board Meeting operating as the Board Process Code helps him to ensure that the company institutionalizes a very safe, reliable and robust Board Process.

[SS1] on Meeting of Board of Directors explains all these three expressions.

**BOARD PROCESS PAPERS**

Notice, agenda, notes on agenda, disclosures, queries raised, clarifications given, minutes of meetings constitute Board Process Papers. All these things have been taken care very aptly by SS1. Para 8.2 of the SS1 on Meetings of Board of Directors require office copies of notices, agenda papers and other things have to be kept for not less than eight financial years. Para 8.3 of SS1 requires that the minutes books must be kept in the custody of the Company Secretary or where there is no Company Secretary, minutes shall be kept in the custody of a director duly authorized by the Board. Para 4.1.8 of Secretarial Standard makes it clear that the Attendance Register should be kept in the custody of the Company Secretary and where there is no Company Secretary, it shall be kept in the custody of a Director who has been duly authorized for this purpose.

**BOARD PROCESS PROCEDURES**

Starting form Notices to Minutes, the entire standard specifies the things that would come under the category of Board Process Procedures. Paras 1.1.1 to 1.3.11 contain very important provisions that occupy a very important position in the Board Process Procedures. Similarly Paras 7.4 to 7.7.2 also constitute a very important position in Board Process Procedures. As per Board Process Procedures, there is a defined need to send notices and papers to designated persons only. If Board Process Papers travel beyond the stipulations of the standard, clauses (v) and (vi) of Section 2(60) may get triggered to see if there is any reason why Board Process Procedure has been deviated. There should be a reason for any deviation in following any of the aspects of Board Process Procedures.

**BOARD PROCESS PERIOD**

Before traversing deeper into this subject, two important things have to be kept in mind. Sub-section (12) of Section 149 of the Act puts the independent directors and non-executive directors in a spot light. It says such directors are liable in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board Processes and with his consent or connivance or where he had not acted diligently.

Section 205 of the Act requires a Company Secretary to comply with applicable Secretarial Standards. This clause is different from several other provisions of the Act in imposing duties on the Company Secretary rather than saying that it is the duty of the company to do so. Section 118 makes it clear that it is the duty of the company to observe Secretarial Standard. Read with Section 118, it is clear that Section 205 imposes a statutory obligation upon the Company Secretary to ensure observance of Secretarial Standards by the company.

Unlike any other compliance obligation under the Act or under any applicable law, here the statute directly appoints the Company Secretary as a person responsible for ensuring that the company complies with Secretarial Standards. Sub-section (2) of Section 205 states that it is the requirement of the Company Secretary to ensure that the company complies with applicable Secretarial Standards does not mean there is any dilution in the duties and functions of the Board of Directors, the Chairperson of the company or Managing Director or Whole-time Director. Thus the Board of Directors primarily, but collectively, has a statutory obligation to ensure that they have devised proper systems so that all applicable laws are adequately and effectively complied with.

Basically, compliance of statutory obligations in general is different from compliance of Secretarial Standards. Company Secretary occupies therefore a very important position in Corporate Governance system. It makes his position very vulnerable also in certain circumstances. The Secretarial Standards on Board Meeting operating as the Board Process Code helps him to ensure that the company institutionalizes a very safe, reliable and robust Board Process.
Governance system. It makes his position very vulnerable also in certain circumstances. The Secretarial Standards on Board Meeting operating as the Board Process Code helps him to ensure that the company institutionalizes a very safe, reliable and robust Board Process.

Independent director and non-executive director who is neither a promoter nor key managerial personnel is liable for any act of omission or commission by a company provided he has knowledge about the same. This provision requires such knowledge should be attributable to the Board Process commencing from the notice, agenda and notes on agenda reaching the director’s desktop not less than seven years to the finalized minutes of the board meetings reaching the directors within 15 days after they are signed. The directors are seized of the matter with respect to a board meeting for about 52 days. However, it may be less than 52 days if the minutes are signed and sent to directors within a short period. We can say this period as the crucial period during which the director is expected to be highly alert and vigilant to make best use of this period and to make such enquiries and seek such explanations as are necessary so as to be not becoming a victim of a weak board process. In a year out of 365 days, there may be a minimum of four board meetings, in view of Para 2.1 of SS1. With respect to each such meeting, this Board Process Period will be there.

Therefore, during the Board Process Period for every meeting of the Board of every company of which a person happens to be a director, he may be finding it extremely stressful to study completely the agenda papers and notes thereon thoroughly. Unless he studies, which means, application of mind, it is not possible to be sure that there are no non-compliances. The director concerned must see to it that there is no possibility of any commission or omission by the company in any respect requiring compliances under applicable laws. Such validation is necessary for the directors to safeguard not only the interests of the company but his interest.

Sufficient time is therefore an essential ingredient. It is in this respect that one must keep in mind that a person cannot hold directorships in more than ten public companies and in a year it is very difficult to visualize a director sitting through agenda papers to minutes of meetings forty times. Therefore sufficient time of seven days to go through the agenda notes, identify if there is any transaction that requires a disclosure of interest, study and set out for sitting in the Board Meeting with an understanding of the agenda and make participation meaningful with a view to not only protecting the interests of the company but also his personal interest to not to get caught in the provisions imposing liability on the directors. In this perspective, if one looks at the Secretarial Standards in a holistic manner, it would be possible to understand that the standard serves a very laudable objective in introducing a Board Process Period. Standards enable directors to do their duties carefully, cautiously and free of any stress.

CONSENT AND CONNIVANCE – KNOWLEDGE IS AN ESSENTIAL INGREDIENT

Consent implies knowledge; there can be no consent if there is no knowledge about the matter in respect of which it is alleged that it has been done with the consent of a director. Connivance does not mean doing something without having knowledge about the same. Connivance is the failure to stop something wrong from happening without knowledge. It is impossible to say that something has happened with the connivance of a director. It is important to remember that the liability clause contained in Section 149 declares that this knowledge must spring from and is attributable to Board Process.

From where would a director know that a particular thing is going to happen which will be an act of omission or commission on the part of the company. It is only from the Board Process Papers which will be received by him during the Board Process Period as per Board Process Procedure, a director will have knowledge. Therefore it is during the Board Process Period, he must be vigilant and he should apply his thought and take care.

Consistent with the stringent stipulation in this regard and in the backdrop of the definition contained in the Act to the expression “officer-in-default”, one has to understand the significance of stringent norms introduced by Paragraphs 1.3.10, 1.3.11, 6.2.3 of SS1. Secretarial Standards seek to cut down informal procedures and make it as far as formal to ensure that decisions are made by the Board with a valid quorum and in the knowledge of all its directors. A director who is in receipt of a notice, agenda and notes on agenda cannot remain silent if he has a reason to believe there is something wrong.

“Officer in default” is an expression defined in Section 2(60) of the Act. Clause (vi) of Section 2(60) of the Act makes it clear that every director in respect of contravention of any of the provisions of the Act who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board of participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance. This penal clause operates independently for all directors other than those who fall under sub-section (12) of Section 149 of the Act. Independent directors and non-executive directors, who are neither promoters nor key managerial personnel, fall under the same class as far as liabilities are concerned. They have the non-obstante clause in sub-section (12) of Section 149 that makes clause (vi) of Section 2(60) inapplicable to them. However other non-executive directors would get covered by Section 2(60).

In any case, whether it is a case of a director falling under Section 149(12) or Section 2(60), the essential ingredient seems to be “knowledge” attributable to board process. This makes the Board Process Period assume high importance. For directors who are managing or whole-time or key managerial personnel, “knowledge”
could come at any time and therefore the legislature has thought it
fit to make Board Process Period relevant for directors other than
those who are forming part of the management of the affairs of the
company. While the entire Board will come under the category of
categories of persons forming part of the Corporate Government System, only
of the directors and key managerial personnel will come
under the category of persons who are directing the management
of the affairs of the company.

DUE DILIGENCE AND GOOD FAITH DO
NOT GO TOGETHER

The Law does not expect directors to read board papers with
a frame of mind of an investigator appointed by, let us say, the
Serious Fraud Investigation Office. However he must act as a
man of sufficient prudence. It is the duty of a director to act in
good faith and good faith does not imply absence of diligence. If
there is lack of due diligence, there will be nothing but negligence.
LODR, in Regulation 4(2)(f)(iii) states that members of the Board
directors shall act on a fully informed basis, in good faith, with
due diligence and care, and in the best interests of the listed entity
and the shareholders. Though this is a collective responsibility,
when it comes to liability, individual liability would set in.

CONTINUING TRAINING PROGRAMMES

It is not possible always for a director to seek leave of absence

<table>
<thead>
<tr>
<th>Sl No</th>
<th>Schedule</th>
<th>Venue of Programme</th>
<th>Contact</th>
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</table>
| 1     | 14th March 2016 to 30th March 2016 (excluding Sundays) | ICSI–SIRC House, 9, Wheat Crofts Road, Nungambakkam Chennai – 34 | Chitra Anantharaman  
Deputy Director  
The Institute of Company Secretaries of India  
Southern India Regional Office  
9, Wheat Crofts Road, Nungambakkam  
Chennai – 600 034.  
Phones: 044-28279898 / 28268685;9789039071  
Email : siro@icsi.edu |
| 2     | 20th June 2016 to 6th July 2016 (excluding Sundays) | |
| 3     | 7th September 2016 to 23rd September 2016 (excluding Sundays) | |
| 4     | 21st November 2016 to 7th December 2016 (excluding Sundays) | |

The participation fee is Rs.7500/- [including tea, lunch & and cost of e-library subscription for one year]. Outstation participants have
to make their own arrangements for stay.

CONCLUSION

As a whole, secretarial standards bring about a sea change
in board process. The significance of Board Process Period
incorporated in several paragraphs of the secretarial standards
cannot be underestimated. It requires a thorough understanding
of highest order to know that secretarial standards contain tools
that shape the board process and they seek to make available
information, details and documents to directors enabling them to
perform their tasks effectively. Thus there is no exaggeration if we
say that secretarial standards have institutionalized the Corporate
Governance Systems so far as board process is concerned. It
goes without saying that Board Process Papers, Board Process
Procedures, and Board Process Period are three important
constituents of SS1. Following them is an ideal panacea to avoid
BP – Blood Pressure, can I say?
Secretarial Standards and Corporate Governance

SS-1 and SS-2 seek to serve two purposes namely (i) improving the confidence of various stake holders through an attempt to codify the Corporate Governance by ensuring availability of sufficient and relevant information at reasonable time to all the stake holders and (ii) to reduce the litigation based on administrative matters by standardising various practises.

For setting up a business, always the Company format is the preferred mode. The reason for the same is that the Company format has two important advantages—one Independent existence to its Members and Directors and second Limited liability of its Members and to some extent, Directors. As a result, to protect the interest of all the stakeholders of the company, it gets controlled by more laws and compliances. Repeated cases of fraud due to noncompliance or compliance not in spirit of law, lead to lack or erosion of confidence of various stake holders in Indian Corporates. The situation, is detrimental to any economy or country. As a result it became inevitable to inbuilt certain level of Corporate Governance in the Companies Act. The Companies Act, 2013 has tried to do the same and one of the step towards the same is recognition of Secretarial standards.

Secretarial Standard is an attempt to standardise the different practises observed by different Companies to comply with various provisions of the Companies Act. It has tried to do the same so that the rights of the various stake holders of the Company get protected and liabilities get limited to the action or inactions by respective stake holders which is the ultimate aim and benefit of the Corporate Governance.

Further, the question arises why there is a preference to the Secretarial Standards 1 and 2 (hereinafter referred as SS-1 and SS-2) only and not others? SS-1 refers to the Meetings of Board of Directors and SS-2 refers to the Meetings of the Members of the Company. The reason being, it was necessary first to control or regularise the decision making process of the company, which is taken by the Directors and shareholders of the company and not by company, as it is not a natural person. These decisions are the major reason of various rights, responsibilities and duties of various stake holders. Further, majority of disputes has a root cause in the improper process or conduct of decision making process of the company. Hence, it was necessary to somewhat control or
The SS, by codifying the practise of holding minimum one Board meeting in each quarter, tries to ensure that the Directors of the Company get the required information at reasonable time and the same gets discussed. Hence, the major reason or question of dispute or difference is sought to be solved by the SS.

SS-1 and SS-2 try to serve two purposes - first improving the confidence of various stake holders through an attempt to codify the Corporate Governance by ensuring availability of sufficient and relevant information at reasonable time to all the stake holders and to reduce the litigation based on administrative matters by standardising various practises.

However, at the same time, codifying SS has led to more compliances and somewhat micro management. This has led to dissatisfaction among various compliant companies. But to control various non-compliant or improper compliant companies, the same becomes inevitable. Further, the Companies Act, 2013 has given the importance to the process followed by the company in conducting the Board Meeting. For eg. The Secretarial Auditor Report-MR-3, has to report that the adequate Notice was given to all Directors of the company along with Agenda and notes on Agenda and there exists a system for seeking and obtaining meaningful participation of the Directors at the Meeting.

Each Secretarial Standard has its own reason to be there. The same is very well explained in detail in the Guidance Note issued by the ICSI.

However, to support the claim and clarify further, let’s take certain examples.

SS-2.1 of SS-1, mentions about the frequency of the Board Meeting.

Section 173(1) of the Companies Act, 2013 states that every company shall hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

SS-2.1 states that – The Board shall meet at least once in every calendar quarter, with maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four Meetings are held in each Calendar Year.

By this SS, it has not tried to increase or reduce the number of Board Meetings nor has it increased or reduced the gap of 120 days between two Board meetings, which is provided by the Act. But it has added one more requirement of ensuring that there is at least one Board meeting in each quarter. The same requires further care in planning the Board Meeting of the Company.

Now let us see how this SS tries to achieve the purpose mentioned above.

As per Section 173 (1) of the Companies Act, 2013, the Company is required to hold four Board meeting in a year and the gap between two Board Meetings should not be more than 120 days. It does not specify the gap of minimum days between two Board meetings. Therefore if a Company convenes four Board Meetings in one month or even in two months, it has complied with the provisions of Section 173(1) of the Companies Act, 2013. But does it really serve the purpose? Whether the Act, intends the same? No. The duties of the Directors as mentioned in Section 166 of the Companies Act, 2013 requires them that they keep themselves acquainted with the performance of the company. One of the duties of a Director is to act in good faith in order to promote the object of the Company for the benefit of its members as a whole and in the best interest of the Company, its employees, the shareholders, the community and for the protection of environment. The Board will not be able to discharge its duty unless it regularly, at least in quarter, keeps itself informed about the performance and activities of the company. But if there is no Board meeting then there may be no provision or availability of sufficient and relevant information and discussion and exchange of views on the activities and operations of the Company. Hence, the requirement of board Meeting in each quarter becomes necessary. Holding Board Meeting in each quarter enables the Board to have required information of the performance and activities of the company of each quarter, based on which the Board can direct the management for next quarter or future course of action, if required and accordingly can discharge their duties.

This SS seeks to allow the Directors to have sufficient and required information at reasonable time to discharge their duties, which is the result of good Corporate Governance. By SS-2.1, it is not presumed that all the companies will not hold Board Meeting at
reasonable interval and frequency. But it tries to protect the interest of Directors of some companies, which will not hold the Board meeting at reasonable interval and thereby protect the interest of all the other stakeholders of the company. The duties of the Directors as mentioned in Section 166 of the Companies Act, 2013 is the same for all the companies, whether Private, Public or Listed companies. So, the SS serves its first purpose of increasing the confidence of each stake holder by providing for sufficient and relevant information at reasonable time to all the stakeholders.

Further, it is observed that in majority cases the Directors are held responsible for action or inaction of the company. The major point of dispute to fix the liabilities will be the availability of required information at right or reasonable time. The SS, by codifying the practise of holding minimum one Board meeting in each quarter, tries to ensure that the Directors of the Company get the required information at reasonable time and the same gets discussed. Hence, the major reason or question of dispute or difference is sought to be solved by the SS.

Take another example of SS.4.1 which pertains to Attendance Register. The Companies Act, 2013 is silent about Attendance register for Board Meeting.

While SS provides that each company has to maintain the Attendance Register for Board Meeting, SS-4.1.2 provides the information to be entered in the Attendance Register. SS-4.1.3 states that who will sign the Attendance Register.

Further, it clarifies entries to be made in the Attendance Register in case Director(s) attending the Board Meeting through Electronic mode. It also provides place of maintenance of Attendance Register and inspection of the same by Directors. Further, it provides for Authentication, preservation and person responsible for custody of Attendance Register.

Here instead of going into the details, we try to find out how the two purpose of SS get achieved by this SS. The responsibility of Director is different when he attends the Board Meeting and when he does not attend the Board Meeting. Further, as per Section 167(1)(b) of the Companies Act, 2013, if a Director does not attend any Board Meeting of the Company with or without leave of absence during the period of twelve months, then he vacates the office of Director. But how to ensure that which Director was present at the Board Meeting and which Director was not present at the Board Meeting. Further, each Director generally receives the sitting fees for attending Board Meeting. How to ensure that only the Directors who attended the Board Meeting has received the sitting Fees? This purpose can be served by providing the required information of the name of Directors who attended the Board meeting and providing proof for the same by taking signature of the said Director and getting the register authenticated by the Company Secretary or the Chairman, where there is no Company Secretary, of the Company. Thus, the SS tries to provide the relevant and sufficient information at relevant time to all the stake holders and accordingly lead to Corporate Governance. Now the second objective of reducing disputes on administrative grounds. Several time, Directors try to avoid their responsibilities by claiming that they were not present at the particular Board Meeting or they were not provided proper information. But the signature of the concerned Director itself declares that he was present at the meeting of the company and signature by invitees, who may be giving presentation or various other information and explanation, shows that the Directors were provided sufficient information. So, the second purpose of SS get served.

SS-1.3.7 states that the Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

SS-1.3.8 provides that each item of business requiring approval at the Board Meeting shall be supported by a note setting out the details of proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

Section173(3) of the Companies Act,2013 states that The Board Meeting should be called by giving not less than seven day notice in writing-----and it also provides for calling the Board meeting with shorter Notice.

However, both the Act and Rules are silent as regard the timeline of Agenda and Notes to the Agenda of the Board Meeting.

The Directors will not be able to contribute at the Board Meeting unless he is informed well in advance the item of business to be transacted at the proposed Board Meeting and the relevant information as regard the agenda items. They will not be able to discharge their duties without the advance and timely relevant information on each of the business to be transacted at the proposed Board Meeting. If the Directors are not provided with the relevant information at reasonable time then they cannot be held liable for inefficiency or failure in discharging their duties. Further, this will be the base or root cause for disputes, in case of any noncompliance, as who will be responsible in such a case.

Thus, SS-1.3.7 provides that in addition to the Notice of Board
Meeting, Agenda and Agenda Notes should also be given to the Directors at least seven days before the date of the Board Meeting. Also, SS-1.3.8 provides what all information is required to be given to the Directors, in respect of each item of business which requires the approval of the Board at the Meeting. This ensures that the Directors get the list of item of the business to be transacted at the proposed Board Meeting and the reasonable details as regard the said business to be transacted. Hence, Directors can perform their duties well. Further, they cannot avoid their liabilities and responsibilities for the action or inaction on the ground of non-availability of the reasonable information at reasonable time. So, the SS achieve both the purposes.

SS-3.1 states that the Quorum of Meeting should be present throughout the Meeting.

Section 174 provides for the Quorum of the Board Meeting but the Act and the Rules are silent on the duration of the presence of the Quorum. Accordingly if the quorum is present at the starting of the meeting and if the Directors present leaves the Board Meeting afterwards, and if there is no quorum after the Board Meeting starts, still meeting can continue and transact the Business at the Board Meeting and still the provisions of the Act complies. But whether the same is correct? No. Each business to be transacted at the Board Meeting should have sufficient number of Directors present.

Same way, SS-6.2.3 states that with each resolution to be passed by Circulation by Directors should be accompanied by a Note setting out the details of the proposal, relevant material facts-------

Section 175 (1) provides for the draft resolution proposed to be passed should be accompanied by the necessary papers, if any.

The Act does not elaborate or give the details to be provided along with the draft resolution to be passed by Circulation. Further, it leaves optional to the company to decide whether any paper or information is necessary or not to pass the resolution by Circulation. This may lead to the situation that company does not send or send insufficient information to the Directors for passing the resolution by Circulation. As a result Directors may act or not act, in appropriate manner, so that they discharge their duties properly. In the absence of sufficient information, agreement or disagreement to the proposed resolution may lead to increase in the liabilities or responsibilities of the Directors. But the same is not correct. So, SS-6.2.3 provides the information required to be given for the resolution proposed to be passed by circulation. Further, as the reasonably sufficient information get provided to the Directors, they cannot avoid their liabilities for their action or inaction on the ground that they were not provided with reasonably sufficient information. Thus, again SS achieves both the purpose.

Further, as regard SS-2, the said SS also tries to achieve similar purpose by providing similar kind of requirements for conducting the meeting of the members, so that the shareholders of the company get reasonably sufficient information in advance and they can participate in the voting process after being reasonably informed. Further, it also tries to give more details and the information in the minutes of the General Meeting to ensure compliances and avoid disputes.

For instance SS-17.2.1.2 states that Minute shall record the names of the Directors and the Company Secretary present at the Meeting. This ensures that reasonable supporting is there to find which Directors were present at the General Meeting. The same will be helpful to prove the diligence of Directors in discharge of their duties. It also helps to establish the liabilities of the Directors.

Further, SS-17.2.2.1(f) also provides that the minutes of the General Meeting should record the presence of the Chairman of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their Authorised Representative.

Section 178 (7) states that the Chairman of Nomination and Remuneration Committee and Stakeholders Relationship Committee should attend the Annual General Meeting of the Company either by themselves or through the Authorised Representative. So, it is necessary to ensure the attendance of the said Chairman. The same can be ensured by making necessary mention in the minutes of General Meeting. This can reduce the dispute as regard presence of Chairman of the required Committees.

This can go on. But here the intention is to try to provide the reason and purpose of SS and its importance for Corporate Governance and possible reduction in corporate disputes on Administrative ground pertaining to the conduct of Board and General Meeting and providing the information for taking the decision by Board and the Members.

It can very well be observed that the SS has tried to achieve these two purposes to the maximum extent.

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Nashik Chapter of WIRC of the ICSI has been shifted to a bigger and better place to serve its members, students and other stakeholders efficiently.

The new office address of Nashik Chapter is as under:

**Nashik Chapter of WIRC of ICSI, 14, Vishwashanti Appartment, Rachana Vidyalaya Road, Sharanpur Road, Canada Corner, Nashik- 422002**

Tel. No. : 0253-2318783
The Ministry of Corporate Affairs accorded its approval under Section 118(10) of the Companies Act, 2013 to Secretarial Standards (SS-1 relating to Meetings of the Board of Directors and SS-2 relating to General Meetings) issued by the Institute of Company Secretaries of India (ICSI).

The Secretarial Standards seek to harmonize, incorporate and standardize diverse secretarial practices followed by Companies throughout the Country, which when uniformly and consistently applied, would result in the establishment of best practice and also advocate good governance practices in certain areas where definite law is not feasible.

India is the first country to issue Secretarial Standards. India is the pioneer in having Secretarial Standards as no other country in the world has yet adopted the Secretarial Standards. Therefore, it is a proud achievement for our Country. These Secretarial Standards become international benchmark for Board and General Meetings for all the countries and benchmark for counterparts to follow.

India Inc. would make a new benchmark of Secretarial Standards (SS) to foothold its corporate governance practice in the global arena. This will bring lots of challenges and provide opportunities for the profession of Company Secretaries. When India Inc. was facing multitude of Corporate Governance practices whereby two activities particularly Board and shareholders decision(s) are crucial, the introduction of SS pertaining to these areas is timely, apt and need of the hour.

Presently Companies have crossed the borders and have presence in many countries with gradual opening up of the global
Secretarial standards are intended to reduce ambiguity in law and adopt best practices of the industry followed over decades conventionally. They do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.

Economy, international financial market and liberalization; there is a growing reorganization for effective corporate governance. In such scenario, there is definitely a need of universally accepted governance standard to be followed by each organization or firm.

The Board of Directors as an institution play a prominent role in Corporate Governance. By this pivotal role of the Board, Directors are considered as fiduciaries in that they are required to act in the interest of various constituencies in a company such as shareholders and other stakeholders. Board room governance will receive sharper focus with the release of Secretarial Standard on Meetings of Board of Directors.

SS will foster corporate governance and reduce litigation as the steps on how to conduct a Board Meeting and a General Meeting have been very clearly specified. The adoption of secretarial standard by the Corporates will have substantial impact on the quality of secretarial practice being followed by the Companies, making them comparable with the best practice in the world.

Good corporate governance involves a commitment of a Company to run its business in a legal, ethical and transparent manner and runs from the top and permeates throughout the organization.

SECRETARIAL STANDARDS – IMPACT ON THE COMPANY SECRETARIES

Enormous responsibility is bestowed on the company secretaries (both, in practice and employment). Company Secretary in employment has to ensure the compliance of Secretarial Standards as it is one of the prescribed statutory functions under section 205 of the Companies Act, 2013 (relating to ‘Functions of company secretary’). Company Secretary in practice has to ensure compliance of the Secretarial Standards for its clients. Company Secretary in practice, who has been appointed as Secretarial Auditor, is under an obligation to report in the Secretarial Audit Report about the compliance of Secretarial Standards by the company.

The Standards recognize the need of dynamism in the Boardroom. The contemporary Company Secretary is much more than a “note taker” at the board meeting or a mere servant of the board but is “the Key Managerial personnel of the company”. The specialized role of modern Company Secretary has emerged as the “Key Managerial Personnel” and “Compliance Officer” within the organization.

The Board and the Chairman are now reliant on Company Secretaries with respect to Corporate Governance requirements and practice and effective board process. This specialized role of the modern Company Secretary has emerged to position this valuable professional as one of the key governance professionals within the organization.

The position of Company Secretary has been enhanced by the Secretarial Standards. Certain provisions introduced in Secretarial Standards in this regard are as follows:

- Along with the Board of Directors only the Company Secretary is in attendance at the Board Meeting. Other persons will be invitees.
- Company Secretary will be the custodian of all the important documents related to meeting viz. Minutes Books, Attendance Registers, etc.
- Company Secretary is the vital link between the top management and rest of the organization.
- Company Secretary as Governance professional.
- Company secretaries are the natural conscience keepers for the corporate sector since they are specialists in the fields of corporate governance, regulation and processes and are the eyes and ears of the Board on such matters. It is they who validate board processes and ensure that companies do the right things, always. “Company Secretary is the Right Hand Man of the Board”

PURPOSE / ROLE OF SECRETARIAL STANDARDS

Secretarial standard is set of some good practices and procedures. Adherence to a standard brings in uniformity, transparency and objectivity. Adherence to the Standards also indicates that the Company concerned is alive to the hygiene factor and takes care to have it embedded in the organizational practices and procedures.

Secretarial Standards play the role of assisting / supplementing the extant company law regulation. Wherever there are issues in practically implementing the provision, i.e. where there is no appropriate solution in Companies Act & Rules, the SS provides an adequate guidance to the corporates and professionals for ensuring compliance of the Companies Act, 2013.

Secretarial standards are intended to reduce ambiguity in law and adopt best practices of the industry followed over decades conventionally. They do not seek to substitute or supplant any
existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.

Laws framed by the legislature are founded on reason and is obvious to common sense. However, no legislation can be framed to cover all possible questions. Law can't be specific in many areas which gives scope to varied interpretations. Mischief mongers use this flexibility to interpret the laws for their own benefit and not for common good as is the intention of the legislature.

ADVANTAGE/VALUE CREATION BY SECRETARIAL STANDARDS

The adoption of Secretarial standards would bring following advantages to the Corporate Sector:

1. Consistent, unambiguous and uniform board room practices as well as better transparency and disclosure norms including timely flow of information, will lead to better protection of minority interest.

2. Increase in confidence of Investors like; JV Partners, foreign investors, non-executive directors as well as independent directors. They will get reassured that no director attempts to achieve any undue gain or advantage to himself or to his associates.

3. All the important business decisions like: financial, economical and operational etc taken at Board Meetings and General Meetings. Standardization of processes and adoption of best practice will enhance in credibility of the decision making process.

PROVISION UNDER COMPANIES ACT, 2013

Every Company shall observe Secretarial Standards with respect to General Meetings and Board Meetings specified by the Institute of Company Secretaries of India, constituted under the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

APPLICABILITY & NON APPLICABILITY OF SECRETARIAL STANDARD

The Standards clearly state that if at any time any amendment is made to the Companies Act and it is contrary to the Secretarial Standards, the provisions of the Act will prevail over the Standards.

SECRETARIAL STANDARD I- MEETINGS OF THE BOARD OF DIRECTORS

This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto. The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee(s) of the Board, unless otherwise stated herein or stipulated by any other applicable guidelines.

A. NOTICE, AGENDA AND NOTES ON AGENDA

Notice, Agenda and Notes on Agenda in writing of every Meeting shall be given to every director by hand or by Speed Post or by Registered Post or by Courier or by facsimile or by Email or by any other electronic mode.

Address for the Notice, Agenda and Notes on Agenda

Postal address or e-mail address, registered by the Director with the company; or in the absence of such details or any change thereto, on the addresses appearing in the director identification Number (DIN) registration of the Director. If the director specifies the mode of delivery of Notice, Agenda and Notes on Agenda, the same shall be given to him by such means.

Responsibility to Issue of Notice, Agenda and Notes on Agenda

Notice, Agenda and Notes on Agenda shall be issued by the Company Secretary or where there is no Company Secretary, by any Director or any other person authorized by the Board for the purpose. The Proof of sending Notice and its delivery shall be maintained by the Company.

Specification of Notice, Agenda and Notes on Agenda

The Notice, Agenda and Notes on Agenda shall specify the Serial Number, Day, Date, Time and Full Address of the venue of the Meeting.

Time Period for Issue of Notice, Agenda and Notes on Agenda

• Notice, Agenda and Notes on Agenda convening a Meeting shall be given at least SEVEN clear days before the date of the Meeting, unless the Articles prescribe a longer period.
• In case the company sends the Notice, Agenda and Notes
on Agenda by Speed Post or by registered post or by courier. An Additional Two Days Shall be Added for the service of Notice.

Notice of Adjourned Meeting

- Shall be given to all Directors including those who did not attend the Meeting on the originally convened date.
- Unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

Notice, Agenda and Notes on Agenda to Alternate Director

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.

CALLING OF MEETING ON SHORTER NOTICE

To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above,

- If at least one Independent Director, if any, is to be present at such Meeting.
- If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.
- In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

D. QUORUM

The Quorum for a Meeting of the Board shall be One-third of the total strength of the Board or Two Directors whichever is higher.

Important Points relating to Quorum

- Fraction: Any fraction contained in the above one-third shall be rounded off to the next one.
- Higher Quorum in AOA: Where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.
- Total Strength: Total strength for this purpose, shall not include Directors whose places are vacant.
- Two thirds of Interested Director: If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.
- No quorum in Adjourned Meeting: If there is no Quorum at the adjourned Meeting also, the Meeting shall stand

B. NOTES

Each item of business requiring approval at the Meeting shall be supported by a note.

Notes on Agenda shall include the following:

- Details of the proposal.
- Relevant material facts that enable the Directors to understand the meaning.
- Scope and implications of the proposal.
- The nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

C. FREQUENCY OF MEETING

Meetings of the Board of Directors (Except Small Company, One Person Company and Dormant Company)

- The Board shall meet at least once in every calendar quarter.
- Maximum interval between two board meetings 120 days.
- At least 4 (four) Board Meetings in a calendar year.
- In case of Newly Incorporated Company “First Meeting” should be held within 30 days of Incorporation of Company.
Presence of Quorum

- Quorum shall be present throughout the Meeting. (Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business).
- Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum.

E. ATTENDANCE OF MEETING

Attendance registers

- Every company shall maintain separate attendance registers for the Meetings of the Board.
- Every company shall maintain separate attendance registers for the Meetings of the Committee.
- The pages of the respective attendance registers shall be serially numbered.
- If an attendance register is maintained in loose-leaf form, it shall be bound periodically.

Particulars of Attendance register of Board Meeting

- Serial number and date of the Meeting
- Place of the Meeting; time of the Meeting
- Names of the Directors and signature of each Director present
- Name and signature of the Company Secretary who is in attendance
- Also of persons attending the Meeting by invitation.

In case of Committee Meeting “name of the Committee” should also be mentioned.

Signing of Attendance Register

- Every Director, Company Secretary who is in attendance and
- Every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting.
- Director participating through electronic mode: The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded by the Chairman or the Company Secretary in the Attendance Register and the Minutes of the Meeting

In case of Directors participating through Electronic Mode

- At the commencement of the Meeting, the Chairman shall take a roll call
- The Chairman or Company Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the Minutes.

F. CHAIRMAN

The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.

G. MEETING OF THE COMMITTEE

A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

H. PARTICIPATION OF DIRECTOR THROUGH ELECTRONIC MODE

Any Director may participate through Electronic Mode in a Meeting, if the company provides such facility. But certain items can’t be dealt at a meeting held through Video conferencing.

Matter which can’t be dealt at a meeting held though Video conferencing unless expressly permitted by the Chairman:

- Approval of the annual financial statements
- Approval of the Board’s report
- Approval of the prospectus
- Audit Committee Meetings for consideration of accounts and
- Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Notice of Board Meeting if Facility of participation through Electronic Mode is provided

In case the facility of participation through Electronic Mode is being made available, the Notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility.

If Facility of participation through Electronic Mode is provided the Notice shall seek advance confirmation from the Directors as to whether they will participate through Electronic Mode in the Meeting.

In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.
I. PROCEDURE OF MAINTENANCE OF MINUTES

a) The pages of the Minutes Books shall be consecutively numbered. This shall be followed “irrespective of a Break” in the book arising out of periodical binding in case of the Minutes.

b) If maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.

c) Minutes of the Board Meeting shall be kept at the Registered Office of the company or if the Company wants to maintain at any place other than Registered Office of the Company, then it will Pass a Board Resolution for the same in the Meeting of Board of Directors.

d) Circulation of draft minutes book
Within 15 (fifteen) days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated to all the directors of the Board or the committee for their comments.

a. MODES of circulation of draft Minutes

i. By hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic means.

ii. Where the Director specifies a particular mode of delivery of draft Minutes, then Draft Minutes shall be circulated to him by such means.

iii. If the draft minutes are sent by speed post or by registered post or by courier, an additional “2 (Two) Days” may be added for delivery of the draft Minutes.

iv. Proof of sending of draft Minutes and Delivery shall be maintained by the Company.

b. Comments by Directors and Time Period for Comment on draft minutes

i. The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof.

ii. If any Director communicates his comments after the expiry of the said period of seven days, the Chairman shall have the discretion to consider such comments.

iii. In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director.

c) Who is entitled to receive draft minutes

i. Even if a director ceases to be a Director after a Meeting of the Board he is entitled to receive the draft Minutes of that particular Meeting and comment thereon.

ii. Even if a director doesn’t attend Meeting of the Board he is entitled to receive the draft Minutes of that particular Meeting and comment thereon.

e) Entry In Minute Book

i. Time Period for Entry

• Minutes shall be entered in the Minutes Book within 30 (Thirty Days) from the date of conclusion of the Meeting.

• In case of adjourned Meeting:
The Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

ii. Duty of Entry in Minutes Book

• The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

• Where there is no Company Secretary, it shall be entered by any other person duly authorized by the Board or by the Chairman.

iii. Record of Entry in Minutes Book

• Minutes, once entered in the Minutes Book, shall not be altered.

• Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered.

J. SIGNING AND DATING OF MINUTES

a) Who is authorized to sign Minutes

• Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.

• Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before
the next Meeting is held or by the Chairman of the next Meeting at the next Meeting.

b) Time period for circulation of certified copy of Signed Minutes:

A copy of the “certified copy of” signed Minutes certified by the Company Secretary or where there is no Company Secretary, by any Director authorized by the Board shall be circulated to all Directors within 15 (fifteen) days after these are signed.

TIME PERIOD FROM MEETING TO CIRCULATION OF FINAL MINUTES

- Circulate Draft Minutes within 15 days of the conclusion of Meeting.
- Comment by Director on draft Minutes within 7 days of Circulation of Draft Minutes.
- Signing of Final Minutes by Chairman within 30 days of Conclusion of Meeting.

c) A copy of signed Minutes Certified by Company Secretary (If no company Secretary then by Director authorized by Board) shall be circulated within 15 days after these are signed.

SECRETARIAL STANDARD II-MEETINGS OF THE BOARD OF DIRECTORS

Secretarial Standard II seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot. This standard is applicable to all types of General Meetings of all companies incorporated under the Act except One person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification.

A Meeting of the Members or class of Members or debenture-holders or creditors of a Company under the direction of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such meeting.

A. PERSONS TO WHOM NOTICE WILL BE SENT

Notice in writing of every General Meeting shall be given to:
- Every Member
- Every Director
- Statutory Auditor
- Secretarial Auditor
- Debenture trustee, if any.
- Whenever applicable or so required, to other specified person

B. MODES OF SENDING OF NOTICE

- By hand or by Speed Post or by Registered Post or
- By Courier or by facsimile or by Email or by any other electronic mode.
- Company will maintain record of “proof of sending” and “proof of Receipt of Notice”

If a member requests for delivery of Notice through a particular mode, other than those listed above, he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.

C. TIME PERIOD FOR SENDING OF NOTICE

Notice convening a Meeting and accompanying documents shall be given at least twenty one clear days before the date of the Meeting, unless the Articles prescribe a longer period.

In case the company sends the Notice by Speed Post or by registered post or by courier, an Additional Two Days shall be Added for the service of Notice.

D. PLACE OF HOLDING OF GENERAL MEETING

i. Annual General Meeting
   - Registered Office of the Company; or
   - Some other place within city, town or village in which the registered office of the Company is situated.

ii. Extra Ordinary General Meeting
    - Any place in India.

iii. General Meeting called by Requisitionists
    - Registered office of the Company or
    - At some other place within the city, town or village in which the registered office of the Company is situated.

E. PARTICULARS OF NOTICE

The Notice shall include the following:
- Complete particulars of ‘Venue’ of Meeting
- Route Map of Location of Meeting
- Prominent Land Mark of Location of Meeting
- Day, Date and Time of Meeting
- Notice shall clearly specify the nature of the Meeting and the business be transacted thereat

F. RESOLUTIONS

Special Business: In case of Special Business in Notice of General Meeting each such item shall be in the form of

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1 Twenty One Clear Days: For the purpose of reckoning 21 clear days notice, the day of sending of the Notice and the day of Meeting shall not be counted.
Secretarial Standard II seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot. This standard is applicable to all types of General Meetings of all companies incorporated under the Act except One person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification.

Ordinary Business: In case of Ordinary Business in Notice of General Meeting the Resolution is not required to be stated in the Notice except where the auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.

Documents to accompany the notice:
- Attendance Slip
- Proxy Form
- Clear instruction for filing, stamping, signing and/or depositing the proxy form.

G. CALLING OF GENERAL MEETING BY SHORTER NOTICE

Notice and accompanying documents may be given at a shorter period of time if consent in writing is given by physical or electronic means, by not less than 95% (Ninety Five Percent) of the Members entitled to vote at such meeting. While sending the Notice of General Meeting a copy of request for consenting the Shorter Notice shall be sent together.

H. EXPLANATORY STATEMENT

i. Nature of Concern & Interest: The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any Special Item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:
   a) Directors and Manager
   b) Other Key Managerial Personnel; and
   c) Relatives of the Persons mentioned above.

ii. Document

Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the registered office of the company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as corporate office of the company, if any, if such office is situated elsewhere, and also at a meeting.

I. DOCUMENTS REQUIRED SENDING ALONG WITH NOTICE OF ANNUAL GENERAL MEETING:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of Document</th>
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<tbody>
<tr>
<td>1</td>
<td>Proxy Form</td>
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<tr>
<td>2</td>
<td>Attendance Slip</td>
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<tr>
<td>3</td>
<td>Request for consenting shorter Notice, if any</td>
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<tr>
<td>4</td>
<td>Directors’ Report</td>
</tr>
<tr>
<td>5</td>
<td>Balance Sheet</td>
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<tr>
<td>6</td>
<td>Profit &amp; Loss Account</td>
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<tr>
<td>7</td>
<td>Cash flow Statement</td>
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<tr>
<td>8</td>
<td>Auditors’ Report</td>
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CONCLUSION

Secretarial Standards will create enormous confidence in the minds of investors particularly fund managers and overseas investors as these investors are very much concerned about good governance practices and sound procedures. This will lead to more flow of capital into India, new projects, more modernization and expansion. At the same time, there would be greater transparency and accountability by the Board of Directors. The Standards have opened plenty of opportunities for the Company Secretaries. As Standards are mandatorily required to be adhered to by all the Companies, except OPCs, all the 13 lakh plus companies, incorporated in India, will now have to follow uniform governance norms and practice to conduct Board and General Meetings.
Secretarial Standard 1 (SS - 1) – Enhancing Board’s Integrity

Board Room conduct deserves highest level of integrity. An effective Board is concerned about integrity inside and outside the Board Room. Integrity in the Board Room is based on factors such as organizational values, the need to uphold the board’s fiduciary responsibilities and a willingness to be accountable.

MEANING OF INTEGRITY

Before we discuss enhancing Board's Integrity, it is worth understanding 'what is Integrity'. Integrity means 'firm adherence to a code of especially moral or artistic values'. It is synonymous with "probity," "honesty," and "uprightness". Mystic – Sadhguru Jaggi Vasudev states that "Integrity is a certain coherence between what you say and what you do, and what you think and how you feel about life around you. It is not just in your actions. Integrity is in the way you are and the way you carry yourself. If you don't bring it there, integrity will be a burdensome exercise where you have to somehow hold it. You do it only when others are watching you."

BOARD ROOM BATTLE

Board Room conduct deserves highest level of integrity. An effective Board is concerned about integrity inside and outside the Board Room. Integrity in the Board Room is based on factors such as organizational values, the need to uphold the board’s fiduciary responsibilities and a willingness to be accountable.

There was no code to guide the conduct of the Board except the rules for issue of board meeting notice and recording of minutes. The process between ‘issue of notice and recording of minutes’,
Introducing independent directors in the corporate governance framework denotes that the interest of all stakeholders was taken into account. It was expected that the independent directors will protect the interest of various stakeholders, particularly the minority shareholders.

was always debated in court room and questioned the intent of any conduct as not desirable. The legal cases on ‘oppression and mismanagement’ are encircled around various conducts of Board meetings and process around that.

The main objective of Secretarial Standards (SS) is to enhance and enrich the Corporate Governance Practices in India. To begin with, the Institute of Company Secretaries of India (ICSI) has issued - SS – 1 on Meetings of the Board of Directors and SS – 2 on General Meetings. These standards when put into practice would have a lasting influence on the decision making powers of the Board of Directors as well as interest of Shareholders.

SS – 1 brings an authority to put a stop on divergent practices and thereby enhancing the integrity of the Board.

The five broad principles, which will help enhancing integrity of Board Room are, (i) be active; (ii) providing leadership; (iii) compliance with laws & ethics policies; (iv) be informed, transparent & listen; and (v) continuous monitoring.

Secretarial Standards with uniform practices and transparency are aiding each of the above principles to enhance Board integrity.

‘BOARD’S ATTITUDE’

The Companies Act, 2013 and Rules made thereunder as well as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have bestowed enormous responsibilities on the Board of Directors.

Directors are not only agents but they are in some sense and to some extent trustees or in the position of trustees. [ LIC of India v Escorts Limited (1986) 59 Comp Cas 548 (SC): (1986) 1 Comp LJ 91 (SC): AIR 1986 SC 1370. ] The Directors are persons selected to manage the affairs of the company for the benefit of all stakeholders. It is an office of trust which, if they undertake, it is their duty to perform fully and entirely.

The roles and functions of the Board of Directors have been observed as critical as well in earlier relevant literature. The Kumar Mangalam Birla Committee Report on Corporate Governance has acknowledged the accountability of Board of Directors:-

“6.1 Board of Directors – The board of a company provides leadership and strategic guidance, objective judgment independent of management to the company and exercises control over the company, while remaining at all times accountable to the shareholders. The measure of the board is not simply whether it fulfills its legal requirements but more importantly, the board’s attitude and the manner in which it translates its awareness and understanding of its responsibilities. An effective corporate governance system is one, which allows the board to perform these dual functions efficiently. The board of directors of a company thus directs and controls the management of a company and is accountable to the shareholders.

6.2 The Board directs the company, by formulating and reviewing company’s policies, strategies, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestitures, change in financial control and compliance with the company and its management by laying down the code of conduct, overseeing the process of disclosure and communications, ensuring that appropriate systems for financial control and reporting and monitoring risk are in place, evaluating the performance of management, chief executive, executive directors and providing checks and balance to reduce potential conflict between the specific interests of management and the wider interests of the company and shareholders including misuse of corporate assets and abuse in related parties transactions. It is accountable to the shareholders for creating, protecting and enhancing wealth and resources for the company, and reporting to them on the performance in a timely and transparent manner. However, it is not involved in day-to-day management of the company, which is the responsibility of the management.”

PROTECTING MINORITY SHAREHOLDERS

The endorsement of Parliamentary Standing Committee was important in this regard is as under -

“29, as the institution of Independent Directors is a critical instrument for ensuring good corporate governance, it is necessary that the functioning of this institution is critically analysed and proper safeguards are made to ensure its efficacy. The appointment of Independent Directors should not be a case of mere technical compliance reduced to the letter of the law. It is important that Independent Director play their designated role to nurture the financial health of the Company and to protect the interests of various stakeholders, particularly the minority shareholders. The Committee, therefore, believes provisions pertaining to the Independent Directors should be distinguished from other Directors in the Bill. The Government should, therefore, prescribe precisely their mode of appointment, their qualifications, and extent of independence from promoters / management, their role and responsibilities as well as their liabilities. In this
context, it would be pertinent to mention that there is a need to circumscribe and limit the liabilities of Independent Directors, so that they are able to act freely and objectively and are able to share their expertise with the rest of the Board. A provision may also be made for their rotation by restricting their tenure in a company to say, five years. The Ministry of Corporate Affairs thus needs to revisit the Institution of Independent Directors and make amendments in the Bill accordingly. A code for independent directors may also be considered for this purpose. The appointment process of Independent Directors may also be made independent of the company management by constituting a panel or data bank to be maintained by the Ministry of Corporate Affairs, out of which companies may choose their requirement of Independent Directors. It is expected that the system of independent directors will evolve as a corporate governance institution over time………"

**CORPORATE GOVERNANCE PRINCIPLES**

The listing regulations provide that the board of directors of the listed entity shall have amongst others responsibilities for –

i. such conduct so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making;

ii. monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions;

iii. ensuring the integrity of the listed entity's accounting;

iv. setting a corporate culture and the values by which executives throughout a group shall behave;

v. treating all shareholders fairly;

vi. maintain high ethical standards and shall take into account the interests of stakeholders; and

vii. exercising objective independent judgement on corporate affairs.

Code for independent directors provides amongst others that an independent director shall:-

i. uphold ethical standards of integrity and probity;

ii. act objectively and constructively while exercising his duties;

iii. exercise his responsibilities in a bona fide manner in the interest of the company;

iv. not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person; and

v. balance the conflicting interest of the stakeholders

The legal position is very clear that the Board of Director should conduct with highest level of integrity and ethics.

**SS – 1 TO UPHOLD BOARD INTEGRITY**

SS - 1 provides complete clarity on conducting board meeting. The way ‘we’ draft the agenda notes or the manner in which each director wanted it to happen, may quite differ and ultimately may not be in the interest of all stakeholders. SS -1 comes useful under those circumstances. It has been clarified that the important points to be included in the agenda notes and thereby dealing with each item of business at the Board Meeting.

Some of the other best practices advocated by the standard which would enhance the integrity of Board are as follows:

- Clarity on the authority to convene a meeting - Clarifies who can convene a valid meeting. How to issue notices to Directors including Alternate Directors even if the meetings are held at pre-determined dates.
- Who all can attend the meeting.
- Matters to be compulsorily placed before the Board.
• Suggesting that agenda and agenda notes including draft resolution to be circulated at least 7 days before to all Directors except in cases where meeting is held in emergent situation or to discuss urgent matter. Also provides for obtaining general consent for giving agenda notes at a shorter notice in relation to agenda which are in the nature of unpublished price sensitive information.

• Clarifying that quorum is to be present not only at the time of commencement of the meeting but throughout the meeting.

• Suggests that minutes shall mention not only the brief background of the proposals, summarizing the deliberations and the rationale thereof in case of major decisions. Process of circulating draft minutes inviting comments from Directors, incorporating comments in minutes and circulating signed minutes among Directors.

• Complete clarity on the process of obtaining consent of Directors on circular resolution.

• Clarify on provisions pertaining to inspection of records by various persons.

Bringing uniformity in Board practices, reducing conflicts, encouraging transparency and keeping interest of all stakeholders are the expansive features of SS - 1. Adhering to the SS – 1 facilitates the Board in fulfilling its responsibilities.

SS – 1 brings transparency in the conduct of Board. Adhering to SS – 1 would bring complete transparency in dealing with all stakeholders and it will be an answer to someone who may question the integrity of the Board.

PERSONAL ‘SOUND INTEGRITY’

The conduct of individual director is equally important. Company though a legal entity cannot act by itself; it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. The Supreme Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar MANU/SC/0005/1973: (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.

It should be borne in mind that reputation of a person is always a matter of great importance. Reputation is not built or acquired in a day but it takes long years and sustained good work, conduct and sound integrity which builds up the reputation of a person. In the business world the companies or corporations also acquire a reputation by producing good products and fair dealings. [Asstt. Commissioner Vs. Velliappa Textiles Ltd. MANU/SC/1218/2003] The director shall have the duty to exercise due care and diligence in his conduct.

AN ISOLATED ACT OF DIRECTOR

In Needle Industries (India) Ltd. and Ors. v. Needle Industries Newey (India) Holding Ltd. and Ors., the Supreme Court observed that the true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts following upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed.

OPPRESSIVE RESOLUTION

N.H. Bhagwati J. in a decision of the Gujarat High Court in S.M. Ganpatram v. Sayaji Jubilee Cotton & Jute Mills Co. [1964] 34 Comp. Cases 830-31 observed that “a resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interests of the shareholders and the company”.

CONCLUSION

Law will not always be able to capture the mind of a collective decision; it is for the board to question in whose interest decision is taken or resolution is passed so that integrity of the board of directors as an ‘institution’ is viewed with respect and trust. Following SS – 1 in the conduct of board would surely uphold the same.
INTRODUCTION

A cornerstone of corporate law is that a member of a board of directors owes fiduciary duties to the corporation he or she serves. One of these fiduciary duties is the duty of loyalty. The duty of loyalty requires board members to act in the interest of the corporation and not in the directors’ own interest or in the interest of another person or organization. In exercising their duty of loyalty, directors must act in a manner they believe is in the best interests of the corporation without taking their personal interests into account. Directors should not use their corporate position to make a personal profit or gain or for other personal advantage.

Another important component of the duty of loyalty is a duty of confidentiality. The duty of confidentiality is essentially a duty not to speak about board matters to non-board members or share board materials with non-board members unless authorized to do so. Although board deliberations are generally considered by the directors to be confidential, this is often not recognized by shareholders or members. There are good reasons, however, as to why confidentiality should be maintained, even in an age of increasing corporate disclosure. Regardless of whether you believe the workings of a board of directors should be open and transparent, or shrouded from view, some level of confidentiality in a board’s deliberations will always be important.

Confidentiality of board minutes is an important commercial interest. The directors’ duty of loyalty requires that directors maintain the confidentiality of corporate information. There is no explicit source for a director’s duty of confidentiality. It is usually inferred from the duty of care, the duty of loyalty, or both. The present article is intended to address directors’ duty of boardroom confidentiality and sanctity of board minutes through SS-1.

The Indispensability of Addressing Directors’ Duty of Boardroom Confidentiality and Sanctity of Board Minutes through SS-1
Although no privilege attaches at law to such minutes, this is an important commercial interest. The board of directors of a corporation is charged with the responsibility to manage the corporation. The directors must be able to conduct open and frank discussions if they are to discharge their responsibilities to the corporation and the shareholders. In the ordinary course, it is certainly arguable that, for this reason, disclosure of minutes of board meetings and related notes of participants, would give rise to a serious risk to an important commercial interest. Despite this importance of the inherent confidentiality of board minutes, it will be very difficult to protect that confidentiality once the minutes become an issue in litigation.

SIGNIFICANCE OF BOARDROOM CONFIDENTIALITY

Confidentiality not only facilitates open discussion at board meetings, but it promotes the perception, if not the fact, of board unity. Once a decision is made, the board should speak with one voice. The effect and force of a decision are weakened if board members are free to discuss the level of dissent or lack of enthusiasm that some directors have for the decision. Confidentiality also facilitates the taking of proper minutes, which should reflect not only the decisions made but also the questions asked, and positions taken by various directors.

Specific requirements of confidentiality are seen in the policies of some corporations in India. Few such organizations include provisions for disciplining board members for breaches of confidentiality, even to the extent that the board itself may remove the director. The fact that existence of such provisions highlights the importance that some boards place on confidentiality, as it appears to be more of a concern even though transparency is most vocally demanded and most often granted. This apparent contradiction can be seen in cases where a corporation has both a strict confidentiality clause for its directors but also puts the minutes of board meetings on its website.

The reason why specific confidentiality covenants are required may be because volunteer directors are more likely to be inexperienced in board procedure. They may also have come to the board with an agenda that is focused on one issue or constituency and not on serving the interests of the corporation as a whole. It is no secret that corporate boards can sometimes be embroiled in disputes and politics that take on an emotional, if not vicious, tone. A confidentiality covenant will at least help to control wayward board members.

Corporate statutes recognize that board minutes are inherently confidential. They are not provided to shareholders as of right. Both the Companies Act, 2013 and the SEBI Regulations grant shareholders the right to inspect or receive copies of certain corporate books and records, including financial statements. Board minutes are not included in the documents to which access is granted. Access to the minutes is given only to the directors themselves. Presumably, all of these statutes restrict access to board minutes because the need for confidentiality (or at least the option for it) is seen as something that should be maintained.

RAMIFICATIONS OF BOARD MINUTES

In the context of the ill-defined treatment of board minutes in the statutes, boards often receive requests from shareholders or members for copies of minutes or for their regular disclosure. As transparency and increased access to information is generally considered a good thing, the desire for openness and the need for confidentiality will naturally cause tension. This has often led to the unhappy compromise of producing two sets of minutes, one which will include the discussion and decisions taken on all matters (including areas considered to be sensitive or confidential) and another, which will be suitable for public disclosure, with the confidential sections removed. Alternatively, the minutes will be drafted in such a way that they say very little. They do not disclose confidential information because they do not record much of anything. Minutes that includes statements such as: “The board discussed several confidential matters” or “discussed matters in camera” do little to meet the requirements that the company keep a record of business transacted. Neither of these alternatives does anything to promote transparency or openness. At most, it merely pays lip service to the concept.

The better view is that, while transparency is always to be encouraged to promote participation and alleviate dissent, information should be communicated through material to which shareholders or members are entitled. This includes annual reports, financial statements, and securities filings. If the board minutes are not disclosed, the need for meaningful minutes can then be met.

Although the corporate statutes do not require the disclosure
When sensitive board information is deliberately exposed by a director, boards may struggle to respond effectively, as the remedies available to the board and the company are limited, particularly since directors cannot require another director to resign. In order to protect confidential and sensitive information, boards should, at a minimum, have robust director confidentiality policies and, in appropriate circumstances, should consider adopting bylaws regarding preserving confidentiality.

of minutes, such protection may be somewhat illusory when it comes to litigation or where minutes are subject to access to information requests. There is always a tension between openness and confidentiality in both litigation and information proceedings. Openness and disclosure, however, more often carry the day than do commercial sensitivity and privacy.

Of course, there may be instances where the company wishes to rely on the contents of board minutes in addressing allegations made in litigation. This will particularly be the case in oppression proceedings or where directors’ deliberations are directly in issue in the lawsuit. Board minutes may be used by the corporate entities in fending off any oppression applications brought by either minority or dissident shareholders.

Where the minutes may not be as directly relevant or where they contain sensitive information that needs to be protected, other efforts must be made. Confidentiality may be protected by sealing orders or by the deemed or implied undertaking rules, such protections will be narrowly construed if there is seen to be an impact on the administration of justice or the public interest.

FOCUS ON BOARDROOM CONFIDENTIALITY

In our age of communication, confidential information is more easily exposed than ever before. Real-time communication tools and social media give everyone with internet access the ability to publicize information widely, and confidential information is always at risk of inadvertent or intentional exposure. The current cultural emphasis on transparency and disclosure—punctuated by headline news of high-profile leakers and whistle blowers, and exacerbated in the corporate context by aggressive activist shareholders and their director nominees—has contributed to an atmosphere in which sensitive corporate information is increasingly difficult to protect. There is limited statutory or case law to guide boards and directors in this area, and there exists a range of opinions among market participants and media commentators as to whether leaking information (other than illegal insider tipping) is problematic at all.

Directors’ legal obligations with respect to confidentiality are not well articulated, and confidential board information is unique in the corporate context. It includes material, non-public information, the disclosure of which is regulated by securities laws and by company-wide policies and procedures, but it also includes sensitive boardroom discussions that have both personal and business elements and implications. In order for boards to function effectively, directors must feel comfortable expressing their views in the boardroom on corporate matters honestly and freely, without concern that their conversations will be made public.

Concerns about leaks often increase with the election of nominee directors. These directors, placed on public company boards through proxy access or a proxy fight, are typically perceived—rightly or wrongly—as representatives of those shareholders who nominated them and are considered likely to share details of board deliberations with their sponsors. When sensitive board information is deliberately exposed by a director, boards may struggle to respond effectively, as the remedies available to the board and the company are limited, particularly since directors cannot require another director to resign. In order to protect confidential and sensitive information, boards should, at a minimum, have robust director confidentiality policies and, in appropriate circumstances, should consider adopting bylaws regarding preserving confidentiality. Companies may also want to review their crisis management plans to ensure that they cover breaches of confidentiality by directors in addition to employees.
Public company boards should consider implementing a confidentiality policy specific to directors. The policy should define “confidential information” broadly, listing examples of the types of information covered, and emphasize that the category includes all non-public information entrusted to or obtained by directors due to their position on the board. The policy should remind directors of their fiduciary duties and state that directors may only use confidential information for the benefit of the company, and not for personal benefit or the benefit of any other entities.

CONFIDENTIAL BOARD INFORMATION

Confidential, non-public corporate information falls generally into three categories: proprietary information that is of competitive, commercial value to the company; inside information about the company’s finances, operations, and strategy; and sensitive information regarding board proceedings and deliberations. Unauthorized disclosures of proprietary information could imperil a company’s competitive advantage or commercial success while unauthorized disclosures of inside information can lead to illegal insider trading and manipulation of the company’s stock price. Information in any category that is material and non-public may be disclosed by company insiders only in specific ways prescribed by the securities laws, including the SEBI (Prohibition of Insider Trading) Regulations, 2015. For these reasons, all companies should have comprehensive corporate confidentiality policies that apply to employees as well as directors. The authorized processes and channels for disclosure of confidential corporate information should be well defined and understood within the company, as improper disclosures can lead to criminal and civil liability in certain circumstances.

The third category, sensitive board information, includes information to which a director is privy by virtue of his or her membership on the board of directors. In the course of fulfilling their fiduciary duties and director responsibilities, directors are entrusted with significant amounts of material, non-public information of all types; however, they also become aware of the inside story about how this confidential corporate information is discussed, used, and understood within the board itself. Directors generally know how their fellow board members view corporate executives, strategic initiatives, potential acquisitions, competitive and legal threats, and even each other. They also understand how board deliberations have developed over time. Any element of this meta-information may be of particular importance, may be potentially disruptive or embarrassing if disclosed, or may simply have been shared within the boardroom with the expectation of privacy. Leaks of sensitive board information—as opposed to proprietary or valuable corporate information—also can be highly damaging to a company. Such leaks can be made publicly, to the media and the investor community at large, or privately, to a director’s sponsor or other influential shareholders.

PUBLIC AND PRIVATE DISCLOSURES

The most sensational type of leak happens when a disgruntled or dissatisfied director provides confidential information to the media in order to put pressure on the rest of the board. Headline-making situation may arise if the boardroom discussions are leaked and ensuing public firestorm with an outcome of high-profile criticism from prominent members of the corporate community and a dramatic (and ongoing) decline in the value of stock. A less dramatic but likely more prevalent type of boardroom leak is the private communication of confidential information by nominee directors to their sponsoring shareholders. Activist shareholders and the investment community are increasingly pushing for shareholder-sponsored directors on public company boards, and indeed their numbers are growing due to dissidents’ success in proxy fights.

Nominee directors may be chosen for board seats by their sponsoring entities on the explicit understanding that they will share inside information for investment evaluation purposes. Indeed, when a director serves as the designee of a stockholder on the board, and when it is understood that the director acts as the stockholder’s representative, then the stockholder is generally entitled to the same information as the director. Absent contractual or bylaw provisions to the contrary, nominee directors are permitted to disclose information to their sponsors so long as they do so in a manner that is consistent with their fiduciary duties. If the corporation was harmed by the disclosures, or if the director knew that the sponsor would use the information disclosed to usurp corporate opportunities belonging to the company, the director likely would be found to have breached his or her duty of loyalty.
Regardless of the director’s intention, however, once information has been passed outside of the board, as a practical matter it is impossible to control the flow of information from the sponsoring shareholder’s employees to others in the investment community, absent specific confidentiality obligations being in place. Other directors may not be aware of the extent or type of information that a nominee director is providing to the sponsoring shareholder, nor how widely the information is being disseminated. Certain activists routinely enter into confidentiality agreements with companies on whose boards they participate, and these agreements, when properly drafted, protect both the company and the activist.

Some activist hedge funds have begun the unfortunate practice of providing their nominee directors with special compensation arrangements, some of which are contingent on certain events or on the implementation of the shareholding entity’s plans for the company. These arrangements are deeply problematic, as directors—regardless of who nominates them—owe fiduciary duties to all shareholders of the company and should not be prioritizing any particular agenda for personal benefit. If this nonsense is not illegal, it ought to be. Boards should give consideration to adopting a bylaw that would disqualify candidates from serving as directors if they are party to such arrangements.

**CONFIDENTIALITY POLICIES**

There is a risk of harm to the company itself when any confidential information is leaked, but there is certain harm to the functioning of the board of directors when its sensitive deliberations are publicly disclosed. An effective group of directors trusts and relies on each other, encourages discussion and debate, and can tolerate even strongly-held dissenting views. When trust has been undermined, board effectiveness will be seriously compromised. A major breach of confidentiality, or an ongoing flow of sensitive information outside the board, can have a chilling effect on board deliberations, thereby depriving shareholders of the full benefit of the directors’ expertise and judgment. Meetings are likely to become contentious, and the board may become incapable of consensus or timely decision-making. All of this is particularly true when a leak exacerbates existing board dysfunction.

Public company boards should consider implementing a confidentiality policy specific to directors. The policy should define “confidential information” broadly, listing examples of the types of information covered, and emphasize that the category includes all non-public information entrusted to or obtained by directors due to their position on the board. The policy should remind directors of their fiduciary duties and state that directors may only use confidential information for the benefit of the company, and not for personal benefit or the benefit of any other entities. The policy should specifically address the issue of disclosure by nominee directors to their sponsors and should note that directors are bound by their confidentiality obligations even after their tenure on the board concludes. The policy should expressly state that, while directors may disclose confidential information when required by law, in such cases a director should provide advance notice of the upcoming disclosure to the board, its chairman, and the chief executive officer. The policy could also require the director to attempt, in cooperation with the company and at the company’s expense, to avoid or minimize any required disclosures through legally available steps.

Having a detailed and robust board confidentiality policy will serve both to advise directors (and their sponsors, if any) as to their obligations with respect to sensitive board information and to create a board culture that views leaking as unacceptable and dishonorable behavior. The chairman of the board should provide the policy to director candidates before they are nominated (or, in the case of nominee directors, directors-elect before they begin service) and may wish to obtain written or oral assurances that they understand and can abide by the terms of the policy. Another available mechanism is a board-approved bylaw requiring nominee directors to confirm their acceptance of the board’s confidentiality policy and to agree that they will not act as representatives of particular constituencies while on the board. Advance notice bylaws for director nominations may also contain confidentiality requirements. To the extent information will be shared with sponsors by their directors, the board should require the execution
of a confidentiality agreement with the sponsor. The board should review its confidentiality policy during its annual review of the company’s corporate governance policies. The board chairman or board counsel may wish to specifically remind directors of their confidentiality obligations when contentious or sensitive situations are at the forefront of board affairs. As a general matter, the board chairman should ensure to the best of his or her ability that directors never lose sight of their shared obligation to fulfill the fiduciary duties they owe to all shareholders.

If legal disputes do arise, a well-drafted confidentiality policy can be a factor in a court’s determination of whether information should be deemed confidential. The court may determine that certain documents relating to private communications among or deliberations of the Company’s board of directors should remain confidential. Based on the company’s written confidentiality policy, which covers documents of this type, as well as on the expectation of privacy of the individuals who participate in the communications described therein. By adopting a confidentiality policy, the board recognizes the necessity of keeping the thoughts, opinions, and deliberations of its members confidential. This board policy deserves significant weight.

BREACHING CONFIDENTIALITY

There are legal ramifications for some breaches of confidentiality. Disclosure of material, non-public information can result in civil or criminal charges. A damaging leak of confidential material could in certain circumstances amount to a breach of the duty of loyalty, which could result in personal liability for damages and limit the director’s legal and contractual protections against such liability. At the board level, however, breaches of confidentiality by directors are notoriously difficult to handle. The first principle should be for the board not to exacerbate the situation by taking actions that would create negative publicity for the company. Removing a director, for example, can only be done by the shareholders and is a very difficult and time-consuming process, and attempting to do so likely would result in protracted public controversy.

Typically, when a serious breach of confidentiality occurs, the board asks for the offending director’s resignation. A board cannot demand it, however, unless the director has signed an advance resignation letter, which commits a director to resign under certain specified circumstances. The effectiveness of advance resignation letters is likely to depend largely on the fairness of the process to determine whether the triggering event has in fact occurred. If the director or sponsoring shareholder resists, enforcement could result in a damaging public controversy regardless of the validity of the process used. Moreover, if the trigger is a finding by a court that the director breached his obligations, the issue is unlikely to be resolved in a timely fashion. Thus, boards commonly wait until the director’s term has expired and decline to re-nominate him or her when faced with trust issues of this type. A board may wish to adopt a bylaw stating that no director who is determined by the board to have violated the board confidentiality policy may be eligible to serve on the board.

The board’s crisis management plan should include provisions regarding director leaks of sensitive board information, whether private or public and whether intentional or inadvertent. Advance preparation can help to ensure procedural fairness and to prevent emotional responses to what can be perceived as a personal betrayal from clouding the board’s judgment.

CULTURE OF TRUST

The obligation of confidentiality fundamentally derives from the fiduciary duties of loyalty and care, and questions of disclosure are, when not covered by existing agreements or company policy, matters of business judgment. Ultimately, there is no substitute for genuine trust, collegiality, and a proper amount of respect among board members. The creation of a culture of confidence is probably a board’s best protection against damaging leaks, and the chairman or lead director should proactively build trust and cohesiveness among directors whenever possible. As a matter of best practices, boards also should establish and maintain clear policies about the handling of confidential board information and the process to be followed in the event of a leak and should require confidentiality agreements in situations where directors may be sharing confidential information with their sponsors.

DIRECTORS’ DUTY OF BOARDROOM CONFIDENTIALITY UNDER COMMON LAW

In India, corporate directors are required to discharge certain common law duties towards the company. The directors have a duty of confidentiality towards the company and should not disclose or make use of confidential information relating to the company for any purposes, other than for the benefit of the company. Boardroom confidentiality is an issue that no board of directors can afford to ignore. Unfortunately, case law regarding a director’s obligation to maintain the confidentiality of corporate information is limited. Short of pursuing legal action, boards are limited in their ability to sanction a disloyal director.

The preservation of boardroom confidentiality is critical to the effective operation of a board. Directors cannot be open and honest in their discussions if they fear that their comments or positions will appear in tomorrow’s newspaper. With the increasing success of hedge funds and other special-interest investors in placing directors on boards, there will be less collegiality in the boardroom and a greater risk of leaks. Directors who serve on a board at the behest of special-interest investors must not lose sight of the fact that they nevertheless owe their fiduciary duties to the stockholders as a whole.
MATTERS THAT ARE PROHIBITED IN A BOARD MEETING CONDUCTED THROUGH VIDEO CONFERENCING

Chapter XII of The Companies Act 2013 read with The Companies (Meetings of Board and its Powers) Rules, 2014 deals with "Meetings of Board and its Powers". By virtue of powers granted to Section 173(2) of the Companies Act, 2013, the Central Government has prescribed that following matters not to be dealt in a Board Meeting through Video Conferencing or through Audio Visual Means at least for the time being. The Government may add some more items in the list over a period of time.

(i) the approval of the Annual Financial Statements;
(ii) the approval of the Board’s report;
(iii) the approval of the prospectus;
(iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of Section 134 of the Act; and
(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

DIFFERENTLY-ABLED DIRECTOR’S DUTY OF CONFIDENTIALITY TO THE COMPANY UNDER SS-1

Paragraph 5.1 of Secretarial Standard-1 (SS-1) enshrines that the Chairperson and the Secretary should ensure that no person other than the Director participating through Electronic Mode has access to the proceedings of the Meeting, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.

CONTINUING & CEASING DIRECTORS’ DUTY OF CONFIDENTIALITY UNDER THE GUIDANCE NOTE ON SS-1

The analysis in italics under Paragraph 7.1.3 of the Guidance Note on Meetings of the Board of Directors (SS-1) requires that “where minutes are maintained in electronic form, the person who is responsible for the maintenance and security of Minutes in electronic form should take necessary steps to ensure security, integrity and confidentiality of minutes”. Further, the analysis in italics under both of the Paragraphs 7.7.1 and 7.7.2 requires that “in order to protect the interest of the company, a system may be introduced requiring a person ceasing to be a Director who desires to inspect the Minutes Book, to submit a formal application in writing and furnish a non-disclosure undertaking to ensure that he is bound by obligations of confidentiality. Notwithstanding the above, Directors of the company have a duty to maintain confidentiality of any information relating to the company”.

EXEMPTION FROM DISCLOSURE OF INFORMATION UNDER THE RTI ACT, 2005

Section 8(1)(d) of the Right to Information Act, 2005 provides that there shall be no obligation to give any citizen of information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. Section 11 of the RTI Act, 2005 gives the third party an opportunity to voice its objections to disclosing information and it does not give a third party an unrestrained veto to refuse disclosing information.

In the case of Vinod Kumar Sharma v. Ministry of Mines (File No.CIC/SS/A/2012/000068) a Five Member Bench of Central Information Commission (CIC) set up under the RTI Act, 2005 heard an appeal wherein the appellant had sought Date and Minutes of the 233rd Meeting of the Board of Directors of Bharat Aluminium Company Ltd. (BALCO) from the Ministry of Mines (MoM), New Delhi. The Chief Public Information Officer (CPIO) of the Ministry had refused to disclose this information on the ground that the Meetings of the Board of Directors of BALCO could not be disclosed for reasons of confidentiality. It was informed that M/s. Sterlite Industries (India) Ltd. have acquired management control of BALCO consequent upon its disinvestment on 2nd March, 2001.
While almost all public companies have adopted insider trading policies prohibiting the disclosure by insiders of material non-public information about the company, a few companies expressly restrict the disclosure of boardroom deliberations and other information learned by directors in the course of their service to the company. Companies should review and revise their corporate governance guidelines or other appropriate policies to expressly prohibit such disclosure unless required by law or approved by the board.

Further, the proceedings of the Meetings of the Board of Directors of the Company contain confidential matters and the provisions of the Companies Act, 1956, do not allow inspection or giving copies of the same to the general public. It was added that RTI Act is neither applicable to M’s. Sterlite Industries (India) Ltd. nor to BALCO. The First Appellate Authority upheld the decision of the CPIO on 20th May, 2013 observing that Government Nominee to BALCO. The First Appellate Authority upheld the decision of copies of the same to the general public. It was added that RTI Act of the Companies Act, 1956, do not allow inspection or giving copies of the same to the general public. It was added that RTI Act is neither applicable to M’s. Sterlite Industries (India) Ltd. nor to BALCO. The First Appellate Authority upheld the decision of the CPIO on 20th May, 2013 observing that Government Nominee to BALCO.

For this purpose, "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to (i) Financial results; (ii) Dividends; (iii) Change in capital structure; (iv) Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; (v) Changes in key managerial personnel; and (vi) Material events in accordance with the listing agreement.

This exemption with respect to sending of Notes related to UPSI at a shorter period of time is applicable to listed companies. In case of other companies, Notes pertaining to any of the items listed above may be circulated at a shorter period of time, subject to the compliance of paragraph 1.3.11 of SS-1. General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors.

If an existing Director, who has accorded such consent, ceases to be a Director during a Financial Year, no change in the Directors of the company can be said to have taken place in the context of this paragraph of SS-1. Similarly, when appointment of an Additional Director is confirmed at an Annual General Meeting, no change in the Directors of the company can be said to have taken place in the context of this paragraph of SS-1.

Consent from the new Director/s to circulate Agenda items which are in the nature of UPSI at a shorter Notice may be obtained on an individual basis. If this consent or any other, obtained from the new Director/s affects the majority consent taken earlier, fresh consent should be taken from the Board. However, if 2 new Directors are appointed in place of the resigned Directors, consent should be taken from these Directors on individual basis. If these 2 Directors give their consent, no fresh consent from the Board would be needed. In case, any of these 2 Directors do not give their consent, fresh consent would be needed from the Board.

REPERCUSSIONS OF CIRCULATION OF SIGNED BOARD MINUTES UNDER SS-1

Paragraph 7.6.4 of Secretarial Standard-1 states that signed board minutes have to be circulated to all directors within 15 days of their signing. The intent behind introduction of paragraph 7.6.4 was to ensure that board minutes are not changed subsequently, i.e. after all the directors have affirmed to the contents of the board minutes. This is mainly to weed out the possibility of using minutes as a tool in cases of internal rivalry. For long, minutes have been the most favoured tool to misstate facts in cases of mismanagement or oppression. Hence, with the sole intention to thwart the plans of internal factions to use minutes as a tool to concoct facts, paragraph 7.6.4 has been introduced. In this pursuit, it has also threatened the sanctity of board minutes.

Moreover, Paragraph 7.7.2 of SS-1 states that a director is entitled to receive a copy of board minutes by requisition. The Companies
Despite the limited remedies available in India, there are some steps that a board can take to help preserve boardroom confidentiality:

**Adoption of Robust Confidentiality Policy**

While almost all public companies have adopted insider trading policies prohibiting the disclosure by insiders of material nonpublic information about the company, a few companies expressly restrict the disclosure of boardroom deliberations and other information learned by directors in the course of their service to the company. Companies should review and revise their corporate governance guidelines or other appropriate policies to expressly prohibit such disclosure unless required by law or approved by the board. The policy should clearly identify as “confidential information” any nonpublic information about discussions and deliberations at the board level, as well as information relating to board dynamics and company personnel. Boards should also make sure that their UPSI disclosure policy and/or corporate governance guidelines squarely address who is authorized to speak on behalf of the company. If nothing else, a robust confidentiality policy will impress upon directors the importance that the company places on boardroom confidentiality and foster voluntary compliance. Also, Indian courts may give weight to board confidentiality policies when analyzing confidentiality claims, at least when ruling on shareholder demands to inspect company books and records.

**Expressly Address Disclosure by Designated Directors to their Sponsors**

The extent to which a director serving at the behest of a hedge fund or other sponsor may convey confidential corporate information to the sponsor is not clearly established under Indian corporate laws. It is inferred that when a director serves as the designee of a stockholder on the board and the director acts as the stockholder’s representative, then the stockholder is generally entitled to the same information as the director. To negate any implicit understanding or confusion in this regard, a company’s director confidentiality policy should expressly prohibit disclosure to a director’s sponsor unless the company otherwise expressly agrees. In addition, designated directors often gain their board seats through a negotiated settlement between the company and the sponsor in connection with a pending or threatened proxy fight. The settlement agreement should clearly address the extent to which the director may share confidential information with his sponsor and should impose confidentiality restrictions on the sponsor.

**Consider Confidentiality Requirements for Nomination and Qualification of Directors**

Many companies have adopted “second generation” advance notice bylaws that provide, among other things, that a shareholder nominee for election to the board must, as a precondition to nomination, agree in writing to comply with all company policies that are applicable to directors. When combined with a robust
director confidentiality policy as discussed above, this type ofylaw can help deter confidentiality breaches. A company may
also wish to consider adding a director qualification bylaw that
would render a director ineligible to serve if the director violated
the company’s confidentiality policies. Alternatively, a company
could require a director to agree in advance to resign from the
board if the director violates the policy. In any event, these types
of mechanisms would need to be carefully crafted to ensure that
the procedure for determining a violation is fair and does not unduly
restrict a director’s disclosure of information that is consistent with
the director’s fiduciary duties.

**Sending Periodic Reminders to Directors**

To enhance compliance, the company should periodically remind
directors of their confidentiality obligations under the company’s
insider trading and boardroom confidentiality policies.

**THE INDISPENSABLE ROLE OF SS-1**

**IN DEVELOPING A BOARDROOM
CONFIDENTIALITY POLICY**

It is indispensable to address the directors’ duty of boardroom
confidentiality and sanctity of board minutes through the Secretarial
Standard-1 on Meetings of the Board of Directors in the absence
of clear-cut provisions in The Companies Act, 2013 and also in
The Companies (Meetings of Board and its Powers) Rules, 2014 in
developing a Confidential Minutes Policy or a Board Confidentiality
Policy, which may contain the following, among other things:

- Identify its purpose.
- When is the duty of confidentiality engaged?
- Define to whom the policy applies: board members? Non-
board committee members? Staff?
- Identify the directors’ duty of confidentiality, and define its
scope: for example, not to disclose or discuss with another
person or entity, or to use for their own purpose, confidential
information concerning the organization’s affairs received in
their capacity as directors, unless the board authorizes such
disclosure.
- Provide that board members not make any statement to the
press or the public unless authorized to do so by the board.
- Require that board members and anyone else to whom the
policy applies review and sign the policy.
- Define what matters are considered confidential.
- Provide a process by which the board may authorize disclosure
of confidential matters.
- Provide a process by which meetings or portions of meetings
may be held in camera.
- Link to or combine with the organization’s privacy policy or
conflict of interest policy.
- Link to or combine with the organization’s confidentiality
policy for staff.
- Link to or combine with the organization’s code of practices
and procedures for fair disclosure of unpublished price
sensitive information (UPSI).
- Define the consequences of breaching the duty of confidentiality.

**CONCLUSION**

Boards should be thoughtful as to how they handle confidential
or sensitive information. The board should assume that minutes
are confidential and, in most cases, they will remain so. They
should also realize that, sooner or later, the minutes might be
made public or disclosed in litigation. This possibility may cause
directors to be somewhat more restrained in what they say, but
it should not impede open and frank discussion. Board members
must keep confidential all information pertaining to matters dealt
with by the Board. This includes board meeting minutes, agenda,
reports to the Board and associated documents, and information
contained in those documents. The obligation to maintain
confidentiality continues to apply even after a person has left the
Board. Maintaining confidentiality as a general rule will also help
ensure observance by Board members who obtains information
because they are, or have been, a member of the Board must not
improperly use the information to gain an advantage for themselves
or someone else; or cause detriment to the organization. Any
person [such as CEO or Secretary] who is not a member of the
Board but is present at a Board meeting (or part of a meeting)
must maintain in confidence all information obtained as a result of
their participation in the meeting. To avoid breaches of the duty of
confidentiality, Boards should consider adopting a confidentiality
policy and having new directors and officers sign a commitment
that they understand and will follow the policy. This by no means
ensures compliance, but it can help to emphasize the importance
of maintaining the confidentiality of board deliberations and
ensures all directors and officers are aware of their duty to protect
confidential Board information. Creating a board confidentiality
policy could help your board deal with issues before they arise.

**REFERENCES**

1. The Companies Act, 2013
2. The Companies (Meetings of Board and its Powers) Rules,
   2014
3. The Right to Information Act, 2005
4. Secretarial Standard-1 (SS-1) on Meetings of the Board of
   Directors
5. The Draft Guidance Note on Meetings of the Board of Directors

**REFERENCES**
INTRODUCTION

The Institute of Company Secretaries of India (ICSI) has constituted Secretarial Standards Board for identifying areas in which secretarial standards to be issued and formulating the Secretarial standards to integrate, harmonies and standardize secretarial practices.

The ICSI in the 2000 had issued 10 Secretarial Standards from SS-1 to SS-10 which were recommendatory in nature. The Standards converged the following topics viz. Board Meetings, General Meetings, Transmission of shares and debentures, Circular Resolution, Common Seal, Dividends, Register and Records, Minutes, Forfeiture of shares. With the introduction of Secretarial Standards, Institute of Company Secretaries of India (ICSI) became the pioneer in the world to issue such Standards.

The Secretarial standards issued were in conformity with the provisions of applicable laws, rules and regulations.

The Secretarial Standards Board since 2000 was working continuously to bring the standards to match with the changing needs and requirements of corporate and legal provisions.

The functions of SSB include:

1) Formulating Secretarial Standards
2) Clarifying issues arising out of Secretarial Standards.
3) Issuing Guidance Notes for the benefit of the members of the ICSI, corporate and other users.
4) Reviewing and updating the Secretarial Standards/Guidance Notes at periodic intervals.

The procedure adopted by the Secretarial Standards Board in formulating and issuing Standards is by constituting various working groups to work on dedicated topics, releasing the exposure drafts for open comments and suggestions, compilation of the relevant suggestions and release of final Standards in consultation with Council and the Ministry.

Position of Standards under the Companies Act, 1956

In the initial years of formation of the Secretarial Standards, they were recommendatory in nature which meant that it was the discretion of the Professionals whether to follow the Secretarial Standards or not. In order to achieve harmony a need was felt...
to statutorise the Standards to achieve concurrence of diverse practices nationwide.

In pursuance of the above need, with the advent of Companies Act, 2013, Secretarial Standards on Board Meetings and Secretarial Standards on General Meetings were recognized to be followed in accordance with the various provisions of the Act and Rules framed there under.

**LEGAL STATUS OF STANDARDS UNDER PROVISIONS OF SECTION 118(10) OF COMPANIES ACT, 2013**

“Every company shall observe secretarial standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government”.

**As per Section 205 of Companies Act, 2013:**

The functions of the company secretary shall include,

(a) to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

**Rule 31 of Companies (Management and Administration) Rules, 2014- Report on Annual General Meeting.**

The report shall contain the details in respect of the following, namely:-

(i) the day, date, hour and venue of the annual general meeting;

(ii) confirmation with respect to appointment of Chairman of the meeting;

(iii) number of members attending the meeting;

(iv) confirmation of quorum;

(v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;

(vi) business transacted at the meeting and result thereof;

(vii) particulars with respect to any adjournment, postponement of meeting, change in venue;

(viii) any other points relevant for inclusion in the report.

**Form MR-3 i.e; the format of Secretarial Audit report explicitly states in the declaration that “I/We have examined compliance with applicable clauses of Secretarial Standards issued by the ICSI” which enhances the responsibility of the Company Secretaries thereby laying our services on a higher plinth.**

The above provisions reflect the need and methodology for the disclosure and compliance, however, the ultimate goal of Secretarial Standards is to promote good corporate practices leading to better corporate governance. These Standards are for good secretarial practices and desirable corporate governance with a view to ensuring utmost transparency, integrity and fair play, going beyond the requirements of law.

An in-depth study of the Secretarial Standards on Meetings of the Board and General Meetings shows that the Standards impact not only the Professionals and Corporates but also the Stakeholders,
Investors, Statutory Authorities, Regulators, Industry and general public at large.

**PROCESS FLOW**

Companies Act, 2013
Companies (Management and Administration) Rules, 2014 and Companies (Board and its powers) Rules, 2014
Table F (Articles of Association)
Secretarial Standards 1 and 2

**SECRETARIAL STANDARDS FOR INVESTORS**

The Secretarial Standards provide for enhancing the protection of investors and build the confidence among them about the Company procedures and in particular with respect to matters concerning their interests while according approvals in the General Meetings. The investors like fund managers and overseas investors are concerned about good governance practices and sound procedures.

The following are the major areas covered in the standards relating to the General Meeting procedures:

- Convening a meeting
- Frequency of meeting
- Quorum
- Presence of Directors and Auditors
- Chairman
- Proxy
- Voting
- Conduct of e-voting
- Conduct of Poll
- Prohibition on withdrawal of Resolutions
- Rescinding of Resolutions
- Modifications to Resolutions
- Reading of Reports
- Adjournment of meetings
- Postal Ballot
- Minutes
- Annual General meeting report

**SECRETARIAL STANDARD ON GENERAL MEETINGS**

Where securities are held singly
- To the Nominee of the single holder

Where securities are held by more than one person jointly and any joint holder dies
- To the surviving first joint holder

Where securities are held by more than one person jointly and all the joint holders die
- To the Nominee appointed by all the joint holders

**MODES OF SERVICE OF NOTICE**

- **SPEED POST**
- **REGISTERED POST**
- **COURIER**
- **ELECTRONIC MODE**

- **Standard**
  1.2.2 Notice shall specify the day, date, time and full address of the place of the Meeting.
  Notice shall contain complete details of the Meeting in writing. Notice shall be given to all shareholders not less than, twenty-one days before the Meeting.

- **Notice**
  Notice shall be sent to all shareholders not less than, twenty-one days before the Meeting.

- **Meeting**
  A Meeting shall be held during business hours i.e., between 9 a.m. and 6 p.m., on a day that is not a national holiday.
6.1 Right to Appoint

**Bottom line:**

1. Notice in writing to the Auditors, Secretarial Auditor, Debenture Trustee, and any other specified persons of the Company.

2. Mode of service of notice has been widened to increase the accessibility to members.

3. Significance of hosting the notice on the website is focussed in the Standard thereby boosting the electronic commerce.

4. Twenty one clear days notice specified gives the flexibility to the shareholders to plan their travel if needed and participate in the important transactions of the company.

5. Emphasis is laid on the role of Investors/members/shareholders by giving them the power to transact urgent business on consent by ninety five percent of the members entitled to vote at the meeting.

6. Negating the business transacted if not as per the Standard.

7. Reschedule or cancellation under unforeseen circumstances not covered under the Act has been addressed by the Standard.

8. Weightage to the presence of members throughout the meeting.

9. Timeliness and Chairmanship for smooth and transparent conduct of the general meeting has been governed by the Standard.

**USP (Unique Standard Points):**

1. Serving of the notice to specified persons who may be strategic or financial investors.

2. Hosting of the notice on the website.

3. Adjourning the duly conveined meeting only with the permission of the members present.

4. Specifying the instances for the rejection of proxies expressed.

5. Modifications or cancellation and withdrawal of resolution only with the member’s approval.

6. Notice in writing to the company, in case of only members to 1 proxy.

7. Stamping of Proxies.

8. Execution of Proxies.


10. Rescinding of Resolutions.

11. Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

12. Modifications to Resolutions

   Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.
10. Fair, transparent conduct of the general meetings in case of widely held companies exempts the Chairman from participating in the resolution in which he is a related party.

11. Concept of authorised representative in case of Body Corporate as member of the Company has been clearly mentioned clearing the ambiguities relating to their rights and obligations.

12. Proxy may be appointed by the members in case of exigencies where he is unable to attend the meeting in person.

13. Importance of date, signature and other formalities of the proxy form has to be taken care of.

14. Provision of e-voting facility to the members and the procedure for conduct of the meeting for convenience of the members who may not be able to attend the meeting.

15. Rights of the members/investors such as voting rights, right to appoint proxy etc have been clearly laid down thereby creating awareness.

16. Manner of conduct of poll and the role of Chairman to enable members to have adequate and convenient opportunity to exercise their vote.

17. Prohibition, Rescinding and modification of resolutions not addressed in the Act has been clarified in the Standard.

18. Adjournment of meetings on consent by the members and at which the quorum is present.

19. The items which are proposed to be passed through postal ballot shall be in the form of Resolutions and should escort an explanatory statement.

20. The Directors and members of the Company can inspect the minutes of general meetings.

SECRETARIAL STANDARD FOR INDEPENDENT DIRECTORS

Proper Board processes are a prerequisite for the true competence of the Board whereby all the directors including non-executive and independent directors actively contribute in the deliberations within the Board, and are enabled to discharge their duties with due and reasonable care, skill and diligence.

Scope of Standards

The Standard is applicable to the meetings of the Board of Directors of all companies incorporated under the Companies Act except One Person Company having only one Director.

These standards are also applicable for the meetings of the committees of the Board.

Objects of standards for conducting Board Meetings

1. Establish good governance practices.
2. Enables the Board to adopt the best practices in making decisions and formulating policies
3. Avoids the Management disputes
4. Enables every director to contribute his best for the betterment of the Company
5. Improves the efficacy of the Board functioning and decision making power.
6. Protections rights of the Directors to attend and participate effectively in the meeting of Board and their committees
7. Provides harmonious and pleasant atmosphere among Directors in Board meetings
8. The Standard protects the interest of Investor Director, Technical Director, Independent Director, Nominee Director, Government Director, Executive and Non-executive Directors.
7.2.2.1 Minutes shall inter-alia contain:

**USP (Unique Standard Points):**

1. The items which are not specified in the agenda can be taken up for discussion at the meeting with the permission of the chairman and consent of the majority of Directors, which shall include at least one Independent Director. Power has been delegated to the Independent Director, if any, to allow the transaction of business other than that circulated in the Agenda thereby giving them the discretion to gauge the importance of the business to be transacted owing to their experience and expertise.

2. Meetings conducted at shorter notice stand valid only on ratification by the Independent Director.

3. The Independent directors of the Company shall meet at least once in a calendar year to improve the efficiency of the performance of the Board as a whole and non-independent Directors also improving the communication and stream of information between the company and the Board.

4. Minutes of the meetings conducted at shorter notice stand valid only on ratification by the Independent Director.

5. The notice of the general meeting and explanatory statement annexed to it at which Independent Director is being appointed has to be specific in terms such as appropriateness of choosing the appointees, performance evaluation in case of re-appointment.
SECRETARIAL STANDARDS FOR PROFESSIONALS

Secretarial Standards signifies emphasizes and recognizes the role players of industry viz. Entrepreneurs, Investors, bankers, Auditors, Chartered Accountants, Cost Accountants and Company Secretaries. The codification of this law one way laid down principles, practices, procedures and another way helps in guiding, advising and recommending by analyzing the legal provisions related to them and enhancing the values to their duties by emphasizing the value and compliance of law by letter and spirit, certain clauses which reflects to professionals are as under:

SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS

USP (Unique Standard Points)

1. The Directors, Auditors and other professionals have the authority/right to inspect the attendance register of the Board meetings.
2. The minutes of the Board meetings shall document the appointment of professionals and other appointments at the managerial level of the hierarchy in the organisation.
3. The statutory document of the company i.e; the minutes of the meetings of the Board can be inspected by the Directors and Professionals for due discharge of their duties.
4. Right to receive the notice of the general meeting in writing and to attend the general meeting has been given to the Professionals such as Auditors, Secretarial Auditor.
5. The Auditors or their authorized representatives shall attend the General Meetings of the company.
6. Secretarial Auditor may attend the meetings on invitation by the Chairman.
7. The professionals can be appointed as scrutinizer for postal ballot or e-voting.
8. The minutes of the general meetings shall have a mention of the professionals who have attended the meeting.
9. For fine performance of their duties, the professionals may inspect the minutes of the general meetings and take the extracts of the resolution for statutory purposes, if any.

SECRETARIAL STANDARDS FOR COMPANY SECRETARIES

The Secretarial Standards prescribe the parameters for good corporate conduct and practices, and require the Company Secretary in employment to establish the same within the organization. Analyzing the legal provisions related to them and enhancing the values to their duties by emphasizing conformity of law by letter and spirit, certain clauses which reflects to Company Secretary are as under:

USP (Unique Standard Points)
**Bottom-line:**

1. Authority and responsibility to conduct the Board meetings has been laid upon the Company Secretary thereby increasing the onus, subject to the requisition of the Director.
2. Issuance of the notice of the Board meetings, an obligation on the Company Secretary if there is any.
3. Company Secretary in attendance shall ensure that the attendance register and minutes of the Board meetings have the mention of the same and shall append the signature without fail.
4. Authentication of the attendance register by the Company Secretary.
5. Custody of the attendance register of the Board meetings shall be with the Company Secretary and he shall keep them safe.
6. Leave of absence may be given to the Director only on receipt of the same by the Company Secretary.
7. Any document, report or notes placed before the Board has to be initialled by the Company Secretary or the Chairman.
8. A copy of the signed minutes shall be circulated to all Directors within fifteen days after these are signed by the Company Secretary.
9. Seating with the Chairman in the general meetings.
10. The scrutinizers’ register, report and other related papers received from the scrutinizer shall be kept in the custody of the Company Secretary.
11. The Company Secretary of the company shall be authorized to conduct postal ballot process and sign and send the Notice along with other documents.
12. Date of entry of the general meeting minutes, custody of the minutes shall be with the Company Secretary.
13. Extracts of the minutes have to be duly signed by the Company Secretary even before they are finalised.

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**AWARENESS PROGRAMME ON**

**SEXUAL HARASSMENT OF WOMEN AT WORKPLACE**

*Focus on practical training and statutory compliances*

Every employer, employing 10 or more employees, has to constitute an Internal Complaints Committee as stipulated by Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (SHWW Act) and amongst four, one member should be a person familiar with the rules relating to sexual harassment of women at workplace.

In order to familiarize persons, the Labour Law Reporter through its **Labour Laws Institute** is holding Awareness Programme with a faculty of eminent experts. The participants with certificate for participation will be eligible to be member or even Presiding Officer of the Internal Complaints Committee not only for their own but also an expert member for other establishments against professional fee. He/she can supplement his/her income also. Also, creating awareness and orientation of the members of the committee by the employers is a statutory requirement under section 19(c) of the SHWW Act.

The interested participants should send their nomination since there will be limited seats.

**Participation fee**: Rs.4000 each. For more than one participant from the same organization Rs.3500 each inclusive of written material and lunch.

**Date & Timing**: 12-2-2016 from 10 am to 5 pm

**Venue**: Scope, CGO Complex, Lodhi Road, New Delhi – 110 003.

(Nearest Metro Station: Jawahar Lal Nehru Stadium)

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Globally, the 2015 AGM season saw an increase in shareholder activism, including in Asia. There were two particularly notable campaigns in Asia, one in South Korea and one in Japan.

In Korea Elliott Associates LLP, a US hedge fund that is also active here in Hong Kong where it is trying to force BEA to disclose papers relating to Japanese multinational banking and financial services company Sumitomo Mitsui, ran a lengthy campaign opposing Samsung Group’s proposed merger of two of its business units. The campaign included court proceedings to try to prevent the corporate action. Elliott considered Cheil Industries Inc’s offer to buy Samsung C&T Corp unlawful, creating significant regulatory risk and being disadvantageous to minority shareholders. The campaign pitted Elliott against South Korea’s wealthiest family and the country’s largest conglomerate, ground that few activists have previously dared to tread in a country which is widely acknowledged as being well behind the curve in terms of corporate governance in the developed world.

Despite Elliott losing the battle, awareness of minority shareholder rights was raised significantly in South Korea and it is hoped that the impact of the struggle may help influence future activist attempts in the country.

Governance advocates may also take some solace from signs of change in Japan, which historically has shared many corporate practices with South Korea. Japan’s Stewardship Code (finalised in February 2014) and fully implemented in August the same year, was introduced with the aim of promoting sustainable growth of companies through investment and dialogue. Institutional investors are expected to follow the spirit of the Code in their activities and take proactive measures to further enhance dialogue with their investee companies.

Consequently, companies are starting to react more positively to outside investors focusing attention on corporate governance. US investor Daniel Loeb’s hedge fund, Third Point LLC, pushed to break up Sony Corp and while the company rejected Mr Loeb’s specific requests, the Japanese technology giant made some major concessions before Loeb subsequently sold his whole stake last October, realising a 20% gain on his initial US$1.1 billion investment. The businessman moved on to the secretive Japanese robot-maker Fanuc Corp – which then voluntarily increased its dividend and started an investor relations department after Mr Loeb began requesting changes.

HONG KONG AND MAINLAND CHINA

If AGMs in China were held in August and September rather than generally in May and June, it’s very likely we’d be looking at a totally different set of figures relative to this year’s attendance and voting. Dubbed ‘Black Monday’, 24 August ended with Chinese equities down 8.5%, wiping out hundreds of billions of dollars in market capitalisation. The following few days also saw drops across the
market, albeit not quite as dramatic. According to the Associated Press news agency, roughly 6% of Chinese households own stocks and shares, so images of worried-looking retail investors flooded news feeds around the globe.

If AGMs had been held that week, it is easy to imagine that organisers would have been inundated with attendees concerned to hear about plans for stabilising their investments, that venues would have been unable to cope with the volume of shareholders turning up, security would have been stretched and the local and international media would have had story after story to write about.

In reality, the 2015 AGM season saw a continuation of the attendance and voting trends we have seen in recent years. Shareholder numbers for the meetings with poll voting that Computershare manages across Hong Kong and China rose by more than 3,300 more people, an increase of 8% year on year. The numbers attending large meetings – those with more than 100 attendees – rose most sharply, increasing by an average of 60 people per meeting.

Bank of China was overtaken by the Industrial and Commercial Bank of China (ICBC) in terms of in-person attendance – with 4,895 people showing up for ICBC’s meeting. BOC had 4,346 shareholders attend in person, the vast majority of these in Hong Kong. China Construction Bank had the third highest attendee numbers, with 3,217 people from China and Hong Kong making the journey to the meeting.

However, disappointingly, this increase in attendance continues to be let down by a lack of voting – with a year-on-year fall of over 5% in voting by those attending the 766 meetings that Computershare runs. Some of this could well be attributed to late arrival – those arriving late at an H-share meeting are not entitled to cast their vote. The message for companies remains – if there is a big difference between your attendance and voting numbers, quite simply you are paying to host people who are not contributing to the corporate governance of your entity. If you want to derive benefit from shareholders who take the time and trouble to attend in person but do not vote, you need to consider the communications you have in place to encourage on-time arrival and voting at the AGM itself.

Happily, overall, the percentage of issued share capital voted (as opposed to the number of individuals who vote their shares) across the meetings that Computershare manages remains comparable and often higher than levels in other countries – with 76% of issued share capital being voted this season.

In China, the state of the stock markets in the spring will be a major factor in attendance and voting levels at AGMs in 2016.

In Hong Kong, the shareholder engagement consultation released by the Securities and Futures Commission has come in for some heavy criticism from listed companies and institutional investors alike, so it remains to be seen what will eventually be put into place and whether this will affect how companies approach AGMs in the future.

• globally, there have been upward trends in shareholder activism, the popularity of online voting and shareholder rights legislation

• companies in Hong Kong need to consider the communications they have in place to encourage on-time arrival and voting at the AGM

• most AGMS in China were held before the stock market slide that began in July, resulting in little change to the historical attendance and voting trends

GERMANY

In 2014, many companies on the DAX, the German blue chip stock market index, experienced increased institutional shareholder voting at their AGMs. This was thanks to extensive investor relations activity and educational programmes that had been put in place to counter the effect of a 2012 court decision which created uncertainty among investors and custodians as to how to execute a legally sound cross-border vote at German AGMs.

In 2015, AGM attendance in Germany saw a slight decrease compared to the previous year, but this may reflect the better investor relations resulting from the investments described above.

One significant change for the 2016 season is the new requirement for mandatory reporting of voting rights belonging to third parties, which has been adopted under the Small Investor Protection Act. It remains to be seen whether this will increase retail investor presence at meetings in future seasons. The Act also removes the uncertainty around cross-border voting.

UK

A relatively quiet AGM season in the UK saw another slight decrease in overall attendance, though thanks to the prevalence of electronic voting solutions, the percentage of issued share capital that was voted rose again year on year and is around 65% for Computershare clients in the FTSE350. 100% of Computershare’s FTSE350 clients now offer both eProxy and...
In China, the state of the stock markets in the spring will be a major factor in attendance and voting levels at AGMs in 2016.

Crest proxy appointments, which has further minimised the amount of paper in the voting chain. We anticipate that this will continue to be the norm during future AGM seasons.

**ATTENDANCE TRENDS IN GERMAN AGMS**

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Siemens</td>
<td>+11%</td>
<td>-5%</td>
</tr>
<tr>
<td>Daimler</td>
<td>+10%</td>
<td>-5%</td>
</tr>
<tr>
<td>BASF</td>
<td>+ 5%</td>
<td>- 1%</td>
</tr>
<tr>
<td>Deutsche Bank</td>
<td>+ 7%</td>
<td>+ 3%</td>
</tr>
</tbody>
</table>

Another point of note is that, in spite of shareholders now having a binding say on pay, more people are still contesting companies’ remuneration reports (compensation already paid) rather than companies’ remuneration policy (future pay plans). As a result, no companies have yet lost a vote on their remuneration policy.

Changes to the UK listing rules were introduced by the Financial Conduct Authority in May 2014 which require premium listing companies (a group of companies that are, amongst other criteria, traded on the London Stock Exchange) with controlling shareholders to ‘dual report’ on the results of resolutions electing independent directors, starting this AGM season.

A controlling shareholder is anyone holding more than 30% of the total voting rights of a company. The shares can be held by one person, or collectively with other associates or shareholders acting ‘in concert’.

The changes mean that the votes cast by a controlling shareholder need to be deducted from the final result of specified resolutions, providing an independent shareholders’ result in addition to the standard result representing the votes of all shareholders so that everyone can see what the result would have been without the controlling shareholder’s votes.

**US**

Proxy access has been the biggest issue for the 2015 season in the US, and has been a significant turning point for the issue as a record number of proxy access proposals gained widespread support.

‘Proxy access’ describes the ability of shareholders to directly access a company’s proxy materials, including permitting the inclusion of a shareholder-proposed director nominee (or slate of nominees) and a statement in support of the nomination(s) in the company’s proxy statement. Although current US securities regulations do not grant shareholders access to company proxy materials, proxy access may be available to shareholders by way of a company’s organisational documents (for example, articles of incorporation, bylaws or corporate governance guidelines), as permitted by state corporate law.

While proxy access did not garner significant attention over the past two proxy seasons, it is one of the most notable developments of the 2015 proxy season. There were 106 proxy access proposals submitted this year, of which 16 were withdrawn or omitted. On average, proxy access has garnered 54% support, with 49 companies receiving a majority of votes cast in favour (only six companies were in this category in 2014).

Proxy access is no longer unusual, although it is far from being a practice as generally accepted as, for example, majority voting for directors. Even so, as proxy access becomes more common, it appears likely that it will rarely be used (consistent with its rare use in other countries where it is more commonly in place). It also seems unlikely to be used by shareholder activists who engage in traditional proxy fights. Rather, it will most likely be used as a carrot to encourage companies to engage their investors and to take action on issues of importance to them.

**AUSTRALIA**

Computershare was involved in over 750 meetings in Australia in 2014, with the busiest period between September and early December. While the amount of issued capital voted across all companies remained flat at 45.4% in 2014, there was a decrease of almost 6% in the issued capital voted for ASX50 companies. However, the amount of issued capital voted via online services has increased over 260% since 2010 – from 8.9% to 32.8%.
Key trends in Hong Kong and Mainland China

The 2014 meeting season was the fourth season that the Australian two strikes legislation was in operation. This requires the board of a company to stand for re-election if 25% or more of votes are cast against remuneration two years in a row and is designed to give shareholders more power. In 2014, more companies received a first strike (85 in 2014 compared with 80 in 2013), however the number of companies receiving a second strike decreased by over 50% (10 in 2014 compared with 22 in 2013). Awareness around the directors’ remuneration report has increased since the introduction of this legislation, and has contributed to a decline in the overall number of strikes received. Companies are also engaging proxy advisers in discussions with large institutional holders on their remuneration report policies in advance of a meeting.

In 2014 the level of investor discontent regarding executive pay was higher for companies in the ASX300. Analysis of the proportion of votes lodged against the remuneration report shows the average was 7.4% in the ASX300, versus 5.8% for companies outside the ASX300. Votes against the remuneration report for ASX50 companies are at the lowest percentage of all ASX groupings, revealing that investor discontent about executive pay appears to increase from the ASX50 through to the ASX300.

Proxy access is no longer unusual, although it is far from being a practice as generally accepted as, for example, majority voting for directors. Even so, as proxy access becomes more common, it appears likely that it will rarely be used (consistent with its rare use in other countries where it is more commonly in place). It also seems unlikely to be used by shareholder activists who engage in traditional proxy fights. Rather, it will most likely be used as a carrot to encourage companies to engage their investors and to take action on issues of importance to them.

ATTENTION

Members/Doctorates/Academics/Scholars/Researchers

Invitation for Research based articles in Commerce, Economics, Management and Law, for publication in Chartered Secretary

The Editorial Advisory Board of Chartered Secretary invites Research based, Empirical, Applied or Conceptual Papers, Extracts of Ph.D. Thesis, Case Studies from Members/Doctorates/Academics/Scholars/Researchers for consideration by the Editorial Board for publication in Institute’s Monthly Journal Chartered Secretary. The Board encourages research articles which may contribute significantly to issues related to Secretarial, Finance, Economics, Management & Law. The subject matters are relating to corporate laws, fiscal laws, Corporate Governance and Corporate Social Responsibility. The research papers may please be forwarded to ak.sil@icsi.edu. Double blind review system is used for reviewing the papers and once found suitable the same will immediately be taken up for publication in the Journal under intimation to the author. For further details contact the joint Director (Publications), the ICSI at ak.sil@icsi.edu Tel: 45341024.

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A STUDY ON MICROFINANCE AND ITS CONTRIBUTION TO WEAKER SECTIONS OF SOCIETY IN INDIA WITH REFERENCE TO NALGONDA, TELANGANA STATE, INDIA

{RESEARCH TEAM ICSI-CCGRT}

ABSTRACT

Microfinance is an economic development approach that involves providing financial services through institutions to low income clients. It refers to small savings, credit and insurance services extended to socially and economically disadvantaged segments of society. It is emerged in need of meeting special goal to empower under-privileged class of society. The purpose of this study was to understand micro finance with reference to Nalgonda, Telangana State in India. This research paper analyses the Microfinance in India as a powerful tool for poverty alleviation. The study shows that consumers are not getting sanctioned the entire amount of what they applied and some of the microfinance institutions are charging higher rate of interest and most of the consumers utilize the loan to run their business and to expand their business activities. The result of the study also shows that the microfinance institutions were successful in improving and assisting the poor people and also received positive responses. The study explores some suggestions to make microfinance more effective and also traces the obstacles in getting the loans sanctioned.

Keywords: Microfinance, Microfinance institutions, Poverty alleviation, Microcredit, Economic development, Non-Governmental Organization (NGO), Microfinance Information Exchange (MIX).

1. INTRODUCTION

Microfinance is not just about giving micro credit to the poor rather it is an economic development tool whose objective is to assist poor to work their way out of poverty. It covers a wide range of services like credit, savings, insurance, remittance and also non-financial services like training, counseling etc. Though many central government and state government poverty alleviation programs are currently active in India, microfinance plays a major contributor to financial inclusion. It has helped out remarkably in eradicating poverty over the past few decades. Reports show that people who have taken microfinance have been able to increase their income and hence the standard of living. One of the most important and effective policy to eradicate poverty is Micro-finance. The organizations that provide these services, known as Microfinance Institutions (MFIs) may operate as formal micro banks, non-bank financial institutions, non-governmental organizations, or community-based financial institutions.

There are two broad approaches that characterize the microfinance sector in India— (SHG–Bank Linkage Program) (SBLP) and Microfinance Institutions (MFIs). SBL is a larger model than MFIs in India, contrary to the global practices of other MFIs. The microfinance movement was initiated by NABARD (National Bank for Agriculture and Rural Development) in collaboration with Banks and Non-Government Organisations (NGOs) for unbanked population known as Self Help Group (SHG) - bank linkage program in 1992. The key object of NABARD has been to facilitate sustained access to financial services for the unreached segments of the population viz., the poor in rural hinterland through various products and delivery channels in a cost effective and sustainable manner. As per the report of NABARD “Status of microfinance in India 2014-15” the Telangana State has 5,11,184 total number of SHGs with the total savings amount to Rs. 98,761 lakhs as on 31st March, 2015.

Microfinance sector in India has gone through 3 broad risk phases in the past – high growth (till 2010), high volatility (2010 – 11), consolidation (2011 – 13) and is now entering a IV phase of relative stability. RBI recognizes this sector as it achieves the objective of financial inclusion by providing access to financial services to the unbanked population of India. With recent introduction of NBFC MFIs guidelines and Priority Sector Lending (PSL) status being retained, RBI has reaffirmed MFI’s role in financial inclusion. According to report published on October 9, 2015 Ujjivan Financial Services has the largest geographical spread with operations across 24 states compared to 22 states for Bandhan Bank and 19 states for SKS Microfinance.

According to Bharat Microfinance 2015-16 report, MFI’s currently operate in 28 States, 5 Union Territories and 568 districts in India. The reported 156 MFI’s with a branch network of 12,221 have reached out to an all-time high of 37 million clients with an outstanding loan portfolio of Rs 48,882 Crore. This includes a managed portfolio of Rs 9854 Crore. Outreach grew by 13% and loan outstanding grew by 33% over the previous year. The Southern region continues to have the highest share of both outreach and loans outstanding, followed by East. However growth rates are higher in the Northeastern and Central regions. Till date, 101 million families have been covered under the SBLP (SHG- Bank Linkage Program) with a total number of 77.12 lakh SHG’s with a saving amount of Rs 11,307 Crores. Average loan disbursed per SHG for 2014-15 is reported at Rs 184,551, whereas average loan outstanding per SHG stood at Rs 115,295. Quality of SHG’s and their performance have emerged as the major issues affecting the movement.

MFI sector employs more than 94,500 personnel, out of which 16% are women and 64% are field staff. Financial expense is the major expense (50%) incurred by MFI’s. Personnel expense and other administrative expenses contribute 23% and 25% respectively. Of the total, NBFC-MFI’s contribute to 85% of clients outreach and 88% of outstanding portfolio, while NGO MFI’s contribute to the remaining. MFI’s with portfolio size of more than Rs 500 Crore contribute significantly to the total outreach (82%) and loan outstanding (85%) of the sector. In an article titled “Microfinance IPO’s in 2016” came on 10th November, 2015 a long list of Initial Public Offerings (IPO’s) from microfinance companies is expected to hit Indian Markets over the next one year. Therefore, this paper attempts to understand the microfinance in India with reference to Nalgonda, Telangana State and its contribution to weaker sections of society.

2. OBJECTIVES OF THE STUDY
   a) To take an overview of microfinance industry.
   b) To study the growth and self-regulation of microfinance in India.
   c) To know the impact of microfinance on weaker sections of society, to know its obstacles and give suggestions.
   d) To promote self-sufficiency and economic development of the poor people.
   e) To highlight the current status of microfinance industry in India.

3. LITERATURE REVIEW
   a) Prof Zohra Bi, Dr. Shyam Lal Dev Pandey in their research article titled “COMPARISON OF PERFORMANCE OF MICROFINANCE INSTITUTIONS WITH COMMERCIAL BANKS IN INDIA” published by Australian Journal of Business Management Research on September, 2011 explained that Microfinance in India has been viewed as a development tool which would alleviate poverty and enhance growth of the country through financial inclusion. Out of 6 lakh villages in India, only approximately 50000 have access to finance. India is a country which has the highest number of households which are excluded from banking. With the Andhra crisis of microfinance institutions and issues that microfinance institutions have a mission drift, the aim of the paper is to study the performance and efficiency of microfinance. A sample of microfinance institutions in India have been selected based on their ratings given by Microfinance Information Exchange (MIX) for the study. The MIX has classified the MFIs based on various parameters such as level of disclosure, financial parameters etc and rated them accordingly. Out of the 88 MFIs in India reported on MIX, 24 MFIs are taken as samples, these samples taken were five star rated by MIX. The financial parameters of these MFIs are studied and compared with the financial parameters of commercial banks and their financial performance can be analyzed. Thus with development of effective strategies and with the combined effort of all players in the society such as donors, government, banks, corporations, NGOs, etc, the long term goal of the government to achieve financial inclusion and poverty alleviation would be attained.

b) Dr. Vinita K. Pimpale in research paper titled “AN INTRODUCTORY OVERVIEW OF MICROFINANCE IN INDIA: AN ENQUIRY INTO FUTURE PROSPECTS” published by International Journal of Marketing, Financial Services & Management Research on September 2012 found that the problem has not been solved yet, and the overwhelming majority of people who earn less than $1 a day, especially in the rural areas, continue to have no practical access to formal finance sector although much progress has been made. Microfinance has been growing rapidly with $25Bn currently at work in microfinance loans. With controversial results, both supporting and not the assumption that microfinance can promote income generate activities, this paper attempts an enquiry into the recent developments in microfinance.

c) Sibghatullah Nasir’s research article titled “Microfinance in India: Contemporary Issues and Challenges” published by Middle-East Journal of Scientific Research in 2013 tries to outline the prevailing condition of the Microfinance in India in the light of its emergence till now. The prospect of Micro-Finance is dominated by SHGs (Self Help Groups) - Banks linkage Program. Its main aim is to provide a cost effective mechanism for providing financial services to the poor. The paper discovers the prevailing gap in functioning of MFIs such as practices in credit delivery, lack of product diversification, customer overlapping and duplications, consumption and individual loan demand with lack of mitigation measures, less thrust on enterprise loans, collection of savings/loans and highest interest rate existing in micro finance sector. All these
are clear syndromes, which tell that the situation is moving without any direction. The finding shows that Microfinance institutions are lagging behind in terms of loan and credit the real needy, regional imbalance, a proper regulation etc. Internal, external and client based challenges are prevailing from starting of the MFIs in India. Finally paper concludes with practicable suggestions to overcome the issues and challenges associated with microfinance in India.

4. RESEARCH METHODOLOGY

a) Scope of the study:
The scope for this project is to explain how the weaker sections of the society and the people below the poverty line are getting benefits from the Microfinance institutions (MFIs) by obtaining the loans at lower interest rates and thereby improving their financial condition.

b) Methodology:
The present study is based on both primary and secondary data. The primary data has been collected through questionnaire and structured and unstructured interviews were also conducted with the theme of the research work. However, secondary data is collected from various resources like journals, books, manuals and reports of the state concerned for literature part. Data collected both from primary and secondary data have been interpreted with the help of statistical anlaysis. The study was focused on growth of linked SHGs through microfinance.

c) Sampling:
The method selected for collecting the sample is “Convenient Sampling Method”.

d) Limitations of the study:
The present study is limited to a particular geographical area situated in Nalgonda (District), Telangana (State), India. It is based on the information collected from the 29 respondents comprising agricultural societies, weaker welfare societies, Samabhavana Sangam and Sangamitra.
5. DATA ANALYSIS

1. Source of information about Microfinance

<table>
<thead>
<tr>
<th>Source of Information</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>NGOs/ Co-operatives</td>
<td>20%</td>
</tr>
<tr>
<td>Awareness Programmes</td>
<td>5%</td>
</tr>
<tr>
<td>Newspaper</td>
<td>30%</td>
</tr>
<tr>
<td>Friends</td>
<td>45%</td>
</tr>
</tbody>
</table>

**Interpretation:** Most of the consumers are taking the help of NGOs/ Co-operative Societies for getting knowledge about microfinance and to get information regarding loan procedure, interest rates, duration of the loan and repayment method.

2. Ever Applied for a Loan or Credit from the SHG/Microfinance Institution.

- Yes: 100%
- No: 0%

**Interpretation:** The above chart shows that all the consumers we involved in this research work approached the Microfinance institutions by making applications for loans.

3. Apply for loan and received.

- Applied: 70%
- Received: 30%

**Interpretation:** The study conducted shows that consumers are not getting the entire amount what they applied and banks are granting 70% only.

4. Repayment Period Enough to Pay back the loan.

<table>
<thead>
<tr>
<th>Period</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>75%</td>
</tr>
<tr>
<td>No</td>
<td>25%</td>
</tr>
</tbody>
</table>

**Interpretation:** The study shows that most of the banks are providing sufficient time to their consumers. However some of the consumers expressed that the repayment period should be increased.

5. Rating on Interest Rate Charged on the Loan Granted.

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>15%</td>
</tr>
<tr>
<td>Very Low</td>
<td>5%</td>
</tr>
<tr>
<td>High</td>
<td>28%</td>
</tr>
<tr>
<td>Very High</td>
<td>17%</td>
</tr>
<tr>
<td>No Interest</td>
<td>35%</td>
</tr>
</tbody>
</table>

**Interpretation:** Most of the microfinance institutions grant the loans to their consumers at a lower rate. However, the study shows that the some of the microfinance institutions are charging a higher rate.

6. Use of the Loan.

- To Run My Business: 34.48%
- To Expand My Business: 17.24%
- To Start Up a Business: 20.69%
- Other Purposes: 27.59%

**Interpretation:** Based on the study conducted, most of the consumers expressed that they utilize the loan money to run their business, and to expand their business activities.

7. Impacts on Consumers of Loan Received from Consumers.

- Improved my economic status: 20%
- Improved my social status: 35%
- Improved my business: 15%
- Others: 30%

**Interpretation:** Based on the study conducted, most of the consumers expressed that they utilize the loan money to run their business, and to expand their business activities.
Interpretation: The Microfinance loans improved the economic and social status of the poor people. It improved their lifestyles and choices.

Interpretation: As depicted in the above diagram, the weaker sections of society were satisfied with the initiatives and the help granted to them by the microfinance institutions. As a result, the microfinance institutions were successful in improving and assisting the poor people and received positive response.

9. OBSTACLES TO GET THE LOAN SANCTIONED.

<table>
<thead>
<tr>
<th>Obstacle</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Process</td>
<td>15%</td>
</tr>
<tr>
<td>Time Taken By Banks</td>
<td>20%</td>
</tr>
<tr>
<td>Interest Rates</td>
<td>30%</td>
</tr>
</tbody>
</table>

Interpretation: Lengthy documentation and procedural aspects is a matter of concern for the consumers. The loan amount sanctioned is mostly less than the applied amount. Lesser interest rates according to them would be more favourable and helpful.

6. FINDINGS, SUGGESTIONS AND CONCLUSIONS

An integrated approach towards clients can enhance the effectiveness of microfinance institutions as a poverty alleviation tool. MFIs can contribute to greater sustainability at the client level by acting as a platform to deliver important social services with credit and financial services. Integrating micro finance with social services such as health, education and natural disaster relief or prevention addresses the other contributing factors to poverty beyond the economic factor. By partnering with other critical social providers and businesses and serving as a platform, microfinance can offer other organizations with a distribution channel to reach individuals in need, share experiences in working in a particular region and community, and offer countless other tangible and intangible products and services. This only makes sense because microfinance is not in the business of maximizing profits but rather of maximizing lives touched and transformed.

The findings of the study shows most of the consumers are taking the help of NGOs/Co-operative Societies for getting information about the microfinance and consumers are not getting the entire amount what they applied and some institutions are charging higher rate of interest. The weaker sections of society were satisfied with the initiatives and therefore the microfinance institutions were successful in improving and assisting the poor people and received positive response.

Microfinance institutions should get more government support to be more active. More awareness programmes and education about Micro-financing activities and organizations should be conducted and conveyed to the general public.

It can be concluded from the present study that the simplified documentation procedure, lower interest rates and increased loan amount limit would be more beneficial and helpful for the consumers. Small credit and loans from Microfinance Institutions and Cooperative Society Groups can help significantly in reducing the level of poverty. Microfinance can serve as a bridge beyond banking and development. The potential for growing microfinance in India is very high. Microfinance institutions need to educate villagers on the ease of procedures for availing loans. Access to microfinance improved their living standards. It can be the link that brings together the services and products available today to the people who need them most. The shift of focus from quantity of microfinance to the qualitative usages of microfinance is necessary. The best chance of succeeding lies in collective efforts.

Interpretation: The consumers expressed in the study conducted that the documentation procedure involved is to be liberalized, the loan amount increased and interest rates reduced – would be more beneficial for the consumers.
7. REFERENCES

Journals:


Websites:


Landmark Judgement

CS: LMJ: 3/01/2016

BACHA F. GUZDAR v. COMMISSIONER OF INCOME-TAX [SC]

Civil Appeal No.104 of 1953


Equivalent citations: 1955 AIR 740, 1955 SCR (1) 876, (1955) 25 Comp Cas 1

Indian Companies Act, 1913- Whether a shareholder has any personal right over the assets and properties of the company- Held, No. Whether the shareholders own the property of the company-Held, No.

Brief facts:

This appeal raised an interesting point of law under the Indian Income-tax Act, 1922, with respect to the nature of dividend income. While deciding the issue, the Supreme Court had also clearly explained the relationship between a shareholder and a company and the rights of the shareholder vis-a-vis the properties of the company and also the nature of shares. We are more particularly concerned with these aspects in this case.

The appellant, Mrs. Bacha F. Guzdar, was, in the accounting year 1949-50, a shareholder in two tea companies and received from these companies dividends aggregating to Rs. 2,750. The two companies carried on business of growing, manufacturing and sale of tea and that 40% of the income of the tea companies was taxed as income from the manufacture and sale of tea and 60% of such income was exempt from tax as agricultural income. According to the appellant, the dividend income received by her in respect of the shares held by her in the said Tea companies is to the extent of 60% agricultural income in her hands and therefore pro-tanto exempt from tax while the Revenue contends that dividend income is not agricultural income and therefore the whole of the income is liable to tax.

Decision: Appeal dismissed.

Reason:

It is true that the agricultural process renders 60% of the profits exempt from tax in the hands of the company from land which is used for agricultural purposes but can it be said that when such company decides to distribute its profits to the shareholders and declares the dividends to be allocated to them, such dividends in the hands of the shareholders also partake of the character of revenue derived from land which is used for agricultural purposes? Such a position - if accepted would extend the scope of the vital words “revenue derived from land” beyond its legitimate limits. Agricultural income as defined in the Act is obviously intended to refer to the revenue received by direct association with the land which is used for agricultural purposes and not by indirectly extending it to cases where that revenue or part thereof changes hands either by way of distribution of dividends or otherwise.

In fact and truth dividend is derived from the investment made in the shares of the company and the foundation of it rests on the contractual relations between the company and the shareholder. Dividend is not derived by a shareholder by his direct relationship with the land. There can be no doubt that the initial source which has produced the revenue is land used for agricultural purposes but to give to the words ‘revenue derived from land’ the unrestricted meaning, apart from its direct association or relation with the land, would be quite unwarranted.

It was argued on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest, (1924) 8 Tax cases 704, that an investor buys in the first place a share of the assets of the company and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word ‘assets’ in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the case of Chiranjitlal Chowdhuri v. Union of India & Ors [1950] S.C.R. 869(known as Sholapur Mills Corporate Laws
case). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company.

It is true that the shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. **The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders.** The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley’s Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividend, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company.

The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. **There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders.** The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up, but not in the assets as a whole as Lord Anderson puts it.

It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders.

In Halsbury’s Laws of England, Volume 6 (3rd Ed.), page 234, the law regarding the attributes of shares is thus stated: **“A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the, nature of real estate. ”**

In Borland’s Trustee v. Steel Brothers & Co. Ltd. L.R. [1901] 1 Ch. 279, Farwell J. held that “a share in a company cannot properly be likened to a sum of money settled upon and subject to executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the company, measured, for the purposes of liability and dividend, by a sum of money ……………… …………..” It was suggested that the dividend arises out of the profits accruing from land and is impressed with the same character as the profits and that it does not change its character merely because of the incident that it reaches the hands of the shareholder.

This argument runs counter to the definition of agricultural income which emphasizes the necessity of the recipient of income having a direct and an immediate rather than an indirect and remote relation with land. To accept this argument will be tantamount to saying that the creditor recovering interest on money debt due from the agriculturist who pays out of the produce of the land is equally entitled to the exemption.

The learned Attorney-General also contended that the conclusion that dividend is not agricultural income also follows from the provisions of section 16, subsection (2) and the proviso to the Act. According to him, this section compels the assessee to show in his return the whole dividend including the portion which is excluded on the ground of agricultural income. We do not consider it necessary to express any opinion upon this contention as our conclusion reached as a result of the foregoing discussion is sufficient to dispose of the appeal. We accordingly dismiss the appeal with costs.

**LW: 01:01:2016**

**UNION OF INDIA & ANR v. MAHALAXMI SAW MILLS P. LTD [DEL]**

LPA No.2514-15/2005

G.Rohini (CJ) & Rajiv Sahai Endlaw, J. [Decided on 23/12/2015]

Government Grant Act read with Companies Act and Transfer of Property Act-grant of government lease-Conversion of partnership firm into private company-assets and properties of the firm transferred and vested into the company- leasehold rights of the land of the firm also stood transferred to the company- lessor claimed the payment of unearned increase, based on the terms of the lease deed, from the firm for giving...
transfer permission – whether the demand is tenable-

Held, Yes.

Brief facts:

The lease of land measuring 207 sq. yards bearing No.3/13, Industrial Area, Kirti Nagar, New Delhi was granted by the President of India to one Jagjodh Singh vide Lease Deed dated 31st December, 1962 for a term of 99 years. Clause (b) supra of the Lease Deed of the land aforesaid requires the lessee to obtain approval in writing of the appellants L&DO before any “assignment or transfer” of the leased premises. Clause (c) supra of the Lease Deed entitled the appellants L&DO to claim and recover unearned increase at the time of “transfer” subsequent to the first “transfer”.

In 1966, the lessee Jagjodh Singh transferred the leasehold rights in the said property to M/s Mahalaxmi Saw Mills, a partnership firm (“MSM”). The constitution of the said MSM changed from time to time but no intimation thereof was given to the appellants L&DO; as on 7th May, 1986 there were 7 partners in the partnership firm.

The aforesaid seven partners of MSM, on 26th August, 1986 got incorporated the respondent Company and transferred the business, assets and liabilities of partnership firm MSM to the respondent Company at their net book value and became shareholders of respondent Company in proportion of their shares in the partnership firm.

The respondent Company thereafter applied to the appellants L&DO for mutation of the leasehold rights in the land aforesaid from the name of MSM to the name of the respondent Company. The appellants L&DO demanded the payment of unearned increase of Rs.13,04,294/- together with penalty of Rs.35,532/- for giving permission.

The respondent Company challenged the demand under a writ petition and the Single Judge, relying on Vali Pattabhirama Rao v. Sri Ramanuja Ginning and Rice Factory (P) Ltd. AIR 1984 AP 176, had allowed the writ petition of the respondent Company by quashing the demand for unearned increase and by directing the appellants L&DO to mutate / record the leasehold rights in the property from the name of the partnership firm to the name of the respondent Company.

The appellants appealed to the Division Bench.

Decision: Appeal allowed.

Reason:

We have considered the rival contentions and for the reasons hereinafter appearing are unable to concur with the view taken by the learned Single Judge and / or with the additional arguments of the counsel for the respondent Company before us.
the company, even if under Section 575 supra was thus a voluntary act to qualify as a transfer.

We are however of the view that the Clauses (b) & (c) supra of the Lease Deed do not require the transfer or assignment to be for consideration. The measure for unearned increase provided therein, of the difference between the premium paid and the market value of the land prevailing, also does not require exchange of any consideration for computation of unearned increase. We are unable to find any requirement of monetary consideration as a necessary concomitant of transfer, neither in Transfer of Property Act nor in any other law. If it were to be so, a gift, for consideration of natural love and affection, would also cease to be a transfer and would not attract any stamp duty or unearned increase. It is also not as if there was no consideration in the subject transaction. The consideration for the partners of M/s Mahalaxmi Saw Mills (partnership firm) to transfer their property to the respondent Company was the issuance of shares of the respondent Company to the partners in lieu thereof. However, that consideration has got nothing to do with the computation of unearned increase as above.

We thus allow the appeal and set aside the judgment of the learned Single Judge and dismiss the writ petition filed by the respondent Company.

LW: 02:01:2016

SIDDARTH GUPTA v. THE DELHI GOLF CLUB LIMITED & ANR [DEL]

I.A. No. 19355/2015 in C.S (OS) No. 2805/2015

Manmohan Singh, J. [Decided on 18/12/2015] Companies Act, 1956- expulsion of member without following the provisions of the AOA - whether tenable- Held, No. whether plaintiff is entitled to interim injunction- Held, Yes.

Brief facts:

The plaintiff applied to the defendant No. 1 on 7th August, 2009 along with a cheque of Rs.44,120/- however no decision was taken for a long time. On 16th April, 2014 the plaintiff received a communication from defendant No. 2 approving nomination of ‘Out of Turn’ regular membership. Upon the receipt of the said communication, the plaintiff applied afresh to defendant No. 1 on 21st April, 2014 along with a cheque of Rs.67,416/- . Defendant No. 1 vide a communication dated 3rd June, 2014 informed the plaintiff of being duly elected as an associate ‘C’ member and was instructed to pay the balance fees. The letter also stated that the plaintiff will be entitled to all the rights and privileges of a member of the club as per the Articles of Association.

Plaintiff has been availing these facilities since he became a member on 3rd June, 2014. Plaintiff vide letter dated 23rd July, 2014 sought refund of Rs.44,120/- deposited in 2009 which was returned by defendant No. 1 with covering letter dated 14th August, 2014. The plaintiff states that he learnt from a well-wisher on 8th September, 2015 who is a member of defendant No. 1, that a resolution was passed by the general committee of defendant No. 1 to revoke his membership on 10th August, 2015. On receipt of this information the plaintiff logged onto the member’s area of defendant No. 1’s website to peruse the minutes of the meeting on 10th August, 2015. The minutes revealed that membership of the plaintiff was decided to be revoked at the behest of defendant No. 2 who decided to cancel his nomination as it was found to be in contravention of the rules and regulations/established procedures of the Govt. of India.

Therefore, the plaintiff has filed the present suit seeking declaration that he is entitled to continue as a member of the defendant Company and that the decisions made by defendant Nos. 1 and 2 are bad in law and illegal, seeking permanent injunction against removal/revocation of plaintiff’s membership with the defendants. The plaintiff had also prayed for an interim injunction as well.

Decision: Interim injunction granted.

Reason:

A person who joins the club is governed by Rules under which he may also be expelled and if he is expelled without following the Rules, in an unfair and unjust manner and the principles of natural justice and fair play have not been applied, it is necessary that he must be given his chance of defence and explanation.

Admittedly, the plaintiff has paid the requisite fee and having waited for 5 years for being a member and having been granted membership, has a legitimate right that he would be entitled to continue as a member as per the rules and Memorandum of Articles of Association and that he could be removed only as per the terms stipulated in the Articles of Association.

It is the admitted position that the defendant No.1 has not granted an opportunity of hearing before passing any adverse orders as per the Memorandum and Articles of Association. The decision of the defendant No.2, referred to in the minutes of the meeting dated 10th August, 2015, has been taken without issuing any notice to the Petitioner. The same was taken at the back of the plaintiff. The defendant No.1 is club if the club is exploiting its member, at least the member must be apprised with. In case the Article 34 and 35 are read in meaningful manner, it is clear that before expelling a member the conditions and rules laid down have to be complied with whether those are mandatory or directory.

Article 34 of the Memorandum and Articles of Association of the defendant No.1 provides the circumstances/reasons in/for which any membership can be revoked/cancelled. None of the conditions
mentioned therein arise in the present case.

Article 35 of the Memorandum and Articles of Association, which mandates that before action is taken against any member, he/she must be given notice of such proposed action and also an opportunity to explain his/her alleged misconduct.

In the present case, no opportunity of hearing was granted to him. Even no notice for cancellation of his membership was given. It was given after filing of the suit and even the plaintiff has challenged the same by filing of application for amendment of plaint. At least both defendant Nos. 1 and 2 ought to have put the plaintiff to notice and granted him an opportunity of hearing before passing any adverse orders. Prima facie on the face of it, rule of natural justice has been violated by the club in a discriminatory manner in violation of the fundamental rights of the plaintiff guaranteed under the Constitution of India.

The plaintiff has also challenged the locus of the defendant No. 2 by stating that once a person is nominated and admitted/elected as a member he can be removed only as per the provision of Memorandum and Articles of Association.

In view of above said reasons, the Court is of the view that defendant No.1 could have, if necessary, revoked the membership only in accordance with the procedure laid down in the Articles of Association. The plaintiff is entitled to continue as member unless he is disqualified in terms of Article 34 and 35 of the defendant No.1.

Once a person becomes the member of the club, who has enjoyed its facility whether he becomes a member in its ordinary course or out of turn, it is the duty of the club to follow the due process as prescribed under Regulations. The membership cannot be terminated without due process of procedure and regulations.

In case of Charles Mantosh & Ors v. Dalhousie Institute & Ors, AIR 1993 Cal 232, it was contended that terminating membership without even giving an opportunity of hearing is not permissible. It was emphatically mentioned that member has prima facie case for grant of temporary injunction restraining authority of club from giving effect to its decision to remove. Similarly in the case of T.P. Daver v. Lodge Victoria, AIR 1963 SC 114, it was contended on behalf of the respondents that expulsion of a member no doubt demands strict compliance of the rules and it is to be done in good faith and in fairness.

In the present case, due process of Articles 34 and 35 has not been followed. The application of the plaintiff is accordingly allowed by passing the interim at this stage in favour of the plaintiff and against the defendants restraining the defendants from interfering with the enjoyment of the rights and facilities available to the members of defendant No.1 by the plaintiff, his spouse and dependents.

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**RESERVE BANK OF INDIA v. JAYANTILAL N. MISTRY [SC]**

Transferred Case (Civil) No. 91 of 2015 (Arising out of Transfer Petition (Civil) No. 707 of 2012) along with batch of petitions

M.Y. Eqbal & C. Nagappan, JJ. [Decided on 16/12/2015]

Right to Information Act, 2005- section 8- exemptions from disclosure- informants asked information as to investigation, audit, bad debts, FEMA violations etc. of various banks from RBI- RBI refused to furnish the same on the ground of information obtained from these banks on fiduciary relationship- whether refusal tenable- Held, No.

**Brief facts:**

The main issue that arose for the consideration of the Court in these transferred cases was as to whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question is in negative, then up to what extent the information can be provided under the 2005 Act.

The following information were sought by various respondents from the RBI:

- Details of the reports of pertaining to investigation and audit carried out by RBI, details of past 20 years’ investigation with respect to cooperative banks.
- Details of the report sent by RBI to the Finance Minister with respect to FEMA violations committed by several commercial
appeals were transferred to the Supreme Court and the Supreme Court challenged by the RBI in various High courts. Ultimately all these appeals were transferred to the Supreme Court and the Supreme Court had decided the cases by passing a common order.

**Decision: Appeals dismissed.**

**Reason:**

We have extensively heard all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts.

The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under section 8 of the RTI Act.

Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1) (e) of the RTI Act taking the stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest warrants such disclosure. The primary question therefore, is, whether the Reserve Bank of India has rightly refused to disclose information on the ground of its fiduciary relationship with the banks. [Court examined in detail the term ‘fiduciary relationship’ from various angles]

In the instant case, the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional “fiduciary” label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an in terrorem effect.

RBI is a statutory body set up by the RBI Act as India’s Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country’s banking sector. RBI has been given powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of ‘trust’ between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country’s economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI’s argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country’s economic security would be endangered, is not only absurd but is equally misconceived and baseless.

In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

And in this case the RBI and the Banks have sidestepped the General public’s demand to give the requisite information on the pretext of “Fiduciary relationship” and “Economic Interest”. This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

Even if we were to consider that RBI and the Financial Institutions shared a “Fiduciary Relationship”, Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable
business practices.

The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy.

We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders giving valid reasons and the said orders, therefore, need no interference by this Court.

There is no merit in all these cases and hence they are dismissed.

LW: 04:01:2016

GAUTAM KUNDU vs MANOJ KUMAR ASSISTANT DIRECTOR, DOE [SC]

Criminal Appeal No. 1706 of 2015 (Arising out of SLP (Crl.) No.6701 of 2015)

Pinaki Chandra Ghose & R.K. Agrawal, JJ. [Decided on 16/12/2015]

Prevention of Money Laundering Act, 2002 read with the Code of Criminal Procedure, 1973 and SEBI Act, 1992 – offence committed under section 3 of the PMLA- bail sought under section 439 of the CRPC-appellant floating as many as 27 companies - monies collected through front company routed through these companies- whether appellant entitled for bail- Held, No.

Brief facts:

This appeal, by special leave, is directed against the judgment and order passed by the High Court of Calcutta, whereby the High Court has rejected appellant’s application for bail under Section 439 of the Code of Criminal Procedure, 1973. The appellant was arrested on 25.03.2015 in relation to an offence alleged to have been committed under Section 3 of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as “PMLA”).

The appellant is the Chairman of Rose Valley Real Estate Construction Ltd. (hereinafter referred to as the "Rose Valley"), a public company incorporated in the year 1999 and registered under the Companies Act, 1956. Certain non-convertible debentures were issued by the Rose Valley by ‘private placement method.’ No advertisements etc. were issued to the public. The said debentures were issued to the employees of the Company and to their friends and associates after fulfilling the formalities for private placement of debentures. Thus, the appellant collected money by issuing secured debentures by way of private placement in compliance with the guidelines issued by the Securities and Exchange Board of India from time to time. Further the appellant had floated as much as 27 companies and routed the monies collected by his front companies through these companies.

Decision: Appeal dismissed.

Reason:

We have heard the learned counsel for the parties. At this stage we refrained ourselves from deciding the questions tried to be raised at this stage since it is nothing but a bail application. We cannot forget that this case is relating to “Money Laundering” which we feel is a serious threat to the national economy and national interest. We cannot brush aside the fact that the schemes have been prepared in a calculative manner with a deliberative design and motive of personal gain, regardless of the consequence to the members of the society.

We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of the PMLA. The contention raised on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under the PMLA, needs to be considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of SEBI Act is still pending for hearing before the High Court. We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure.

We cannot brush aside the fact that the appellant floated as many as 27 companies to allure the investors to invest in their different companies on a promise of high returns and funds were collected
from the public at large which were subsequently laundered in associated companies of Rose Valley Group and were used for purchasing moveable and immovable properties.

We have further noted that the High Court at the time of refusing the bail application, duly considered this fact and further considered the statement of the Assistant General Manager of RBI, Kolkata, seizure list, statements of director of Rose Valley, statements of officer bearers of Rose Valley, statements of debenture trustees of Rose Valley, statements of debenture holders of Rose Valley, statements of AGM of Accounts of Rose Valley and statements of Regional Managers of Rose Valley for formation of opinion whether the appellant is involved in the offence of money laundering.

In these circumstances, we do not find that the High Court has exercised its discretion capriciously or arbitrarily in the facts and circumstances of this case. We further note that the High Court has called for all the relevant papers and duly taken note of that and thereafter after satisfying its conscience, refused the bail. Therefore, we do not find that the High Court has committed any wrong in refusing bail in the given circumstances. Accordingly, we do not find any reason to interfere with the impugned order so passed by the High Court and the bail, as prayed before us, challenging the said order is refused. Consequently the appeal is dismissed.

LW: 05:01:2016

KOTAK MAHINDRA BANK LTD v. ANUJ KUMAR TYAGI [DEL]

RFA No. 56/2014

Rajiv Shakhder, J. [Decided on 17/12/2015]

Limitation Act, 1963- section 3 read with articles 55 and 113- grant of vehicle loan- borrower failing to pay the EMIs- suit filed by the bank- trial court dismissed the suit as time barred without appreciating articles 55 and 113- whether the rejection of suit tenable-Held, No.

Brief facts:

The respondent had approached ICICI Bank Ltd. in July, 2007, for grant of credit facility of Rs.3.28 lacs to purchase a TATA INDICA Vehicle, which was granted. As per the loan agreement, the respondent was required to repay the sum borrowed, in 59 Equated Monthly Installments (EMIs), amounting to Rs. 7544/- each. The first due date, as stipulated in the loan agreement, was 10.08.2007, with the date of maturity indicated as 10.06.2012. The repayment clause contained in the loan agreement provided that the due date would be the tenth day of each successive month. Additional security in the form of four post-dated cheques, was also given.

The respondent also hypothecated the subject vehicle in favour of ICICI Bank Ltd., by executing an unattested deed of hypothecation. Furthermore, an irrevocable power of attorney was also executed in favour of ICICI Bank Ltd.

It appears that the loan account became irregular, as the respondent failed to adhere to the financial discipline in the payment of the EMIs. Since, the respondent, failed to regularize the account, a loan recall-cum-demand notice dated 26.06.2012 was issued to him, which was posted on 29.06.2012. By virtue of the said recall-cum-demand notice, the loan agreement was terminated and the respondent was called upon to repay the entire outstanding amount, and handover possession of the subject vehicle. As, the respondent, failed to oblige, a suit for recovery was instituted against him. It is pertinent to note, that in the interregnum, ICICI Bank Ltd. had assigned the loan to an entity by the name of Asset Reconstruction Company (India) Ltd., which in turn, assigned the loan account, pertaining to the respondent vide assignment deed dated 31.12.2009, to the appellant herein.

The learned ADJ had, on a perusal of the statement of accounts (Ex. PW1/9) filed by the appellant, which is dated 31.10.2009, as per which the last transaction with the respondent took place on 11.08.2008, concluded that since, the suit was filed on 20.07.2012, it was "hopelessly" barred by limitation. Hence the present appeal.

Decision: Appeal allowed.

Reason:

To my mind, Article 55 could have possibly been made applicable, to this case as well, as the loan agreement had a tenure extending from 10.08.2007 till 10.06.2012, but for one aspect of the matter which I have adverted to in the following paragraph. In so far as Article 55 is concerned, the fact that that the respondent failed to adhere to the schedule of repayment, would not deprive the right of the appellant to treat each breach as a fresh cause of action. The last breach, quite clearly, in the instant case, would have occurred only in May-June, 2012, assuming the last instalment was to be adjusted by virtue of the respondent paying an initial amount of Rs. 7544/- as an advance. The suit, admittedly, was instituted on 20.07.2012.

Having said so, there is, as stated above, another aspect of the matter, as regards this case, which is that, under the loan agreement, the appellant, in terms of clause 48, is conferred with the power, in an event of a default.

Quite clearly, in terms of clause 48, the appellant had discretion to decide when to trigger the recall of loan upon occurrence of an event of default. The fact that EMIs were to be paid over a period spanning from 10.08.2007 till 10.06.2012, gave the appellant, under clause 48 the right to treat any of the defaulted EMI’s (that is, after the due date for its payment had passed) as an event of default.
Once, such an event of default occurred, the appellant under clause 48 could set in motion the process for recall of the loan. The commencement of the period of limitation, would thus be triggered, once, the said notice was issued, which in turn would relate to the defaulted EMI.

In the instant case, as noticed above, the recall-cum-demand notice dated 26.06.2012 was dispatched to the respondent, on 29.06.2012. Quite clearly, the period of limitation, would relate back to last defaulted EMI as, vide the aforementioned notice the appellant gave a final opportunity to the respondent to repay the amount, which was due and payable on the date of notice. The right to sue would occur, in my opinion, each time when, there is a default in payment of an EMI on its due date. The appellant in terms of clause 48 is, however, at liberty to take a decision to treat the non-payment of a particular EMI, as an event of default. The period of limitation would, though, commence from the date of the last defaulted EMI, which is made the subject matter of the notice and not from the date of the notice itself. Therefore, in such a situation, Article 113 of the 1963 Act would become applicable as against Article 55.

The trial court while dismissing the suit has not alluded to any specific Article of the 1963 Act. Recourse has been taken by the trial court to Section 3 of the 1963 Act, which inter alia, only empowers a court to dismiss a suit which is barred by limitation even if limitation is not set up as a defence. The section by itself could not have helped the trial court in coming to the conclusion as to what should be the period of limitation in a case such as this. Furthermore, the reference to Article 37 in the written statement is also of no relevance as the appellant did not sue either on a promissory note or a bond.

Having regard to the above, the appeal is allowed and, consequently, the impugned judgement is set aside.

Industrial & Labour Laws

LW: 06:01:2016

POONA EMPLOYEES UNION v. FORCE MOTORS LIMITED & ANR [SC]

Civil Appeal Nos. 10130-10131 of 2010

V. Gopala Gowda & Amitava Roy, JJ. [Decided on 01/12/2015]

Trade Union Act, 1926- section 19- recognition of trade union- Appellant union claiming to command 85% of the workforce of the company sought recognition- existing union BKS and the company opposed- Industrial court granted recognition without appreciating the facts properly- whether recognition to be accorded to the appellant union- Held, No.

Brief facts:

The Company, Force Motors Limited, earlier named as Bajaj Tempo Limited, has its office at Akurdi, Pune. The respondent No. 2- union i.e. Bhartiya Kamgar Sena (“the BKS”) is the recognized union of the company. The appellant union in its bid to be adjudged as the recognized union in place of BKS, filed an application on 6.9.2003 before the Industrial Court, Pune, as required under the provision of the Act. It insisted that almost all the employees members of BKS had meanwhile tendered their resignation, and had expressed their desire to discontinue their membership therewith. It claimed that majority of the employees had become its members, so much so that in the month of January, 2003, it had in its fold 1973 employees. Claiming that it was a union registered under the Trade Unions Act, 1926 (for short, hereinafter to be referred to as “1926 Act”) on 20.7.1986 with a valid certificate to that effect, it asserted that with the exodus of the employees members from BKS to its ranks, it had the holding of 85% of the total employees of the company.

The company resisted the application by pleading, amongst others, that the appellant union was not duly registered under the 1926 Act. It denied as well that it did have, at that point of time, 30% membership of the employees of the company and that it did comply with the imperatives of Section 19 of the Act. Dismissing the appellant union’s claim of majority membership to be a bogey, it refuted its claim of having larger membership of the employees of the company compared to BKS.

BKS, as well, joined the fray in similar lines with the company. Apart from reiterating that the appellant union was not duly registered under the 1926 Act and thus it had no locus standi to claim the status of a recognized union, it categorically controverted its claim of holding 30% membership of the company as compared to it (BKS).

The Industrial Court allowed the application of the appellant union but on appeal the High court reversed the decision of the Industrial court. Hence the present appeal.

Decision: Appeal dismissed.
Reason:

We have extended our anxious consideration to the rival pleadings and the arguments based thereon. The documents available on record have also received our attention.

On a conjoint reading of the provisions of the Trade Unions Act, it is abundantly and predominantly clear that the exercise of examining an application of a union in an undertaking seeking the status of recognized union whether by replacing an existing recognized union or not, is neither a routine ritual nor an idle formality. Not only the applicant-union has to be eligible to apply as per the prescriptions with regard to the extent of membership it has to command for the relevant period, its application has to be bona fide in the interest of the employees and it must not have indulged in any activity of instigating, aiding or assisting, the commencement or continuation of a strike during the said period. The detailed procedure in both the eventualities, as contemplated in Sections 12 and 14 of the Act, enjoins a participating enquiry to verily ascertain the membership pattern of the rival unions, and also the existence or otherwise of the disqualifying factors as stipulated by the Act.

Section 9(2) of the Act, to reiterate, makes it incumbent on the Investigating Officer to assist the Industrial Court in matters of verification of membership of unions and also to assist the Industrial and Labour Courts investigating into the complaints relating to the unfair labour practice. Axiomatically, thus the enquiry to be undertaken by the Industrial Court, has to strictly comport to the prescripts of the relevant provisions and cannot be repugnant to the letter and spirit thereof. Indubitably, the burden would be on the applicant union to decisively establish its eligibility and suitability for being conferred the status of a recognized union to be adjudged by the legislatively enjoined parameters. Though the enquiry envisages participation of the rival union(s), employers and employees, having regard to the ultimate objective of installing a representative union to secure genuine, effective and collective negotiations, catering to industrial cohesion, harmony and growth, no compromise or relaxation in the rigours of the requirements of the enquiry can either be contemplated or countenanced.

The factual conspectus, albeit, not wholly identical herein, the fact remains that though it had been undertaken by the appellant union that if permitted to file its affidavits, the same would not be utilized to decide the issue of membership and was endorsed as well by the Industrial Court, its decision would clearly reveal that the contents of the affidavits not only had been taken note of by it but also relied upon along with the other materials on record, to eventually hold that the appellant union held in its ranks, the majority membership of the employees of the undertaking. To this extent, we are constrained to hold that the approach of the Industrial Court in deciding the issue of membership cannot be sustained being in derogation of the letter, spirit and objectives of the procedure prescribed by the Act to determine the issue of majority of membership for the purpose of identifying the recognized union of an industrial establishment.

To recall, the common averment made in the 1556 affidavits filed by the appellant union is that the employees concerned had resigned from BKS on 12.12.2002 as it did not defend the interest of the workers and had functioned as per the directions of the company. It was further affirmed that the deponent did not pay union subscription to BKS since last year and that he/she had instead accepted the membership of the appellant union i.e. Puna Employees Union on 12.12.2002 and that concludes to be its member on the date of the execution of the affidavit. It was stated further that in view of the resignation of the deponent and others, BKS did not have majority of the membership since 1.1.2003 and that thus its recognition be revoked.

Adverting to the evidence, dehors the affidavits, suffice it to state that the report of the Investigating Officer clearly reveals that the contribution collected from the members of the appellant union had not been deposited in its bank account. This finding, to reiterate, is based on a scrutiny of the original records of the appellant union. Though the then President of the appellant union, in his testimony claimed that the membership fee had been duly deposited in the bank, he conceded that no complaint had been made against the Investigating Officer for incorporating a finding contrary thereto. No overwhelming evidence was also produced to counter this finding. This witness admitted as well that the accounts of the appellant union were not being audited by a Chartered Accountant, appointed by the Government which per se is also in repudiation of the mandate of Section 19(iv) of the Act. This witness in course of the cross- examination was also confronted with the annual return submitted by the union for the period January to December, 2003 in which he admitted that the columns No. 10, 13, 15 and 17 of the prescribed form had been left blank.

Not only, in the comprehension of this Court, the report of the Investigating Officer based on a scrutiny of all relevant records of the appellant union including the list of employees, membership receipt book, register of membership, cash book, bank pass books etc. does not as such admit of any doubt about its credibility, even some of the affiants, in their cross-examinations, on their affidavits filed in support of the claim of membership of the appellant union, had stated that they had affirmed the same because they were promised by the appellant union that their deducted wages for the go-slow tactics would be reimbursed. Though the respondents have nursed a remonstrance that the permission granted by the Industrial Court to cross-examine only 100 of the affiants out of 1556 deponents did denude them of a valuable right of defence, in our estimate, nothing much turns thereon.

To reiterate, these affidavits could not have been, in the facts and circumstances of the case, and more particularly in view of the undertaking given by the appellant union and also the order to that effect by the Industrial Court that the same would not be used to decide the issue of membership, acted upon for this purpose. It had throughout been in the understanding of all concerned that the contents of the affidavits would be used only for relevant and ancillary purpose but divorced from the issue of membership. The
Industrial Court however, in concluding that the appellant union did have more than 30% of the membership of the total employees, took cognizance of these affidavits and relied on the same. The contents of the affidavits, referred to hereinabove, which are identical and in a format are to the effect that the deponents had not paid subscription to the BKS for the last two years and that they had accepted the membership of appellant union on 20.12.2002 and that BKS does not have majority of the membership since 1.1.2003. These affidavits taken on their face value, irrefutably testified on the aspect of membership of the two unions and though the Industrial Court did endeavour to construe the same for the purpose of ascertaining the intention of the affiants to support the appellant union, it indeed had a decisive bearing on its ultimate conclusion of its majority membership.

In the facts of the present case, in our estimate, the analysis and evaluation of the materials on record as undertaken cannot be denounced as illogical, irrational or uncalled-for and the view recorded in the impugned judgment and order is one permissible on the basis thereof.

We have perused the impugned judgment and order. In the above presiding backdrop of facts and law, we are of the unhesitant opinion that the view taken by High Court is plausible and rational being based on a logical analysis of the materials on record and the law applicable does not merit any interference at our end. Having regard to the paramount objectives of the Act and in the interest of industrial orderliness, stability, peace and overall wellbeing as well, we find no persuasive reason to intervene at this distant point of time. The appeals fail and are, accordingly, dismissed. No costs.

**LW: 07:01:2016**

**JAIBHARAT TEXTILE & REAL ESTATE LTD v. REGIONAL PROVIDENT FUND COMMISSIONER [DEL]**

W.P. (C). 10096/2015 & CM No.28059/2015

Sunita Gupta, J. [Decided on 17/12/2015]

Employees Provident Funds and Miscellaneous Provisions Act, 1952- sections 7-O, 7-Q & 14-B – EPFAT imposed pre-deposit of 50% failure to deposit-appeal dismissed- assets attached- HC reduces the quantum of pre-deposit to Rs.25 lacs.

**Brief facts:**

The Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Nagpur passed an order on 20.11.2014 for default in the payment of contribution to the fund for the period August, 2008 to May, 2012 for an amount of Rs.1,19,90,859/-. Feeling aggrieved by the order passed by the competent authority, an appeal was preferred by the establishment before learned EPFAT along with an application seeking waiver of pre-deposit, as required under Section 7(O) of the Act. While entertaining the appeal of the establishment, the competent authority directed the establishment to deposit 50% of the amount instead of stipulated 75% within 30 days as a precondition. Being aggrieved, the establishment preferred a civil writ petition No.6595/2015 which was disposed of by the Court vide order dated 13.07.2015 extending the time to deposit the amount ordered by the appellate authority by six weeks. However, due to non-compliance of the order, the appeal was dismissed. Subsequently, warrant of attachment of movable property was issued by the department as a result of which, four machines of the petitioner's establishments were attached.

**Decision: Petition allowed.**

**Reason:**

The basic submission of learned counsel for the petitioner is that the petitioner company is suffering losses since the year 2011 with the result it could not comply with the order. A statutory reference before BIFR under SICA has also been filed by the company which is registered on 06.05.2015. Various decisions have been relied upon by learned counsel for the petitioner for submitting that due to continuous losses suffered by the petitioner company the petitioners have no means of fulfilling the pre-deposit condition. Moreover, if the petitioner was unable to comply with this condition, at the most the interim protection may not have been granted to the petitioner but the appeal should not have been dismissed on merits. Moreover, petitioner has a good prima facie case on merits as the beneficiaries have not been identified before fastening the liability upon the petitioner. In any case, the petitioner is ready to deposit a sum of Rs.25 lacs with the appellate authority over and above the amount of Rs.5,50,740/- already attached from the account of the petitioner in Bank of India by the respondent. The basic submission of learned counsel for the respondent, on the other hand, is that the dues under EPF Act are first charge on the assets of the establishment and mere fact that a reference has been made under SICA is not sufficient to negate the claim of the respondent.

Rival contentions of the parties require consideration. Keeping in view the special circumstances of the case, the writ petition is disposed of with the direction that subject to depositing a sum of Rs.25 lacs with the appellate authority within two weeks, the appeal bearing ATA No. 1346(9)2014 be restored by the appellate authority and be decided on merits. The petitioner is further directed to furnish an undertaking before the appellate authority that it will not sell, alienate or in any manner dispose of the four machines attached by the respondent without prior permission of the respondent. Subject to furnishing the undertaking by the respondent, the attachment dated 27.10.2015 be lifted. It is clarified that while doing so, I have not expressed any opinion on merits of the case and it will
be open to both the parties to make their rival submissions before the competent authority on merits of the case and the appellate authority shall decide the appeal in accordance with law.

**LW: 08:01:2016**

JAI BALAJI SECURITY SERVICES (REGD) v. A.P.F.C.DELHI [DEL]

LPA Nos.880/2015, 762/2015, 848/2015 & 868/2015

Pradeep Nandrajog & Mukta Gupta, JJ. [Decided on 16/12/2015]

Employees Provident Funds and Miscellaneous Provisions Act, 1952- sections 7A, 7O, 7Q & 14B

Power of the EPF Appellate Tribunal to put conditions to grant stay of recovery- HC explains the legal position.

**Brief facts:**

The above captioned four appeals are being disposed of by a composite order because a common question of law arises for consideration in the appeals. The appellants of LPA No.880/2015 had challenged an order passed under Section 14-B and Section 7-Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) before the Employees Provident Fund Appellate Tribunal. The order levied damages for late deposit of the provident fund dues and raised a demand towards interest. On an application filed for stay of the impugned demand, vide order dated September 21, 2015 the Appellate Tribunal directed that not more than 50% of the amount can be recovered. Said order was challenged by way of a writ petition which has been dismissed vide impugned order dated October 15, 2015.

Challenge in LPA No.762/2015 by the Central Board of Trustees is to an order dated September 07, 2015 passed by the learned Single Judge in a writ petition filed by the respondent of said appeal, laying a challenge to an order dated August 18, 2015 passed by the Employees Provident Fund Appellate Tribunal staying operation of an order levying damages under Section 14-B of the Act upon 50% of the amount raised in the demand being deposited. The learned Single Judge has held that the appeal had to be heard without insisting on any deposit because the embargo put by Section 7-O of the Act to an appeal being entertained only after 75% of the demand raised was deposited was confined to orders passed under Section 7-A of the Act.

Challenge by the appellant of LPA No.848/2015 is to an order dated October 14, 2015 passed by the learned Single Judge restraining the respondent of the appeal to recover more than 30% of the amount assessed under Section 14-B and Section 7-Q of the Act.

It is noted that vide order dated October 08, 2015, the Employees Provident Fund Appellate Tribunal had restrained the respondent of the said appeal to recover more than 30% of the assessed amount.

Challenge in LPA No.868/2015 is to an order dated August 28, 2015 passed by the learned Single Judge setting aside the order dated July 22, 2015 passed by the Employees Provident Fund Appellate Tribunal directing 40% of the amount assessed under Section 14-B of the Act to be deposited as a condition precedent for stay of the demand raised.

**Decision:** LPA No.880/2015 and LPA No.848/2015 are dismissed. LPA No.868/2015 and LPA No.762/2015 are allowed.

**Reason:**

A perusal of Section 7-O reveals that the embargo on the entertainment of an appeal by the Appellate Tribunal concerning pre-deposit of 75% of the amount due as determined by an officer referred to in Section 7-A is restricted to said Section and does not embrace Section 7-Q or Section 14-B of the Act.

We therefore hardly see any scope for an argument that Section 7-O creates an embargo to the entertainment of an appeal by the Tribunal unless 75% of the amount due as determined by an officer under Section 7-Q and Section 14-B is deposited, subject to the Appellate Tribunal passing an order as per the Proviso to Section 7-O of the Act.

But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay. Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, but the pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders.

There is no confusion on the legal provisions and their interpretation. Thus, the order dated September 21, 2015 passed by the Appellate Tribunal which has been challenged by the appellant of LPA No.880/2015 is a legal and valid order because it has been passed by the Appellate Tribunal not with respect to its powers under the proviso to Section 7-O of the Act. The order has been passed on an
application filed by the appellant of the appeal praying for a stay of the demand raised under Section 7-Q and Section 14-B of the Act.

As regards LPA No. 762/2015, we note that vide order dated August 18, 2015 passed by the Appellate Tribunal, it has exercised power with respect to an application filed by the respondent of the said appeal praying for an interim order staying the demand raised under Section 14-B of the Act. The Appellate Tribunal has not exercised power under the Proviso to Section 7-O of the Act. We note that the appellant of LPA No. 762/2015 had argued before the Appellate Tribunal that in view of Section 7-O of the Act it could not entertain the appeal unless 75% of the demand raised was deposited. The Appellate Tribunal has noted the argument, but has not passed the order with respect to the power vested in it under the Proviso to Section 7-O. The impugned order dated September 07, 2015 passed by the learned Single Judge is totally misdirected inasmuch as the learned Single Judge has proceeded as if the order impugned before him was passed with reference to Section 7-O of the Act.

As noted above in LPA No. 848/2015 the challenged impugned order dated October 14, 2015 passed by the learned Single Judge is in a writ petition filed by the appellant to an order dated October 08, 2015 passed by the Appellate Tribunal directing 30% of the amount assessed under Section 7-Q and Section 14-B of the Act to be deposited as a condition of stay of the demand. The order passed by the Appellate Tribunal is not with reference to its powers under the Proviso to Section 7-O of the Act. As regards LPA No. 862/2015 we find that the learned Single Judge in passing the impugned order dated August 28, 2015 has been misled to understand the order dated July 22, 2015 passed by the Appellate Tribunal which stayed 60% of the demand on 40% being deposited concerning an order passed under Section 14-B Act.

We reiterate once again. Section 7-O of the Act would apply only to orders passed under Section 7-A of the Act and condition of pre-deposit of 75% of the amount assessed would be a condition for entertaining the appeal by the Appellate Tribunal subject to the Tribunal passing an order under the Proviso to the said Section. The said order is distinct from an order passed by the Appellate Tribunal in an application seeking interim directions where demands raised under Section 7-O and Section 14-B of the Act are challenged. Said orders are not passed in exercise of the power under the Proviso to Section 7-O of the Act.
The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015.

[Issued by the Ministry of Corporate Affairs vide F. No. 1/32/2013-CL-V-Part, dated 14.12.2015. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

In exercise of the powers conferred under sections 173, 175,177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014,-

(i) After rule 6, the following rule shall be inserted, namely:-

"6A. Omnibus approval for related party transactions on annual basis.- All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely: -

(1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely: -

(a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
(b) the maximum value per transaction which can be allowed;
(c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
(d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;
(e) transactions which cannot be subject to the omnibus approval by the Audit Committee.

(2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -

(a) repetitiveness of the transactions (in past or in future);
(b) justification for the need of omnibus approval.

(3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

(4) The omnibus approval shall contain or indicate the following: -

(a) name of the related parties;
(b) nature and duration of the transaction;
(c) maximum amount of transaction that can be entered into;
(d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
(e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

(5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

(6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

(7) Any other conditions as the Audit Committee may deem fit.".
The Companies (Audit and Auditors) Amendment Rules, 2015

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In exercise of the powers conferred by sub-section (12) of section 143 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014 namely:-

1. (1) These rules may be called the Companies (Audit and Auditors) Amendment Rules, 2015.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Audit and Auditors) Rules, 2014 (hereinafter referred to as the principal rules),-

   (i) For rule 13, the following rule shall be substituted, namely:-

   “13. Reporting of frauds by auditor and other matters:

   (1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

   (2) The auditor shall report the matter to the Central Government as under:-

   (a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;

   (b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;

   (c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

   (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

   (e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and

   (f) the report shall be in the form of a statement as specified in Form ADT-4.

   (3) In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

   (a) Nature of Fraud with description;

   (b) Approximate amount involved; and

   (c) Parties involved.

   (4) The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board’s Report:-

   (a) Nature of Fraud with description;

   (b) Approximate Amount involved;

   (c) Parties involved, if remedial action not taken; and

   (d) Remedial actions taken.

   (5) The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.);

(ii) In the principal rules, after rule 14 and before FORM NO. ADT-1, insert the word “Annexure”;

(iii) In the principal rules, in Form No. ADT-4,-

   (A) in line 3, for the word, figures and brackets “rule 13(4),
the word, figures, letter and brackets “rule 13(2)(f)” shall be substituted; and

(B) in line 25, in item No. (10), for the word, figures and brackets “rule 13(1)”, the word, figures, letter and brackets “rule 13(2)(a)” shall be substituted.

Amardeep Singh Bhatia
Joint Secretary

Date of coming into force of the provisions of sections 13 & 14 of the Companies (Amendment) Act, 2015

[Issued by the Ministry of Corporate Affairs vide F. No. 1/6 /2015-CL. V, S. O. 3388(E), dated 14.12.2015. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated 15.12.2015]

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2015 (21 of 2015), the Central Government hereby appoints the 14th day of December, 2015 as the date on which the provisions of section 13 and 14 of the said Act shall come into force.

Amardeep Singh Bhatia
Joint Secretary

Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013 - reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 15/2015, F.No. 01/34/2013 CL-V, dated 30.11.2015.]

In continuation of this Ministry's General Circular 14/2015 dated 28.10.2015, keeping in view requests received from various stakeholders, it has been decided to relax the additional fees payable on e-forms AOC4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 upto 30.12.2015, wherever additional fee is applicable.

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

KMS Narayanan
Joint Secretary

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2015

[Issued by the Securities and Exchange Board of India vide No. SEBI/LAD-NRO/GN/2015-16/27, dated 22.12.2015. Published in the Gazette of India, Extraordinary, Part III, Section 4, dated 22.12.2015]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2015.

2. They shall come into force on the 1st day of April, 2016.

3. In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, in regulation 34, in sub regulation (2), –

   i. in clause (f), after the words “for the top” and before the words “listed entities”, for the word “hundred” the words “five hundred” shall be substituted;

   ii. in the proviso to clause (f), after the words “other than top” and before the words “listed companies”, for the number “100” the words “five hundred” shall be substituted.

U.K. Sinha
Chairman

Timelines for Compliance with various provisions of Securities Laws by Commodity Derivatives Exchanges

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CDMRD/DEA/03/2015, dated 26.11.2015.

Pursuant to Section 131 of the Finance Act, 2015 and Central Government Notification S.O. 2362 (E) dated August 28, 2015, all recognized associations (commodity derivatives exchanges) under the Forward Contracts (Regulation) Act, 1952 (‘FCRA’) are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 (‘SCRA’) with effect from September 28, 2015.

2. Section 131 of the Finance Act, 2015 also stipulates that SEBI may provide such deemed exchanges, adequate time to comply with the provisions of SCRA and any regulations, rules, guidelines or like instruments made under SCRA. Accordingly, commodity derivatives exchanges shall comply with the provisions of SCRA, applicable provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (‘SECC Regulations’) and SEBI circular CIR/MRD/DSA/33/2012 dated December 13,
2012, on procedural norms on recognition, ownership and Governance for Stock Exchanges and Clearing Corporation ("SECC Circular").

3. The timelines provided in this circular shall be reckoned from the date of recognized associations under FCRA having been deemed to be recognized stock exchanges under SCRA, i.e. September 28, 2015.

Corporatization and Demutualization:

4. Regional commodity derivatives exchanges shall corporatize and demutualize within a period of three years in accordance with the provisions contained in section 4B of SCRA. In this regard, regional commodity derivatives exchanges shall submit a scheme for corporatization and demutualization for SEBI approval within a period of two years, as per the procedure laid down in section 4B of SCRA.

Clearing and Settlement:

5. Commodity derivatives exchanges shall transfer the functions of clearing and settlement of trade to a separate clearing corporation within three years. Till then, the exchanges may continue with the existing arrangement for clearing and settlement of trades.

Validity of recognition of Commodity Derivative Exchanges:

6. Validity of recognition of commodity derivatives exchanges under SCRA shall be taken to be the same as the validity of their recognition under FCRA. Further, the renewal of recognition, if any, will be as per SCRA and SECC Regulations.

7. The conditions required to be continuously complied with by recognized stock exchanges as given in Regulation 7(3) of SECC Regulations shall be complied with by national commodity derivative exchanges within one year and by regional commodity derivatives exchanges within three years.

However, commodity derivatives exchanges shall immediately put in place adequate surveillance system to monitor positions, prices and volumes etc. so as to ensure market integrity till online real-time surveillance systems are set up and operationalized.

8. Conditions required to be continuously complied with by recognized clearing corporations given in Regulation 7(4) of SECC Regulations, to the extent applicable, shall be complied with by national commodity derivatives exchanges within one year and by regional commodity derivatives exchanges within three years.

Regulatory Fee:

9. Commodity derivatives exchanges shall pay the regulatory fee in terms of Securities and Exchange Board of India (Regulatory Fee on Stock Exchanges) Regulations, 2006.

Networth Requirements:

10. Commodity derivatives exchanges shall comply with Regulation 14(1) of SECC Regulations as specified below:

   a) Any national commodity derivatives exchange having a networth of less than INR 100 crore, shall achieve a minimum networth of INR 100 crores by May 5, 2017. Further, it shall submit a plan duly approved by its shareholders to SEBI for achieving the networth in terms of Regulation 14 of SECC Regulations, within six months.

   b) Any regional commodity derivatives exchange having networth of less than INR 100 crore, shall achieve a minimum networth of INR 100 crores within three years. Further, it shall submit a plan duly approved by its shareholders to SEBI for achieving the networth in terms of regulation 14 of SECC Regulations, within six months.

11. It may be stated that commodity derivative exchanges shall not distribute profits in any manner to its shareholders until the requisite networth of INR 100 crores is achieved in terms of Regulation 14(4) of SECC Regulations.

12. It may also be stated that commodity derivatives exchanges shall submit audited networth certificate from the statutory auditor on an yearly basis by the thirtieth day of September every year for the preceding financial year in terms of Regulation 14(5) of SECC Regulations. The networth certificate for the financial year ended on 31st March, 2015 shall be submitted by 31st December, 2015.

Ownership:

13. National commodity derivatives exchanges shall comply with the shareholdings limits specified under SECC Regulations, 2012 by May 5, 2019. As per clause 5 of SECC Circular, they shall put in place a monitoring mechanism to ensure compliance with the shareholding restrictions specified in SECC Regulations.

14. Shareholdings of existing shareholders of national commodity derivatives exchanges, whose shareholdings were approved by Forward Markets Commission (FMC), shall not require fresh approval from SEBI. However, any fresh holdings will be governed by the provisions of Regulation 19 of SECC Regulations and SECC Circular.

15. Regulations 20 to 22 of SECC Regulations shall be applicable to national commodity derivative exchange with immediate effect. The format for submitting shareholding pattern to SEBI is annexed to this circular.
16. Regional Commodity Derivatives Exchanges shall comply with the provisions specified in Chapter IV of SECC Regulations within three years.

**Governance:**

17. Provisions of Regulations 23 to 26 shall be applicable to national commodity derivatives exchanges, subject to the following:

a) Existing Independent Directors on the boards of national commodity derivatives exchanges shall be deemed to be Public Interest Directors (PIDs) under SECC Regulations,

b) All existing directors on the governing boards of national commodity derivatives exchanges who are not in compliance with SECC Regulations may be allowed to continue for one year or till completion of their term, whichever is earlier,

c) All new appointments on the governing boards of national commodity derivatives exchanges shall be governed by the provisions of SECC Regulations and SECC Circular.

18. National Commodity Derivatives Exchanges shall comply with the provisions of Regulation 27 of SECC Regulations within one year.

19. Regional Commodity Derivatives Exchanges shall comply with the provisions of Regulations 23 to 27 of SECC Regulations within three years.

**Segregation of Regulatory Departments:**

20. Commodity derivatives exchanges shall segregate their regulatory departments (as indicated in SECC Circular) from other departments in the manner specified in Part C of Schedule II of SECC Regulations within six months.

**Oversight Committees:**

21. Commodity derivative exchanges shall comply with the requirements of Regulation 29 read with Regulation 44D (1) (b) of SECC Regulations within three months. National commodity derivatives exchanges shall constitute an oversight committee for 'Product design', chaired by a Public Interest Director, within three months.

**Advisory Committee and other Statutory Committees:**

22. National commodity derivatives exchanges shall constitute Advisory committees in line with Regulation 30 of SECC Regulations, 2012 and statutory committees as pre specified scribed in SECC Circular within three years.

**Risk Management Committee:**

24. Till the functions of clearing and settlement are transferred to a separate clearing corporation, commodity derivatives exchanges shall comply with provisions of Regulation 31 of SECC Regulations relating to risk management committee. This committee shall be constituted.

**Appointment of Compliance Officer:**

25. All commodity derivative exchanges shall appoint a compliance officer in terms of Regulation 32 of SECC Regulations.

**Transfer of Penalties:**

26. National commodity derivative exchanges shall credit all settlement related penalties to their settlement guarantee fund (SGF) and other penalties to Investor Protection Fund (IPF).

27. Regional Commodity Derivatives Exchanges shall credit all penalties to their SGF. On creation of IPF, regional commodity derivatives exchanges shall credit penalties other than settlement related to their IPF.

**Disclosure and Corporate Governance Norms:**

28. Regulation 35 of SECC Regulations shall be applicable to national commodity derivative exchanges immediately. Regional commodity derivatives exchanges shall comply with this Regulation within three years.

**General Obligations:**

29. Till the functions of clearing and settlement are transferred to a separate clearing corporation, commodity derivative exchanges shall comply with the provisions of Regulation 39 of SECC Regulations on Fund to guarantee settlement of trades.

30. The provisions of Regulations 41, 42, 43, 44 and 44A of SECC Regulations to a recognized stock exchange shall be applicable to commodity derivatives exchanges. Additionally, the provisions of Regulations 41, 42, 43, 44 and 44A of SECC Regulations in so far as they pertain to a recognized clearing corporation shall be applicable to commodity derivatives exchanges till the functions of clearing and settlement are transferred to a separate clearing corporation.

31. Till the functions of clearing and settlement are transferred to a separate clearing corporation, commodity derivative exchanges shall have right to recover dues from its trading/clearing members arising from the discharge of their clearing and settlement functions from the collaterals, deposits and the assets of the trading/clearing members in line with Regulation 44B of SECC Regulations.
32. Regulation 44C and 44D of SECC Regulations shall be applicable to commodity derivatives exchanges.

**Listing:**

33. Regulation 45 of SECC Regulations shall be applicable to commodity derivatives exchanges.

**Dematerialization of Securities:**

34. National commodity derivative exchanges shall comply with Regulation 46 of SECC Regulations with respect to holding securities in dematerialized form within six months, and regional commodity derivatives exchanges shall comply with the same within three years.

35. Commodity derivative exchanges are advised to:-
   a) Make necessary amendments to the relevant rules/ bye-laws/ regulations for the implementation of the above decision;
   b) Bring the provisions of this circular to the notice of their members and also to disseminate the same through their website; and,
   c) Communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly / Quarterly Development Reports to SEBI.

36. This circular is issued in exercise of the powers conferred under Regulation 44D (1) and 51 of SECC Regulations read with Section 11 (1) of the Securities and Exchange Board of India Act, 1992 with a view to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into with immediate effect.

37. This circular is also available on SEBI website at www.sebi.gov.in

Vishal Nair
Deputy General Manager

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7 Testing of software used in or related to Trading and Risk Management

[Issued by the Securities and Exchange Board of India vide CIR/CDMRD/DEICE/03/2015, dated 11.12.2015.]

1. Pursuant to Section 131 of the Finance Act, 2015 and Central Government notification F.No. 1/9/SM/2015 dated August 28, 2015, all recognized associations under the Forward Contracts (Regulation) Act, 1952 are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 with effect from September 28, 2015. This circular applies to National Commodity Derivatives Exchanges (Exchanges) as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2015.

2. Due to technological developments and innovations, currently the members of exchanges have multiple options for using software i.e. either exchange provided or in-house developed software which is being used for trading and risk management related activities.

3. In the securities market, in order to avoid any disruption like event due to malfunctioning of software used by the trading members / brokers, it was felt necessary to strengthen the process of testing of software before deployment. In this regard, based on the recommendations of Technical Advisory Committee (TAC), SEBI had specified guidelines for testing procedures vide circulars CIR/MRD/DP/24/2013 dated August 19, 2013 and circular CIR/MRD/DP/06/2014 February 07, 2014 which are made applicable to the securities market.

4. Since new software or changes to the existing software without proper testing may affect the integrity of the markets, it has been decided to make the provisions of the aforesaid circular also applicable to commodity markets. The major provisions covered are as under:
   a. Testing of Software
   b. Approval of Software of brokers/members
   c. Undertaking to be provided by the brokers/members
   d. Sharing of Application Programming Interface (API) specifications by the brokers/members
   e. Penalty on malfunction of software used by brokers/members

5. The circular shall be applicable for Exchanges with effect from April 01, 2016.

6. The Exchanges are advised to:-
   - Make necessary amendments to relevant bye-laws/rules for the implementation of this circular
   - Communicate SEBI, the status of implementation of the provisions of this circular

7. The circular is issued in exercise of the powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
8. The circular is available on SEBI website at i.e. www.sebi.gov.in.

B J Dilip
General Manager

08

Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

[Issued by the Securities and Exchange Board of India vide CIR/CFD/CMD/16/2015, dated 30.11.2015.]

1. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “listing regulations”) place obligations with respect to Scheme of Arrangement on Listed Entities and Stock Exchange(s) in Regulation 11, 37 and 94.

Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as “the SCRR”) provides that Securities and Exchange Board of India (SEBI) may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules.

2. Thus the additional requirements in order to achieve the intent of regulations 11, 37 and 94 and for availing exemption under sub-rule (7) of rule 19 of SCRR, if applicable are placed at Annexure-I.


4. The Stock Exchanges are advised to bring the provisions of this circular to the notice of Listed Entity and also to disseminate the same on its website.

5. This circular is issued under regulations 11, 37 & 94 read with regulation 101(2) of listing regulations and Rule 19(7) of SCRR, 1957.

6. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework/Circulars”.

B.N. Sahoo
General Manager

ANNEXURE I

I. Requirements before the Scheme of arrangement is submitted for sanction by the Hon’ble High Court

A. Requirements to be fulfilled by Listed Entity

1. Eligibility conditions for companies seeking relaxation under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

A listed issuer may submit the Draft Scheme of arrangement under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, thereby seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof, for listing of its equity shares on a recognized stock exchange without making an initial public offer, if it satisfies the following conditions:

(a) The equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant to a scheme of reconstruction or amalgamation (Scheme) sanctioned by a High Court under section 391-394 of the Companies Act, 1956 or under Section 230-234 of the Companies Act, 2013;

(b) At least twenty five per cent of the post-scheme paid up share capital of the transferee entity shall comprise of shares allotted to the public shareholders in the transferor entity;

(c) The transferee entity will not issue/ reissue any shares, not covered under the Draft Scheme of arrangement;

(d) As on date of application, there are no outstanding warrants/ instruments/ agreements which give right to any person to take the equity shares in the transferee entity at any future date. If there are such instruments stipulated in the Draft Scheme, the percentage referred to in Para (b) above shall be computed after giving effect to the consequent increase of capital on account of compulsory conversions outstanding as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised; and

(e) The shares of the transferee entity issued in lieu of the locked-in shares of the transferor entity will be subject to lock-in for the remaining period.

2. Designated Stock Exchange

(a) Listed companies shall choose one of the stock
exchanges having nationwide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI.

(b) For companies listed solely on regional stock exchange, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is sought, the listed entity shall obtain in-principle approval for listing of equity shares on any stock exchange having nationwide trading terminals.

(c) In cases, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is not sought by the listed entity, one of the stock exchanges having nationwide trading terminals shall provide a platform for dissemination of information of such Schemes and other documents required under this circular. For such purpose, stock exchanges having nationwide trading terminals may charge reasonable fees from such companies.

3. Submission of Documents

The Listed entity shall submit the following documents to the stock exchanges:

(a) Draft Scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc.;
(b) Valuation Report as per Para (4) below;
(c) Report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report. The Valuation Report is required to be placed before the Audit Committee of the listed entity;
(d) Fairness opinion by merchant banker on valuation of assets / shares done by the valuer for the listed entity and unlisted company;
(e) Pre and post amalgamation shareholding pattern of unlisted company;
(f) Audited financials of last 3 years (financials not being more than 6 months old) of unlisted company;
(g) Auditor’s Certificate as per Para (5) below;
(h) Compliance with requirements of Regulation 17 to 27 of Listing Regulations;

4. Valuation Report;

(a) All listed entities are required to submit a valuation report.

(b) However, 'Valuation Report from an Independent Chartered Accountant' need not be required in cases where there is no change in the shareholding pattern of the listed entity / resultant company.

(c) For the limited purpose of this Circular, 'change in the shareholding pattern' shall mean:

(i) change in the proportion of shareholding of any of the existing shareholders of the listed entity in the resultant company; or
(ii) new shareholder being allotted equity shares of the resultant company; or
(iii) existing shareholder exiting the company pursuant to the Scheme of Arrangement

(d) Further, a few examples illustrating 'no change in shareholding pattern' are indicated below:

(i) In case a listed entity (say, "entity A") demerges a unit and makes it a separate company (say, "entity B);

1) if the shareholding of entity B is comprised only of the shareholders of entity A; and
2) if the shareholding pattern of entity B is the same as in entity A; and
3) every shareholder in entity B holds equity shares in the same proportion as held in entity A before the demerger.
It will be treated as 'no change in shareholding pattern'.

(ii) In case a wholly-owned-subsidiary (say, "entity X") of a listed entity is merged with its parent listed company (say, "entity Y"), where the shareholders and the shareholding pattern of entity Y remains the same, it will be treated as 'no change in shareholding pattern'.

For the limited purpose of this Circular, 'resultant company' shall mean a company arising / remaining after the listed company undertakes a Scheme of Arrangement.

(e) In all other cases, 'Valuation Report from an Independent Chartered Accountant' shall be required.

5. Auditor’s certificate

(a) An auditors’ certificate shall be filed to the effect that the accounting treatment contained in the scheme is in compliance with all the Accounting Standards specified by the Central Government.
under Section 133 of the Companies Act, 2013 read with the rules framed thereunder or the Accounting Standards issued by ICAI, as applicable, and other generally accepted accounting principles.

Provided that in case of companies where the respective sectoral regulatory authorities have prescribed norms for accounting treatment of items in the financial statements contained in the scheme, the requirements of the regulatory authorities shall prevail.

Explanation – For this purpose, mere disclosure of deviations in accounting treatments as prescribed in the aforementioned Accounting Standards and other generally accepted Accounting Principles shall not be deemed as compliance with the above.

(b) The standard format for auditors’ certificate would be as per Annexure II.

6. Redressal of Complaints

(a) The Listed entity shall submit to stock exchanges a ‘Complaints Report’ which shall contain the details of complaints/comments received by it on the Draft Scheme from various sources (complaints/comments written directly to the listed entity or forwarded to it by the stock exchanges/SEBI) as per Annexure III of this Circular prior to obtaining Observation Letter from stock exchanges on Draft Scheme.

(b) ‘Complaints Report’ as mentioned above, shall be submitted by listed entity to the stock exchanges within 7 days of expiry of 21 days from the date of filing of Draft Scheme with stock exchanges and hosting the Draft Scheme along with documents specified under para (3) above on the websites of stock exchanges and the listed entity.

7. Disclosure on the Website

(a) Immediately upon filing of the Draft Scheme of arrangement with the stock exchanges, the listed company shall disclose the Draft Scheme of arrangement and all the documents specified under para (3) above on its website.

(b) Listed entity shall also disclose the Observation Letter of the stock exchanges on its website within 24 hours of receiving the same.

8. Explanatory Statement or notice or proposal accompanying resolution sent to shareholders for seeking approval of scheme

(a) The Listed entity shall include the Observation Letter of the stock exchanges, in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders seeking approval of the Scheme.

(b) The listed entity shall ensure that in the explanatory statement or notice or proposal accompanying resolution to be passed, it shall disclose the pre and post-arrangement or amalgamation (expected) capital structure and shareholding pattern, and the “fairness opinion” obtained from a merchant bankers on valuation of assets / shares done by the independent chartered accountant for the listed entity and unlisted company.

(c) The Listed entity shall include the ‘Complaints Report’ in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders while seeking approval of the Scheme.

9. Approval of Shareholders to Scheme Through Postal Ballot And e-Voting:

(a) The Listed companies shall ensure that the Scheme of Arrangement submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution, in the following cases:

i. Where additional shares have been allotted to Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary(s) of Promoter / Promoter Group of the listed entity , or

ii. Where the Scheme of Arrangement involves the listed entity and any other entity involving Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary(s) of Promoter / Promoter Group.

iii. Where the parent listed entity, has acquired the equity shares of the subsidiary, by paying consideration in cash or in kind in the past to any of the shareholders of the subsidiary who may be Promoter / Promoter Group,
Related Parties of Promoter / Promoter Group, Associates of Promoter / listed entity company, and if that subsidiary is being merged with the parent listed company under the Scheme of arrangement.

(b) Such Scheme of arrangement shall also provide that the Scheme of arrangement shall be acted upon only if the votes cast by the public shareholders in favor of the proposal are more than the number of votes cast by the public shareholders against it. The term ‘public’ shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.

(c) For all other cases, the requirements stated at para (9) (a) above shall not be applicable. In such cases, the listed entities shall furnish an undertaking certified by the auditor and duly approved by the Board of the company, clearly stating the reasons for non-applicability of para (9) (a) above.

(d) The undertaking as referred to in Para (9)(c) above shall be displayed on the websites of stock exchanges and the listed company along with other documents submitted, as stipulated under Para (3) above.

(e) Any mis-statement or furnishing of false information with regard to the said undertaking would be viewed seriously and liable for punitive action as per the provisions of applicable laws and regulations.

B. Obligations of Stock Exchange(s)

1. The designated Stock Exchange, upon receipt of the Draft Scheme of Arrangement and documents referred to at para (A) (3) above shall forward the same to SEBI within three working days.

2. The ‘Complaints Report’ shall be forwarded by the stock exchanges to SEBI before SEBI communicates its comments on the Draft Scheme to the stock exchanges. Such Report shall be submitted as per the format specified at Annexure III to this Circular.

3. The stock exchanges where the specified securities are listed / proposed to be listed shall also disclose on their websites the documents listed at para (A) (3) above immediately on receipt. It shall also disclose the Observation Letter on its website immediately upon issuance.

C. Processing of the Draft Scheme by SEBI

1. Upon receipt of Observation Letter’ or ‘No-Objection’ letter from the stock exchanges, SEBI shall provide its comments on the Draft Scheme of arrangement to the stock exchanges. While processing the Draft Scheme, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the stock exchanges and may also seek an opinion from an Independent Chartered Accountant.

SEBI shall endeavour to provide its comments on the Draft Scheme to the stock exchanges within 30 days from the later of the following:

(a) date of receipt of satisfactory reply on clarifications, if any sought from the listed entity by SEBI; or

(b) date of receipt of opinion from Independent Chartered Accountant, if sought by SEBI; or

(c) date of receipt of Observation Letter’ or ‘No-Objection’ letter from the stock exchanges.

(d) date of receipt of copy of in-principle approval for listing of equity shares of the company seeking exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 on designated stock exchange, in case the listed entity is listed solely on regional stock exchange.

3. All complaints/comments received by SEBI on the Draft Scheme of arrangement shall be forwarded to the designated stock exchange, for necessary action and resolution by the listed entity.

II. (a) Requirements after the Scheme is Sanctioned by the Hon'ble High Court (hereinafter referred to as “Approved Scheme”) and (b) application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, as applicable A.

Requirements to be fulfilled by Listed Entity

1. Eligibility conditions for entities seeking relaxation under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

Stock exchanges shall ensure that, an unlisted issuer may make an application to the Board under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, pursuant to Part I of Annexure I this Circular if it satisfies the following conditions:

(a) Observation Letter or No Objection Letter has been issued by the stock exchanges to the Draft Scheme of arrangement;
(b) The listing of the equity shares of the transferee entity is in terms of the Scheme sanctioned by the Hon’ble High Court or its order whereby the Scheme of arrangement has been sanctioned;

(c) The equity shares sought to be listed have been allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity);

(d) The names of the allottees have been entered as beneficial owners in the records of the depositories pursuant to the Scheme or share certificates have been dispatched to the allottees.

2. Submission of Documents

Upon sanction of the Scheme by the Hon’ble High Court, the listed entity shall submit the documents mentioned below to the stock exchanges:-

(a) Copy of the High Court approved Scheme;

(b) Result of voting by shareholders for approving the Scheme;

(c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme vis-à-vis the Draft Scheme of arrangement;

(d) Status of compliance with the Observation Letter or No Objection Letter of the stock exchange(s);

(e) The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable; and

(f) Complaints Report as per Annexure III of this Circular.

3. In case of a hiving off of a division of a listed entity (say, “entity A”) and its merger with a newly formed or existing unlisted issuer (say, “entity B”) there will not be any additional lock-in, if the paid-up share capital of the unlisted issuer ‘B’ is only to the extent of requirement for incorporation purposes.

4. In case of merger where the paid-up share capital of the unlisted issuer seeking listing (say, “entity B”) is more than the requirement for incorporation, the promoters' shares shall be locked-in to the extent twenty percent of the post-merger paid-up capital of the unlisted issuer, for a period of three years from the date of listing of the shares of the unlisted issuer. The balance of the entire pre-merger capital of the unlisted issuer shall also be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.

5. The listed entity and/or transferee entity (unlisted entity), as applicable, shall confirm that it has taken steps for listing of its specified securities, within thirty days of the receipt of the order of the Hon’ble High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.

6. The formalities for commencing of trading shall be completed within forty five days of the order of the Hon’ble High Court. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity (is situated, giving following details:

(a) Name and address of its registered office;

(b) Details of change of name and/or object clause;

(c) Capital structure - pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value);

(d) Shareholding pattern giving details of its promoter group shareholding, group companies;

(e) Names of its ten largest shareholders - number and percentage of shares held by each of them, their interest, if any;

(f) Details of its promoters - educational qualifications, experience, address;

(g) Business and its management;

(h) Reason for the amalgamation;

(i) Financial statements for the previous three years prior to the date of listing;

(j) Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing);

(k) Details of its other group companies including their capital structure and financial statements;

(l) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies;

(m) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years;

(n) Any material development after the date of the balance sheet; and

(o) Such other information as may be specified by the Board from time to time.

B. Application by a listed entity for Listing of Equity Shares with Differential Rights as to Dividend, Voting or Otherwise:

A listed entity desirous of listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, may make an application to the Board under sub-rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19...
thereof if it satisfies the following conditions:

(a) such equity shares are issued to all the existing shareholders as on record date by way of rights or bonus issue;

(b) the issuer is in compliance with the conditions of minimum public shareholding requirement stipulated in regulation 38 of Listing Regulation, with reference to the equity shares already listed and the equity shares with differential rights proposed to be listed; and

(c) the issuer undertakes to disclose the shareholding pattern of the equity shares with differential rights separately in terms of requirements of regulation 31.

C. Application by a listed entity for Listing of warrants Offered Along With Non-Convertible Debentures (NCDs):

A listed entity, desirous of listing of its warrants without making an initial public offer of warrants, may make an application to the Board under sub-Rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 if it satisfies the following conditions:

(a) warrants are issued as combined offering of NCDs and warrants through qualified institutions placement under Chapter VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”);

(b) the issuer is in compliance with all the provisions of Chapter VIII of the ICDR Regulations; and

(c) NCDs and warrants shall be traded in the minimum trade lot of one lakh rupees.

D. Requirements to be fulfilled by Stock Exchange(s)

1. The designated stock exchange shall forward the documents to the Board along with its recommendations on documents and recommendation, if applicable, on the application for granting exemption, under sub-rule (7) of rule 19 of SCRR.

E. Processing of the Scheme by SEBI

1. The Board may, while granting relaxation, if any, under sub-rule (7) of rule 19 of SCRR, stipulate any other conditions as may be deemed necessary in the interest of investors and securities market, under the facts and circumstances of the specific case.

2. SEBI shall endeavour to intimate its comments/approval, wherever applicable, to the designated stock exchange within 30 days of receipt of complete information, including the no-objection certificate from the exchange.

ANNEXURE II
Format for Auditor’s Certificate

To,
The Board of Directors,

..............................................(Name and address of the Company)
We, the statutory auditors of .............................................. (name of the listed entity), (hereinafter referred to as “the Company”), have examined the proposed accounting treatment specified in clause .............. (specify clause number) of the Draft Scheme of .............................................. (specify the type of Scheme) between .............................................. (names of the companies/entities involved) in terms of the provisions of section(s) .............................................. (specify the relevant section(s)) of the Companies Act, 1956/ Companies Act, 2013 with reference to its compliance with the applicable Accounting Standards notified under the Companies Act, 1956/ Companies Act, 2013 and Other Generally Accepted Accounting Principles.

The responsibility for the preparation of the Draft Scheme and its compliance with the relevant laws and regulations, including the applicable Accounting Standards as aforesaid, is that of the Board of Directors of the Companies involved. Our responsibility is only to examine and report whether the Draft Scheme complies with the applicable Accounting Standards and Other Generally Accepted Accounting Principles. Nothing contained in this Certificate, nor anything said or done in the course of, or in connection with the services that are subject to this Certificate, will extend any duty of care that we may have in our capacity of the statutory auditors of any financial statements of the Company. We carried out our examination in accordance with the Guidance Note on Audit Reports and Certificates for Special Purposes, issued by the Institute of Chartered Accountants of India.

Based on our examination and according to the information and explanations given to us, we confirm that the accounting treatment contained in the aforesaid scheme is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued there under and all the applicable Accounting Standards notified by the Central Government under the Companies Act, 1956/ Companies Act, 2013 and Other Generally Accepted Accounting Principles.

In respect of ……………………………………….. (specify the financial statement item(s)) as prescribed by ……………………………………….. (name of the regulator) vide its Notification ……………………………………….. (details of the Notification) which prevail over the accounting treatment for the same as prescribed under the aforesaid Accounting Standards (wherever applicable), except the following:

..............................................................
..............................................................

This Certificate is issued at the request of the ……………………………………….. (name of the Company) pursuant to the requirements of circulars issued under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for onward submission to the ……………………………………….. (name of the Stock Exchange(s)). This Certificate should not be used for any other
Introduction of system-driven disclosures in securities market

[Introduced by the Securities and Exchange Board of India vide CIR/CFD/DCR/17/2015, dated 01.12.2015.]

1. SEBI has specified the disclosure requirements relating to acquisition, sale and pledge of securities under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “SAST Regulations”) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “PIT Regulations”) in order to bring in transparency and promote orderly conduct in the market. Since the Stock Exchanges, Depositories and Registrar and Share Transfer Agents (hereinafter referred to as “RTAs”) have adopted advanced systems and technologies, it has been decided to explore the possibility of disclosing such information based on these systems.

Implementation in phases:-

2. Since the entire information as required under the current disclosure obligations is not available in the current systems (e.g. details of instruments other than equity shares, PACs etc.), the proposed system shall be implemented in phases. In the first phase, the systems shall disclose the changes in shareholding of promoter/promoter group of the listed entities. The disclosures in the first phase shall pertain to acquisition/disposal of equity shares by promoters/promoter group based on specified thresholds under the SAST Regulations and PIT Regulations and pledge of equity shares by promoters/promoter group under the SAST Regulations.

3. Initially, this system would run in parallel with the existing system i.e. the promoters/promoter group shall continue to comply with the disclosure obligations as applicable to them.

4. Based on the experience gained in the first phase, subsequent phase(s) would be implemented to include the information for non-promoters and instruments other than equity shares.

5. The listed entities, RTAs, Depositories and Exchanges shall make necessary arrangements in their systems such that the first phase is implemented from January 01, 2016.

6. The procedure required for implementation of the first phase is provided at Annexure - A.

7. The disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchanges.

8. The Depositories and Exchanges shall prescribe the detailed modalities for uploading and exchange of data with RTAs in order to maintain uniformity and consistency of data.

9. This circular is issued in exercise of powers conferred by 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.

10. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework/Circulars”.

Encl: as above

V. Divya Veda
Deputy General Manager

ANNEXURE - A

Procedure
The following would be the steps / process required to be taken for implementation of the first phase:

1. The first step would be to build an accurate database of the existing holdings at ISIN level of all the promoters /
promoter group. The listed company through its RTA will be required to provide to the depositories the information about promoters and promoter groups of the companies. The information provided by the listed company to the RTA must be authenticated and shall be provided within 15 days from the date of this circular. The information provided by the RTAs to the depositories shall be in the manner prescribed by depositories and must also include the PAN of the promoter/promoter group. In respect of PAN exempt entities, the account numbers will be provided.

2. Based on the PAN/account numbers, the depositories will tag such demat accounts in their depository systems at ISIN level as of the promoter/promoter group.

3. In case of any subsequent changes in the promoter or promoter group of the listed company, the company through RTA shall provide the information of the new promoter(s) to the depositories.

4. In respect of the identified promoters and promoter groups for an ISIN, the respective depositories will generate the required information and send it to the RTAs on a daily basis at the end of each working day.

5. The RTAs will then aggregate the dematerialised shareholding data received from both the depositories and the physical shareholding of the promoter/promoter group. Based on the defined criteria as per the regulations (For e.g., aggregate holding of a promoter across both depositories and physical shareholding exceed a specified percentage or value), the RTAs will generate reports and provide it to the respective stock exchange(s). The stock exchanges shall then disseminate the data on its website in accordance with the respective regulations.

6. The RTAs may then check the disclosures made by the promoter entities as per the current regulatory requirements and match the same with the disclosure generated by the systems so that any discrepancies may be found and necessary action taken for rectification of the same. The Promoters or members of the Promoter Group must also take up the issue of discrepancy with the respective Stock Exchanges which may then be communicated to the respective RTA.

10 Manner of achieving minimum public shareholding

[Issued by the Securities and Exchange Board of India vide CIR/CFD/CMD/14/2015, dated 30.11.2015.]

1. Regulation 38 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that the listed entity shall comply with minimum public shareholding requirements in the manner as specified by the Board from time to time.

2. In order to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, the Listed Entity shall adopt any of the following methods:
   i. Issuance of shares to public through prospectus;
   ii. Offer for sale of shares held by promoters to public through prospectus;
   iii. Sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated February 1, 2012;
   iv. Institutional Placement Programme (IPP) in terms of Chapter VIII A of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
   v. Rights Issue to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;
   vi. Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;
   vii. Any other method as may be approved by SEBI on a case to case basis. For this purpose, the listed entities may approach SEBI with appropriate details. SEBI would endeavor to communicate its decision within 30 days from the date of receipt of the proposal or the date of receipt of additional information as sought from the company.

3. The Stock Exchanges are advised to bring the provisions of this circular to the notice of the listed entities and also to disseminate the same on its website. This circular shall come into force on December 01, 2015.

4. This Circular is issued in exercise of the powers conferred under Section 11 and Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulation 38 and Regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

5. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Continuous Disclosure Requirements”.

B N Sahoo
General Manager
Non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Standard Operating Procedure for suspension and revocation of trading of specified securities

[Issued by the Securities and Exchange Board of India vide CIR/CFD/CMD/12/2015, dated 30.11.2015.]

1. In terms of sub regulation (1) of regulation 97 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”), recognized Stock Exchanges shall monitor compliance by listed entities with the provisions of the regulations.

2. Sub regulations (1) and (2) of regulation 98 of Listing Regulations inter alia specify liability of a listed entity or any other person for contravention and actions which can be taken by the respective stock exchange and the revocation of such actions, in the manner specified by SEBI.

3. Accordingly, recognized stock exchanges shall use imposition of fines as action of first resort in case of such non compliances and invoke suspension of trading in case of subsequent and consecutive defaults. Accordingly, in order to maintain consistency and uniformity of approach the recognized stock exchanges shall follow the following procedure:

a) Uniform fine structure for non-compliance with Listing Regulations regarding non-submission of certain periodic reports – Annexure I.

b) Standard Operating Procedure (SOP) for suspension and revocation of suspension of trading of specified securities – Annexure II.

4. In order to ensure effective enforcement of the Listing Regulations, the depositories, on receipt of intimation from concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, the entire shareholding of the promoter and promoter group in such entity.

5. The recognized stock exchanges shall disclose on their website the action/s taken against the listed entities for non-compliance(s); including the details of respective requirement, amount of fine, period of suspension, freezing of shares, etc.

6. Recognized stock exchanges may, having regard to the interests of investors and securities market, take appropriate action in line with the principles and procedures laid down in Annexure I and II and any deviation therefore should not dilute the spirit of the policy contained therein. Any deviation shall be on justifiable reasons to be recorded in writing. The above actions are without prejudice to power of SEBI to take action under securities laws for above violations.

7. The Stock Exchanges are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on its website. This circular shall come into force with effect from December 01, 2015.

8. This circular is issued under regulations 97, 98, 99 and 102 read with regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

9. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Continuous Disclosure Requirements”.

B N Sahoo
General Manager

ANNEXURE I
IMPOSITION OF FINE

1. The recognized stock exchange shall impose fine on listed entities for non-compliance with certain provisions of the Listing Regulations for non-submission/ delay in submission of reports/documents to recognized stock exchange as under:

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Fine payable for 1st non-compliance</th>
<th>Fine Payable for each subsequent and consecutive non-compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 27 (2) Non submission of the Corporate governance compliance report within the period provided under this regulation</td>
<td>₹ 1,000 per day of non-compliance till the date of compliance</td>
<td>₹ 2,000 per day of non-compliance till the date of compliance</td>
</tr>
<tr>
<td>Regulation 31 Non submission of the Shareholding pattern within the period prescribed under this regulation</td>
<td>₹ 1,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1 % of paid up capital* of the entity or ₹ 1 crore, whichever is less.</td>
<td>₹ 2,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1 % of paid up capital* of the entity or ₹ 1 crore, whichever is less.</td>
</tr>
</tbody>
</table>
Regulation 33
Non submission of the financial results within the period prescribed under this regulation

<table>
<thead>
<tr>
<th>Regulation</th>
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<tr>
<td>33</td>
<td>₹ 5,000 per day of non-compliance till the date of compliance and if non-compliance continues for more than 15 days, additional fine of 0.1% of paid up capital* of the entity or ₹ 1 crore, whichever is less.</td>
</tr>
<tr>
<td>34</td>
<td>₹ 10,000 per day of non-compliance till the date of compliance and if non-compliance continues for more than 15 days, additional fine of 0.1% of paid up capital* of the entity or ₹ 1 crore, whichever is less.</td>
</tr>
</tbody>
</table>

*Paid up capital as on first day of the financial year in which the non-compliance occurs.

2. The amount of fine realized as per the above structure shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange.

3. The recognized Stock Exchanges shall disseminate on their website, the names of non-compliant listed entities that are liable to pay fine for non-compliance of the above regulations.

4. Every recognized stock exchange shall review the compliance status of the listed entities within 15 days from the due date for compliance for the respective regulation and issue notices to the non-compliant listed entities to ensure compliance and pay fine as per this circular within 15 days from the date of the notice.

5. If any non-compliant listed entity fails to pay the fine despite receipt of the notice as stated above, the recognized stock exchange may initiate appropriate enforcement action, including prosecution.

**TRADING OF SHARES IN CATEGORY "Z"**

6. If a listed entity commits two or more consecutive defaults in compliance of the aforesaid provisions of the Listing Regulations within 15 days from date of the notice issued under clause 4, the concerned recognized stock exchange shall, in addition to imposing fine as specified above, move the scrip of the listed entities to "Z" category wherein trades shall take place on 'Trade for Trade' basis.

7. The recognized stock exchange shall move back the scrip of the listed entity to the normal trading category, if it complies with respective provisions of the Listing Regulations and completely pays fine prescribed as above.

8. The recognized stock exchange shall give 7 days prior public notice to investors before moving the share of non-compliant entity to "Z" category or vice versa.

**ANNEXURE II**

**STANDARD OPERATING PROCEDURE (SOP)**

**A. SOP for suspension of trading**

1. Criteria for suspension of the trading in the shares of the listed entities:
   - (a) failure to comply with regulation 27(2) with respect to submission of corporate governance compliance report for two consecutive quarters;
   - (b) failure to comply with regulation 31 with respect to submission of shareholding pattern for two consecutive quarters;
   - (c) failure to comply with regulation 33 with respect to submission of financial results for two consecutive quarters;
   - (d) failure to comply with regulation 34 with respect to submission of Annual Report for two consecutive financial years;
   - (e) failure to submit information on the reconciliation of shares and capital audit report, for two consecutive quarters;
   - (f) receipt of the notice of suspension of trading of that entity by any other recognized stock exchange on any or all of the above grounds.

2. Before suspension of trading on any of the above grounds, except clause 1 (f), the concerned recognized stock exchange shall send written intimation to the non-compliant listed entity calling upon it to comply with respective requirement(s) mentioned in clause (a) to (e) above and pay the applicable fine within 21 days of the date of the intimation.

3. If the non-compliant listed entity fails to comply with aforesaid requirement(s) and pay fine despite the receipt of the intimation of the recognized stock exchange within the time as aforesaid, the concerned recognized stock exchange shall forthwith intimate the depositories to freeze entire shareholding of the promoter and promoter group in such listed entity. Simultaneously, the recognized stock exchange shall give a 21 days (prior to the proposed date of suspension) public notice on its website proposing suspension of trading in the shares of the non-compliant listed entity.

4. If the non-compliant listed entity complies with respective requirement(s) and pays fine five days before the proposed date of suspension, the trading in its shares shall not be suspended on the proposed date and the concerned recognized stock exchange shall intimate to the depositories...
to unfreeze, after one month from the date of compliance, the shares of the promoter and promoter group of the entity. Simultaneously, the recognized stock exchange shall give a public notice on its website informing compliance by the entity.

5. In case of failure to comply with respective requirement(s) and/or pay fine as aforesaid, the recognized stock exchange shall suspend the trading in the shares of a non-compliant listed entity. The entire shareholding of promoter/promoter group in such listed entity shall remain frozen till expiry of three months from the date of revocation of suspension.

6. While suspending trading in the shares of the non-compliant entity the recognized stock exchange shall send intimation of suspension to other recognized stock exchanges where the shares of the non-compliant entity are listed. On receipt of such intimation the other recognized stock exchanges shall also suspend trading in the shares of the entity.

7. After 15 days of suspension, trading in the shares of non-compliant entity may be allowed on the "Trade for Trade" basis, on the first trading day of every week for 6 months. In this regard, the recognized stock exchange shall give instruction to its trading members/stock brokers to obtain confirmation from clients before accepting an order for purchase of shares of non-compliant entity on the 'Trade for Trade' basis.

8. The recognized stock exchange shall put in place a system to publish a caution message on its trading terminals, as follows: "Trading in shares of the Listed Entity is under 'suspension and trade to trade basis' and trading shall stop completely if the Listed Entity remains not compliant for six months ".

B.SOP for revocation of suspension of trading

1. If the non-compliant listed entity complies with the aforesaid requirement(s) and pays applicable fine within three months from the date of suspension, the recognized stock exchange may revoke the suspension of trading of its shares.

2. If the non-compliant listed entity complies with the aforesaid requirement(s) and pays applicable fine after three months from the date of suspension, the recognized stock exchange may revoke the suspension of trading of its shares after a period of three more months from the date of such compliance.

3. The recognized stock exchange shall, 7 days prior to revocation of suspension of trading in shares of the entity, issue a public notice on its website.

4. After 3 months from the date of revocation of the suspension, the recognized stock exchange shall send intimation to the depositories to unfreeze the shares of the promoter and promoter group.

5. After revocation of suspension, the trading of shares shall be permitted only in the 'Trade for Trade' basis for a period of three months from the date of revocation and after this period of three months, trading in the shares of the entity shall be shifted back to the normal trading category, after giving prior notice of 7 days.

12 Issue of No Objection Certificate for release of 1% of issue amount

[Issued by the Securities and Exchange Board of India vide CIR/OIAE/001/2015, dated 30.11.2015.]

1. As per the extant Listing Agreement with the Stock Exchanges, an issuer company deposits 1% of the issue amount of the securities offered to the public and/or to the holders of the existing securities of the company, as the case may be, with the designated stock exchange. SEBI, vide circular no. OIAE/Cir-1/2009 dated November 25, 2009, had laid down the procedure for issuance of No Objection Certificate to the designated stock exchange for release of the amount to the issuer company.

2. On Listing Agreements being novated and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 taking effect from December 01, 2015, an issuer company shall deposit the 1% security deposit in terms of the respective Regulations related to issuance of capital. Therefore, Circular no. OIAE/Cir-1/2009 dated November 25, 2009, shall be partially modified w.e.f December 01, 2015 as:

(a) In para 1 of the Circular the phrase “as per the Listing Agreement with the Stock Exchanges” shall be replaced by “as per provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008”.

(b) In para 5(b) of the Circular the words „Listing Agreement” shall stand deleted.

3. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

4. This Circular is available on SEBI website at www.sebi.gov.in.

N. Hariharan
Chief General Manager
**Members Admitted**

**FELLOWS***

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**ASSOCIATES***

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<td>MS. REEVA KALRA</td>
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*Admitted during the period from 20.11.2015 to 19.12.2015.
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427 MR. JITENDRA KUMAR HIRALAL KALAL ACS - 42407 WIRC 480 MR. NALIN MAHESHWARI ACS - 42460 NIRC
428 MS. SHANU GYANCHAND JAIN ACS - 42408 WIRC 481 MR. MAYANK WADERA ACS - 42461 NIRC
429 MR. JAYKUMAR NARESH BELANI ACS - 42409 WIRC 482 MR. SABAREESWAR THAMPAN A G ACS - 42462 SIRC
News From the Institute

January 2016

MS. SHOVINA CHOUDHARY ACS - 42469 NIRC
MR. AMIT KUMAR AGARWAL
MS. RUCHI KHANDELWAL
MR. DIPAK BAPUSAHEB GAWANDE ACS - 42465 WIRC
MS. LUCKY AGRAWAL
MS. PRITI KAKKAR ACS - 42470
MR. GAURAV MEHROTRA
MS. VARSHA GUPTA ACS - 42494 EIRC
MS. PAYAL SHARMA ACS - 42492 EIRC
MS. NIKITA SNEHIL ACS - 42491 EIRC
MS. SHAH DRISHTI JYOTIN ACS - 42489
MR. NEEL GAUTAM SUKHANI ACS - 42487
MR. RINKESH RASHIKLAL GALA ACS - 42486
MS. VINITA RAVINDRA UDHANI ACS - 42484
MR. MAYANK MANOJ PATWA
MR. SACHIN ARVINDBHAI THAKKAR ACS - 42479
MS. SHALAKA PRAKASH KHANDEKAR ACS - 42478
MS. EMRIEL JOSEPH PEREIRA ACS - 42477
MR. BHATT PRASANKUMAR YOGENKUMAR
MS. RRITUJA ARUN KAPATKAR
MS. TANYA ASKNANI ACS - 42474
MS. BHAIKAVI SANJIV PATEL
MS. RRITUJA ARUN KAPATKAR
MS. NIKITA SURENDRA WADHWA ACS - 42514 WIRC
MS. MONALI ASHOK MEHTA
MS. DAVE MADHAVIBEN BHASKARBHAI
MS. SEJAL NARENDRABHAI GAGJAR
MR. KRUTI VIJAY KUMAR TRivedi
MS. DAVE MADHAVIBEN BHASKARBHAI
MS. MONALI ASHOK MEHTA
MS. NIKITA SURENDRA WADHWA
SH. KRUNAL SANJAY KUMAR WALA

484 MS. LUCKY AGRAWAL
ACS - 42464
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537 MR. KUNAL NAYAR
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538 MS. PRIYANKA PAL
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539 MR. HIMANSHU ALAGH
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540 MS. DIVYA NIKHIL THAKUR
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541 MS. ANTARA SINGH
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542 MS. RICHA NIRMAL
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543 MR. PRATYAKSH SHIVAM
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544 MS. SHRUTI AGGARWAL
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545 MR. DEVENDER AGARWAL
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546 MR. DEVASANIKAPIL AVINASANVENKATESHWARLU
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547 MR. ASHWIN KUMAR LOYA
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548 MR. SANDEEP MOODI
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549 MR. RAGHU VISWANATH
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SIRC
550 MS. SUMA G P PARAMESHWARAPPA
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551 MR. ARAVIND KUMAR V
ACS - 42531
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552 MR. YOUNUS MD
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553 MR. INDIRA N
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554 MS. MEGHANA M P
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555 MR. ISSAC WILLIAM
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556 MS. VINITA RAVINDRA UDHANI
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557 MS. BURRA SHAILAJA
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558 MR. HARSHA DEEPAK TETALA
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559 MR. DINESH R G
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560 MR. GOPALAN V
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561 MS. SHWETA BHIMRAO PATIL
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562 MS. GADIHYA JULI RASHIKLAL
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563 MS. YOMA KAUSHIK DESAI
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564 MS. PUNITA LOKBANDHU SHARMA
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565 MR. SHIVRAM C S GANESAN
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566 MS. PRIYA JAIN
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567 MR. RAJ TULSHIBHAI RAMI
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568 MR. NIKhil SUNIL ARYA
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569 MR. BHUWNESH VISHNUDATT VORA
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570 MS. PRACHI MAHESHWARI
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571 MS. LEENA SANTOSH AMBWANI
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572 MR. NITIN KULTHIA
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574 MS. SWATI AGARWAL
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575 MS. NAYNA
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576 MS. RAKSHA SANKHLÉCHA
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577 MS. RAJU SAHU
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578 MR. ABHINAV TYAGI
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579 MS. RAKSHA SANKHLECHA
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580 MS. TRIPTI CHUGH
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581 MR. VIRENDER SINGH
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582 MS. DOLLY
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583 MS. SHEFALI TEOTIA
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584 MR. ABHISHEK ROHILLA
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585 MS. AMBIKA MAHNA
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586 MS. SHIWANI AGGARWAL
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587 MS. SHIVANI SEHGAL
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588 MS. SHIKHA SHARMA
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589 MS. LATIKA TIWARI
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607 MR. SHILPA AGARWAL
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608 MS. JITENDRA BHAI SHEKHAR
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611 MS. PRIYANKA AGARWAL
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612 MS. ANISHA AGGARWAL
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590 MS. HEERIKA SHUKLA
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591 MS. NANCY SINGLA
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592 MS. RAMANDEEP KAUR
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ACS - 42625 WIRC

593 MS. SHWETA GUPTA
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594 MR. KAMAL AGGARWAL
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595 MR. NAVEEN KHANDELWAL
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596 MS. AISHWARYA PANDIYA
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597 MS. NEHA SAHU
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598 MS. PALAK JAIN
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599 MS. DEEPA GEHANI
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600 MS. AKSHITA AGRAWAL
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601 MR. AMANPAL SINGH
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602 MR. KARANPREET SINGH
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603 MS. POOJA GUPTA
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604 MS. SARIKA GULATI
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605 MS. HARSHA
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606 MS. ISHA
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607 MS. MEGHNA SAINI
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608 MS. NISHA GOYAL
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ACS - 42641 NIRC

609 MR. JASMEET SINGH CHAWLA
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ACS - 42642 NIRC

610 MR. NIKHIL KUMAR
ACS - 42590 NIRC 663 MS. HEENA BANSAL
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611 MS. NAMRATA R BATAVIA
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ACS - 42644 NIRC

612 MR. K M PRAVEEN KUMAR
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613 MR. TEJAS JAYESH MEHTA
ACS - 42593 WIRC 666 MS. ANURADHA KESAWANI
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614 MS. KRUPALI JIGISHCHANDRA JOSHI
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615 MS. TINKLE KISHORBHAI CHHEDA
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616 MS. REKHA RATANLAL SHAH
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617 MR. SANTOSH PANDURANG GHAHAT
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618 MR. KUNAL KOCHAR
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619 MR. AVINAV SHARMA
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620 MS. SURUCHI TIWARI
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621 MR. ISHANT JAIN
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622 MR. ASHISH PRATIHAIST
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623 MR. PARITOSH CHAUHAN
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624 MS. SAKSHI GANDHI
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625 MR. ADITYA JAIN
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626 MS. MEGHA SINGHAL
ACS - 42606 NIRC 679 MS. GANDHI NIDHI HARSHVIND
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627 MS. RAMANDEEP KAUR
ACS - 42607 NIRC 680 MS. SAYONI SUBH BASU
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628 MR. SHIVENDRA SINGH
ACS - 42608 NIRC 681 MS. PREETHI SURESH
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629 MR. ASHISH KUMAR MISHRA
ACS - 42609 NIRC 682 MS. MANSI SANDIP KUMAR MEHTA
ACS - 42662 WIRC

630 MS. RICHA KUMARI
ACS - 42610 NIRC 683 MS. GARVI SANJAY BHAI SHAH
ACS - 42663 WIRC

631 MR. SAGAR GUPTA
ACS - 42611 NIRC 684 MS. LALITA RAJARAM BORANA
ACS - 42664 WIRC

632 MS. SURBHI TALREJA
ACS - 42612 NIRC 685 MR. HITESH MURLIDHAR LACHHWINI
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633 MS. KOMAL GUPTA
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634 MS. RHYTHM SEHRA
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ACS - 42667 WIRC

635 MS. SHRUTI GARG
ACS - 42615 NIRC 688 MS. RACHNA VYAS
ACS - 42668 NIRC

636 MS. HANSA SHARMA
ACS - 42616 NIRC 689 MS. SNEHA KHEMKA
ACS - 42669 NIRC

637 MS. TANVI GUPTA
ACS - 42617 NIRC 690 MR. NITESH TANEJA
ACS - 42670 NIRC

638 MS. SHVETA CHHUPA
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ACS - 42671 NIRC

639 MR. SAHIL ARORA
ACS - 42619 NIRC 692 MR. NISHANT KAUL
ACS - 42672 NIRC

640 MR. SOURABH KUMAR
ACS - 42620 SIRC 693 MR. ANKIT BHARDWAJ
ACS - 42673 NIRC

641 MS. RAGHI K
ACS - 42621 SIRC 694 MR. KARAN SINGH
ACS - 42674 NIRC

642 MR. SANTANU KUMAR GANTAYAT
ACS - 42622 SIRC 695 MS. RISHA KHANDELWAL
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Members Restored*

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Certificate of Practice**

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116  MS. JENY VINODKUMAR GOWADIA ACS - 41542 15573  WIRC  
117  MR. VINEET PANT ACS - 41548 15574  NIRC  
118  MR. ABHAY AJAY ATHAVLE ACS - 41622 15575  WIRC  
119  MR. HARI BABU P ACS - 41781 15576  SIRC  
120  MR. ARJUN N A ACS - 41788 15577  SIRC  
121  MS. SIDVILAS VELUGULA ACS - 41836 15578  SIRC  
122  MS. IPSA GARG ACS - 41871 15579  NIRC  
123  MR. RAHUL MACCHINDRA SONAWANE ACS - 41892 15580  WIRC  
124  MR. KESHAV MADHUSUDAN DALIYA ACS - 41908 15581  WIRC  
125  MS. NARRA SWARUPA RANI ACS - 41920 15582  SIRC  
126  MR. SUDHIR BABAJI SUTAR ACS - 41953 15583  SIRC  
127  MR. AKSHAY GOWDA G ACS - 41957 15584  SIRC  
128  MR. HARINATH PUNNA ACS - 41967 15585  SIRC  
129  SH. PRATAP KUMAR CHAKRAVARTY ACS - 4680 15586  EIRC  
130  MS. SHIPRA AGARWAL ACS - 37076 15587  NIRC  
131  MS. DEEKSHA SINGHVI ACS - 41005 15588  WIRC  
132  MR. GANESH KUMAR JHA ACS - 41347 15589  WIRC  
133  MS. SHIKHA RANI ACS - 41436 15590  NIRC  
134  MR. YUGESH VERMA ACS - 41767 15591  NIRC  
135  MR. PRAKASHA C R ACS - 41880 15592  SIRC  
136  MR. RONAK JAIN ACS - 41913 15593  WIRC  
137  MR. ASHISHKUMAR HANSRAJBAI DOBARIO ACS - 41918 15594  WIRC  
138  MR. VISHWAS HEGDE ACS - 41955 15595  SIRC  
139  MS. T KRISHNA VENI ACS - 41970 15596  WIRC  
140  DR. CHANDRA BAHADUR THAPA FCS - 3574 15597  NIRC  
141  SH. UMESH VASU MOOLYA ACS - 11059 15598  WIRC  
142  MS. SHUBHI MITTAL ACS - 30379 15599  NIRC  
143  MR. ANUKUL UDAI ACS - 36040 15600  WIRC  
144  MR. VARUN DEV JUSTA ACS - 37757 15601  NIRC  
145  MS. NENA RAMESH KUMAR PABARI ACS - 40626 15602  WIRC  
146  MS. KHUSHBOO ACS - 41058 15603  NIRC  
147  MR. KARAN ARORA ACS - 41391 15604  NIRC  
148  MR. SUMEET BHALEKAR ACS - 41894 15605  WIRC  
149  MS. ARCHANA BAID ACS - 41986 15606  EIRC  
150  MR. ARPIT AGRAWAL ACS - 42000 15607  WIRC  
151  SH. SUNIL RASKILAL SHAH FCS - 2052 15608  WIRC  
152  SH. RAJU AGGARWAL ACS - 27297 15609  NIRC  
153  MR. KRISHNA KUMAR SINGH ACS - 32183 15610  EIRC  
154  MR. YOGESH VIJAY JOSHI ACS - 27507 15611  WIRC  
155  MS. TRISHLA BADAYA ACS - 42034 15612  NIRC  
156  MS. NAMITA VEMULAKONDA ACS - 30475 15613  SIRC  
157  MS. SHAGUN TANEJA ACS - 38841 15614  NIRC  
158  MR. VIPAN KUMAR BANSAL ACS - 41498 15615  NIRC  
159  MR. RIYANSHI CHAUDHARY ACS - 41996 15616  NIRC  
160  MS. RANJITHA SHENOY G ACS - 30257 15617  SIRC  
161  MS. VANDITA SHARMA ACS - 42035 15618  NIRC  
162  MS. PULI AKSHITHA ACS - 42053 15619  NIRC  
163  MS. ANKITA GAJENDRA JAIN ACS - 40613 15620  WIRC  
164  MR. HARSHA RAJ ACS - 41721 15621  EIRC  
165  SH. KRISHNA KUMAR SARAF ACS - 3046 15622  WIRC  
166  MR. KHANJAN BHARAT SONI ACS - 36357 15623  WIRC  
167  MRS. PRIYANKA MISHRA ACS - 28231 15624  WIRC

CANCELLATION*  
SL No. L No. NAME Region  
1 6803 MS. SMRUTI SUDHAKAR DEHERKAR WIRC  
2 6804 MR. JANGID RAVI POONARAM WIRC  
3 6805 MR. KRISHNA V SIRC  
4 6806 MR. SATHISH T N SIRC  

**Admitted during the month of November, 2015.  
*Cancelled during the Month of November, 2015.
## Company Secretaries Benevolent Fund

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

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<td>MR. AVI SANGAL</td>
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<td>SH. SHESADEV BEHERA</td>
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<td>SH. VIPUL GARG</td>
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<td>MR. SIDVILAS VELUGULA</td>
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<td>MS. NARRA SWARUPA RANI</td>
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<td>SH. S SAMPATH</td>
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<td>MS. PADMA DANTURTHI</td>
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<td>MS. NITHISHA N</td>
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<td>SH. ARUN SHOURIE HAVLAGI</td>
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<td>17</td>
<td>MR. ARUN K V</td>
<td>ACS - 35121</td>
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<td>MR. SUBHASH KISHAN KANDRAPU</td>
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<td>MR. ANIL KUMAR VORUGANTI</td>
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<td>MR. HARSHA DEEPAK TETALA</td>
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<td>SH. DHARMESH MARUTI</td>
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<td>MR. V. VIJAYA SARADHI PAPPU</td>
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<td>MR. RAJABABU SAILADA</td>
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<td>MR. RAJESH R</td>
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<td>MR. PRAKASH T BISARAHALLI</td>
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<td>SURAT</td>
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<td>ACS - 28706</td>
<td>BHILAI</td>
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<td>MR. SACHIN NANDLAL KANOJIYA</td>
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<td>SH. ROHAN SUDHIR POTE</td>
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*Enrolled during the period from 21/11/2015 to 20/12/2015.
FORM – D
APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION
OF CERTIFICATE OF PRACTICE
See Reg. 10, 13 & 14

To
The Secretary to the Council of
The Institute of Company Secretaries of India
‘ICSI HOUSE’, 22, Institutional Area, Lodi Road, New Delhi
-110 003

Sir,

I furnish below my particulars:

(i) Membership Number FCS/ACS:

(ii) Name in full

(in block letters) Surname Middle Name Name

(iii) Date of Birth:

(iv) Professional Address:

(v) Phone Nos. (Resi.) (Off.)

(vi) Mobile No Email id

(vii) Website of the member, if any

(viii) Additions to or change in qualifications, if any

Submitted for (tick whichever is applicable):
(a) Issue ______________ (b) Renewal ______________(c) Restoration ______________

(a) Particulars of Certificate of Practice issued / surrendered/ Cancelled earlier

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Certificate of Practice No.</th>
<th>Date of issue of CP</th>
<th>Date of surrender / Cancellation of CP</th>
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(b) Unique Code Number
(i) Individual/Proprietorship concern (ii) Partnership firm

3. Area of Practice

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<tr>
<th>Sl. No.</th>
<th>Area of Practice</th>
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<tr>
<td>1</td>
<td>Corporate Law</td>
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<tr>
<td>2</td>
<td>Financial Service and Consultancy</td>
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</tr>
<tr>
<td>3</td>
<td>Securities/Commodities Exchange Market</td>
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4. Finance including Project/Working Capital/Loan Syndication(Specify the areas handling)

5. Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc). Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)

6. Excise/CUSTOMS (Filling of returns, Handling assessment, appearing before the appellate authority)

7. Sales Tax/VAT Practice (Filling of returns, Handling assessment, appearing before the appellate authority)

8. Income Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)

9. Service Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)

10. Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/returns, appearing before RBI etc)

11. Foreign Collaborations & Joint Ventures

12. Intellectual Property Rights (Specify the areas being handled)

13. Depositories


15. Consumer Protection Laws

16. Arbitration and Conciliation

17. Import and Export Policy & Procedure

18. Environment Laws(Specify the areas)
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<td>Environment Laws (Specify the areas)</td>
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<td>Societies/Trusts/Co-operative Societies &amp; NCTs (Non Co-operative Trust Societies)</td>
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<td>21</td>
<td>Financial Consultancy</td>
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<tr>
<td>22</td>
<td>Other Economic Laws</td>
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<td>23</td>
<td>SEBI / Securities Appellate Tribunal</td>
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<td>24</td>
<td>Banking and Insurance</td>
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<td>25</td>
<td>Any Other Service (Please specify)</td>
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</tbody>
</table>

4. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.

ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.

iii. I hereby undertake that, I shall adhere to the mandatory ceiling as regards issuing of Secretarial Audit Report (pursuant to Section 204 of the Companies Act, 2013) and certification/ signing of Annual Return (pursuant to Section 92 of the Companies Act, 2013) in terms of the GUIDELINES FOR ISSUING SECRETARIAL AUDIT REPORT, SIGNING AND CERTIFICATION OF ANNUAL RETURN respectively issued by the Institute from time to time.

iv. I state that I have issued / did not issue __________ advertisements during the year 20__ in accordance with the Guidelines for Advertisement by Company Secretary in Practice issued by the Institute*.

ev. I state that I issued __________ Corporate Governance compliance certificates under Clause 49 of the Listing agreement during the year 20__ ... *

vi. I state that I have / have not undertaken __________ Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20... - ... *

vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the Guidelines for Requirement of Maintenance of a Register of Attestation/Certification

5. I send herewith Bank draft drawn on ___________________ Bank ___________________ Branch bearing No.________________ dated _______________/ online payment vide acknowledgement No.________________ dated _______________/ Cash payment at ROs/Chapters vide Acknowledgement No. ________________ dated ________________ for Rs.________________ towards annual certificate of practice fee for the year ending 31st March ____________.

6. I hereby declare that I attended the following professional development programmes held during the financial year __________:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of Programme</th>
<th>Organised by</th>
<th>Place</th>
<th>Date</th>
<th>Duration*</th>
<th>No. of Program Credit Hours Secured**</th>
<th>Details of Certificate for Program Credit Hours ***</th>
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</thead>
</table>

* Please specify whether full day/half day/number of hour
** Extra sheet can be attached...
*** The extracts from ICSI portal about the Credit hours with self certification

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)  
Place:  
Date:  

***Encl.

* Applicable in case renewal or restoration of Certificate of Practice  
** Rs. 1000/- Annual Certificate of Practice Fee (Rs. 500/- if applied during October-March)  
***  
• Copy of the relieving letter in case earlier in employment.  
• Copy of Form DIR 12 regarding cessation of employment in case working earlier as Company Secretary.  
• Copy of letter of cancellation of Certificate of Practice of other professional bodies if applicable.
List of Practising Members Registered
For The Purpose of Imparting Training During The Month of November, 2015

CS AJAY GOYAL
A-8, GURU TEG BHADUR NAGAR, JHALANA DOONGRI, NEAR RTO CIRCLE, MAIN ROAD, PINCODE:302004, JAIPUR

CS AMRENDRA KUMAR SINGH
WZ-98, JWALA HERI MARKET, PASCHIM VIHAR, PINCODE:110063, NEW DELHI

CS ANUJ KUMAR TIWARI
C-147, RAJA JI PURAM, PINCODE:226017, LUCKNOW

CS ASHA RAMESHWARLAL JAIN
4, MAYUR FLAT, JAIN COLONY, NR. TERIAPANTHBHAWAN, SHAHIBAUG, PINCODE:380004, AHMEDABAD

CS ASHUTOSH AGRAWAL
G-33, G/F, SHAKARPUR, PINCODE:110092, DELHI

CS BHAVIKA BEHRUNANI
109, JOGANI CITYPLEX, KALYAN CIRCLE, STATION ROAD, PINCODE:332001, SIKAR

CS DHAVAL GOVINDBHAI RAMANI
19, BLDG NO. 6, OM SAI DHAM APARTMENT, BEHIND HEENA GARDEN, PIPELINE ROAD, GANDHARE, PINCODE:421301 KALYAN (WEST)

CS DINESH VATS
BUILDING NO 6, 3RD FLOOR, CENTRAL MARKET, PUNJABI BAGH, NEAR SHIVAJI PARK METRO STATION, PINCODE:110026 DELHI

CS DIWAKAR JAIN
PLOT No. 77, BRU VIHAR COLON, NEAR JAGATPURA RAILWAY, OVERBRIDGE, JAGATPURA, PINCODE:302017, JAIPUR

CS GAURANG RADHESHYAM SHAH
5, 1ST FLOOR, DEVASHISH COMPLEX, OFF C.G.ROAD Pincode:380006, AHMEDABAD

CS GIRISH SUNITKUMAR VARMA
CS GIRISH VARMA, OFFICE NO 22A, YOGESH HOUSE, ABOVE KAYA CLINC, EAST STREET Pincode:411001, PUNE

CS JIGAR KAMLESH VYAS
201, POONAM PALACE, OPP. OLD UMRA POLICE STATION, NEAR PRAKASH SOCIETY, ATHWALINES, PINCODE:395001 SURAT

CS JYOTI SHARMA
88 SHARWAN COMPLEX, OLD ROSHANPURA, CHAWLA STAND, NAJAFGARH PINCODE:110043, NEW DELHI

CS KARUNA SHARMA MALHOTRA
G-13, 1ST FLOOR, SOUTH CITY -II, PINCODE:122018 GURGAON

CS KAVIN PARMANAND KHATRI
FLAT NO. 101, 1ST FLOOR, SIDDHI RESIDENCY, PREM VIHAR COLONY, NEAR SUDDARSHAN BULD, AMRAVATI

CS KIRAN
HOUSE NO. 651, SECTOR 13, VASUNDHARA, PINCODE:201012 GHAZIABAD

CS KISHOR KUMAR GUPTA
SHOP NO. 8, K B COMPLEX, NEAR BUS STAND, SEMARIYA CHOWK, PINCODE:485001, SATNA

CS KSHITIJ JAINENDRA LUNKAD
201, CITY CENTER, NEAR GARWARE COLLEGE, KARVE ROAD, PINCODE:411014, PUNE

CS KUMAR RISHI
QTR.NO.C-711, SAROJINI NAGAR, PINCODE:110023 NEW DELHI

CS MAYUR CHHABRA
GF J6/41, RAJOURI GARDEN, PINCODE:110027, NEW DELHI

CS MEHULSINH DIGRAJSINH JADEJA
OFFICE NO. 105, 1ST FLOOR, JHANJHARIA COMMERCIAL CENTRE, PLOT NO. 116, SECTOR NO. 8, GANDHIDHAM, PINCODE:370201, KUTCH

CHARTERED SECRETARY
CS MUKESH D PARAKH  
# 203, LEVEL 2, MANOMAY PLAZA, 272, CENTRAL BAZAR ROAD, RAMDASPETH, PINCODE:440010, NAGPUR

CS NANDISH S DAVE  
421, MADHAV SQUARE, LIMADA LANE, PINCODE:361001 JAMNAGAR

CS NUPUR CHOUDHURI  
SYNDICON ENCLAVE, FLAT -2B, 25/1A/1, NAKTALA ROAD  
Pincode:700047, KOLKATA

CS PRASOON PAREEK  
H.NO. 814, BABA HARISH CHANDRA MARG, Pincode:302001 JAIPUR

CS PRATIK KIRIT PUJARA  
04, PATIL BHAVAN, OPP AVANI NX, MANICKPUR,VASAI (W), PINCODE:401202 THANE

CS PRIYANK TIWARI  
29/135, THIRD FLOOR, WEST PATEL NAGAR, PINCODE:110008 DELHI

CS PRIYANKA AGARWAL  
GA-145, BHAWANI NAGAR, NEAR MURLIPURA SCHOOL, SIKAR ROAD, PINCODE:302039 JAIPUR

CS SIDDHARTH SURENDRA SIPANI  
MARKET LINE, MAIN ROAD, WARORA, PINCODE:442907 CHANDRAPUR DISTT

CS SUNDARESAN P K  
NEW NO:25,OLD NO:16, II FLOOR, EAST MADA STREET, MYLAPORE, PINCODE:600004 CHENNAI

CS SURENDER SINGH  
95/28, GALI NO.6, JAGAT PUR EXTN., PINCODE:110084 DELHI

CS SUYOG MUKUND AGARKAR  
KRUPA PRASAD APT,SR.NO.133, OFF.NO.201,2ND FLOOR, SINHAGAD ROAD, PINCODE:411030 PUNE

CS VIKAS KUMAR  
WZ-10, CH. JOT RAM MARKET, 1ST FLOOR, NEAR PALAM CIRCLE, PALAM VILLAGE, PINCODE:110045 NEW DELHI

ALFA LAVAL (INDIA) LIMITED  
301,302,401,402 GLOBAL PORT BUILDING SURVEY NO. 45/1 TO 10, MUMBAI BANGLORE HIGHWAY BANER, DIST.: PUNE-411045

AMERICAN EXPRESS SERVICES INDIA LIMITED  
METROPOLITAN - SAKET, 7TH FLOOR, OFFICE BLOCK, DISTRICT CENTRE SAKET, NEW DELHI

ARISTRO FINANCIAL SERVICES PRIVATE LIMITED  
12A LORD SINHA ROAD SHYAMKUNJ ANNAPURNA APPARTMENT, 1ST FLOOR ROOM NO. 102, KOLKATA

BHAWANI INDUSTRIES PRIVATE LIMITED  
VILLAGE AJNALI MANDI GOBINDGARH

CITY MALL VIKASH PRIVATE LIMITED  
36, GANESH CHANDRA AVENUE, PERFECT CHAMBERS, KOLKATA

GMR HYDERABAD INTERNATIONAL AIRPORT LTD.  
GMR AERO TOWERS, LEVEL III, SHAMSHABAD, HYDERABAD 500409

KEYSIGHT TECHNOLOGIES INTERNATIONAL INDIA PRIVATE LIMITED, CP-11, SECTOR-8, TECHNOLOGY PARK, IMT MANESAR, GURGAON
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<td>KZAR PROPERTIES PRIVATE LIMITED</td>
<td>63 RAFI AHMED KIDWAI ROAD, 2ND FLOOR, KOLKATA</td>
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<td>M/S. GREEN VALLEY INDUSTRIES LIMITED</td>
<td>VILLAGE: NONGSNING, PO: CHIEHRUPHI, PS: KHLIEHRIAT, DIST: JAINITA HILLS, MEGHALAYA – 793200</td>
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<td>MAHESH INDUSTRIES PRIVATE LIMITED</td>
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<td>MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED</td>
<td>PARADIGM PLAZA, AB SHETTY CIRCLE, MANGALORE</td>
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<td>NARAYANA HRUDAYALAYA LIMITED</td>
<td>258/A, BOMMASANDRA INDUSTRIAL AREA, ANEKAL, ANEKAL T.Q, BANGALORE</td>
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<td>NARMADA BIO-CHEM LIMITED</td>
<td>907, 9TH FLOOR, AKIK COMPLEX, OPP. RAJPATH CLUB, S. G. HIGHWAY, BODAKDEV, AHMEDABAD</td>
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<td>QUEST GLOBAL ENGINEERING SERVICES PRIVATE LIMITED</td>
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<td>ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED</td>
<td>VISHRANTHI MELARAM TOWERS, NO.2/319, RAJIV GANDHI SALAI (OMR), KARAPAKKAM, CHENNAI</td>
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<td>RR INDUSTRIES LIMITED</td>
<td>RR TOWERS III, THIRU VI KA INDUSTRIAL ESTATE GUINDY, CHENNAI</td>
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<td>TARA CHAND RICE MILLS PRIVATE LIMITED</td>
<td>4, MILESTONE, KARNAL ROAD, KARNAL, PANIPAT</td>
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<tr>
<td>TOKAI IMPERIAL HYDRAULICS INDIA PRIVATE LIMITED</td>
<td>UNIT 796, FLOOR 7, TOWER B1, SPAZE I-TECH PARK SOHNA ROAD, SECTOR-49, GURGAON</td>
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<td>WALLEM MARITIME TRAINING (INDIA) PRIVATE LIMITED</td>
<td>1ST FLOOR, CRESCENT TOWERS, OFF NEW LINK ROAD CTS NO. 580, OSHIWARA, ANDHERI (WEST) MUMBAI - 400053</td>
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<td>YASH TECHNOLOGIES PRIVATE LIMITED</td>
<td>201-205, BANSI TRADE CENTRE, 581/5, M. G. ROAD, INDORE</td>
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<td>AGRIMONY COMMODITIES LIMITED</td>
<td>OFFICE NO. 701, 7TH FLOOR, KINGSTON, TEJPAL ROAD, VILE PARLE(E), MUMBAI - 400057</td>
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<td>AMBAR PROTEIN INDUSTRIES LIMITED</td>
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<td>CAMPHOR AND ALLIED PRODUCTS LIMITED</td>
<td>PLOT NO. 3, GIDC INDL. ESTATE, NANDESARI, VADODARA</td>
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<td>GUJARAT FOILS LIMITED</td>
<td>CORPORATE OFFICE: INDIABULLS FINANCE CENTER, TOWER -3, 16TH FLOOR, 1601, SENAPATI BAPAT MARG ELPHINSTONE ROAD WEST - 400013, MUMBAI</td>
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<td>PREMIUM CAPITAL MARKET &amp; INVESTMENT LIMITED</td>
<td>401- STARLIT TOWER, 29- Y.N. ROAD, INDORE</td>
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<td>SHANTHI GEARS LIMITED</td>
<td>304-A, TRICHY ROAD, SINGANALLUR, COIMBATORE</td>
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<td>TECHNOFOB ENGINEERING LIMITED</td>
<td>507 EROS APARTMENTS, 56 NEHRU PLACE, DELHI</td>
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<td>THE TATA POWER COMPANY LIMITED</td>
<td>BOMBAY HOUSE, 24, HOMI MODY STREET, MUMBAI</td>
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<td>TRILOGIC DIGITAL MEDIA LIMITED</td>
<td>20TH FLOOR, GRANDEUR, CTS NO.737,9,12,B,C&amp;D, OFF LINK RD,VEERA DESAI RD, EXT, OSHIWARA, ANDHERI (W), MUMBAI</td>
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### EASTERN INDIA REGIONAL COUNCIL

#### RANCHI CHAPTER

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<th>website link</th>
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<td>1. 01st 5-days Professional Skill Development Programme</td>
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<td>2. observation of Flag Day - Communal Harmony</td>
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### NORTHERN INDIA REGIONAL COUNCIL

#### BANGALORE CHAPTER

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<td>November 2015 - Students Study Circle Meetings</td>
<td><a href="http://bit.ly/1Zbg2Vj">http://bit.ly/1Zbg2Vj</a></td>
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### SOUTHWestern INDIA REGIONAL COUNCIL

#### BANGALORE CHAPTER

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<td>29.11.2015 - Participation in Airtel Delhi Half Marathon-Great Delhi Run 6 Km</td>
<td><a href="http://www.icsi.edu/Portals/70/Document2016.pdf">http://www.icsi.edu/Portals/70/Document2016.pdf</a></td>
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<tr>
<td>30.11.2015 - Valedictory Function of 224th MSOP</td>
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<tr>
<td>3.12.2015 -Programs jointly with U.S. Commercial Service, Department of Commerce, UnitedState of America on “DOING BUSINESS IN THE USA”</td>
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## KOCHI CHAPTER

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## WESTERN INDIA REGIONAL COUNCIL

### AHMEDABAD CHAPTER

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## KIND ATTENTION!

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The Institute has started again Five Years subscription of Chartered Secretary after giving a flat discount of 20% to the total subscription amount. For further details contact the Joint Director (Publications) of the Institute at 22, Institutional Area, Lodi Road, New Delhi - 110003. E-mail: ak.sil@icsi.edu
ICSI - CCGRT ANNOUNCES UNIQUE ALL INDIA RESEARCH PAPER COMPETITION

ICSI-CCGRT is pleased to announce unique “All India Research Paper Competition”, with the objective of creating proclivity towards research among its Members both in employment and practice. As research is an integral part of scientific approach towards an issue for arriving at concrete solutions, in view of this it is essential to ensconce the research oriented approach. Further, research is pervasive, i.e. it is not restricted to a particular field. Whether it is engineering, management, law, medicine, etc. without proper research, it is almost next to impossible to ascertain the solution of a problem.

The Indian Companies Act, 2013 which has ushered in paramount opportunities for ‘Governance Professionals’, has also presented with myriad challenges in the shape of new sections or chapters. So it is high time that every Company Secretary both in practice and employment develop research acumen to comprehend critical corporate issues and deliver an optimum solution to their clients or top management.

This competition provide an altar to the Company Secretaries to showcase their research talent and contribute immensely to the ocean of wisdom.

Themes / Chapters on which Research Papers are invited

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**RESEARCH PAPER / MANUSCRIPT GUIDELINES**

- Original papers are invited from Company Secretaries in employment & practice, Academicians, Research Scholars and other Professionals.
- The paper must be accompanied with the author’s name(s), affiliations(s), full postal address, email ID, and telephone/ fax number along with the title of the paper on the front page.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- The text should be typed double-spaced only on one side of A4 size paper in MS Word, Times New Roman, 12 font size with one-inch margins all around.
- The author/s’ name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- The research paper should contain the write-up on the selected Chapter, Sections / Rules and Commentaries. The following points to be considered:
  a) **Statutory Framework**
     - Section under Companies Act, 2013
     - Sub-section under Companies Act, 2013
     - Comparative Section in Companies Act, 1956
     - "Relevant Rule Name (the Companies (Registration of Charges) Rules, 2014)"
     - Relevant Rule No
     - Circular
     - Notification
     - SS (Secretarial Standards)
     - Applicability
     - Date of Notification
  b) **Value Addition**
     - Date of Coming in to Force
     - Commentary
     - Judicial Pronouncements
     - Relevant International Law
     - Relevant Corporate Laws viz. FEMA, Listing Agreement.
     - Secretarial Action Plan
- Key Highlights with brief synopsis
  - Tables should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 etc.
  - All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
  - The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 15th of February, 2016 by 12 noon (IST).
- Participants should email their research papers on the following email id: ccgrt@icsi.edu

**Further Information for Authors / Participants**

- The decision of the Reviewing Committee will be final and binding on the participants.
- The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI. Further, the authors whose papers will be selected will receive an Appreciation Letter from the institute and Program Credit Hours (PCH).
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- The papers will be scrutinized by an Expert Committee.

For any query / assistance, kindly contact at: ccgrt@icsi.edu / +91-22-41021515/1501

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There will be suitable honorarium for selected papers.

CS Ahalada Rao V  CS Ashish Doshi  
Chief Patron &  Patron & Chairman  
Chairman, Research Committee  CCGRT Mgmt. Committee

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Vision

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Mission

"To develop high calibre professionals facilitating good corporate governance"

ICSI in pursuance of its vision and mission statements evangelising an International project dedicated to corporate governance.

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An application along with their profile may please be forwarded to ccgrt@icsi.edu specifying clearly the following details, on or before 31st January, 2016:

1. Personal Details.
2. Their area of experience relevant to Corporate Governance.
3. Their academic qualifications/research experience (for instance Doctor of Philosophy Ph.d), any other relevant area of experience at the Corporate Level/ Institutes Level/ Foundations Level.
4. Their passion of involvement either as Volunteer/organiser/paper contributor/resource person/or any other service.

ICSI reserves the right to select the group members. It may reject or keep on hold any application made in this regard without specifying any reasons.

CS Ahalada Rao V
Chairman
ICSI-Research Committee

CS Ashish Doshi
Chairman
ICSI – CCGRT Committee
The Insolvency Regulator (Clause 188)
The Code proposes to establish an Insolvency Regulator (The Insolvency and Bankruptcy Board of India) to exercise regulatory oversight over
- Insolvency Professionals,
- Insolvency Professional Agencies and
- Information Utilities.

Insolvency Professionals and Insolvency Professional Agencies. (Chapter III and Chapter IV of Part IV)
The code proposes to regulate insolvency professionals and insolvency professional agencies. Under Regulator’s oversight, these agencies will develop professional standards, codes of ethics and exercise a disciplinary role over errant members leading to the development of a competitive industry for insolvency professionals.

Information Utilities (Chapter V of Part IV)
The Code proposes for information utilities which would collect, collate, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. An individual insolvency database is also proposed to be set up with the goal of providing information on insolvency status of individuals.

The Adjudication Authorities
The Debt Recovery Tribunal (DRT), Debt Recovery Appellate Tribunal ("DRAT"), The National Company Law Tribunal ("NCLT"), National Company Law Appellate Tribunal ("NCLAT") are the adjudicating authorities and will have the jurisdiction to hear and dispose of cases by or against the debtor.

Adjudicating Authority for individuals and unlimited liability partnership firms (Part III, Chapter VI)
The Debt Recovery Tribunal ("DRT") shall be the Adjudicating Authority with jurisdiction over individuals and unlimited liability partnership firms. Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal ("DRAT").

Adjudicating authority for corporate and LLPs (Part II, Chapter VI)
The National Company Law Tribunal ("NCLT") shall be the Adjudicating Authority with jurisdiction over companies, limited liability entities. Appeals from the order of NCLT shall lie to the National Company Law Appellate Tribunal ("NCLAT"). NCLAT shall be the appellate authority to hear appeals arising out of the orders passed by the Regulator in respect of insolvency professional Agencies or information utilities. (clause 61, clause 202 and clause 211)

The process for Corporates and LLPs
1. **The time lines**
The code proposes a swift process and timeline of 180 days for dealing with applications for insolvency resolution. This can be extended for 90 days by the Adjudicating Authority only in exceptional cases. During insolvency resolution period (of 180/270 days), the management of the debtor is placed in the hands of an interim resolution professional/resolution professional.

2. **Approval**
An insolvency resolution plan prepared by the resolution professional has to be approved by a majority of 75% of voting share of the financial creditors. Once the plan is approved, it would require sanction of the Adjudicating Authority. If an insolvency resolution plan is rejected, the Adjudicating Authority will make an order for the liquidation.

3. **Fast Track corporate Resolution Process (Part II Chapter IV)**
The code proposes a fast track insolvency resolution process which may be applicable to certain categories of entities. In such a case, the insolvency resolution process has to be completed within a period of 90 days from the trigger date i.e commencement date. However, on request from the resolution professional based on the resolution passed by the committee of creditors, a one-time extension of 45 days can be granted by the Adjudicating Authority. The order of priorities in which the proceeds from the realisation of the assets of the entity are to be distributed to its creditors is also provided for.

**The Process for Individuals and Unlimited Liability Partnerships:**
The code proposes an insolvency regime for individuals and unlimited liability partnerships also. The code proposes two distinct processes Viz , Fresh Start and Insolvency Resolution.

**Fresh Start process**, indigent individuals with income and assets lesser than specified thresholds (annual gross income does not exceed Rs. 60,000 and aggregate value of assets does not exceed Rs.20,000) shall be eligible to apply for a discharge from their “qualifying debts” (i.e. debts which are liquidated, unsecured and not excluded debts and up to Rs.35,000). The resolution professional will investigate and prepare a final list of all qualifying debts and submit such list to the adjudicating authority at least five days before the moratorium period ends. . At the end of moratorium period, the Adjudicating Authority will pass an order on discharging of the debtor from the qualifying debts and accord an opportunity to the debtor to start afresh, financially. (Chapter II)

**Insolvency Resolution Process**, the creditors and the debtor will engage in negotiations to arrive at an agreeable repayment plan for composition of the debts and affairs of the debtor, supervised by a resolution professional.(Chapter III)
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43RD NATIONAL CONVENTION OF COMPANY SECRETARIES

PROCEEDINGS OF THE INAUGURAL & TECHNICAL SESSIONS

DAY 1 : DECEMBER 17, 2015

INAUGURAL SESSION
MAKE IN INDIA - INNOVATE, EXCEL AND GROW
Shri Ashok Chawla, Chairman, Competition Commission of India, inaugurated the 43rd National Convention of Company Secretaries on the theme ‘Make in India-Innovate, Excel and Grow. Mr. Chawla said that Company Secretaries are to play a very important role in effective shareholder democracy by ensuring compliances of a huge set of regulations and emphasized that for professionals, public interest should always prevail over the private interest.

Shri Ashish Chauhan, MD & CEO, BSE Ltd., by placing the Company Secretary in the context of Mahabharata said that “Company Secretaries play the role of Krishna to the CEOs who are modern Arjuna’s”.

" CS Atul H. Mehta, President, ICSI, delivering his Presidential address covered the opportunities and challenges posed by implementation of Companies Act 2013. He insisted Company Secretaries to “Keep playing their role with such a passion that even when the curtains are down, the applause doesn’t stop.”

Ms. Mamta Binani, Vice President, ICSI introduced the theme of 43rd National Convention and said that we, as professionals, have the capability of ‘Learn, Learn and Relearn.

CS Vineet Choudhary, Council Member, ICSI and Chairman, 43rd National Convention Organising Sub-committee emphasised on a much larger role of Company Secretaries in the Make In India, where the Professionals will have to Innovate, Excel and Grow.

CS Dr. Shyam Agrawal, Council Member, ICSI and Co-Chairman, 43rd National Convention Organising Sub-committee introduced the dignitaries of the Inaugural Session.

CS Sutanu Sinha, CE & Officiating Secretary, ICSI announced the Regional Council and Best Chapter Awards and proposed a formal Vote of Thanks. ICSI also launched Certificate Course(s) in Internal Audit, Goods and Services Tax and released Guidance Notes on Annual Return.

SPECIAL INTERNATIONAL SESSION
CAPITAL MARKETS REGULATION AND DEVELOPMENT
The session started with the release of publication on Insider Trading by Shri Prashant Saran, Whole Time Member, SEBI as the Chairman of the Special Session. The guest speakers were Mr. Shri Prashant Saran, Whole Time Member, SEBI, Dr. Nicholas K. Letting, Chairman, Institute of Certified Public Secretary of Kenya; Ms Carina Wessels, Past President, Chartered Secretaries 43rd National Convention of Company Secretaries.

Day 1 : December 17, 2015 Southern Africa (CSSA); and Shri Gopal Krishna Agarwal, Council Member, ICSI, National President, Association of National Exchanges of India. Shri Makrand M. Lele, Council Member, ICSI coordinated the session and Vote of thanks was extended by Shri Mahavir Lunawat, Council Member. Makrand M Lele while welcoming the dignitaries said that the capital market has emerged as a modern engine of growth and capital market development is the key determinant of economic development. Shri Prashant Saran expressed his long tenure association with ICSI and praised the publications being brought out by the Institute as high quality publication. He emphasized that Make in India is not just a mechanical process, it concerns the overall ethos, history and genesis of the country.

Shri Amar Jibi Ghimire shared the facts on the profession of company secretaries in Nepal. He gave a glimpse of capital market, governing regulations and development in Nepal. He also mentioned the challenges faced in regulating the capital market. He concluded by suggesting that development does not take place in restrictive regulation.

Dr. Nicholas K. Letting gave an overview of the Institute of Certified Public Secretary of Kenya (ICPSK). He said that the mandate of ICPSK is to promote good governance in both public and private institutions. He covered Nairobi Stock Exchange, products and services listing requirements and capital market structure in Kenya etc. He also emphasised that Make in India should also focus on global acceptability.

Ms Carina Wessels at the outset hoped that by 2020 India would be biggest economy in the world. While giving an overview of the Johannesburg Stock Exchange (JSE) she also discussed regulatory framework, key recent challenges and development in the capital market in South Africa. She informed that South Africa is moving towards King IV code of corporate governance to be implemented in near future. Through this code the country aspires to have better and cooperative regulations and also to set international standards on corporate governance.

Shri Gopal Krishna Agarwal focussed on the regulatory gaps and overlaps in financial as well as capital markets in India, FSLRC.
recommendations on regulation making process and recent initiatives of SEBI.

While proposing formal vote of thanks, Shri Mahavir Lunawat, Council Member, ICSI opined that capital market is very important for financial inclusion globally. Governance and financial management go hand in hand, said Lunawat while emphasising the role of company secretaries in governance.

Handbook on Insider Trading Regulations was released on the event.

SPECIAL SESSION
SECRETARIAL STANDARDS
Shri A.K. Chaturvedi, Regional Director, North, Ministry of Corporate Affairs, Shri Pavan Kumar Vijay, Council Member, ICSI, Shri Ranjeet Pandey and Shri Ahalada Rao V, Council Member, ICSI addressed at the Special Session on Secretarial Standards.

Shri A.K. Chaturvedi, Regional Director, North, Ministry of Corporate Affairs, Shri Pavan Kumar Vijay, Council Member, ICSI, Shri Ranjeet Pandey and Shri Ahalada Rao V, Council Member, ICSI addressed at the Special Session on Secretarial Standards.

During the session, Guidance Notes on Secretarial Standards (SS-I and SS-II) were released. Shri Atul H. Mehta, President, ICSI in his address said that implementation of Companies Act 2013 has taken the profession of Company Secretaries to the next level. However a lot of challenges also need to be addressed after its implementation. Mr. Mehta continued, that the opportunities are also immense and CEOs and Board of Directors consult Company Secretaries on a more frequent basis than before.

Shri A. K. Chaturvedi, Regional Director (North), MCA expressed that the Company Secretaries are the extended arms of the Governance Architect in the corporates as well as regulatory arena. He urged the Company Secretaries to extend their full support and cooperation in future endeavour of MCA as they have extended at the time of MCA 21 and other initiatives.

DAY 2 : DECEMBER 18, 2015

WOMEN POWER BREAKFAST
This session held on December 18, 2015 was about life skills. It was addressed by Ms. Anita Sehgal, life coach and Ms. Ruby Bhatia, fashion stylist and image consultant. Vice President Mamta Binani while delivering the welcome address highlighted the need for women, professionals and those working in organization to maintain a work-life balance as the expectations from both the roles is entirely different.

Ms. Anita Sehgal, life coach while addressing the delegates emphasized that working/professional women need to empower themselves and the best way for doing so is to connect to your ownself. In this regard, she exemplified various methods to empower oneself such as yoga, meditation etc..

Ms. Ruby Bhatia delivered her views on women transformation on 21st century and she emphasized the need and method for ‘power dressing’ for women. Ms. Bhatia also highlighted as to how women may feel confident and empowered and she also explained in detail about different dress codes for different occasions. Formal vote of thanks was proposed by Ms. Monica Kohli, Member, NIRC of ICSI.

FIRST TECHNICAL SESSION
DIGITAL INDIA
The first technical session on the theme ‘Digital India’ was chaired by Shri P K Malhotra, Secretary, Ministry of Law and Justice and was addressed by Shri Premkumar Seshadri, Executive Vice Chairman & Managing Director, HCL Infosystems Ltd.; Shri Kiran Murthi, Chief Executive Officer, AskmeBazaar.com; Shri Ashish Chandra, General Counsel, Snap Deal

Shri P K Malhotra highlighted that Digital India is an ambitious project of Government of India. Digital India will have three key areas namely cyber security, e-governance and digital security of citizens of India. He further added that digital India can bridge urban rural divide in future and corruption is also going to reduce as transparency is offered by e-governance.

Shri Premkumar Seshadri explained the concept of digital India, and highlighted that empowerment to citizens in terms of doing business online whether B2B or B2C is the need of the hour.

Shri Kiran Murthi discussed in detail how SMEs can leverage on digital growth to scale up their businesses and can adopt e-commerce, search online, make payment online and take finance online.

Shri Ashish Chandra insisted that India at present is a centre point of digitalization across the Globe and the present Government has further glorified this campaign through Make in India Vision. Digital India places huge responsibility on Indian Law makers to come up with the laws for incubation of technology in India.

The session was summed up through a ‘question answer’ session by the audience and release of Reference material for ‘e-governance’ as a part of 15 days training program of ICSI after completion of Executive level. The session proved to be a fruitful session as lots of knowledge sharing took place at this platform. Shri P K Malhotra concluded the session on an outstanding legal observation in context of speeding up of Digital India campaign “Laws should be implemented in spirit and not in letter.” Shri Vineet K. Chaudhary, Council Member, ICSI and Chairman, Convention Organising Sub-Committee proposed a formal vote of thanks.
**SECOND TECHNICAL SESSION**

**EASE OF DOING BUSINESS IN INDIA**

CS Ashish Garg, Council Member, ICSI welcomed the dignitaries on and off the podium. Mr. Rajeev Talwar, IAS (Retd.), CEO, DLF Ltd., in his opening speech emphasized that from socialism to inclusiveness, India has come up long way especially in the field of technology. India has overcome a lot of matters relating to connectivity and communication. He discussed about the complexities existing in Indian legal system, rules and regulations in respect to Ease of Doing Business which leads to non-availability of mechanized skilled labour in India and higher cost of compliances.

Mr. Talwar emphasised that we all need to act as a society and come together to help government in making processes easier for increase in national income and national employment.

Mr. Ketan Dalal, Regional Managing Partner, Pricewaterhouse Coopers Pvt. Ltd. referred to the judicial backlogs in India with respect to taxation related matters, tendency to overlegislated legislation, too much regulatory overlapping and lack of timeframe in making legislation. He opined that we need a holistic approach to deal with grey areas in the legislative and concluded that “Revolution is not an apple that will ripe and fall in time, one has to make it fall.”

Mr. R. Sukumar, Editor, HT Mint deliberating on the broader issues related to ease of doing business, pointed out the need for facilitation and also depicted areas where scope for improvement at implementation levels exists.

He suggested that businesses should not look at the ‘letter of law’ but also at the ‘spirit of law’ and regulators need to repose greater trust in businesses and provide conducive environment instead of constraining the requirements. He emphasized that transparency and disclosure in doing business is the key to enhance the ease of doing business in India.

Mr. Talwar concluded the session by pointing out the major hindrances impeding the growth of businesses in India such as over legislative, trust deficit and duplication of information demanded by the regulators.

**THIRD TECHNICAL SESSION**

**SKILL DEVELOPMENT**

Third Technical Session on day 2 on Skill Development and Entrepreneurship was chaired by CS Mamta, Binani, Vice President, ICSI and the speakers were Smt. Meenakshi Lekhi, Member of Parliament, Dr. Pawan G. Agrawal, representing Dabbawala’s of Mumbai, Shri Alok Sharma, Chairman & MD, Air One Aviation Pvt. Ltd.

Smt. Lekhi deliberated on the three dividends of the nation which are democracy, demography and the demand. She highlighted that in the past one and a half years the FDI has been increased by 40 per cent. She emphasized the need of Skill India Programme by saying that since 1.25 million people are on demand side, the focus must shift on moving the chunk to supply side. She opined that innovation is a vital component of Make in India and Skill India Programme.

Dr. Agrawal elaborated upon the excellent Logistics and Supply Chain Management of Dabbawalas of Mumbai wherein 5,000 group members were able to deliver 2,00,000 tiffins a day in Mumbai by utilizing network of local Mumbai trains. He highlighted that how Dabbawalas are able focus on their ‘core capability’ of ‘ON TIME DELIVERY’ to manage their time schedules with their passion and commitment to the customer service. He highlighted how their organization consisting of below average literate people won ‘Six Sigma Certification’. He quoted that, “People study business books and then practice, we practiced and have now become a case study.” His address proved to be immensely motivating and won standing ovation from the audience.

Mr. Ashok Sharma said that the country is headed towards ‘leadership’ and it is not only about economic leadership but also about the social leadership and values. He emphasized on the significance of skill development and suggested that skillling should be imbibed with the education system right from the beginning. He emphasized that to move to double digit growth, India needs to focus upon manufacturing sector.

Mr. Satwinder Singh extended formal vote of thanks to the speakers and said that skill and knowledge are the driving force for economic growth and social development.

**B2B SESSION**

A B2B Session was organized for the first time in the history of National Conventions of ICSI to ensure that the members of the institute are aware of the prevalent technologies and the legal implications on adopting the same. Shri Rajeev Bajaj, Council Member, ICSI moderated the session. The gathering was introduced to ‘automation in board meetings’ and ‘leveraging technology in enhancing service levels’. The gathering was informed of various innovations in the Institute by Shri Ankur Yadav, Joint Secretary (SG) of ICSI.

**DAY 3: DECEMBER 19, 2015**

**4TH TECHNICAL SESSION**

**MAKE IN INDIA - LEGAL, SOCIAL AND FINANCIAL REFORMS**

Justice V Bakhru initiated his discussion by mentioning ‘focus areas’ of Make in India - Social, Legal & Financial and various measures undertaken by Government viz. abolition of Licence Raj, standardization and simplification of procedures and processes, shift
from professional certification to self-certification and discretionary regulations to regulatory regime. He also focussed on Government initiatives on liberalisation of FDI sectoral limits particularly in defence sector, which is attracting foreign investment. He opined that Government now acts as a ‘facilitator’ not a ‘regulator’ to achieve the objective of Make in India. He emphasized upon four major pillars of Make in India- New Processes, New Infrastructure, New Sectors & New Mindset. He referred to catchy phrases of Government of India with respect to Make in India- “Look East, Link West”, “3D’s-Democracy, Demography and Demand”, FDI stands for ‘First Develop India’. He also threw some light on certainty in tax regime which is an important determinant of attracting and inspiring foreign investors. He concluded with a discussion on 2 ordinance-Arbitration & Conciliation Ordinance, 2015; and Commercial Court, Commercial Division of High Court, Commercial Appellate Division of High Court Ordinance, 2015.

Mr. M S Sahoo said that ‘ICSI is really becoming a partner in the Make in India Initiative’. He emphasized that Company Secretaries are Lawyer of Economics who know Economics of Laws and Laws of Economics. He highlighted the inter relationship between Law and Economics by mentioning that ‘Every Law has Economic Consequences and There is a Law for Every Economic Problem’. He said that success of ‘Make in India’ initiative is also based on economic liberty to businesses and laws are denying economic liberty. So it is important to build an institutional regime that protects and promotes economic liberty.

Mr. U K Chaudhary defined Make in India as initiative to “Making manufacturing bases in India and inviting not only the capital, but also technology and skills which help growing GDP not only in terms of finance but also Productivity”. He pointed out hindrances in the way of success of IPR protection which encourage foreign investment and hence, legal reforms in IPR are a priority for the success of Make in India effort. He also mentioned some other issues which need to be discussed for tolerance for violation of the law, replacement of convenience with competence in appointments, infrastructure development (including cleanliness).

Mr. Manoj Fadnis highlighted issues that need to be addressed for the success of Make in India Programme. He said that infrastructure availability is crucial, it should not only sufficient for today but also for tomorrow’s needs. Infrastructure Development also opens up a big Business Opportunity for entrepreneurs. He suggested that technology investment need to be improved so as to reduce high compliance cost. He concluded that regulatory bodies like ICSI, ICAI and ICAI-Cost must be strengthened to help Making in India.

Mr. Bharat highlighted that social reforms and legal reforms for hand in hand. In reference to women empowerment, he emphasized on women safety at workplace and implementation of Sexual Harassment Act. He there is utmost need of providing women a safe society and comfortable workplace environment as she deserves constitutional equality.

VALEDICTORY SESSION
Hon’ble Justice Mahesh Mittal Kumar was the Chief Guest for the valedictory session of the 43rd National Convention of Company Secretaries. Justice Mittal referred ICSI as a vibrant institute full of energy and enthusiasm to perform. He appreciated the theme of this National Convention and said that this National Convention has proven to be educative for all professionals. He opined that corporate sector is on such a threshold that year 2015 will be remembered as a year of major changes and such transformation requires CS who till now were known as experts who “play with figures”, to act as people to “play with words” such as advocates. Hon’ble Justice said that establishment of NCLT/NCLAT opens a new regime for professionals like CS, CA, Advocates and CS professionals should attempt to grab these opportunities to the maximum. He suggested that some changes ought to be there in CS Curriculum to put more emphasis on Pleading, Drafting, CPC, Evidence and Court Craft etc. and they should have more exposure to advocacy related work. He insisted that CS are instruments of growth, but they should galvanize themselves and do their job meticulously.

Mr. Rajesh Sharma, Govt. Nominee opined that Company Secretaries must know as to how their work contributes to the society and country. They are associated with Boards of Corporate World from where the progress of the nation initiates. Therefore, they are partners in a nation’s growth. They can be legal experts, managerial experts. They need to think with a vision and should not create boundaries for themselves, they should think and achieve in the same way as Sir Edmund Hillary told to Mount Everest before conquering it “I will come again and conquer you because as a mountain you can’t grow, but as a human I can.”

Mr. Yamal Vyas, Government Nominee emphasised that Ease of Doing Business in India will only be possible when regulators will have to do lesser work; therefore, company secretaries should focus on providing quality work in the area of corporate governance.

President Atul Meta advised members of the institute “Don’t Create your Boundaries, Go Beyond.” He apprised the members about opportunities and challenges thrown by Companies Act 2013 and templates in pipeline for incorporation of the companies in India. He also informed that international presence of the institute is very soon going the see the light of the day.

Vice president Mamta Binani said that India was earlier know as the country of improvisers (Jugaads), now it will be known as a country of innovators and with FDI ushering in the country at a faster pace than before, Company Secretaries will have a daunting task on their shoulders in corporate world. Shri Shyam Agrawal proposed the vote of thanks to the guests to close the Convention.
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### EXTRA BOX NO. CHARGES

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