

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

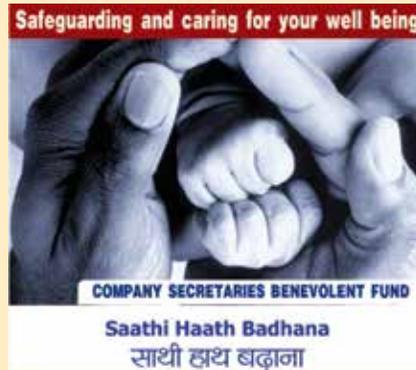
Focus on
Ease of
Doing Business
in **India**



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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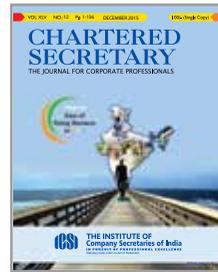
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- 01 >> CS Vineet Kumar Chaudhary seen presenting a bouquet to V Sadananda Gowda (Hon'ble Union Minister of Law and Justice).
- 03 >> Chartered Secretaries Southern Africa (CSSA) – Annual Corporate Governance Conference held at Johannesburg on 27 & 28.10.2015 – Sitting on the dais from Left: Atul Mehta from India; Chua Siew Chuan from Malaysia; Grace Tan from Singapore; Peter Turnbull from Australia; Dr Nicholas Letting from Kenya and Katherine Combs from USA.
- 05 >> ICSI – WIRC - Annual Regional Conference – CS Atul Mehta addressing. Others sitting from Left: CS Shilpa Dixit, CS Devendra Deshpande, CS Rishikesh Gagan Vyas, CS Kamlesh Joshi, CS Sutanu Sinha and CS Praveen Soni.
- 07 >> EIRC - Lecture on Investigation of Corporate Fraud and Stock Market Fraud at Swami Vivekananda State Police Academy, Barrackpore – CS Mamta Binani addressing the police personnel at the academy.

- 02 >> Meeting of ICSI delegation with Member of Parliament – Group photo – Standing from Left: CS Vineet K Chaudhary, Meenakshi Lekhi (Member of Parliament), CS Mamta Binani and CS Shyam Agrawal.
- 04 >> WIRC – Thane Chapter – Seminar on SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - Sitting on the dais from Left: CS Nitin Upadhye, CS Atul Mehta, CS Rahul Sahasrabudhe and CS Vikas Chomal.
- 06 >> ICSI – WIRC - Annual Regional Conference – Standing from Left: - CS Jamshed S Patel, CS Rishikesh Gagan Vyas, Subhash Desai (Hon'ble Minister of Commerce and Industries, Government of Maharashtra) and CS Kamlesh Joshi.
- 08 >> ICSI - CCGRT - All India Residential Research Circle Brain Storming Colloquium on Indian Company Law – Group photo of participants with K K Balu (Former Vice Chairman, CLB) and ICSI Central Council Members CS Makarand Lele, CS Ashish C Doshi and CS Ahalada Rao V.



Articles

P-11

Provisions of the Companies Act 2013 concerning deposits: Is every money received or borrowed a deposit?

» P-11

Dr. K. R. Chandratre

The definition of the term 'deposit', which is extremely and unjustifiably wide in scope, is set out in section 2(31) of the 2013 Act. The definition is differently worded than the definition under the Companies Act 1956. The two definitions are virtually the same in substance. It was ruled by the Company Law Board in two cases that every money borrowed does not necessarily fall within the ambit of the definition of 'deposit', despite its wide sweep, inasmuch as the definition has to be interpreted keeping in view the purpose of the provision, namely to regulate monies taken by a company from the public as deposits and to safeguard their interests. So a genuine loan transaction not intended by both parties to be a deposit cannot fall within the ambit of the definition. The present article deals with this aspect of the subject-matter.

Ease of Doing Business in India : the Concept, Issues And Steps Needed to Accelerate Progress, Including Income Tax and Companies Acts Aspects

» P-17

T.N. Pandey

The Prime Minister of India's concept of 'make-in-India' will only succeed if there is ease in doing business. Though some of the issues in this direction have settled, still there are many areas, where much needs to be done. According to World Bank's study of 189 countries in ease of doing business, India's ranking rose to 130 from 134. It will be relatively easier if regulatory approvals for starting new business is expedited. The author, in the article, has examined the position concerning real estate and restaurant sectors and compliances to be made under the I.T. Act and Companies Act. The progress will depend on how strong is the core sector, like labour policies, power supply, lesser legal tangles, adequate banking and communication, e-commerce facilities and promulgation of new laws like GST. The position could be summarized saying 'red tape down but no sign of red carpet'.

Cyber Laws in India with reference to Ease of Doing Business

» P-20

Rodney D. Ryder & Ravi Goyal

The internet is considered by many to be the fifth domain after land, water, air, and space. With the frequent release of new and innovative internet based technologies, internet can truly be considered to be the most dynamic and

powerful source of communication, trade and commerce present in today's world. Since India is gradually being considered as an ideal country for companies to expand their business, it is important for businesses to comply with the Indian Information Technology Act, 2000. The Information Technology Act, 2000 is a stand-alone legislation for regulating the internet and lays down certain conditions for companies who collect data and/or provide services through the internet. Non-compliance of the same can lead to penalties as well as imprisonment in some cases. It is thus absolutely necessary for businesses to comply with the Act in order to successfully conduct their business in India.

Ease of doing mergers and acquisitions under the Indian Competition Regime

» P-26

G.R.Bhatia

Though India is the fastest growing economies in the world, its position in the 'Doing Business' continues to be less than favourable. The latest ranking is lower than its BRICS (Brazil, Russia, India, China, South Africa) counterparts. There is an urgency to focus on improving the business regulatory regime and arrest the decline in relative performance against various determinants of investment attractiveness.

Ease of Doing Business – A Company Law Perspective

» P-30

DR. K. S. Ravichandran

The role of a Government lies in creating new opportunities for economic growth, research and development aimed at alleviating social, economic and environmental problems and removal of disparities. Business is an excellent tool to remove barriers based on caste, creed, religion, sex and race. It is the responsibility of the Government to make laws consistent with this premise. Companies Act, 2013 applies in a uniform manner almost to all companies, private or public. Based on the number of companies registered, a large number of companies are private companies and closely held public companies. Other than borrowings from banks and financial institutions, such companies do not access public funds. Therefore there is a case for reducing compliance obligations under the Companies Act, 2013. This article is aimed at introducing a novel concept that involves three levels of compliance obligations under the Companies Act, 2013 to lessen the burden on the businessmen.

Ease Of Doing Business in India – Some Significant Changes in Commercial Laws

» P-34

Delep Goswami & Anirrud Goswami

The progressive pragmatic initiatives taken by the Central



at a Glance

Government has improved India's ranking in the "Ease of Doing Business" chart and now newer areas of work avenues have opened up and/or are being opened and the corporate professionals have immense scope to embark on specialised areas of work to encash the opportunities being thrown open by the changes in the commercial laws. The article deals with the important changes already made in the Arbitration Act, 1996, as well as in the Companies Act, 2013 vide the Companies Amendment Act, 2015. In addition, the article also deals with some of the salient features of the Insolvency Laws Reforms Committee's recommendations for changes in the insolvency law and for ease in exiting business.

**Ease of Doing Business Index:
Its Reliability in India's Perspective**



P-40

Dr. Devendra Jarwal

Now a days 'Ease of Doing Business' is a hot topic of debate and everyone is looking towards it in order to boost the economy and in the era of globalisation it attracts the foreign aid. India as an emerging economy is doing very well and in all these areas we have transformed India by manifolds which must be brought to the notice of World Bank's Group. In further investigation, it was found that they still consider the requirements of minimum paid-up capital, certificate of commencement of business and common seal among other things into their methodology for assigning rank to India. However amendments bringing simplification brought up in the year 2015 could not be taken up, but the concept of Limited Liability Partnerships did not find adequate space in the rankings of Ease of Doing Business though it was passed in the year 2008. Despite efforts we are not able to improve our position hence in this regard a Company Secretary can play a vital role in improving this index as now a days the professionals equipped with statutory authority and status of 'Key managerial personnel' are able to comply with the provisions related to corporate governance norms, infusing corporate transparency, protecting the rights of minority shareholders in a better and easier way.

Ease of Doing Business in India



P-44

M Kurthalanathan

India was ranked 142 by the World Bank in 2015 on ease of doing business and later its rank was revised to 134 based on a new methodology. The rankings are based on 10 indicators such as how easy it is to start a business and sometimes form the basis of foreign investments in a country. According to the new report, it takes 29 days to start a business in India now; it took 127 days in 2004. The Government of India launched an ambitious programme of regulatory reform aimed at

making it easier to do business. Spanning a range of areas measured by Doing Business, the programme represents a great deal of effort to create a more business friendly environment. In May 2015, the government eliminated the minimum capital requirement to start a business and also ended the requirement to obtain a certificate to commence business operations, which helped it improve its rankings. The World Bank noted that India recorded the biggest increase in the distance to frontier (a measure of a country's absolute performance) score in South Asia since 2004.

**Ease of Doing Business –
Enforcing Contracts In India**



P-50

Naresh Kumar

The World Bank's Ease of Doing Business Index, 2015 (Doing Business Index), assesses the legal and regulatory framework of business of 189 countries in the World and highlights the factors which count for efficiency and sustainability of business and private enterprises. The object of Doing Business Index is to help the respective governments in improving the quality and implementation of their rules and regulations for facilitating the private sector to thrive and grow. India ranks 142 out of 189 countries in the Doing Business Index. In this context, an attempt is made to discuss the broad legal and regulatory aspects of business and corporate laws in India and critically examine the mechanism of enforcing contracts.

Ease of Doing Business in India



P-55

Meenu Gupta

Being the campaign of 'Make in India' there is a need to highlight the issues and challenges faced by the Corporates and others for 'Doing Business in India' and a necessity to recommend solution for ease of doing business. The article highlights the same issues and challenges while explaining the major initiatives taken by the Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion and the KPMG Report. It identified a number of areas to improve the business climate in India particularly around land acquisition, starting a business, taxation and contract enforcement. New initiatives have been started in some states that have led to positive change, many of these could perhaps be leveraged at the national level, i.e. MCA has introduced an integrated process for incorporation of a company, wherein applicants can apply for Director's Identification Number (DIN) and company name availability simultaneous to incorporation application (Form INC-29).



Legal World

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▶ CS: LMJ: 2/12:2015 The private agreement which is relied upon by the plaintiffs where under there is a restriction on a living member to transfer his shareholding only to the branch of family to which he belongs in terms imposes two restrictions which are not stipulated in the Article. Firstly, it imposes a restriction on a living member to transfer the shares only to the existing members and secondly the transfer has to be only to a member belonging to the same branch of family. The agreement obviously, therefore, imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of the Article 13. They are, therefore, not binding either on the shareholders or on the company. [SC] ▶ LW:097:12:2015 The mere non-compliance of Accounting Standards (though not true in the present case) cannot be a ground for recall or review of a court sanctioned scheme especially when due process of law has been complied with. [Bom] ▶ LW:098:12:2015 We find that the facts of the case have been properly appreciated by SAT for coming to the conclusion that the amalgamation was not on account of any compulsion of law. The compulsion of the appellant was a business compulsion to do business as a broker with NSE.[SC] ▶ LW:099:12:2015 SEBI itself extended the benefit to those converting not only from 21.1.1998 but from 1.4.1997. There is nothing in paragraph 4 or in the explanation to support the stand of the SEBI that the benefits must be confined to conversions taking place after a particular date when no such date finds place in the Regulations. [SC] ▶ LW: 100:12:2015 State Governments have power to legislate for taxes in respect of professions, trades, callings or employment for the benefit of the State. By performing the said activity OP 1 is merely carrying out the sovereign function of the Government and as such is not engaged in any economic activity to be covered within the definition of an enterprise.[CCI] ▶ LW: 101:12:2015 It is the duty of the Court to sever and separate trivial and technical parts by retaining the main or substantial part and by giving effect to the latter if it is legal, lawful and otherwise enforceable. [SC] ▶ LW: 102:12:2015 As the services of the appellant were deputed with NAA, it was definitely competent to initiate the disciplinary proceedings for his continued absence. [SC] ▶ LW: 103:12:2015 Since the notification exempts anything that is in excess of what is determined as excise duty on such like goods, and considering that for the entire period under question the duty arrived at under Section 3(1) proviso (ii) is in excess of the duty arrived at on like goods manufactured in India by non 100% EOUs, it is clear that the whole basis of the show cause notice is indeed flawed. [SC]

From the Government

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▶ The Companies (Management and Administration) Third Amendment Rules, 2015 ▶ The Companies (Share Capital and Debentures) Third Amendment Rules, 2015 ▶ Establishment of Appellate Authority by Central Government ▶ Investor Grievance Redressal System and Arbitration Mechanism ▶ Annual System Audit, Business Continuity Plan(BCP) and Disaster Recovery (DR) ▶ Streamlining the Process of Public Issue of Equity Shares and Convertibles ▶ Format for quarterly holding pattern, disclosure norms for corporate governance report and manner for compliance with two-way fungibility of Indian Depository Receipts (IDRs) ▶ Format for Business Responsibility Report (BRR) ▶ Format for Voting Results ▶ Review of Foreign Direct Investment (FDI) policy on various sectors ▶ Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment Regulations, 2015) ▶ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2015 ▶ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015 ▶ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2015 ▶ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2015 ▶ External Commercial Borrowings (ECB) Policy - Issuance of Rupee denominated bonds overseas ▶ Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015. ▶ Clarification on FDI Policy on Facility Sharing Arrangements between Group Companies ▶ Clarification on FDI Policy on Single Brand Retail Trading (This clarification is without prejudice to other conditions of the extant FDI policy on the sector)

Other Highlights

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- ▶ Members Admitted / Restored
- ▶ Certificate of Practice Issued / Cancelled
- ▶ Licentiate ICSI Admitted
- ▶ Company Secretaries Benevolent Fund
- ▶ Our Members
- ▶ Looking Beyond
- ▶ NCLT Corner



“My meaning simply is, that whatever I have tried to do in life, I have tried with all my heart to do well; that whatever I have devoted myself to, I have devoted myself to completely; that in great aims and in small, I have always been thoroughly in earnest.”

— Charles Dickens, David Copperfield



Dear Professional Colleagues,

The Country is passing through a transition stage and a number of regulatory transformations have been initiated to make Country ready for doing business comfortably. The Bankruptcy Law Reforms Committee (BLRC) has submitted in November, 2015 its report to the Government and recommended a single code of resolving the insolvency of all corporate entities. The BLRC, in a radical move has recommended the removal of all laws dealing with insolvency of registered entities and replacing it with this uniform Insolvency and Bankruptcy Code. Towards this, the BLRC has submitted a draft of the Insolvency and Bankruptcy Bill, 2015 ('Draft Bankruptcy Code') to the Government for its consideration and further action. Significantly, the Draft Bankruptcy Code seeks to amend certain provisions of the Companies Act, 2013 which deal with insolvency and winding-up of companies. Other laws that have also been sought to be replaced by respective provisions of the Draft Bankruptcy Code include provisions of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, the Limited Liability Partnerships Act, 2008, Recovery of Debts Due to Banks and Financial Institutions Act, and the Indian Partnership Act, 1932. The Draft Bankruptcy Code also recommends and considers the National Company Law Tribunal to be the only forum where issues relating to insolvency of companies will be adjudicated. The Ministry of Finance sought comments on Insolvency and Bankruptcy Bill 2015 which has also brought several new concepts such as Insolvency and Bankruptcy Board of India, Insolvency Professional Agencies, Insolvency professionals, etc. I am sure the emerging Insolvency Code would bring ample opportunities to our professional colleagues, specially as Insolvency Professionals.

As you are aware, the Ministry of Corporate Affairs has substituted Form MGT-7 through the Companies (Management and Administration) Third Amendment Rules,



2015 replacing the form introduced earlier. The Institute had requested the Ministry to permit filing of these forms i.e. MGT-7, AOC-4; AOC-4 CFS and AOC-4 (XBRL) till December, 2015, without additional fee. We are grateful to the Ministry and date of filing has been extended till December 30, 2015.

The Institute has brought out a Guidance Note on Annual Return to guide the company secretaries in filling and filing the annual return and also in its certification. This publication has been uploaded on the website of the Institute. I request all my professional colleagues to make use of this publication.

The Institute is proposing to organise a series of webinars on National Company Law Tribunal covering the areas such as manner of transfer of cases from High court, CLB, BIFR to NCLT, Manner of dealing with the cases, appearance nitty-gritty etc. I am sure that the members would be benefitted by these.

15th ICSI National Award for Excellence in Corporate Governance

The process of evaluation of two stages of the five stage evaluation process has been completed by the technical team of your ICSI. The Jury comprising eminent personalities under the Chairmanship of Hon'ble Justice Shri M.N. Venkatachaliah, former Chief Justice of India will meet on December 15, 2015 at New Delhi to adjudge the Award Winning Companies. The presentation ceremony of 15th ICSI National Award for Excellence in Corporate Governance is scheduled to be held on January 8, 2016 at Mumbai.

Webinar on new e-form MGT-7 for filing of Annual Return

The Ministry of Corporate Affairs vide its notification dated August 28, 2015 amended the provisions of the Companies (Management and Administration) Rules, 2014 and brought out e-form MGT-7 for filing of Annual Return. The Institute received lots of practical issues/concerns in filling and filing of e-form MGT-7. To discuss and clarify the issues, the Institute organised a first webinar on October 08, 2015 on new e-form MGT-7 for filing of Annual Return.

The webinar was addressed by Ms. Mamta Binani, Vice-President, ICSI; Mr. Vineet Chaudhary, Chairman,

Corporate Laws and Governance Committee and Council Member, ICSI; Mr. Ranjeet Pandey, Council Member and Ms. Alka Kapoor, Joint Secretary, ICSI. Mr. K M S Narayanan, Assistant Director, Ministry of Corporate Affairs was also present to understand and clarify the concerns along with Mr. Bhasker Subramanian, Industry Principal, CS Ankit Kumar Jain, Senior Associate Consultant, Infosys Limited the two officers associated with e-governance team of MCA. Approximately 7,000 viewers joined the webinar.

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

I along with Shri M K Gupta, Director, Finance & Accounts of the Institute represented ICSI and attended the aforesaid programmes in Hanoi, Viet Nam on 16 and 17 November, 2015 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. The meeting was attended by dignitaries from Vietnam, Korea, Turkey, Malaysia, Myanmar, China, Pakistan, Philippines, Japan, Bhutan, Indonesia and representatives of OECD. Shri Madhukar Gupta, Additional Secretary, Department of Public Enterprises, Ministry of Public Enterprises and Heavy Industries, Govt. of India, Shri U D Chaubey, DG, SCOPE, India and Shri R K Mishra, Director, IPE, India also participated in the meeting.

The broad heads of discussion thereat were Good Practices and Best Practices: An Involving Consensus in OECD and ASIA; SOE Governance Reforms in Asian Countries: Recent Experience and Prospects; SOE Governance Reforms in Vietnam: Experience and Prospects; Good Practices of Performance Management in Asia.

India shared its practice of evaluation of performance of the SOEs through the mechanism of Memorandum of Understanding. The practice was started in 1980s. Under the practice, for management of SOE Govt. of India decides the performance indicators before the commencement of the financial year. The SOE submits periodical report on the performance indicators to the concerned Ministry. At the end of the financial year, the performance on each of the indicator is evaluated and accordingly the SOE is rated



From the President

as excellent, very good, good, satisfactory and poor. New initiatives like: Women director on the Board of certain companies; Secretarial standards on the Board meetings and General meetings; Secretarial audit on the lines of financial audit; 2% of net profit to be spent on CSR, etc. in the Companies Act 2013 were also shared with the participants. The other sub-heads discussed were Singapore model of SOEs governance; Equitisation as means of improving performance, etc. The meeting ended with the observations from the representatives of OECD who appreciated the depth and breadth of the discussions in governance of SOEs. The meeting was very active and open in discussing the current practices and challenges. The OECD representatives stated that the outcome of the discussions would be summarised and considered for incorporation in the OECD guidelines on Corporate Governance on SOEs.

Thereafter 2015 knowledge sharing programme (KSP) Regional Workshop in Asia - Public Finance Management Reforms in Asian Countries was organised by Korean Development Institute (KDI). The Key Note speaker was H.E Dr. Dae Hee Yoon, Former Minister for Policy Coordination, Republic of Korea who highlighted the role of public financial management in Korea's Development. The other topics discussed were Feasibility Study for Effective Public Financial and Asset Management; Public-Private Partnership (PPP) for Financing; Medium Term Expenditure Framework (MTEF), etc.

ICSI-WIRC Annual Regional Conference

ICSI-WIRC organized its most coveted Annual Regional Conference on October 03 & 04, 2015 at Mumbai. The Conference witnessed many sought out deliberations from top class professionals of the country. The theme of the conference was "Make in India - Company Secretary as the Nation Builder". Shri Subhash Desai, Hon'ble Minister of Commerce and Industries, Government of Maharashtra was the Guest of Honour. During his brief address he complimented the efforts of ICSI-WIRC Chairman for organizing the conference which is of immense topical relevance. He said that the state Government has also come out with ample initiatives on the theme which is under deliberation during the Conference. Subsequently on both the days various technical sessions and Panel discussions were held where there was a tremendous flow of knowledge.

On 4th October during the Conference, CS Day was also celebrated.

Punjab State Conference

Punjab State Conference of the NIRC-ICSI was organized on 21 & 22.11.2015 at Hotel Radisson Blu, Amritsar. Sh. Anil Joshi, Hon'ble Minister of Local Bodies, Medical Education and Research, Punjab and Justice M.M. Kumar, Chairman, Company Law Board and Sh. A.K. Chaturvedi, Regional Director, Ministry of Corporate Affairs were the dignitaries present. The theme of the conference was "Seizing Opportunities in the Winds of Change". Justice M.M. Kumar in his address emphasized the significance of proper presentation and communication of the arguments while taking legal cases. He also explained how company secretaries can improvise themselves while appearing before NCLT. Sh. Anil Joshi emphasized on the focus of Punjab Govt. in the growth of the state and explained how Amritsar offers the best opportunities to the businessmen and professionals in the growing India.

43rd National Convention

The much awaited mega event of the Institute, 43rd National Convention of Company Secretaries scheduled for December 17-19, 2015 at Kempinski Ambience Hotel, Delhi on the theme Make in India – Innovate, Excel and Grow is just about a week away and it's gratifying indeed to report that while many of us have enrolled from far and wide; nonetheless many more can still register as delegates. Along enriching the knowledge through deliberations, the Convention would also offer opportunity of, interaction with the expert faculty, networking with fellow professionals from India and abroad and strengthening brotherhood among the Company Secretaries. We have confirmations from the very distinguished speakers from their chosen fields and may I appeal to you to join our fellow professionals in making this Convention a memorable one. Your support and encouragement would indeed go a long way in its smooth and successful conduct and accomplishment.

With kind regards,

December 03, 2015.

Yours sincerely,

(CS ATUL H MEHTA)
president@icsi.edu



Dr. K. R. Chandratre*, FCS

Practising Company Secretary
Pune

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Provisions of the Companies Act, 2013 concerning deposits: Is every money received or borrowed a deposit?

- Finance is the most critical requirement for carrying on business. For corporates, raising finance through deposits from public has been one of the important sources. The Companies Act, 2013 has brought about significant changes in relation to acceptance of deposits from public. The question whether every money received or borrowed from public amounts to deposit is sought to be examined here.

INTRODUCTION

Chapter V (Section 73 to 76) of the Companies Act, 2013 deals with acceptance of deposits by companies. Section 73(1) provides that, “on and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in the manner under this Chapter”.

Further section 73(2) provides that “a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following condition.....”

Section 76(1) of the 2013 Act provides that “Notwithstanding anything contained in section 73, a public company, having such



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



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net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-s. (2) of s. 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe”

The Companies (Acceptance of Deposits) Rules, 2014 (the Rules) further exclude some categories from the term ‘Deposit’ in its Rule 2(1)(c). Clauses (i) to (xiv) of Rule 2(1)(c) of the Rules lists the categories of exempted deposits. But there are certainly certain amounts specified in that provision which, by any stretch of imagination, cannot be called ‘deposits’ (such as those specified in sub-clause (xii) of rule 2(1)(c) and hence susceptible to challenge on the grounds of constitutional validity as well as excessive delegated legislation.

DEFINITION OF ‘DEPOSIT’

The definition of the term ‘deposit’, which is extremely and unjustifiably wide in scope, is set out in section 2(31) of the 2013 Act, is as follows:

“Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such

categories of amount as may be prescribed in consultation with Reserve Bank of India.”

This definition has three ingredients: (1) any receipt of money by way of deposit; (2) any receipt of money by way of loan; and (3) any receipt of money in any other form.

As against this definition, the Companies Act 1956 (‘the 1956 Act’) defined the term ‘deposit’ in section 58A as follows:

“For the purposes of this section, “deposit” means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

This definition had two ingredients: (1) any deposit of money; and (2) any amount borrowed.

It will be noticed that except the third ingredient mentioned above, the two definitions are virtually the same in substance as in the definition in the 1956 Act. The second ingredient in both the definitions, namely ‘any receipt of money by way of loan’ and ‘any amount borrowed’ is virtually the same in substance. In fact, one of the meanings of ‘loan’ in a standard dictionary is a thing that is borrowed, especially a sum of money that is expected to be paid back with interest. [see Concise Oxford English Dictionary;]. The Oxford Business English Dictionary defines it as ‘money that an organization such as a bank lends and somebody borrows’.

Thus, although the new definition is an inclusive definition and it looks wider in form than the old definition (as it seeks to treat as deposit any receipt of money by way of deposit or loan or in any other form by a company), it is not much different than the previous definition in substance.

The third ingredient in the definition given in the 2013 Act, namely ‘any receipt of money in any other form’ must be read by applying the rule of *ejusdem generis*. This rule is explained in the Black’s Law Dictionary, 9th Edn. as follows: “A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.”

The rule of *ejusdem generis* (meaning, things of the same kind or class rule or the consistent list rule) is invariably applied to interpret a word or phrase in a statute which is of general meaning and character when it follows some word or phrase of specific meaning. As the Supreme Court has pointed out, according to this rule, when a general word or phrase follows a list of specific words or phrases, the general word or phrase will be interpreted to include only items of the same type as those listed. In other words, when a list of specific items belonging to the same class is followed by general words (as in “cats, dogs, and other animals”), the general words are to be treated as confined to other items of the same class (in this example, to other domestic animals). The expression *ejusdem generis*, meaning ‘of the same kind or nature’, signifies





➤ The definition of 'deposit' cannot be stretched to bring within its ambit every receipt of money which is not in the nature of deposit even if it is a loan and the intention of the parties as reflected in the agreement or any other document is not to treat the money received by the company as a deposit and both are clear in their intention as written in the agreement.

a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus — describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned early and were not intended to extend to objects of a wholly different kind.¹

The Constitution Bench of the Supreme Court in *Kavalappara Kottarathil Kochuni v. State of Madras* AIR 1960 SC 1080 explained the rule as follows:

"When general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

Again, in another Constitution Bench judgment it was stated:

"The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subject of the enumeration constitutes a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent."²

Accordingly, in the expression 'by way of deposit or loan or in any other form' in the definition of 'deposit' the words 'loan' and the words 'in any other form' must be read by applying the principle or rule of ejusdem generis. In other words, the words 'loan' and the

words 'in any other form' should take colour from the first and the most crucial words in the definition, namely 'by way of deposit'. The definition of 'deposit' cannot be stretched to bring within its ambit every receipt of money which is not in the nature of deposit even if it is a loan and the intention of the parties as reflected in the agreement or any other document is not to treat the money received by the company as a deposit and both are clear in their intention as written in the agreement.

It would appear that the expressions 'any loan' and 'any receipt of money in any other form' should be read *ejusdem generis* and take colour from the preceding words namely 'any receipt of money by way of deposit'. In other words, the two expression which follow the first one ('any receipt of money by way of deposit') should be interpreted in the light of the first one and if so read it would appear that all the three expressions have one common thread, namely money received by a company must have the character of 'deposit' as contemplated by the provisions of this Act and the 1956 Act.

INTENT OF THE PROVISIONS

Sections 73 and 76 both seek, as their headings go, to regulate acceptance of deposits from public. Sub section (1) of section 73 states: "... no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter." A close look at the provisions of these two sections and the Companies (Acceptance of Deposits) Rules 2014, reveals that these provisions are aimed at regulating deposits invited/accepted by companies under their deposit schemes which usually facilitate them to take deposits in small amounts from the members of the public on which interest is paid at a certain rates of interest, with a maturity period ranging between one year and three years similar to deposit schemes of banks. Both the company and the depositor are clear in their minds and intention that the depositors keep their money to get them back after a certain period, get interest on it and the money is unsecured; the money is not given by way a loan as is understood in commercial parlance.

The distinction between 'deposit' and 'loan' is well recognized and settled. In a transaction of a deposit of money or a loan, a relationship of a debtor and a creditor must come into existence. In the context of banking business, 'deposit' means money placed in a bank account or an instance of placing money in a bank account; an amount of money paid into a bank account or held in a bank account, especially when it is earning interest. But in ordinary sense, the word 'deposit' has several meaning, such as a payment, especially into a bank account; a sum of money which you pay when you rent something, and which is returned to you when you return the thing you have rented; money which is saved in a bank or something similar.

The terms "deposit" and "loan" may not be mutually exclusive, but nonetheless in each case what must be considered is the intention of the parties and the circumstances. What must also be borne in mind is that under the Limitation Act, the period when limitation

¹ Siddeshwari Cotton Mills P Ltd v Union of India (1989) 2 SCC 458: AIR 1989 SC 1019.
² Amar Chandra Chakraborty v. Collector of Excise, Govt. of Tripura AIR 1972 SC 1863



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would begin in the case of deposit and in the case of lending are differently provided. Hence, the distinction between a loan and a deposit is fine but appreciable.³

The Bombay High Court has held that both in the case of a loan and in the case of a deposit, there is a relationship of a debtor and a creditor between the party giving money and the party receiving money. But in the case of a deposit, the delivery of money is usually at the instance of the giver, and it is for the benefit of the person who deposits the money the benefit normally being earning of interest from a party who customarily accepts deposits. Deposits could also be for safe keeping as a security for the performance of an obligation undertaken by the depositor. In the case of a loan, however, it is the borrower at whose instance and for whose needs the money is advanced. The borrowing is primarily for the benefit of the borrower although the person who lends the money may also stand to gain thereby by earning interest on the amount lent. Ordinarily, though not always, in the case of a deposit, it is the depositor who is the prime mover while in the case of a loan, it is the borrower who is the prime mover.⁴

The Supreme Court has observed that the case of a deposit is something more than a mere loan of money. It will depend upon the facts of each case whether the transaction is clothed with the character of a deposit of money. The surrounding circumstances, the relationship and character of the transaction and the manner in which parties treated the transaction will throw light on the true form of the transaction.⁵ The Supreme Court held that a loan "imports a positive act of lending coupled with an acceptance by the other side of the money as loan".⁶

In another decision, the Supreme Court has held that whether a transaction is a transaction of loan or deposit does not depend merely on the terms of the document but has got to be judged from the intention of the parties and all the circumstances of the

case. Even though the transaction is a transaction of deposit, the deposit can be coupled with an agreement that it will be payable on demand. Such an agreement can be express or implied and if an express agreement in that behalf is recorded in the document the transaction of deposit cannot thereby be converted into a transaction of loan.⁷

Now, let us dwell briefly on historical background of the provisions and discover the Legislative intent, by applying the rule of 'purposive construction'. Literal interpretation is the primary and golden rule of statutory interpretation; there is however an exception to the 'literal rule' and it is the 'purposive rule of interpretation' (sometimes also referred to as 'mischief rule') which can be resorted to when the words in a statutory provision are ambiguous. A classic exposition of the two rules is the *Sussex Peerage* case.⁸ It was said:

"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves *alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute....*" [emphasis supplied]

The Supreme Court⁹ succinctly summarized this principle as follows:

"It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning which would adhere to the purpose of the statute."

Sections 58A and 58B were inserted by the Companies (Amendment) Act 1974. The purpose was stated in the Notes on Clauses thus:

"Clause 6 — It has been the practice of the companies to take deposits from the public at a high rate of interest. Experience has shown that in many cases deposits so taken by the companies have not been refunded on the due dates. In many such cases either the companies have gone into liquidation or the funds are depleted to such an extent that the companies are not in a position to refund the deposits. It is accordingly considered necessary to



3 Durga Prasad Mandelia v Registrar [1987] 61 Comp Cas 479 (Bom); (1986) 1 Comp LJ 275
4 Ponnwail India Ltd v Registrar [1987] 62 Comp Cas 112 (Bom); (1986) 2 Comp LJ 208
5 Ram Janki Devi v Juggilal Kamlatpat AIR 1971 SC 2551; (1971) 1 SCC 477
6 Shree Ram Mills Ltd v CEPT [(1953) 23 ITR 120; AIR 1953 SC 485

7 Annamalai Chettiar (V E A) v Veerappa Chettiar (S V V S) AIR 1956 SC 12 (1844) 11 Cl&F 85.
8 Union of India v Hansoli Devi 2002 AIR SCW 3755.



control the companies inviting deposits from the public. The issue of an advertisement in such form and in such manner as may be prescribed including therein a statement showing the financial position of the company seeking deposits from the public is being made obligatory. Provision has also been made for the Central Government to make rules in consultation with the Reserve Bank of India. Penal provisions have also been included. There is also a provision for the refund of the amount of deposits received by a company in violation of the requirements of the law. The provisions of the Act relating to a prospectus are also made applicable to the issue of such advertisements as contemplated in this clause. The clause will be applicable to all companies other than the banking companies and those specified by the Government in consultation with the Reserve Bank of India".

It is true that the Statement of Objects and Reasons or Notes on Clauses appended to a Bill presented in Parliament as such may not be admissible as an aid of construction to the statute but, as the Supreme Court has pointed out, it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which it sought to remedy.¹⁰ As the Statement of Objects & Reasons stated, the purpose of the section 58A was "to control the companies inviting deposits from the public" and not to ban borrowing of monies by companies for business purposes under a genuine and legitimate agreements between the company and the lender when the lender is clear in his intention that he is giving his money to the company as a loan and as a deposit and the intention of the parties is clearly stated in the agreement. as the Supreme Court pointed out in the Delhi Cloth & General Mills case referred to below, section 58A had a definite object, namely, "to check the abuse by the corporate sector and to protect the depositors/investors".

Secondly, as noted earlier, the purpose behind the provisions in section 73 is the same as was behind section 58A of the 1956 Act, which I have discussed in detail in my opinion of 10 February 2014, namely to protect the interests of the persons who keep their money with companies by way of deposit.

Therefore the question arises as to whether any money borrowed by a company for its business purposes is 'deposit' even if in true sense and having regard to the purpose and context of sections 73 to 76 of the Act and the Rules it is not a deposit and even if it has not been expressly excluded under rule 2(b) of the Rules, or whether if money borrowed is not in the nature of a deposit but is a loan and even if it has not been expressly excluded under rule 2(b) of the Rules is not a deposit.

It is true that according to the definition given in section 2(31) of the Act, deposit includes any amount borrowed by a company, and by applying the 'literal interpretation rule', any money borrowed by a company amounts to deposit. This is a wider definition

and seeks to include any and every amount borrowed even if an amount borrowed may not really be in the nature of deposit as contemplated by the section and also the purpose of such borrowing is not what section 58A has behind its enactment.

The purpose of and reasons for enacting section 58A of the 1956 Act was explained by the Supreme Court in *Delhi Cloth and General Mills Co Ltd v Union of India* AIR 1983 SC 937;(1983) 54 Comp Cas 674 (SC)] affirming the decision of the Gujarat High Court in *Ahmedabad Mfg & Calico Printing Co Ltd v Union of India* (1983) 53 Comp Cas 904 (Guj), thus:

"... it was designed to meet cases of abuse or distortion of system, which have, of late, assumed comparatively serious proportions, and a stringent measure of control has become inevitable ... The power conferred by section 58A on the Central Government to prescribe the limits up to which the manner in which and the conditions subject to which deposits may be invited or accepted by non-banking companies had a definite object, namely, *to check the abuse by the corporate sector and to protect the depositors/investors*. Mischief was known and the regulatory measure was introduced to remedy the mischief. The conditions which can be prescribed to effectuate this purpose must *a fortiori*, to be valid, fairly and reasonably, relate to check-mate the abuse of juggling with the depositors'/investors' hard earned money by the corporate sector and to confer upon them a measure of protection, namely, availability of liquid assets to meet the obligation of repayment of deposit which is implicit in acceptance of deposit ... Section 58A must receive its legitimate construction in the backdrop of this fact-situation. Viewed from this angle, section 58A will enable the Central Government to prescribe conditions subject to which deposits can be accepted and one such condition would be how to readily make, a small portion of the deposit, available for repayment because while inviting and accepting deposits, it is implicit therein that repayment would be assured on the date of maturity".

The purpose of the provisions in Chapter V of the 2013 Act is the same as was in the case of section 58A of the 1956 Act, i.e. to regulate deposits invited by the companies from the public or their shareholders and thereby protect or safeguard the interests of the depositors (most of whom are those who invest their monies in deposits of companies in small amounts) and it is not the purpose of these provisions to bring genuine loan transactions by which a company borrows money for the purpose of its business and when the lender has the clear and avowed intention of lending money and not giving money by way of a deposit.

In this regard, two decisions of the Company Law Board (CLB) on the interpretation of the word 'deposit' for the purposes of Section 58A of the 1956 Act are noteworthy.

In one case, the CLB, while interpreting Section 58A of the 1956 Act held:

"This section is limited to invitation and acceptance of deposits

¹⁰ MK Ranganathan and Another v. Government of Madras AIR 1955 SC 604; Prabhudas Damodar Kotecha v. Manhabala Jeram Damoda AIR 2013 SC 2959.



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➤ A loan which is not in the nature of a deposit as contemplated by section 2(31) of the 2013 Act and the Rules would not attract section 73 and 76 and the Rules, provided that there is an agreement between the Company and the lender of money clearly indicating that the money given is a loan, and the agreement should stipulate terms and conditions relating to the loan. The contract must be supported by consideration in order it to be a valid contract and consideration may be either in the form of interest (which need not be at market rate).

from the public or from the members of the company. The money received from the public or the members must be in the nature of "deposit". In order to attract this section it is required to be seen whether a deposit is invited or accepted by the company from the public or from its members in accordance with the Companies (Acceptance of Deposits) Rules, 1975. These Rules bring out certain special features of deposit distinguishing it from a loan. In this connection, beneficial reference is invited to V. E. A. Annamalai Chettiar v. S. V. V. S. Veerappa Chettiar AIR 1956 SC 12, wherein the apex court has made a clear distinction between loan and deposit although, in a particular case, loan may include deposit. But then, every loan is not a deposit. Whether a transaction is a loan or deposit has to be judged from the intention of the parties and the circumstances of the case. By virtue of rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 1975, no company shall accept any deposit which is repayable on demand or on notice or after a period of less than six months or more than thirty-six months from the date of acceptance of such deposit. Every company intending to invite deposits from the public shall issue an advertisement in accordance with rule 4 or file a statement in lieu of advertisement as the case may be under rule 4A. Every company should furnish to the depositor a receipt for the amount received by the company in the manner prescribed under rule 6. None of these requirements is satisfied by the company, while accepting monies from the depositor. Moreover, copies of the receipts dated February 13, 1991, and April 8, 1991 (documents Nos. 1 and 2), produced by the depositor are not in accordance with rule 6. The confirmation of account from the books of the company as at March 31, 1991 (document No. 3), and statements of account for the periods from April 1, 1991, to March 31, 1992, and April 1, 1992, to March 31, 1993 (documents Nos. 4 and 5), all issued by the company show that monies advanced to the

company are in the nature of loans, repayable on demand as borne out by the receipts dated February 13, 1991, and April 8, 1991 (documents Nos. 1 and 2), which is in violation of rule 3(1) (a) stated supra. Considering these circumstances, the character of the transactions, the manner in which the parties treated the transactions as laid down by the Supreme Court in the decision cited by the authorised representative of the depositor and non-fulfilment of the requisite statutory requirements, I am convinced that the monies advanced in the present case cannot amount to "deposit" for the purpose of section 58A."¹¹

IN ANOTHER CASE, THE CLB HELD THAT

"This section is limited to invitation and acceptance of deposits from the public or from the members of the company. The money received from the public or the members must be in the nature of "deposit".In order to attract section 58A, it is required to be seen whether the deposits are invited or accepted by the Company from the public or from its members in accordance with the Companies (Acceptance of Deposits) Rules, 1975."¹²

In the light of the foregoing discussion, it appears a loan which is not in the nature of a deposit as contemplated by section 2(31) of the 2013 Act and the Rules would not attract section 73 and 76 and the Rules, provided that there is an agreement between the Company and the lender of money clearly indicating that the money given is a loan, and the agreement should stipulate terms and conditions relating to the loan. The contract must be supported by consideration in order it to be a valid contract and consideration may be either in the form of interest (which need not be at market rate). The agreement should contain all standard terms and conditions that a loan agreement usually contains and a specific clause incorporated on the following lines:

"It is not the intention of the Lender of money under this Agreement to treat the money lent as deposit and the Parties to this Agreement clearly intend, understand and agree that the money borrowed by the Company in terms of this Agreement is a loan not in the nature of a deposit, whether for the purposes of the Companies Act 2013 and the Rules made under the Act or otherwise; and that the lender shall not claim that the money lent is deposit and shall not resort to any provision of the Companies Act 2013 or the Rules. Similarly, the Company shall not treat the money so lent as a deposit for the purposes of the Act and the Rules made thereunder or otherwise."

When a person lends money to a company with a clear understanding on both sides the money is not a deposit as contemplated by section 2(31) read with Sections 73 and 76 of the Act and the Rules, but is a loan and such loan is governed only by the terms and conditions specified in the loan agreement between the parties and the agreement clearly envisages the money lent as a loan and not a deposit, it cannot be treated as a deposit for the purposes of the Act. CS

11 Girija Smelters Limited v Saraswathi Finance Corporation [2004] 119 Comp Cas 592 (CLB-SRB)

12 Gopal K. Maheshwari v Hawk Multimedia (P) Ltd [2005] 60 SCL 382 (CLB-SRB)



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Ease of Doing Business in India : the Concept, Issues and Steps Needed to Accelerate Progress, Including Income Tax and Companies Acts Aspects

- Despite sincere efforts, there are still considerable delays for many businesses for clearances from many Departments before business could be commenced. Some real life issues in this regard concerning some areas are outlined in this discussion.

Since the Prime Minister of India invited overseas entrepreneurs by his first speech from Lal Quila to come and 'make in India', a debate has generated in a big way for facilitating such move, inter-alia, by providing 'ease for doing business' because no business enterprise would like to lock its funds in a new venture in India and then run after various Ministries and Depts. of the Govt. at Central, State and Local authorities levels to commence business. Presently, despite sincere efforts, there are still considerable delays for many businesses for clearances from many Depts. before the business could be commenced. In this discussion, some real life issues in this regard are being discussed concerning some areas.

REAL ESTATE BUSINESS

Media reports show that if a person wants to enter into real estate construction business, he will have to seek 40 to 70 approvals,



inter-alia, from NHAI, the Pollution Control authorities of Ministry of Environment, AAI, Labour Ministry, Central Ground Water Board, aviation regulators and some other authorities. For various reasons, India is amongst the worst in the world when it comes to dealing

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with construction permits (rank 183) and enforcing contracts (rank 178) even when the Govt. has set a target of making India one among the top 50 countries in doing business.

Some months back, a news item appeared in the media that the Promoter of Mumbai based Cosmos Group wrote a 15 page note and then shot himself with a .32 calibre pistol. In his note, he blamed local body officials, politicians and complained about red tapism and extortion as reasons to his suicide.

According to a report of Confederation of Real Estate Developers Association of India (CREDAI) on an average, it takes 2-3 years to start a project after the land is acquired. By this time, the cost of land rises by 24 to 30% due to heavy interest payable to banks. Loans are not available for procuring important raw material. Besides, graft costs on account of bribes, etc., are also a reality. These increases get passed on to the customers.

After the construction is complete, there are still too many hassles like getting plinth area certificates regarding the completion of each floor, problems in getting occupancy certificates and obtaining non-agricultural land clearance, etc.

PROBLEMS UNDER THE COMPANIES ACT

For starting a company, various requirements of the companies legislation, rules and regulations are to be complied with. It was expected that with the coming into force of the Companies Act, 2013, the position regarding the filing of documents and getting Certificate of Commencement will ease, but that has not happened. Even the Companies Act, 2013 (Act) had to be amended shortly after coming into force of the Act. Even these amendments were not considered adequate. The Finance Minister on 27th October, 2015 announced constitution of six expert panels to review Companies Act and work on more amendments to the Act, on top of 16 amendments moved for changing the Companies Act almost immediately after the Act came into force. This was done on the representation of India Inc., which found the provisions of the Companies Act too harsh and even later amendments were considered not to have eased the position. The Groups proposed will go through all recommendations made by the Industry Bodies on their dedicated chapters and finalise the contours of orders on removing the difficulties. The Panels are also to look into easing of the provisions of registry and incorporation, raising of funds, corporate governance and management accounts and auditing, penalty and setting up of National Company Law Tribunal [NCLT].

RESTAURANT BUSINESS

Similarly, in Restaurant business, a large number of clearances are required despite considerable emphasis on easing the doing of business. Licenses are required from fire, health, police, municipalities, taxation, environment and various other Depts. Further laws differ from State to State and this makes opening of branches at various States cumbersome. It takes months after the business is set up, to make it functioning. Restaurant business continues to be over-regulated and governed by laws, some of which are still archaic and there is need for complete overhauling of the licensing policies. It takes up considerable time to deal with various Depts. separately and if one is stuck up at one stage, he may not be able to move to the other. A single point clearance needs to be provided to cut down the loss of time by moving different Depts. separately.

COMPLIANCE OF INCOME TAX ACT [ACT]

In the past – say 50 years - the compliance under the Act was cumbersome. Since then, the Dept. has moved in a big way in facilitating doing of business. There was a time when the taxpayers had to visit Income Tax Offices, in some cases, many times in getting their assessments completed with big bundles containing their books of account and other documents. From that stage, the I.T. Dept. has moved to a situation, where 98 to 99% of the returns filed are accepted and assessments are made without requiring the presence of the taxpayers. Only returns in few cases are scrutinized.

Over the years, the I.T. Dept. has switched over to online





- Shutting down businesses should be as less cumbersome as starting it. Regretfully, presently it is not so. An enterprise, desiring to close down, has to show past 3 years' financial results (audited). The business has to be kept running for one year after filing the proposal for closure. This causes hardship and is also, apparently, unfair.

functioning and the process is showing continuing progress. Recently, the I.T. Dept. has started a pilot project of using e-mails for sending notices, getting replies as well as carrying out tax assessments in an attempt to make sure taxpayers don't have to visit I.T. Offices physically in smaller cases. The Central Board of Direct Taxes (CBDT) has identified non-corporate charges at five locations and 100 initial cases for e-hearing. In order to improve taxpayer services, enhance efficiency and usher in a paper less environment for carrying out assessment proceedings, CBDT has decided to initiate the concept of using e-mail for corresponding with taxpayers and sending through e-mails the questionnaires, notice and getting responses from them using the same medium on a pilot basis. Five non-corporate charges in Delhi, Mumbai, Bengaluru, Ahmedabad & Chennai have been picked up for the pilot project. Initially, 100 cases for e-hearing will be identified in each of these charges and the major part of assessment processing will be conducted in an electronic mode. The move would eliminate the necessity of visiting Income Tax offices by taxpayers, particularly in smaller cases, involving limited issues and where taxpayer is able to provide details required by the AO without necessitating his physical presence. Cases covered under the pilot project, would be those, which have been selected for scrutiny on the basis of AIR or CIB information or non- matching with 26AS data. Consent of taxpayers will be obtained in the beginning and cases of only willing taxpayers will be considered under the pilot project.

A lot more has been done in earlier years but cannot be included in this short write-up. The process is ongoing. Recently [on 27th October, 2015], the FM has constituted a Committee to simplify further the provisions of the I.T. Act, 1961. One of the terms of reference of this Committee (numbered 2) is to study and identify the provisions, which are impacting the ease of doing business. After the recommendations of the Committee are received and implemented, the I.T. bottlenecks, which could be said to be impacting the ease in doing business will be removed and further substantial progress in this respect would be forthcoming and the I.T. Dept.'s working will be a facilitator in easy business in India.

SHUTTING DOWN

Shutting down businesses should be as less cumbersome as starting it. Regretfully, presently it is not so. An enterprise, desiring to close down, has to show past 3 years' financial results (audited). The business has to be kept running for one year after filing the proposal for closure. This causes hardship and is also, apparently, unfair.

CONCLUDING COMMENTS

In this write-up, a sample study has been attempted in regard to ease of doing business concerning some areas. There could be many more, where much has been done. The efforts cannot be onetime exercise. These have to be a continuing process, showing improvements year after.

The Govt. is continuously making efforts to improve the situation. India's ranking rose to 130 from 134 – four points up – according to World Bank's ease of doing business study, which ranks 189 countries. The up-going in rank has been possible by significant efforts for improvement in parameters like ease in starting new businesses and availability of electricity. The P.M. has already made a commitment that by 2019, every city and village in India will have electricity. According to the World Bank report (supra), it now takes 29 days to start a business in India as against 127 days in 2004.

However, much progress in this matter depends on how strong is the core infrastructure set up in the country such as in transport sector for movement of goods through land, air and sea routes, better custom related processes, availability of power [according to the World Bank EODR (supra), India ranked 70 (out of 189) on the power supply front, which is expected to improve as promised by the P.M.], fair labour policies, lesser legal tangles, adequate banking and communication and e-commerce facilities, changes in old laws or their scrapping such as traditional Shops and Establishment Act fast and introduction of new laws like GST will ease the multi taxation problem.

FINAL SUMMING UP

Much has been done to facilitate ease of doing business in various areas, but much needs to be done. The exercise is to be continued with vigour and enthusiasm. Relatively easier regulatory approval for starting new businesses have started. Taxation problems are being resolved by making announcements concerning MAT provisions for foreign companies, decision regarding retrospective amendments and ambiguities regarding transfer pricing matters are being cleared. Companies Act is to be amended to ease doing of business and similar changes are being made in other laws.

It would be appropriate to close this discussion with a heading in one of the economic newspapers, which reads as under: "Red tape down, but no signs of red carpet".

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Article



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➤ The internet laws in the country are still developing and comprehensive policies or legislations dealing with data privacy, encryption, etc., are expected in the near future which would provide businesses with further clarity regarding the rules and regulations to be complied with while doing business in India.

In the last few decades the Internet has emerged as a powerful and borderless medium of communication, trade and commerce. In fact, Pentagon, headquarters of the United States Department of Defense, considers cyberspace as the fifth domain after land, water, air, and space.¹

The Internet is being made available and used at a massive pace all across the world thanks to efficient service providers, Government infrastructures, new business models and projects such as Facebook's internet.org². This has, in turn, lead to job creations, launch of innovative business models, effective communication, better accountability of public servants and Governments, and many other impressive feats.

The Indian economy too has witnessed a dramatic surge in terms of dependence on internet and related technology. The same can be seen through the gradual growth in e-commerce, e-payments, IT markets and internet user base. The Government is also seen relying on internet to solve governance problems and socio-economic problems. Internet has thus, no doubt,



become the lifeline of critical infrastructures such as energy, telecommunication, banking, stock exchanges, etc.³

A report by the Internet and Mobile Association of India has revealed that India's e-commerce market is growing at an average rate of 70% annually and has grown over 500 % since 2007.⁴

1 As reported in Cyberwar: The Fifth Domain of Warfare available at < <http://thepolitic.org/cyberwar-the-fifth-domain-of-warfare/> >

2 Internet.org is a partnership between social networking services company Facebook and six companies [Samsung, Ericsson, MediaTek, Opera Software, Nokia and Qualcomm] that plans to bring affordable access to selected internet services to less developed countries.

3 NASSCOM Cyber Security Task Force Briefing Paper available at < https://www.dsci.in/sites/default/files/NASSCOM%20CSTF_Briefing%20Paper_0.pdf >

4 See <<https://www.techinasia.com/e-commerce-in-india-to-hit-10-billion-this-year/>>



According to a report provided by Morgan Stanley, the Indian internet market is expected to rise from USD 11 billion in 2013 to USD 137 billion by 2020⁵. Many Indian companies having internet based businesses can now be deemed to have been transitioned from start-ups to well established companies having a strong user base in the country [such as Grofers, Housing, Ola Cabs, PayTM, etc.] and in some cases – across the world too, such as Zomato⁶. The Indian economy is at such a stage that almost every foreign company or industry wishes to expand their business to India, be it foreign law firms⁷, commercial airlines such as Air Asia, or the furniture retailer IKEA⁸. This is also evident from the fact that India has moved up 12 places from its last year's ranking of 'Ease of Doing Business' as published by the World Bank Group⁹.

All this has indeed been achieved due to the efforts of the Government as well as the perseverance and hard work of the citizens of our country. Despite all this, one of the major and primary contributing factors for India's booming economy has no doubt been the 'internet'.

However, this very same internet that has helped boost several businesses is also quite vulnerable and is many a times used by criminals and unscrupulous persons to profit from or damage private and public infrastructure as well as strategic resources. Regulating the World Wide Web and maintaining pace with the ever changing and dynamic technologies is increasingly difficult for countries and their law makers as they are faced with extreme challenges and at times - lack of understanding of the technology to be regulated. Cyber security and cyber laws are complex areas which require deep understanding of the technologies involved in order to develop and implement effective laws and policies for their regulation. Presently, internet or cyber laws of our country are in a state of continual development and the Ministry of Communications & Information Technology [MCIT] alongwith the Government and other relevant stakeholders are in the process of refining present laws/policies and introducing new and more relevant laws and policies pertaining to internet and the cyber space. However, as of now, the Information Technology Act, 2000 is the sole legislation addressing issues related to the 'internet'.

THE INFORMATION TECHNOLOGY ACT, 2000 [IT ACT]

The 1990's marked the advent of globalisation and computerisation across the world. With much of international trade being done through electronic communication and with email gaining

- 5 See <http://www.business-standard.com/article/companies/india-set-to-become-world-s-fastest-growing-e-commerce-market-115020601227_1.html>
- 6 See <<http://www.firstpost.com/business/corporate-business/zomato-acquisition-spreed-buys-us-firm-nextable-2207964.html>>
- 7 See <http://articles.economictimes.indiatimes.com/2015-07-24/news/64817197_1_foreign-law-firms-advocates-act-legal-sector>
- 8 See <<http://www.forbes.com/sites/abehal/2015/06/22/whats-the-hold-up-for-ikea-stores-in-india/>>
- 9 See <<http://www.ndtv.com/india-news/india-ranks-130-in-ease-of-doing-business-report-jumps-12-spots-1237167>>

momentum, an urgent and imminent need was felt for recognizing electronic records that is, the data what is stored in a computer or an external storage attached thereto. The United Nations Commission on International Trade Law [UNCITRAL] thus adopted the Model Law on e-commerce in 1996. The General Assembly of United Nations passed a resolution in January 1997 inter alia, recommending all States in the UN to give favourable considerations to the said Model Law, which provides for recognition to electronic records and according it the same treatment like a paper communication. The Government of India thus enacted the Information Technology Act, 2000 in line with UNCITRAL's Model Law on e-commerce.

Being the first legislation on technology, computers and e-commerce and e-communication, the Act was the subject of extensive criticism and detailed reviews and discussions, with one arm of the industry criticizing some sections of the Act to be draconian and other stating it as too liberal. The need for an amendment of the Act was thus felt within years from the date of its enactment. Subsequently, after much discussions and analysis, the Information Technology Amendment Act 2008 was passed in the Parliament at the aftermath of the 26/11 Mumbai terrorist attacks.

The amendment introduced a number of new sections and made the entire act more structured and streamlined. At present, the IT Act deals with issues such as data privacy, intermediary liability, encryption, etc. Provisions of the Act, which are relevant to companies and businesses, are discussed below in detail.

INTERMEDIARY LIABILITY

The internet offers users a sense of anonymity that is absent in physical interactions. This sense of anonymity at times induces users to abuse and/or perform illegal activities on the internet under the false assumption that no one would be able to know their identity. Further, many users take to the internet to perform illegal activities via websites and other online services. This situation leads to the question that whether such websites





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[known as intermediaries] should also be held liable for the acts conducted by such perpetrators. Further, intermediaries - in most cases - have ready access to data which can easily help identify such perpetrators. However, intermediaries cannot reasonably be expected to be aware of all the content transmitted, stored or referenced on their networks, which is constantly changing at an automatic and rapid pace. Because of this, it is argued by many that intermediaries should not be held liable for content on their networks created by third parties.

Intermediary is defined under the IT Act as any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes.¹⁰ This definition is very wide and covers a diverse set of service providers, ranging from internet service providers, search engines, web hosting service providers, to e-commerce platforms or even social media platforms.

Similarly, intermediary liability refers to when internet intermediaries involved in the transmission, processing or storage of electronic data on the internet are held liable for unlawful content transmitted or stored on their networks. To put it simply, it means the legal responsibility [liability] of intermediaries for illegal or harmful activities performed by users through their services. Liability means that intermediaries have an obligation to prevent the occurrence of unlawful or harmful activity by users of their services. Failure to do so may result in legal orders compelling the intermediary to act or expose the intermediary to civil or criminal legal action.

Intermediary liability occurs where Governments or private litigants can hold technological intermediaries such as Internet Service Providers and websites liable for unlawful or harmful content created by users of those services. Intermediary liability can occur in a vast array of circumstances, around a multitude of issues including: copyright infringements, digital piracy, trademark disputes, phishing, cybercrime, defamation, hate speech, child pornography, etc.¹¹

In order to understand the concept of intermediary liability, it is best that we take use of the www.baazee.com [now eBay India] incident. This incident brought forth the legal risks that online businesses could be exposed to. In this case, the CEO of Baazee.com, an auction portal, was arrested for an obscene MMS clip that was put up for sale on the website by a user. Although the content was not generated by Baazee or the CEO, the Delhi High Court while considering a petition to quash the criminal proceedings against the CEO, found that the website which hosted the MMS was liable for selling or publishing obscene material as per Section 292 of the Indian Penal Code, 1860 and Section 67 of the IT Act. In the

aftermath of this incident, the IT Act and especially Section 79 of the Act which deals with intermediary liability was widely criticised and the business industry appealed to the Government to provide safe harbour provisions to intermediaries.

Subsequently, the IT Act was amended in the year 2008, and Section 79 of the Act was amended to provide wider safe harbour provisions. As per the amended section, an intermediary is not liable for any third-party content hosted/made available through such intermediary when:

- i. the function of the intermediary is limited to providing access to the system; or
- ii. the intermediary does not initiate, select the receiver of or select / modify the information contained in a transmission;
- iii. the intermediary observes due diligence and abides by other guidelines prescribed by the Government;
- iv. The intermediary does not conspire, abet, aid, or induce the unlawful act; and
- v. Upon obtaining actual knowledge of a violation acts expeditiously [acknowledgment within thirty six hours and removal within one month¹²] to remove access to such information.

With reference to the last condition, it is to be noted that recently the Supreme Court, in the landmark Judgment of Shreya Singhal v. Union of India¹³, read down Section 79 of the IT Act. As per the judgment¹⁴, intermediaries are now bound to remove prohibited or illegal material only if an adjudicatory body issues an order compelling intermediaries to remove the content. Thus,



10 Section 1(w) of the Information Technology Act, 2000

11 Taken from Comninos, A. (2012). *The liability of internet intermediaries in Nigeria, Kenya, South Africa and Uganda: An Uncertain Terrain*. Johannesburg: APC.

12 Clarification on The Information Technology (Intermediary Guidelines) Rules, 2011 under section 79 of the Information Technology Act, 2000 available at <[http://deity.gov.in/sites/upload_files/dit/files/Clarification%2079rules\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/Clarification%2079rules(1).pdf)>

13 Writ Petition [Criminal] No.167 Of 2012

14 "upon receiving actual knowledge from a court order or on being notified by the appropriate Government or its agency that unlawful acts relating to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material."



intermediaries will only be liable if they fail to comply with an order from the Court or appropriate Government directing them to remove the illegal content, rather than merely a private party request.

Further, as per Section 79 of the Act and the 'The Information Technology [Intermediaries Guidelines] Rules 2011', intermediaries are required to comply with the following:

1. Publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary's computer resource by any person. Such rules and regulations must inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share certain prescribed categories of prohibited information;
2. inform its users that in case of non-compliance with terms, the Intermediary has the right to immediately terminate the access rights of the users;
3. provide information to Government agencies that are lawfully authorized for investigative, protective, cyber security or intelligence activity;
4. report cyber security incidents and also share cyber security incidents related information with the Indian Computer Emergency Response Team;
5. not deploy or install or modify the technological measures which may change the normal course of operation of the computer resource;
6. publish the details of the Grievance Officer on its website and the designated agent to receive notification of claimed infringements

An intermediary must also notify users of the computer resource not to host, display, upload, modify, publish, transmit, update, share or store any information that:

1. belongs to another person;
2. is harmful, threatening, abusive, harassing, blasphemous, objectionable, defamatory, vulgar, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;
3. harms minors in any way;
4. infringes any patent, trademark, copyright or other proprietary rights;
5. violates any law for the time being in force;
6. deceives or misleads the addressee about the origin of such messages which are grossly offensive;

7. impersonates another person;
8. contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;
9. threatens the unity, integrity, defence, security, or sovereignty of India, friendly relations with foreign states, or public order, or causes incitement to the commission of any offence or prevents investigation of any offence or is insulting any other nation.

DATA PRIVACY AND PROTECTION

Data Protection refers to the set of privacy laws, policies and procedures that aim to minimize intrusion into one's privacy caused by the collection, storage and dissemination of personal data. Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organisation or an agency.

As of date, India does not have a stand-alone legislation governing data protection or privacy. The Information Technology Act, 2000 [IT Act] is thus the only relevant legislation pertaining to data protection and privacy.

Under Section 43A of the IT Act, which was inserted by the 2008 amendment of the Act, any 'body corporate' who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, can be held liable to pay damages to the person so affected. The





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➤ India does not have any clear and well established laws or policies regarding encryption or encryption techniques to secure electronic communication. Section 84A of the IT Act is the only section pertaining to encryption. As per this section, the Government can prescribe the modes or methods for encryption for secure use of the electronic medium and for promotion of e-governance and e-commerce. No such rules have been finalised yet.

term 'body corporate' comprises of any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities. It is important to note that there is no upper limit specified for the compensation that can be claimed by the affected party in such circumstances.

Section 43A of the Act thus mandates companies to implement and maintain 'reasonable security practices and procedures' to protect 'sensitive personal data or information [SPDI]'. The Information Technology [Reasonable Security Practices and Procedures and Sensitive Personal Data or Information] Rules 2011 further defines these 'reasonable security practices and procedures' and SPDI.

SENSITIVE PERSONAL DATA OR INFORMATION [SPDI]

As per the Rules¹⁵, Sensitive Personal Data or Information [SPDI] of a person means such personal information which consists of information relating to password, financial information such as Bank account or credit card or debit card or other payment instrument details, physical, physiological and mental health condition, sexual orientation, medical records and history, biometric information, or any details relating to such information as provided to a body corporate for providing service. SPDI also includes any of the above mentioned information received by body corporate for processing - stored or processed - under lawful contract or otherwise.

It is to be noted that freely available or accessible information or information furnished under the Right to Information Act, 2005 or any other law for the time being in force has been expressly excluded from the definition of SPDI.

15 Rule 3 of the Information Technology [Reasonable Security Practices and Procedures and Sensitive Personal Data or Information] Rules 2011

REASONABLE SECURITY PRACTICES AND PROCEDURES

As per Section 43A, reasonable security practices and procedures constitutes those practices and procedures that protect information from unauthorized access, damage, use, modification, disclosure, or impairment as may be specified in an agreement between the parties or as may be specified by any law in force. The Rules¹⁶ further states that a body corporate must implement security practices and procedures which include a comprehensive documented information security programme and information security policies. The information security policies should contain managerial, technical, operational and physical security control measures that are commensurate with the information assets being protected.

As per the Rules, organisations following IS/ISO/IEC 27001 codes shall be deemed to have implemented reasonable security practices and procedures. However, organisations that follow security standards other than IS/ISO/IEC 27001 codes are required to get the same approved by the government. Further, organisations are bound to conduct an audit of their 'reasonable security practices and procedures' by an auditor at least once a year or after every significant upgradation of their systems.

Further, the Rules have laid down the following conditions for collection of SPDI:

- A privacy policy for handling of or dealing in personal information including sensitive personal data or information is to be provided to the user/provider of information;
- Mandatory consent from provider of information while collecting information is required;
- Purpose for collecting SPDI and the intended recipients are to be disclosed;
- The provider/user can review the information;



16 Rule 8 of the Information Technology [Reasonable Security Practices and Procedures and Sensitive Personal Data or Information] Rules 2011



- The provider/user can withdraw the consent given to the body corporate at any given time;
- It is the body corporate's duty to keep the information secure;
- Mandatory appointment of Grievance Officer to address complaints
- Disclosure of SPDI to third parties require prior consent; Third parties should not disclose it further;
- Disclosure of SPDI to certain Government Agencies mandated under law without prior permission;
- Body corporate should not publish SPDI;
- Transfer of SPDI requires prior consent of provider of information.

BREACH OF LAWFUL CONTRACT

Under Section 72A of the Act, disclosure of information, knowingly and intentionally, without the consent of the person concerned and in breach of the lawful is punishable with imprisonment for a term extending to three years and fine extending to five lakh rupees.

TAMPERING WITH COMPUTER SOURCE DOCUMENTS

Section 65 of the Act lays down that whoever knowingly or intentionally conceals, destroys, or alters any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

OFFENCE BY COMPANIES

Under Section 85 of the Act, every person [as well as the company] who, at the time the contravention or offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company is liable. The directors and/or employees of the company can thus be held liable if it is proved that they had knowledge of the contravention or that the contravention was committed because of their negligence.

ENCRYPTION

India does not have any clear and well established laws or policies regarding encryption or encryption techniques to secure electronic communication. Section 84A of the IT Act is the only section pertaining to encryption. As per this section, the Government can prescribe the modes or methods for encryption for secure use of

the electronic medium and for promotion of e-governance and e-commerce. No such rules have been finalised yet. However, very recently, a draft national encryption policy was notified by the Government but was immediately withdrawn due to intensive criticism and scrutiny by the public. As of now the Government is working on a new encryption policy but there is no specific date or time frame as to when the said policy will be notified.

In the absence of any specific legislation governing encryption and encryption limits, various regulatory authorities have published guidelines on encryption and its usage. As per the Reserve Bank of India [RBI], for all banking transactions, normally, a minimum of 128-bit SSL [Secure Socket Layers] encryption is expected. Securities and Exchange Board of India [SEBI] prescribes a 64-bit/128-bit encryption for standard network security and mandates the use of encryption technology for security, reliability and confidentiality of data. However, the Department of Telecommunications [DoT], through its Internet Service Provider [ISP] license agreements, restricts the level of such encryption to a mere 40 bits. Any encryption above this level requires the prior approval of DoT. Similarly, as per DoT's National and International Long Distance License Agreements, prior approval of DoT is required for installation of any encryption equipment.

CLOUD COMPUTING

Cloud computing is an innovative concept and is gradually being used by many companies across the world. Popular services such as DropBox and Google Drive too are based on the concept of cloud computing. Cloud computing, however, raises serious concerns regarding the protection and handling of personal data or sensitive personal data or information [SPDI]. Typically, when a user uses a cloud computing service, the data provided by the user is handled by several third parties. These third parties have access to the user' data – in some cases without their consent – and thus this technology has extreme legal ramifications with respect to data privacy and protection.

As of now, India does not have any policy or legislation on Cloud Computing, but it is implied that Cloud Computing services should comply with the provisions of the IT Act, especially the provisions relating to data protection and privacy, as discussed earlier.

CONCLUSION

The Indian Government has attempted to provide a balanced framework for regulating the internet. However, businesses are required to constantly adapt and evolve with new technologies and a clear and straightforward regulatory framework pertaining to the internet and emerging technologies is desperately needed. The internet laws in the country are still developing and comprehensive policies or legislations dealing with data privacy, encryption, etc., are expected in the near future which would provide businesses with further clarity regarding the rules and regulations to be complied with while doing business in India. 



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Ease of doing Mergers and Acquisitions under the Indian Competition Regime

- Though India is the fastest growing economies in the world, its position in the 'Doing Business' continues to be less than favourable. The latest ranking is lower than its BRICS (Brazil, Russia, India, China, South Africa) counterparts. There is an urgency to focus on improving the business regulatory regime and arrest the decline in relative performance against various determinants of investment attractiveness.

INTRODUCTION

The consistent attempt of the present Government to bolster trade and foreign investment is not unsurprisingly achieving positive results. In the World Bank's recently released Doing Business Report, India now ranks 130 out of 189 countries in the ease of doing business, moving up 12 places from last year.¹ The significance of this was highlighted by World Bank's Chief Economist and Senior Vice President Kaushik Basu who in an interview has said that "For any big economy, a rank improvement of 12 is a remarkable achievement. Going from 142 in the world last year to 130, as India has done, is very good sign. It gives a good signal about the way things are moving in India."²

- 1 World Bank Group, Doing Business 2016, available at: <http://www.doingbusiness.org/data/exploreconomies/india/>, last visited: November 23, 2015. Data in Doing Business 2016 are current as June 1, 2015. The indicators are used to analyse economic outcomes and identify what reforms of business regulation have worked, where and why.
- 2 Press Trust of India, India Moves Up in World Bank's Ease of Doing Business List, October 28, 2015. Available at: <http://www.ndtv.com/india-news/india-ranks-130-in-ease-of-doing-business-report-jumps-12-spots-1237167>, last visited: November 23, 2015

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The economic growth and development of the country has indeed been remarkable and the growth story extremely positive. Needless to say, economic reforms have a big role to play in the ease of doing business as well as economic development. Economic and regulatory statutes are central to the agenda of economic reforms



that India is pursuing. As adequately stated by Lopez Claros, Director of the Global Indicators Group, "What is significant about India is that they are in the middle of what appears to be a very, very ambitious process of reforms affecting a broad range of areas captured by the Doing Business indicators."³

One central aspect in the ease of doing business is the ease of inorganic growth for business. It is undeniable that mergers, acquisitions and restructuring activities are essential to businesses for these gateways to entry, stay and exit from markets. It is also acceptable that 'Societies need regulation and businesses as part of society are no exception. It is also realized more than ever before that markets left to themselves would produce poor outcomes whereas well designed regulation can ensure outcomes that are socially optimal and likely to leave every one better off. India has a twin regulatory setup to ensure that mergers, acquisitions, amalgamation (including creation of Joint Ventures) do not harm the interests of the shareholders or of competition in the market. While the former is broadly controlled by virtue of the Companies Act, 2013 (and the erstwhile Companies Act, 1956), the latter is the more recent breed of regulation and is covered by the Competition Act, 2002. (Act)

THE COMPETITION ACT AND THE RABBIT OF REFORMS

When the Act was enacted in 2002 and its important compartment namely 'regulation of combination' was brought into force in 2011, the business community raised many concerns of increased burden of regulatory approvals. To sum it up succinctly, Section 6 of the Act requires that all 'combinations' i.e. mergers and acquisitions where aggregate value of combining parties crosses the thresholds either in terms of total value of assets or turnover prescribed in Section 5 of the Act, require a prior approval from the Competition Commission of India (CCI) and the transactions cannot be consummated before the approval is obtained.⁴ The CCI was further given a time period of 210 days⁵ to consider the transaction after which it could either, permit, conditionally permit or prohibit the transaction. Prima facie this appears to create a major roadblock for mergers and acquisitions which fall within the scope of Section 5 of the Act as big ticket transactions cannot be given effect without the prior approval of the CCI which can take as long as 210 days.

However, the CCI has since allayed most of the fears of the business communities. In the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations), the CCI created a best endeavor deadline to 180 days to consider the transaction.⁶

3 Id.
4 Section 6(2) of the Act.
5 Section 6(2-A) of the Act.
6 Regulation 28(6) of the Combination Regulations

In spite of these attempts, the long duration for approvals, lack of clarity regarding the obligation to file attracted some criticism from India Inc. The CCI, however, has not permitted the rabbit of reforms to become a turtle and on July 1, 2015, the CCI vide a notification, amended the Combination Regulations for the fourth time since their coming into force in 2011. The latest amendments are, according to the CCI, an attempt to make the merger clearance process "forward looking" and "provide greater clarity and transparency and help in avoiding undue delay."⁷

A brief outline of significant amendments and their impact to ease of doing Merger & Acquisitions, is provided below:

1. Regulation 19(1) - Extending the clock

In what may be regarded as the most controversial change of the amendments, the CCI would now have 30 working days to form a prima facie opinion on a combination. As per the erstwhile regulation, this period was 30 calendar days. Net net effect of this change is that CCI is having flexibility to take a prima facie view on the proposed transaction within 42 to 45 days from the day of filing a valid notice. However, it is expected that the CCI will now shun the practice of issuing defect notice to buy time when the clock time is about to raise alarm. As parties now can share duly filled up notice and have informal consultation in relation to deficiency, if any, the revamped process will enable the CCI to take prima facie view comfortably within the 42-45 days.

2. Amendment of Regulation 5(9)- Scope of 'other document' reduced

The amended Regulation also brings some clarity to scope of



7 Press release dated 03 July 2015 – CCI amends regulations relating to combinations. Available at: <http://www.cci.gov.in/May2011/PressRelease/prjuly15.pdf> last visited 07 July 2015.



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➤ In a clear attempt to avoid undue delays and to tame criticisms levied to the amendment to Regulation 14(2) which empower the CCI to invalidate the notice, the pre-filing consultation process now provides the parties with an opportunity to forward a draft of the form and supporting documents to the CCI to help, “in identifying the information required for filing a complete and correct Form I/ II/III as well in identifying additional information that the Commission may require to assess the likely impact of the proposed combination on competition in the relevant markets.” The increased scope of the pre filing consultation is indeed a laudatory step, especially in view of regulation 14(2).

the ‘other document’ which would trigger a filing under Section 6(2) of the Competition Act, 2002 (Act). Under the erstwhile regulations, a communication of the intention to acquire made to the Central or a State Government triggered the notification requirement. This led to grave consequences for Tesco Overseas Investments Limited which sought an approval of the Department of Industrial Policy and Promotion and the Foreign Investment Promotion Board for its acquisition of 50% share capital of Trent Hypermarket Limited, prior to executing any binding documents with Trent. Tesco did not approach the Commission at this stage, for which it was fined INR 3 crores as the application for approval to the DIPP and FIPB were considered to be the ‘other document’ communicating the intention to acquire to the Central Government.⁸

Via the present amendment, only communications of the intention to acquire to a statutory authority such as the Securities Exchange Board of India or the Reserve Bank would trigger a filing.⁹

3. Amendments to filing procedure

Interestingly, all filings must now be accompanied with a 500

8 Order u/s 43A of the Competition Act, 2002 in the notice given u/s 6(2) by Tesco Overseas Investments Limited, Combination Registration No. C-2014/03/162, order dated 27 February, 2015

9 The initial draft of the proposed amendments sought to limit the scope of the statutory authority to only SEBI however in the final amendments the CCI has retained Statutory Authority.

words summary that would be published on the website of the CCI,¹⁰ soon after the filing although this is not specified.¹¹ The 500 word summary proves that short and small is always precious. Until now, the first notice of most combinations was made public only at the time of a press release or the final order being uploaded on the website of the Commission. This increases transparency and addresses one of the biggest criticism of the CCI reviewing mergers in camera.

Further, an amendment to Regulation 19(3) of the Combination Regulations provides that clock would stop for a maximum duration of 15 working days, if additional information is requisitioned by the Commission from third parties. The erstwhile regulations had no such provision implying that that delay by third parties in providing the information requisitioned could be a hurdle in the approval process.

In a much needed reprieve, the amended Regulations allow the form to be verified by any person duly authorized by the board of directors rather than a director herself.¹²

4. Introduction of Regulation 14(2) - Invalidation of notice

The amended Regulations also empowers the CCI to invalidate a notice filed before the CCI if the information provided is not complete. The message is clear that the CCI will not tolerate casual or deficient notice. Though the amendment is silent as to parameters on which a notice may be adjudged to be invalid nor the consequences on the parties if such a notice is invalidated. Hopefully, the case law will shed light on this darkness.

5. Regulation of 17 - Definition of termination of proceedings

In light of the recent orders dealing with divestments,¹³ the amended Regulation provides that if there is a conditional approval subject to divestments, proceedings under the Act would terminate only once a compliance report, as mandated by the CCI has been accepted under Regulation 26. This brings certainty in such type of transactions.

6. Amendment to Form I- The mystery of the ‘short form’

In a significant change, the CCI has amended and overhauled Form I and also provided Notes to the same for greater clarity.

10 Regulation 13(IB) of the Combination Regulations.

11 The Press release by the CCI states that, “...the amendments provide that a summary of every combination under review will be published on the website of CCI. Such publication will provide stakeholders an opportunity to submit their comments to CCI regarding the proposed combination.” Supra n. 1

12 Amendments to Regulation 9(1) and Regulation 9(3) of the Combination Regulations

13 Notice under Section 6 (2) of the Competition Act, 2002 given by Sun Pharmaceutical Industries Limited; and Ranbaxy Laboratories Limited, Combination Registration No. C-2014/05/170, order dated 05 December, 2014; Notice under Section 6 (2) of the Competition Act, 2002 given by Holcim Limited; and Lafarge S.A, Combination Registration No. C-2014/07/190, order dated 30 March 2015.



The present Form I has a striking similarity with the European Commission Short Form CO and while the information required now is much more detailed than the erstwhile Form I, it can lead to fewer requests for information and enable a speedy approval. Some significant changes in Form I are:

- (i). Details of ownership structure prior to and post the combination;
- (ii). Detailed justifications for non-compete clauses;
- (iii). With respect to overlapping products between the parties, details of any enterprise in which the parties have a shareholding, irrespective of whether they exercise control over the enterprise or not.¹⁴

7. Enlargement of the scope of informal consultation

In a clear attempt to avoid undue delays and to tame criticisms levied to the amendment to Regulation 14(2) which empower the CCI to invalidate the notice, the pre-filing consultation process now provides the parties with an opportunity to forward a draft of the form and supporting documents to the CCI to help, "in identifying the information required for filing a complete and correct Form I/II/III as well in identifying additional information that the Commission may require to assess the likely impact of the proposed combination on competition in the relevant markets."¹⁵ The increased scope of

¹⁴ Earlier, the details of overlapping products had to be provided with respect to group entities but not with respect to all entities have shareholding.

¹⁵ Consultation prior to filing of notice of the proposed combination under sub section (2) of section 6 of the Competition Act, 2002. Available at: <http://www.cci.gov.in/May2011/Home/ConsultationPrior250511.pdf> last visited 07 July 2015.

the pre filing consultation is indeed a laudatory step, especially in view of regulation 14(2).

The changes in the consultation process have however been gradual- initially beginning from filling up of the form I, II, III which later on extended to interpretation of law/regulations and now further extended to notice to be filed- which is indeed commendable and will significantly reduce the possibility of defect notices. However, the consultation process still leaves room for improvement. The process should be done in writing like the informal consultations of SEBI – which will make the process more transparent.

CONCLUSION

India is the fastest growing economies in the world. However, India's position in the 'Doing Business' continues to be less than favourable. The latest ranking is lower than its BRICS (Brazil, Russia, India, China, South Africa) counterparts. There is an urgency to focus on improving the business regulatory regime and arrest the decline in relative performance against various determinants of investment attractiveness.

While the changes made by the CCI are laudatory but surely does not require complacency. The CCI specifically needs to address two highly relevant issues. Primarily, the system of e-filing- which is now sought to be introduced- should be brought into effect as soon as possible. Secondly and more importantly, the Government needs to clarify whether the Notification No. 482 (E) dated March 04, 2011 which introduced a de minimis exemption, and is in force for a period of five years from the date of notification, will be extended. CS

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Article

Ease of Doing Business – A Company Law Perspective



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Ease of Doing Business – A Company Law Perspective

- How to make it easier for doing business is the crucial question that arises in the context of 'Ease of doing business'. There are several factors. Some of them are subjects under the control of the Central Government. Some are subjects under the control of State Governments. Some key issues are outlined in this article.

INTRODUCTION

Doing business is not easy. To make it easier for doing business is certainly possible. It is the duty of the Government of India and the State Government to make it easier for doing business. India has come a long way. Tax collecting State must make it easier for business to grow and flourish. Men in business would expect everything to be less tedious, less cumbersome and less taxing. For the purpose of regulating environmental, safety, health and welfare issues, transparent but stringent regulations are most needed. However regulations introduced keeping in mind fraudsters alone would be only a punishment for the ordinary traders and small business owners. Therefore there be a holistic thinking of how to reduce compliance requirements which are intended only for the purpose prevention rather punishment. It cannot go to the extent of punishing for non compliance of preventive regulations and compliance obligations and disclosure requirements [CODR]. Another danger of doing so would be the reduction in genuine compliances, increase in paper work and difficulty in having a watch over what is most important for protecting the innocent and gullible investors and punishing the culprits. In



short, CODR must be such that they are just sufficient to give a smell some mischief, fraud or undesirable practices.



➤ Today there seems to be growing feeling that Compliance Obligations and Disclosure Requirements (CODR) in order to be able to doing business has become a tad tedious, cumbersome and costly. It should not be driven to the extent of going back to era of unlimited liability so that such CODR do not arise. The other advantage of corporate sector is the ability to invite subscription to securities from members of the public and carry out risky projects.

DON'T DRIVE TO APPLY THE REVERSE GEAR

The aim of a statute such as the Companies Act, 2013 should be to provide minimum disclosures and maximum scrutiny and action based on pointers to suspect mischief, fraud or undesirable practices. If the time for making it easier for doing business in India has come, it is because there is a general feeling that the business entities in India have come a long way from the era of the Honourable East Indian Company of 1600 setting foothold in India through the Battle of Swally in 1612 and the introduction of limited liability way back in the 1860s paving way for the Companies Act, 1866 and the Acts relating to companies in force prior to the Companies Act, 1866. 150 years have passed after this codified company law. It implies business has grown, corporate sector has grown, maturity has increased, concepts known as corporate culture has acquired a strong foothold, professionals have emerged for various advisory and audit services, shareholder and investor interest has seen phenomenal increase, justice system has come of age, regulators have become experienced and systems have been developed to manage each and every main and ancillary requirements which shape and surround the corporate sector. Therefore it is not only the businessmen who have become matured, experienced, and intelligent but also the investors, creditors, regulators and justice delivery institutions. Systems develop to meet the challenges of new techniques that are adopted to evade law or to defraud or to make undue gains and profit at the cost of others. However there is no denying of the fact that there is a synchronized and simultaneous development of new systems to give a run to such techniques and practices that are adopted by wily businessmen to dupe gullible investors. It clearly establishes the fact that every organ of this economic system is growing matured and adapting itself to growing needs arising from new practices.

This above situation certainly calls for a relook at the age old

concepts and considerations for making a regulation. In other words, the purpose behind a regulation justified the same. Today there seems to be growing feeling that CODR in order to be able to doing business has become a tad tedious, cumbersome and costly. It should not be driven to the extent of going back to era of unlimited liability so that such CODR do not arise. The other advantage of corporate sector is the ability to invite subscription to securities from members of the public and carry out risky projects. A look at the annual report published by the Ministry of Corporate Sector shows that a substantial number of companies that are formed are private limited companies and even amongst public companies, many are closely held unlisted public companies only. Are they doing business with public funds? Probably they may have borrowed loan funds from banks and financial institutions which are secured by stringent debt recovery laws including the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Today raising funds has become easier for good business and projects. Private equity funds, venture capitalists, strategic investors, start up investors, angel investors and investors in debt securities are scouting around for goods business opportunities going around with bag loads of money. With tough capital market laws, prospects of huge penalties make even large business houses think twice before proceeding to issue securities to public.

Therefore the next immediate question that arises is how to make it easier for doing business? There are several factors. Some of them are subjects under the control of the Central Government. Some are subjects under the control of State Governments.

SWACHH BHARAT CESS

Levy of Swachh Bharat Cess is a recent illustration of how Government does something that is exactly not supposed to be done. Is it difficult for the Government to earmark a portion of the taxes it collects for Swachh Bharat Programmes and projects? It could do it easily. Even small firm and business houses have escrow mechanism to funnel funds for specified purposes. However in its special wisdom, the Government has thought it fit to





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introduce a cess and create a separate account and administrative procedure for the same. Thus there is no end for the list of things that a Government at the Centre could do to make it easier for doing business. If the purpose of CODR.

LISTING REGULATIONS

The latest from SEBI is the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. This has been introduced as if the listing agreement mechanism has lost its relevance all of a sudden. One is at a loss to know why suddenly introduce a new regime without first showing the existing dispensation has lost its relevance or is not able meeting the desired objectives. A study of hundreds of cases and adjudication orders and orders in appeal do not show that there is any alarming need for introducing new Regulations in this sphere. Most of the cases relate to manipulation of securities market and delays, deviations, deficiencies and defaults in filing disclosure requirements specified in SEBI Regulations such as the SEBI (Prohibition of Insider Trading) Regulations, 2015. This shows the tendency to introduce regulations without any empirical evidence of failure of the present system. Isn't it therefore necessary to think about making easier for doing business? It seems to be the need of the hour. It is absolutely not necessary to have multiple and layers of penal provisions and punishing authorities. It is most unfortunate to threaten the whole corporate world with Regulation 98 saying without prejudice to punishment for contraventions under the respective securities laws, stock exchanges may levy fines, suspend trading and freeze assets. Even if it is assumed that LODR is the savior peace, why arm stock exchanges too to levy fines and other menu driven varieties of punishments in addition to provisions enabling adjudication of penalties, powers of SEBI to pass even disgorge orders and without prejudice to all such things prosecute before special courts.

FRAUDS AND OFFENCES HAVE TO BE SEVERELY DEALT WITH

Looking at from the perspective of the Companies Act, 2013, revenue generation appears to be the objective behind CODR. There is a lot of scope for reducing CODR. Reduction in CODR should be in such way that there is no reduction in the timely and sufficient flow of most essential information. This requirement must be considered and deliberated in the light of the stringent provisions introduced under the Companies Act to deal with frauds, misappropriation of funds and properties of companies, embezzlement, and misfeasance. Such serious things have to be dealt with ruthlessly. Section 447 of the Companies Act, 2013 on frauds is a case in point. Several provisions refer to Section 447. This exhibits the under current in introducing stringent penal provisions to deal with frauds. Frauds today have increased. Money making has become the only motive. Though it is true that over a period of time, the meaning of fraud has also undergone

dilution and even a small deviation is treated as and deemed to be a fraud, none will have any second thought that frauds must be dealt with in a sever manner, howsoever small it may be. In fact, the definition under Section 447 says there need not be any undue gain or advantage in order to constitute a fraud. Therefore the objective behind these provisions has been made very clear and this calls for substantial reduction in CODR. Another aspect to be kept in mind as an argument in favour of reduction in CODR levels is the fact the data with MCA shows that a large number of companies are private and unlisted public companies, as already stated. However the penal clauses do not seem to recognize the same. There cannot be same level of CODR and same level of punishment for all types of companies, whether small or big.

Moreover there are special provisions for taking care of oppression, mismanagement, default in repayment of deposits, class action suits, inspection and investigation by Central Government, Serious Fraud Investigation and other such provisions that could be invoked if need arises.

THE THREE LEVELS

Towards radically rationalizing the CODR under the Companies Act, 2013, the CODR could be divided into three levels. The first level could be the entry level and second third levels should be characterized by a company reaching a specified threshold which could based on multiple criteria such as paid up capital, number of members, net worth, turnover and such factors.

COMMON MINIMUM COMPLIANCE OBLIGATIONS AND DISCLOSURE REQUIREMENTS – THE BASE LEVEL

At the first level, CODR could be a Common Minimum CODR [CMCODR] that applies to every company, whether private or public, small or big. This could be only annual reporting of the sort of annual return and financial statements without any periodic CODR except when Specified Changes take place. This will make it easier for such companies to work and grow. Direct and Indirect Tax compliances and labour laws, pollution, environmental laws and forex laws will take care of other requirements for such companies. Reporting about Specified Changes should be made mandatory and the Specified Changes could be change in capital, objects, registered office, name, and composition of board. This will practically do away with any reporting at all except annual filing unless some Specified Change takes place. This will not however prevent any investor or creditor or shareholder airing his grievances before appropriate authorities. There can be carrying out of mandatory periodical inspection from time to time of companies randomly chosen basis for which could be abnormal parameters are found or if there are complaints. Provisions for meetings other than the annual general meeting or prescribed meetings for the purpose approving Specified Changes alone could be stipulated



➤ Only if flooding of information, documents and records is reduced, there is a possibility for a proper monitoring. Officers at the Registrar of Companies or in Central Registry could take up for scrutiny select cases as per internal norms and guidelines so that the presence of a regulator is not at all felt in day-to-day management. If any suspicion arises from the deeper study of the records and returns, additional information could be called for and Registrars could commence necessary enquiry. Basically such a system will remove the mindset from a suspicion based preventive and highly intervening and prescriptive system to a regime that non-intrusive and passive working from the back office.

doing away with complicated and meaningless prescriptive rules and regulations. So far as borrowings are concerned, there could be provisions that curb acceptance of deposits except from directors, relatives and shareholders. Borrowings from banks, financial institutions and NBFCs could best left to the market forces who have the necessary capability to evaluate risks and make a decision to lend. There need not be any reduction in the qualification and duties of directors even at this level. At this level, except register of members, no other register should be mandatory. Select accounting standards may be made mandatory at this level itself.

THE MID-CORPORATE LEVEL

In the Second Level, quarterly returns could be prescribed in addition to CMCODR. At this level, the CODR may be known as MCODR. This will give the regulators an opportunity to devote their time on most important documents and leave medium companies also to do their business without any major compliance requirements. Reporting of more Specified Changes could be introduced and norms for share issue and capital raising and borrowing through deposits, debentures and raising funds through other instruments could be introduced so as to ensure that reporting requirements are strictly need or occurrence based. At no point of time there should be any need for filing or registering any resolutions of the Board of Directors. The provisions may require

board meetings for deciding and approving certain specified matters. Provisions for disclosure of interest and distancing from participation could also be introduced to introduce / improve corporate governance in an introductory manner. In this level itself certification of quarterly and annual returns and maintenance of registers and records could be specified. Accounting Standards and Auditing standards should be made mandatory at this level. Public inspection of records at the registered office could also be made possible at this level. Managerial remuneration limits could be introduced without any Government approval requirements, whether the company is profit making or otherwise.

THE TOP LEVEL

The third level should be the full blown level wherein besides MCODR, there could be provisions such as certification of quarterly, annual and annual audits of governance provisions, board process and risk parameters, financial and accounting aspects, cost aspects should be there. At this level a company may be a listed or unlisted public company. Constitution of Committees should be made mandatory to achieve specified but unambiguous goals. All those things such as rotation of auditors, internal audit, independent directors, woman directors, vigil mechanism, secretarial audit and other such things could be ideally introduced only at this level. Mandatory need for appointing company secretary, managing director, chief financial officer could be specified at this level only.

CONCLUSION

Only if flooding of information, documents and records is reduced, there is a possibility for a proper monitoring. Officers at the Registrar of Companies or in Central Registry could take up for scrutiny select cases as per internal norms and guidelines so that the presence of a regulator is not at all felt in day-to-day management. If any suspicion arises from the deeper study of the records and returns, additional information could be called for and Registrars could commence necessary enquiry. Basically such a system will remove the mindset from a suspicion based preventive and highly intervening and prescriptive system to a regime that non-intrusive and passive working from the back office. Should there be any issues, there will be adequate staff, time and usefulness in taking necessary steps to bring to book the offenders.

If the above three level system is introduced, penalties will also get aligned with the level of the companies and there will less room for cribbing. Companies Act, 2013 would become a master piece, nicely prescribing governance principles. The above system does not really need any major amendments to be made to the law nor would it need any major changes to the technology that drives the electronic filing, registration and retrieval system that is in vogue nor would the introduction of the same cause any change in the administrative set up. Yes; there is a crying need for a radical change in the mindset!

CS



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Ease Of Doing Business in India – Some Significant Changes in Commercial Laws

- The 'Ease of Doing Business Index' is an index that has been created by the World Bank. This index reveals how the world economies are ranked according to the ease of doing business within their geographical boundaries. While every country, including India, aspires a higher rating to indicate better regulations, easier clearance windows for business permits and a healthy enforcement mechanism, India has shown positive movement recently. Some significant changes relating to commercial laws in India are spelt out here.

Ease of doing business in India has many important areas starting from the stage of setting up of the business enterprise by incorporation of companies to the stages of commencement of production, exit policies and the most significant aspect of expeditious resolution of business/commercial disputes. For the purpose of this article, only some very significant changes which have been introduced in India with regard to expeditious incorporation of companies without the necessity to complete and comply with some formalities which were prevalent before these changes took place, and another important area, namely, the expeditious settlement of commercial disputes within a specified time-frame are being highlighted here.

Recent changes have been introduced with a view to attract foreign investments in India since the predominant grievance of foreign investors has been concerned with the protracted and long-drawn litigation process in the Indian Courts which takes a number of

years to get settled. In the backdrop of litigations that have been hurtful to the foreign investor, be it in the acquisition of natural resources in the country for operating/harnessing or the aspect of international taxation, the resultant situation had been fairly



*Views are strictly personal.



➤ In order to transform India from a 'least favoured' to a 'most favoured' seat of international arbitration after Singapore and London, suitable amendments to the existing Arbitration Act were contemplated. Subsequently, in a significant move, the Government of India, has, as recently as on October 23rd, 2015, promulgated an Ordinance known as "The Arbitration and Conciliation (Amendment) Ordinance, 2015 thus making many significant changes in the Arbitration and Conciliation Act, 1996 ("the Arbitration Act"), which address the problems being faced by commercial litigants.

grim, with foreign investors exiting the Indian economy. That said, the sheer number of years it takes for any complex commercial or industrial dispute to get resolved in India has been adversely affecting our country's prospects of attracting foreign investors.

In order to transform India from a 'least favoured' to a 'most favoured' seat of international arbitration after Singapore and London, suitable amendments to the existing Arbitration Act were contemplated. Subsequently, in a significant move, the Government of India, has, as recently as on October 23rd, 2015, promulgated an Ordinance known as "The Arbitration and Conciliation (Amendment) Ordinance, 2015 thus making many significant changes in the Arbitration and Conciliation Act, 1996 ("the Arbitration Act"), which address the problems being faced by commercial litigants. Some of these changes introduced by the Ordinance, 2015 are as follows:-

- i) A fixed timeline has been fixed for the Arbitrators to resolve cases within 18 months and towards this end, a clause has been incorporated where-under, after the completion of 12 months, certain restrictions have been put in place to ensure that the arbitration case does not linger on.
- ii) The Ordinance, 2015 has also amended the Arbitration Act and has introduced a cap on the fees payable to an arbitrator in the proceedings.
- iii) Conflicts of interest, if any, shall henceforth be required to be spelled out by the arbitrator, as per the amendment, in respect

of the case being taken up for arbitration.

- iv) In order to ensure neutrality of arbitrators, it is proposed to amend Section 12 of the Arbitration Act to the effect that when a person is approached in connection with prospect of being appointed as an arbitrator, he/she shall disclose in writing about the existence of any relationship or interest of any kind, which is likely to give rise to justifiable doubts. Further, if a person is having specified relationship, he/she shall be ineligible to be appointed as an arbitrator.
- v) Insertion of a new provision that the Arbitral Tribunal shall make its award within a period of 12 months. Parties may extend such period up to six months. Thereafter, it can only be extended by the Court, on sufficient cause. The Court while extending the period may also order reduction of fees of arbitrator(s) not exceeding five percent for each month of delay, if the court finds that the proceedings have been delayed for reasons attributable to the arbitral tribunal. If the award is made within a period of six months, arbitrator may get additional fees, if the parties may agree.
- vi) A provision for fast-track procedure for conducting arbitration has been proposed for insertion. Parties to the dispute may agree that their dispute be resolved through fast track procedure. Award in such cases shall be given within a period of six months.
- vii) Amendment has been made to Section 34 of the Arbitration Act relating to grounds for challenge of an arbitral award, and to restrict the term 'Public Policy of India' (as a ground for challenging the award) by explaining that only where making of award was induced or affected by fraud or corruption, or it is in contravention with the fundamental policy of Indian Law or is in conflict with the most basic notions of morality or justice, the award shall be treated as being 'against the Public Policy of India'.





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- viii) A new provision has been added to provide that application to challenge the award is to be disposed of by the Court within one year.
- ix) Amendment has been made to Section 36 of the Arbitration Act to the effect that mere filing of an application for challenging the award would not automatically stay execution of the award. Award can only be stayed where the Court passed any specific order on an application filed by the party.
- x) A new sub-section in Section 11 of the Arbitration Act to be added to the effect that an application for appointment of an Arbitrator shall be disposed of by the High Court or Supreme Court as expeditiously as possible and an endeavour should be made to dispose of the matter within sixty days.
- xi) A new Section 31A is to be added for providing comprehensive provisions for costs regime. It is applicable both to arbitrators, as well as related litigation in Court. It will avoid frivolous and meritless litigation/arbitration.
- xii) Section 17 is to be amended for empowering the Arbitral tribunal to grant all kinds of interim measures which the Court is empowered to grant, under Section 9 and such order shall be 'enforceable in the same manner as if it is an order of Court.
- xiii) Apart from above, amendments in Sections 2(1)(e) , 2(1)(f) (iii), 7(4)(b), 8(1) and (2), 9, 11, 14(1), 23, 24, 25, 28(3), 31(7) (b), 34 (2A) 37, 48, 56 and in Section 57 are also proposed for making the arbitration process more effective.

It becomes important to bear in mind that the reasoning behind legislating the said changes to the Arbitration Act stems from the need for ring-fencing arbitration proceedings from judicial intervention. Foreign investors exiting Indian business have not favourably looked at the powers of the Court to interfere and even overturn an arbitral award. The new law changes the situation dramatically. The Ordinance, 2015, says that the 'Court' will deal with the Arbitration rather than the 'Chief Justice or his delegate', which had previously been the position.

Further, in the presence of an arbitration clause in the agreement under dispute, the matter will now directly go to the Arbitration Tribunal, independent of the involvement of the Supreme Court, unlike the previous position. However, the limitations on the role of the Court can only gain further clarity by pronouncements by the Supreme Court on the issue.

As regards the aspect of the power to hear an application of arbitration, while previously only the Court could wield this power, henceforth, the Tribunal has been vested with the power to hear arbitration applications also, as the words "person or an institution" has been introduced in the Ordinance, 2015. Therefore, suitable Rules shall be required to be framed to ensure smooth enforcement of the provisions.

While the parties of an arbitration proceeding were entitled to approach the Court to seek interim relief under Section 9 of the Arbitration Act previously, the Ordinance, 2015, gives the Arbitration Tribunal the same powers as that of a 'Court' for awarding interim awards in an arbitration proceeding. However, the Ordinance, 2015, also makes it abundantly clear that barring few exceptional circumstances, once an arbitration proceeding commences, the Tribunal or the Arbitrators shall not award any interim reliefs to the parties.

Another significant change introduced in the Ordinance, 2015, is that while previously, the Tribunal was bound by the arbitration agreement and could give an award only limited to the allowances made in the agreement. Henceforth, the Tribunal is required only to take note of the existing arbitration agreement in a dispute, but if the merits of the matter require so, it can, while giving the arbitral award, break free from the bondage of the arbitration agreement.

While the Ordinance, 2015, in the Seventh Schedule lays down the circumstances under which a person shall not be appointed as an arbitrator, the parties have under the new law, been allowed the latitude to seek waiver of the Seventh Schedule in their Arbitration agreement.

Importantly, with a view to address the issue relating to protracted arbitration proceedings spanning several years, under the new law if the Arbitral Award has not been made within the statutory period of time, then the mandate of the arbitrators shall automatically stand terminated.

COMPANIES (AMENDMENT) ACT, 2015

On May 25, 2015, the Companies Amendment Bill, 2014 which had been passed by both the houses of the Parliament, received the assent of the President of India, and was notified in the Official Gazette on May 26, 2015. This is the first amendment to the relatively new enactment, i.e., the Companies Act, 2013 ("the Act, 2013") that had replaced the erstwhile Companies Act, 1956.





➤ To allow flexibility to the companies in ease of doing business in respect of genuine commercial decisions, another significant change which has been made through the Amendment Act, 2015 relates to “related party transactions” and now Section 188(1) of the Act, 2013 has been amended and the requirement of approval by the non-related shareholders to the “related party transactions” have been allowed to be done through ordinary resolution, instead of ‘special resolution’, which was mandated earlier.

With the issuance of the Companies (Amendment) Act, 2015 (‘Amended Companies Act’), by the Ministry of Corporate Affairs, certain sections of the Companies Act, 2013 stand amended and the key changes, inter-alia, have been explained as below:-

- (i) The definitions of Private Companies and Public Companies have been amended. The requirement of minimum paid-up share capital (as per Section 2(68) of the Companies Act, 2013 - one lakh rupees in the case of a private company and as per Section 2(71) of the Act - ten lakh rupees in the case of a public company) has been discarded and henceforth, any company, be it private or public, can be incorporated without the requirement of having the minimum paid-up share capital.
- (ii) Previously a director of a company having share capital was required to file a declaration with the Registrar of Companies, declaring that the share capital of the company is not less than the amount prescribed for subscription and that each subscriber to the Company’s Memorandum has paid the value of the shares committed by him/her. This requirement of filing the declaration before commencement of the business or exercising its borrowing powers, have been done away with under of the Amended Companies Act, 2015. Section 11 of the Act, 2013 has been amended and consequential changes have been made in Section 248 of the Act, 2013.
- (iii) Under the Amendment Companies Act, the use of the common seal has been made optional and in the event a company does not have a common seal, any authorization can be done by either two directors of the company or by a director and a company secretary in case of a company that has appointed a company secretary. Thus, inter alia, Section 22(2) and Section 46 of the Act, 2013 have been amended.
- (iv) For protection of the depositors in a company, a new section, i.e., Section 76A has been inserted by the Amendment Act, which introduces penal provisions for contravention of Section 73 and Section 76 of the Act, 2013 pertaining to acceptance and return of deposits by companies. For such contravention, the company in addition to returning the amount of deposits accepted along with applicable interest rate, shall also be liable to pay a fine not below Rupees 1 Crore which may be increased up to Rupees 10 Crore. Further, every contravening Officer of the Company shall face imprisonment which may extend to 7 years or with fine of at least Rupees 25 lakhs or with both. If such officer in default has been found to have wilfully committed the contravention, then he shall, in addition to the foregoing penal provisions, be liable for action under Section 447 of the Act (which deals with punishment for ‘Fraud’).
- (v) To provide confidentiality of business information and commercial details discussed and approved by the Board of Directors of a company and decided by means of a Resolution, the new Amendment Act stipulates that no person shall be entitled under Section 399 of the Act, 2013, to inspect or obtain the copies of the Board Resolutions of a company that have been filed with the Registrar of Companies under Section 117(3) of the Act, 2013.
- (vi) A new proviso has been inserted in Section 123 of the Act, 2013, after the first two provisos, to the effect that no company shall declare dividend unless carried over past losses or depreciation in the previous year or years are set off against the profit of the company for the current year.
- (vii) For ease in doing business, especially with regard to related party transactions, a new proviso has been inserted in Section 177(4) of the Act, 2013 and as per the new proviso, the Audit Committee of the Company has been empowered to give omnibus approvals for related party transactions on an annual basis.





Article

Ease Of Doing Business in India – Some Significant Changes in Commercial Laws

- (viii) Another change which the Amendment Act, 2015 has incorporated in the Act, 2013 relates to Section 185 on “Loans to Directors”. The change eases the provisions relating to loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries and its utilisation by the subsidiary company for its principal business activities.
- (ix) To allow flexibility to the companies in ease of doing business in respect of genuine commercial decisions, another significant change which has been made through the Amendment Act, 2015 relates to “related party transactions” and now Section 188(1) of the Act, 2013 has been amended and the requirement of approval by the non-related shareholders to the “related party transactions” have been allowed to be done through ordinary resolution, instead of ‘special resolution’, which was mandated earlier.
- (x) Further, another significant change has been made by amendment to Section 188(1) of the Act, 2013 and now “related party transactions” between holding companies and wholly owned subsidiaries are exempt from the requirement of approval of non-related shareholders.
- (xi) A new Section 435 was introduced in the Act, 2013 for setting up of Special Courts to try offences committed under the Act. To avoid clogging the Special Courts with both minor and major offences, now the Amendment Act, 2015 changes Section 435 and 436 of the Act, 2013 and makes it clear that the Special Courts will try only those offences carrying imprisonment of two years or more. This will hopefully speed up disposal of cases.
- (xii) The Act, 2013 inserted a new section 447 for trial of offences of “fraud” and very stringent provisions have been made thereto. However, by the Amendment Act, 2015, changes have been made in Section 212(6) of the Act, 2013 which deals with investigation into affairs of a company by the Serious Fraud Investigation Office (SFIO) and obtaining “bail” was rather difficult. By virtue of the Amendment Act, 2015, bail restrictions have been eased and now bail restrictions would apply only for offences relating to fraud u/s 447 of the Act, 2013.
- (xiii) To speed up disposal of cases by the National Company Law Tribunal (NCLT), section 419 of the Act, 2013 has been amended and now it enables that the winding up cases will be heard by a 2 member Bench of the NCLT, instead of 3-member Bench, which was mandated under the Act, 2013.
- (xiv) Section 134(3) read with Section 143(12) of the Act, 2013 prescribed reporting of corporate frauds by the Auditors and the report of the Directors thereon in the company’s Board of Directors Report. Perhaps not to scare away investors with unduly hyped corporate misdoings/frauds, necessary changes have been made, and now amended Section 143(12) provides that “notwithstanding anything contained in this section, if an

Auditor of a company in the course of the performance of his duties as Auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the Auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed. Provided that in case of a fraud involving lesser than the specified amount, the Auditor shall report the matter to the Audit Committee constituted under Section 177 or to the Board in other cases, within such time and in such manner as may be prescribed. Provided further that the companies, whose auditors have reported frauds under this sub-section to the Audit Committee, or the Board, but not reported to the Central Government, shall disclose the details about such frauds in the Board’s Report in such manner as may be prescribed.”

- (xv) Section 462 of the Act, 2013 empowers the Central Government, in the public interest, by notification to direct that any of the provisions of the Act shall not apply to such class or classes of companies or shall apply to the class of classes of companies with such exemptions, modifications and adaptations as may be specified in the notification. The Amendment Act, 2015 has substituted sub-section (2) of Section 462 with a new sub-section, which enables faster process of giving exemptions to a class of companies and also rationalises the procedure for laying draft notifications granting exemptions, in the Parliament.

INSOLVENCY AND BANKRUPTCY CODE

In November, 2015, the Bankruptcy Law Reforms Committee (BLRC) submitted its report to the Government and recommended a single code of resolving the insolvency of all corporate entities, be they companies, limited liability partnership firms or individuals. The BLRC, in a radical move has recommended the removal of all laws dealing with insolvency of registered entities and replacing it with this uniform Insolvency and Bankruptcy Code. Towards this,





the BLRC has submitted a draft of the Insolvency and Bankruptcy Bill, 2015 ('Draft Bankruptcy Code') to the Government for its views and further action. The Draft Bankruptcy Code, however, does not seek to replace all the existing laws relating to the subject, contrary to popular belief and it states under Section 234 of the Draft Bankruptcy Code that the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, both of which deal with individual insolvency, would be repealed.

Significantly, the Draft Bankruptcy Code seeks to amend certain provisions of the Companies Act, 2013 which deal with insolvency and winding-up of companies. Owing to limitation of space, this article does not go into the details of such provisions. Other laws that have also been sought to be replaced by respective provisions of the Draft Bankruptcy Code include provisions of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, the Limited Liability Partnerships Act, 2008, Recovery of Debts Due to Banks and Financial Institutions Act, and the Indian Partnership Act, 1932. It is reported that the new Bankruptcy Code proposed by the BLRC seeks to make borrowers more accountable to their loan agreements with banks and financial institutions. This new law also gives banks more power in dealing with business/borrower companies that have failed owing to the default on loans by promoters. The Draft Bankruptcy Code also recommends and considers the NCLT (which is yet to be made functional) to be the only forum where issues relating to insolvency of companies will be adjudicated. Given the different statutes that lay down the powers and liabilities of both the borrower and creditor, having a uniform code for bankruptcy will aid in bringing transparency and interpretation of the laws and help in furthering the ease of doing business in India. However, the Government has to clearly state the applicability of the Draft Bankruptcy Code, once it decides to enact the law, and whether the same will be prospective or retrospective and what will be the fate of the pending disputes.

CONCLUSION

The 'Ease of Doing Business Index' is an index that has been created by the World Bank. This index reveals how the world economies are ranked according to the ease of doing business within their geographical boundaries. While every country, including India, aspires a higher rating to indicate better regulations, easier clearance windows for business permits and a healthy enforcement mechanism, India has shown positive movement recently. India's ranking has gained a 12 point jump on the 'Ease of Doing Business' Index. It has been reported that although many laws, including the corporate laws, namely the Companies Act, 2013 and the Arbitration Act, 1996 have been amended recently with a view to ease the conduct of business in India, the Union Finance Minister, Shri Arun Jaitley, has reportedly admitted the need for cutting down the number of permissions required for a business to function, so that the time lag between the decision to invest and

the actual investment being made is shortened significantly. This calls for co-operation from the State Governments as well since the basic permissions such as availability of land, environmental permissions and sanction of building plans are all aspects that are currently the problem areas consuming a lot of time. The laws related to the aforesaid aspects need to be made simpler and the mechanism to provide permissions and approvals by the respective Central Government as well as the State Government bodies needs to be overhauled.

Apart from the World Bank ranking India at 130 out of 180 nations in the Ease of Doing Business Index, the World Economic Forum, too, has reported a similar improvement for India.

While it is a welcome move on the part of the Indian Government to have introduced significant and far-reaching changes to some of the key corporate laws in the country, including, as those highlighted in this article, the amendments made to the Act, 2013 and the Arbitration Act, the issues that have come up during litigation post the amendments, are yet to be pondered over by the Supreme Court and the Court's interpretation of such pressing issues, as have been highlighted above in this article, is much anticipated to ensure smooth transition from unease to ease of doing business in India.

The important thing, however, is to note, with due appreciation, that the adverse trend on which India was up until now, treading, has been reversed and this is a reflection of the intention and the general temperament of the Government, which is to do away with outmoded and unproductive procedural laws and regulations and to bring, in their place, a revised and more promising framework regulations and legislations which will reinforce the confidence in the foreign investor and give a fillip to the Indian economy. The proposed changes, as well as the changes already introduced in the business-related laws have opened up newer work avenues for the corporate professionals and adequate preparedness is required to tap the opportunities now being thrown open to the corporate professionals.

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Ease of Doing Business Index: Its Reliability in India's Perspective

- Several important developments that had taken place in India have not been considered or taken into account by the World Bank while preparing the index of ease of doing business. Therefore to what extent the said Index of the World Bank could be relied so far as India is concerned is difficult to specify.

INTRODUCTION

Now a days 'Ease of Doing Business' is a hot subject of debate and everyone is looking to it in order to boost the economy in the era of globalization. In principle, foreign investment is needed to supplement domestic savings for business investment and to facilitate transfer of technology. The term 'ease of doing business' was coined by the World Bank's Group and then an index of Ease of Doing Business was created. Different nations/economies were ranked indicating better, usually simpler, regulations for businesses and stronger protections of property rights. A nation's ranking on the index is based on average of 10 sub-indices which are as follows:

- 'Starting a business' index which indicates the total number of procedures required to register a firm or business organization. A procedure is defined as any interaction of the company founders with external parties (for example, government agencies, lawyers, auditors or notaries)
- 'Dealing with construction permits' index which indicates the procedures, time and costs to build a warehouse in the Country. This includes obtaining necessary licenses and

permits, completing required notifications and inspections and obtaining utility connections.

- 'Getting electricity' index which reflects the number of procedures to obtain a permanent electricity connection for a newly established business unit. A procedure is defined as



*Views are strictly personal.



any interaction of the company employees or the company's main electrician with external parties

- 'Registering property' which covers procedures, time and cost to register commercial real estate
- 'Getting Credit' index which measures rules and practices affecting the coverage, scope and accessibility of credit information available through either a public credit registry or a private credit bureau
- 'Protecting minority investors' index which indicates the extent of disclosure, extent of director's liability and ease of shareholder suits
- 'Paying taxes' index which reflects the total number of taxes and contributions paid, the method of payment, the frequency of payment and filing returns of taxes and the number of agencies involved for standardized case study
- 'Trading across borders' index which reflects the total number of documents required per shipment to import goods. Documents required for clearance by government ministries, customs authorities, port and container terminal authorities, health and technical control agencies and banks are taken into account
- 'Enforcing Contracts' index reflects the cost of court fees and legal expenses to accomplish the procedures, time and cost to enforce a debt contract
- 'Resolving insolvency' index which tests creditors' participation in and their rights during liquidation and re-organization proceedings.

Apart from these, the doing of business index also offers information on distance to frontier, entrepreneurship, good practices and transparency in business regulations. Distance to frontiers shows the distance of each economy to the "frontiers", which represents the highest performance observed on each of the indicators across all economies included in Ease of Doing Business since indicator was included in Ease of Doing Business. On Entrepreneurship it indicates the data collected directly from newly registered firms over the past seven years. Good Practices on governance and regulatory aspects gives insights into how governments have improved the regulatory environment in the past especially in the areas measured by Ease of Doing Business Index. Transparency in business regulation highlights data on the accessibility of regulatory information measures how easy it is to access fee schedules for regulatory processes in the largest business city of an economy.

POSITION OF INDIA

If we look into the abovementioned indicators in World Bank Group's view, the situation in India emerges as follows:

Table 1

INDIAN ECONOMIC OVERVIEW				
REGION	SOUTH ASIA	DOING BUSINESS 2015 RANK	DOING BUSINESS 2014 RANK	CHANGE IN RANK
INCOME CATEGORY	LOWER MIDDLE INCOME	142	140	↓ -2
POLULATION	1,252,139,596	DOING BUSINESS 2015 DTF (% POINTS)	DOING BUSINESS 2014 DTF (% POINTS)	CHANGE IN DTF (% POINTS)
GNI PER CAPITA	1570 (US \$)	53.97	52.78	↑ 1.19
CITY COVERED	MUMBAI, DELHI			

Source: www.doingbusiness.org

Table 2

Table Showing different factors considered in the Doing of Business Index and their respective individual rankings

TOPICS	DOING BUSINESS RANKING 2015	DOING BUSINESS RANKING 2014	CHANGE IN RANKING
STARTING A BUSINESS	158	156	↓ -2
DEALING WITH CONSTRUCTION PERMITS	184	183	↓ -1
GETTING ELECTRICITY	137	134	↓ -3
REGISTRING PROPERTY	121	115	↓ -6
GETTING CREDIT	36	30	↓ -6
PROTECTING MINORITY INTEREST	7	21	↑ 14
PAYING TAXES	156	154	↓ -2
TRADING ACROSS BORDERS	126	122	↓ -4
ENFORCING CONTRACTS	186	186	NO CHANGE
RESOLVING INSOLVENCY	137	135	↓ -2

Source: www.doingbusiness.org

TEST OF INDIA

While ranking of India, two major cities of India only were taken into consideration namely Mumbai and Delhi and this is a significant sampling error as India is the seventh largest country in the world



Article

Ease of Doing Business Index: Its Reliability in India's Perspective

➤ While ranking of India, two major cities of India only were taken into consideration namely Mumbai and Delhi and this is a significant sampling error as India is the seventh largest country in the world which makes it an obvious place to have vast geographical feature. If we take only two cities into consideration for assigning ease of doing business ranking then it is a sampling error.

which makes it an obvious place to have vast geographical feature. If we take only two cities into consideration for assigning ease of doing business ranking then it is a sampling error as India's total area in square kms is 3166414, while the area of Mumbai is 603.4 Square kms and that of Delhi is 1484 Square kms, and in totality area of both cities is just 0.06% of the total area of India. The share of Mumbai's GDP to India's GDP is 2.84% and share of Delhi's GDP to India's GDP is 3.72% hence combined share of both cities to India's GDP is 6.56 %. If we consider the ranking of Indian states then Gujarat tops the list, and it is interesting to note that states like Andhra Pradesh, Jharkhand, Chattisgarh, Madhya Pradesh, Rajasthan and Odhisha are having rankings higher than Maharashtra and Delhi. In such condition how can we consider only two cities while we compare these with the world's economies? Moreover both the cities are struggling through the problems of urbanisation and we have started the various measures to provide urban amenities into rural areas covering the whole country, we have other major cities and Special Economic Zones apart from Delhi and Mumbai like Calcutta, Chennai, Bangalore, Ahmedabad and many other cities.

In the summary of India's report which have been considered by the World Bank's Group the following aspects were taken into consideration:

For 2015

- Starting a Business: India made starting a business easier by considerably reducing the registration fees, and also made it more difficult by introducing a requirement to file a declaration before the commencement of business operations. These changes apply to both Delhi and Mumbai.
- Protecting Minority Investors: India strengthened minority investor protections by requiring greater disclosure of conflicts of interest by board members, increasing the remedies available in case of prejudicial related party transactions and introducing additional safeguards for shareholders of privately held companies. This reform applies to both Delhi and Mumbai.

- Getting Electricity: In India the utility in Mumbai made getting electricity less costly by reducing the security deposit for a new connection.

For 2013

- Dealing with Construction Permits: India reduced the time required to obtain a building permit by establishing strict time limits for pre-construction approvals.

For 2012

- Paying Taxes: India eased the administrative burden of paying taxes for firms by introducing mandatory electronic filing and payment for value added tax.

For 2011

- Starting a Business: India eased business start-up by establishing an online VAT registration system and replacing the physical stamp previously required with an online version.
- Paying Taxes: India reduced the administrative burden of paying taxes by abolishing the fringe benefit tax and improving electronic payment.

For 2010

- Resolving Insolvency: India made resolving insolvency easier by increasing the effectiveness of processes and thereby reducing the time required.

For 2009

- Trading Across Borders: India reduced the time for expanding by implementing an electronic data interchange system.

For 2008

- Getting Credit: India's private credit bureau started to provide credit information on firms. India also strengthened its secured transactions system by launching a unified and geographically centralized collateral registry that covers security interests granted by companies, can be searched by debtor name and encompasses the entire country.
- Trading across border: India made trading across borders easier by introducing ICEGATE – an electronic data interchange system making it possible to lodge customs declarations through the internet and facilitating the operation of a risk management system, an electronic payment system and an electronic manifest system that allows shipping lines to submit their cargo manifest in advance.

Hence very few developments in India have been taken into consideration by the World Bank's Group. While assigning ranking in respect of starting a business, the ease of starting a business into a corporate form introduced through the Companies Act 2013 and Limited Liability Partnerships Act 2008 have not been taken into consideration. Business organizations have several forms like one person company, limited liability partnership and limited companies for which Ministry of Company Affairs is doing a



commendable job, whether it is regarding a new firm or ease of compliance or of investor's protection. In all these areas we have transformed India by manifolds which must be brought to the notice of World Bank's Group. In further investigation, it was found that they still consider the requirements of minimum paid-up capital, certificate of commencement of business and common seal among the other things into their methodology for assigning rank to India; amendments bringing about simplification in the year 2015, the concept of Limited Liability Partnerships etc. did not find adequate mention in the rankings of Ease of Doing Business.

On 'getting electricity', the Doing Business rankings were more concerned over getting an electricity connection and less concerned about the uninterrupted supply of the electricity. In India, to get electricity connection is not a tedious task nor does the amount of security deposit at the time of getting connection create any hurdle. At a glance India was having an installed capacity of producing 2,76,783 Mega Watt electricity as on 31.08.2015 and if we look at power supply position then the requirement of electricity is 10,68,923 Million Units; we were able to supply 10,30,785 Million Units, which is short by 38,138 Million Units and this shortage was 83,950 Million Units for the year 2009-10; thus India has certainly improved its position in terms of electricity supply.

In India getting a property registered is not a big deal; our Registering Authorities are very efficient and with just 7 to 8% of the transaction amount one can have the property registered including stamp duty, attorney fees and documentation charges; however for the past couple of years we are facing hurdles in land acquisition. Similarly getting credit is not about having a central repository agency to store financial or credit data; rather it is about the total credit facility avenues available in the system. Despite a surging NPA our financial institutions are very aggressive to provide credit facilities and in addition to that we have a growing capital market to support financial needs. Regarding the protection of minority investors, we have a comprehensive legal structure working to protect the interest of minority investors. But gradually we have shifted from regulatory structure to the competitive structure hence we need to enhance maturity level and awareness among the general investors. Regarding procedure for paying taxes and trading across borders, India has made tremendous progress by infusing technology and creating online facility in this regard, but the need is to simplify the taxation laws for which bills are pending before legislatures.

The indices of 'Enforcing Contracts' and 'Resolving Insolvency' are somehow in conformity with the actual position of India. In spite of all the advancements in information and communication technologies changing the life of the people of the country dramatically, the India legal system still looks like a domineering and pretentious British vestige appearing to belong to an elite class away from the people and the country. As a matter of fact, the present system of justice is totally out of place and out of time and tune with democratic procedures and norms, which please only a certain section of the society with vested interests.

THE DILEMMA OF SOCIALISM VERSUS CAPITALISM

By the will of the Constitution, India wants to become a socialist nation, but by the desire of governance stakeholders its subject wants to adopt capitalism and adoption of the slogan 'Ease of Doing Business' which is a brain child of Capitalism. We are desperate about foreign direct investment to boost our 'Make in India' campaign, which may generate employment opportunities. Employment generation for our large labour population with capitalist motive may facilitate labour exploitation to unbearable level and accordingly the Doing Business Methodology regarding labour regulations was criticised by the International Trade Union Confederation because it favoured flexible employment regulation where it became easier to dismiss a worker for economic reasons in a particular economy while bettering its ranking. Further with the objective for profits as the goal of a business unit which overrides all other factors, adverse effects on the environment are inevitable. Pollution of water, air, and soil are natural by products of production systems organized for the single goal of making profits, thus we need to adopt capitalism consciously without affecting our socialist values.

CONCLUSION

On the basis of the above discussion one can argue that "Ease of Doing Business Index" is not presenting a real picture of India, but still it has certainly reflected a perception which we feel in our day to day life. It is to be noted that except the factor of 'getting electricity' all other factors can be managed by corporate professionals like Company Secretaries effectively with their expertise and knowledge. Company Secretary can play a vital role in improving this index as now days the professionals are equipped with statutory authority and endowed with the status of 'Key managerial personnel' who are able to comply with the provisions related to corporate governance norms, infusing transparency, protecting the rights of minority shareholders in a better and easier way. If an entrepreneur wants to start a business then company secretary is first and key person who can help him to get the work done swiftly. Similarly dealing with construction permits, documentation and process for registering property, liaison with financial institution for getting credit, ensuring legal norms for protecting minority investors, preparation of tax returns for direct and indirect taxes and payment of taxes, paper work for trading across borders, liaison with lawyers regarding enforcement of contracts and resolving issues of insolvency are some matters which the professional who are in practice deals with ease on daily basis. As professionals we have to let entrepreneurs and clients feel this ease hence if corporate professionals remain committed to provide best possible services to their clients, and then certainly India can improve its tally on the 'Ease of Doing Business Index'.

CS



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Ease of Doing Business in India

- The ease of doing business index is meant to measure regulations directly affecting businesses and does not directly measure more general conditions such as a nation's proximity to large markets, quality of infrastructure, inflation, or crime. India dropped two places to rank 142 among 189 nations in the World Bank's Ease of Doing Business 2015 study.

INTRODUCTION

Ease of doing business ranks economies from 1 to 189, with first place being the best. A high ranking (a low numerical rank) means that the regulatory environment is conducive to business operation. The index averages the country's percentile rankings on 10 topics covered in the World Bank's Doing Business. The ranking on each topic is the simple average of the percentile rankings on its component indicators.

EASE OF DOING BUSINESS INDEX

It is an index created by the World Bank Group. Higher rankings (a low numerical value) indicate better, usually simpler, regulations for businesses and stronger protections of property rights. Empirical research funded by the World Bank to justify their work show that the effect of improving these regulations on economic growth is strong.

The index is based on the study of laws and regulations, with the input and verification by more than 9,600 government officials, lawyers, business consultants, accountants and other professionals in 185 economies who routinely advise on or administer legal and regulatory requirements.

The ease of doing business index is meant to measure regulations



directly affecting businesses and does not directly measure more general conditions such as a nation's proximity to large markets, quality of infrastructure, inflation, or crime.



PARAMETERS USED BY WORLD BANK TO MEASURE EASE OF DOING BUSINESS

The World Bank report considers three things while ranking countries- process, cost and time. The ten parameters which is being considered by the bank to prepare the report includes starting a business, construction permits, getting electricity and water connections, enforcement contracts, registering property, resolving insolvency, paying taxes, getting credit, trading cross borders, protecting investors.

1. Starting a business

It measures the number of procedures, time and cost for a small and medium-size limited liability company to start up and formally operate.

2. Dealing with construction permits

It tracks the procedures, time and cost to build a warehouse— including obtaining necessary the licenses and permits, submitting all required notifications, requesting and receiving all necessary inspections and obtaining utility connections.

3. Getting electricity

It tracks the procedures, time and cost required for a business to obtain a permanent electricity connection for a newly constructed warehouse.

4. Registering property

It examines the steps, time and cost involved in registering property, assuming a standardized case of an entrepreneur who wants to purchase land and a building that is already registered and free of title dispute.

5. Getting credit

It explores two sets of issues—the strength of credit reporting systems and the effectiveness of collateral and bankruptcy laws in facilitating lending.

6. Protecting investors

It measures the strength of minority shareholder protections against misuse of corporate assets by directors for their personal gain as well as shareholder rights, governance safeguards and corporate transparency requirements that reduce the risk of abuse.

7. Paying taxes

It addresses the taxes and mandatory contributions that a medium-size company must pay or withhold in a given year, as well as measures the administrative burden in paying taxes.

8. Trading across borders

It measures the time and cost (excluding tariffs) associated with exporting and importing a standardized cargo of goods by sea transport. The time and cost necessary to complete 4 predefined stages (document preparation; customs clearance and inspections; inland transport and handling; and port and terminal handling) for exporting and importing the goods are recorded; however, the time and cost for sea transport are not included. All documents needed by the trader to export or import the goods across the border are also recorded.

9. Enforcing contracts

The enforcing contracts topic assesses the efficiency of the judicial system by following the evolution of a commercial sale dispute over the quality of goods and tracking the time, cost and number of procedures involved from the moment the plaintiff files the lawsuit until payment is received.

10. Resolving insolvency

It identifies weaknesses in existing bankruptcy law and the main procedural and administrative bottlenecks in the insolvency process.

EASE OF DOING BUSINESS RANKINGS

India dropped two places to rank 142 among 189 nations in the *World Bank's Ease of Doing Business 2015 study*. With the exception of two parameters (getting credit and protecting minority investors), India does not feature in the top 100 in the remaining parameters.

In “dealing with construction permits” and “enforcing contracts” parameters, India ranks among the bottom 10 economies.

India is still the lowest ranked country in South Asia, with Sri Lanka (99), Nepal (108), the Maldives (116), Bhutan (125), and Pakistan (128) ranked higher.

Singapore topped the list for a ninth straight year, followed by New Zealand and Hong Kong.

India's performance in terms of the points scored has improved in six out of the 10 criteria; deteriorated on the ease of paying taxes criterion; and remained unchanged on three other parameters. The country's overall score improved to 53.97 in 2015 from 52.78 a year ago, when it was ranked 140.

In terms of global ranking, India has improved its performance only in the new category of protecting minority investors. It has dropped in all other cases except for enforcing contracts, where its rank has remained the same.



Article

Ease of Doing Business in India

➤ India's performance in terms of the points scored has improved in six out of the 10 criteria; deteriorated on the ease of paying taxes criterion; and remained unchanged on three other parameters. The country's overall score improved to 53.97 in 2015 from 52.78 a year ago, when it was ranked 140.

Country -wise ranking

Country/Region	Rank	
	2015	2014
Singapore	1	1
New Zealand	2	3
Hong Kong	3	2
Denmark	4	5
South Korea	5	7
Norway	6	9
United States	7	4
United Kingdom	8	10
Finland	9	12
Australia	10	11
INDIA	142	140

Parameter-Wise Ranking

S.No	Parameter	DB 2015 Rank	DB 2014 Rank	Change in Rank
1	Starting a Business	158	156	↓-2
2	Dealing with Construction Permits	184	183	↓-1
3	Getting Electricity	137	134	↓-3
4	Registering Property	121	115	↓-6
5	Getting Credit	36	30	↓-6
6	Protecting Minority Investors	7	21	↑14
7	Paying Taxes	156	154	↓-2
8	Trading Across Borders	126	122	↓-4
9	Enforcing Contracts	186	186	No Change
10	Resolving Insolvency	137	135	↓-2

OBJECTIVES ON EASE OF DOING BUSINESS

- Making India easiest place to do business

- Bringing India in top 50 rank of Doing Business Report

PRINCIPLES OF EASE OF DOING BUSINESS

- Convert from manual to online
- Eliminate touch points with applicants
- Prepare checklists, adhere to them
- Prepare timelines, punish delays
- Share information across platforms
- Eliminate unnecessary steps and requirements
- Promote self-compliance, self-certification

MAJOR INITIATIVES ON IMPROVING 'EASE OF DOING BUSINESS' IN INDIA

1. Starting a business made easy

The most important change comes from Ministry of Corporate Affairs (MCA) which has passed the Companies Amendment Act, 2015 to eliminate the requirement of minimum paid-up capital, common seal and declaration of commencement of business for companies. Further, MCA has introduced Form INC-29 providing option of selection of company name and obtaining Director's Identification Number (DIN) at the time of incorporation of company. Therefore a company can now be created and made active with a single process of applying for incorporation.

It also simplifies a number of other regulatory requirements.

DIPP has integrated applicants to obtain Permanent Account Number (PAN) and Tax Account Number (TAN) from CBDT and register with ESIC and EPFO at the time of incorporation of company. Now a company can obtain these five registrations through a single process.

Employer's registration with ESIC and EPFO has already been made online and real-time with applicants getting registration number immediately. Registration under Shops and Establishment law has also been made online and is being done on the same day. In Mumbai, registration for VAT and Professional Tax has been integrated into a single ID eliminating the requirement of a separate registration for Professional Tax. While, Maharashtra is allotting TIN within a day, the process has been made real-time by Delhi.

These steps will reduce the number of procedures and days taken in starting a business and significantly reduce the costs related to it

2. eBiz Platform to provide GoI Services

eBiz online portal has been established by DIPP to provide an online single window to businesses for availing various



government services. 14 Central Government services have already been integrated with the portal and work on another 12 services is underway.

In addition to these 26 GoI services the portal will initially integrate 24 services of the States of Andhra Pradesh, Punjab, Haryana, Orissa, Maharashtra, Delhi, Uttar Pradesh, Rajasthan, Tamil Nadu and West Bengal.

3. Revival and Rehabilitation framework for MSMEs

Ministry of MSME, through an Order dated 29th May, 2015, has created a framework for revival and rehabilitation of MSMEs. So far the existing mechanism was working for large industries through Lender's Forum.

An analogous arrangement has been created for MSMEs, wherein the enterprise or any of its creditors may apply to banker's committee to consider revival or rehabilitation of the enterprise.

4. Documents for Export & Import Reduced

The Doing Business Report, 2015 identifies 7 documents required for exports and 10 documents required for imports in India. There are a number of non-mandatory documents identified in the Report. DGFT has through Notification No. 114 (RE-2013)/2009-2014 dated 12th March, 2015 clarified that only following three documents are required for export of goods from India:

- i) Bill of Lading/ Airway Bill
- ii) Commercial Invoice cum Packing List
- iii) Shipping Bill/Bill of Export

Similarly, following three documents will be required for import

of goods into India:

- i) Bill of Lading/ Airway Bill
- ii) Commercial Invoice cum Packing List
- iii) Bill of Entry

Custom Clearance Facilitation Committees (CCFC) have been formed under the chairmanship of Chief Commissioner/ Commissioner of Customs (with representatives of all agencies involved in clearances as members) at all ports/ airports for expediting clearance of goods.

5. Enforcing contracts

India ranks 186th out of 189 countries in 'enforcing contracts' indicator. India's judicial system takes on an average 1,420 days to resolve a commercial dispute. On the other hand, countries which have high ranking, takes only 4 to 6 months time. In order to expedite the dispute resolution process, Delhi and Mumbai High Courts have set up benches into commercial courts.

These dedicated commercial benches will help faster disposal of commercial cases in Delhi and Mumbai.

6. Increase of Industrial Licence Validity

The initial validity period of Industrial License (IL) has been increased to three years from two years. This will give enough time to licensees to procure land and obtain the necessary clearances/approvals from authorities.

And the Initial validity of IL for defence sector revised to seven years, extendable up to three years.

7. FDI Policy mapped with NIC Code 2008

The NIC Code 2008 has been adopted, which is the advanced version of industrial classification. This code will allow Indian businesses to be part of globally recognized and accepted classification that facilitate smooth approvals/registration.

8. Assessment framework for ranking of states released

A 98 point agenda was shared with all the State Governments for reducing the regulatory burden on businesses and streamline the processes. States were asked to implement these reforms within prescribed timelines.. DIPP has decided that it will rank States on 'Ease of Doing Business' based on these action points and has engaged KPMG to assist it in developing the methodology for ranking the States. The World Bank Group will also assist DIPP in the process.

9. SEZ Units allowed on self-attestation

SEZ Units are allowed to remove goods for repair, replacement, testing, calibration, quality testing and research





and development on self-attestation.

10. Simplifying and rationalizing the regulatory environment

DIPP has requested all Secretaries of Government of India and Chief Secretaries of the States/UT to simplify and rationalize the regulatory environment. In order to improve the regulatory business environment they have been requested to take the following measures on priority:

- All returns should be filed on-line through a unified form;
- A check-list of required compliances should be placed on Department's web portal;
- All registers required to be maintained by the business should be replaced with a single electronic register;
- No inspection should be undertaken without the approval of the Head of the Department; and
- For all non-risk, non-hazardous businesses a system of self-certification should be introduced.

11. Checklist developed to process foreign investor applications

A checklist with specific time-lines has been developed for processing all applications filed by foreign investors in cases relating to Retail/NRI/EoU foreign investments. This has been placed on the DIPP website.

12. Streamlining grant of Construction Permits

India ranks at an extremely low 184th in 'dealing with construction permits' indicator. Grant of construction permits is primarily a function of the local municipal body. The Governments of Delhi and Maharashtra have made significant reforms in easing the procedure for grant of construction permits through online application.

Government of Delhi has made available online application with Common Application Form for buildings approval. Now most of the applications are processed online. In case of plotted residential area, the program identifies shortcomings and indicates them immediately.

A similar effort has been made by Municipal Corporation of Greater Mumbai. Now, construction permits are granted through online common application form. Further, now there is no requirement for obtaining separate completion and occupancy certificates. Municipal Corporation of Greater Mumbai will issue single completion cum-occupancy certificate.

These reforms will radically help reducing compliance burden on the applicant by reducing number of procedures and time taken in grant of construction permits.

13. Easy electric connections:

Government of Maharashtra has radically reformed the procedure of granting electric connection by reducing the number of procedures to three (from existing seven) and number of days required for connection to 21 (from existing 67). An applicant can now apply online for grant of connection.

Further, Central Pollution Control Board has vide its letter No. B- 29012/1/ESS/2014 dated 23rd December, 2014 clarified that there is no requirement for NOC or Consent to Establish from concerned State Pollution Control Board/Committee for new industrial electricity connections.

14. Unveiling Bankruptcy Code

To deal with the problem of insolvency, the government will unveil a comprehensive Bankruptcy Code.

ASSESSMENT OF STATE IMPLEMENTATION OF BUSINESS REFORMS- WORLD BANK REPORT

Aiming to enhance the country's image as a friendly investment destination, the government along with World Bank has released a state-wise report on the ease of doing business on 14th September 2015—a report in which Gujarat has topped with a score of 71.14%.

Andhra Pradesh has bagged the second rank with 70.12%. Jharkhand is third with 63.09%; Chhattisgarh is fourth with 62.45% and Madhya Pradesh is fifth with 62.00% score.

The report assesses implementation status of 98-point reform measures across the following eight areas: Setting up a business, Allotment of land and obtaining construction permit, Complying





➤ "However, the State-wise report also flags a multitude of reforms that still need to be implemented effectively by most states. A majority of states are yet to begin implementing electronic courts to resolve commercial disputes; that is, infrastructure to allow e-filing of disputes, issuance of e-summons, online payments, e-cause lists and digitally signed court orders.

with environment procedures, Complying with labour regulations, Obtaining infrastructure related utilities, Registering and complying with tax procedures, Carrying out inspections and Enforcing contracts.

According to the report, Punjab is the best state in terms of 'setting up a business'. The state, which has a single-window online system for registrations and licences, has scored 81.48 per cent on this parameter.

In 'obtaining infrastructure-related utilities', Maharashtra, Gujarat and Madhya Pradesh - with their clearly defined timelines for electricity, water and sewage connections, and a reformed electricity connection application process - were the best-ranked states.

In terms of 'obtaining land and construction permits', Madhya Pradesh topped the list with a 72.73 per cent score. It was followed by Gujarat and Maharashtra. The report noted how these states published details on land banks available, with detailed allotment procedures. Gujarat has also implemented a robust geo-spatial information system (GIS) providing details of land earmarked for industrial use.

Gujarat scored 100 per cent in terms of 'obtaining environment clearances'. Jharkhand stood first in 'complying with labour laws'. The state was followed by Gujarat and Chhattisgarh.

"However, the report also flags a multitude of reforms that still need to be implemented effectively by most states. A majority of states are yet to begin implementing electronic courts to resolve commercial disputes; that is, infrastructure to allow e-filing of disputes, issuance of e-summons, online payments, e-cause lists and digitally signed court orders.

The report also said 26 states were yet to introduce reforms along a wide range of labour inspections under various acts, or on inspections related to building permits. About 25 states lacked online availability of information on land banks, and use of GIS to track industrial land parcels.

STATE WISE RANKING

Rank	State	Score	Rank	State	Score
1	Gujarat	71.14%	17	Himachal Pradesh	23.95%
2	Andhra Pradesh	70.12%	18	Kerala	22.87%
3	Jharkhand	63.09%	19	Goa	21.74%
4	Chhattisgarh	62.45%	20	Puduchery	17.72%
5	Madhya Pradesh	62.00%	21	Bihar	16.41%
6	Rajasthan	61.04%	22	Assam	14.84%
7	Odisha	52.12%	23	Uttarakhand	13.36%
8	Maharashtra	49.43%	24	Chandigarh	10.04%
9	Karnataka	48.50%	25	Andaman and Nicobar Islands	9.73%
10	Uttar Pradesh	47.37%	26	Tripura	9.29%
11	West Bengal	46.90%	27	Sikkim	7.23%
12	Tamil Nadu	44.58%	28	Mizoram	6.37%
13	Telangana	42.45%	29	Jammu and Kashmir	5.93%
14	Haryana	40.66%	30	Meghalaya	4.38%
15	Delhi	37.35%	31	Nagaland	3.41%
16	Punjab	36.73%	32	Arunachal Pradesh	1.23%

CONCLUSION

The Government has taken a series of steps to improve ease of doing business that include having a timeline for clearance of applications, de-licensing the manufacturing of many defence products and introduction of e-biz project for single window clearance etc., With required measures being taken to improve 'Ease of Doing business' in the country, the ministry expects that India's ranking in the world bank's Ease of Doing Business report would be in the range of 95 to 105 from the current 142 out of 189 countries and aim to feature among top 50 in the next three years. Surely, India expects big jump in ranking in the coming years.

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SPECIAL ISSUE OF CHARTERED SECRETARY ON SECRETARIAL STANDARDS

It is proposed to bring out a special issue of Chartered Secretary on **Secretarial Standards** (January, 2016 issue of the Journal).

Members and others having expertise on the aforesaid subject are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issue.

The articles may kindly be forwarded latest by 20th of December, 2015 at the following address:

The Joint Director (Publications), The ICSI, 22, Institutional Area, Lodhi Road, New Delhi 110003.

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Ease of Doing Business – Enforcing Contracts In India

- The World Bank's Ease of Doing Business Index, 2015 (Doing Business Index), assesses the legal and regulatory framework of business of 189 countries in the World and highlights the factors which count for efficiency and sustainability of business and private enterprises. The object of the Doing Business Index is to help the respective governments in improving the quality and implementation of their rules and regulations for facilitating the private sector to thrive and grow. India ranks 142 out of 189 countries in the Doing Business Index.

INTRODUCTION

In modern market driven economies, efficient, transparent and effective implementation of business laws improve market sentiments and inspire entrepreneurs to invest and grow, thereby creating more jobs and infrastructure for improving the quality of life. The World Bank's Ease of Doing Business Index, 2015 (Doing Business Index), assesses the legal and regulatory framework of business of 189 countries in the World and highlights the factors which count for efficiency and sustainability of business and private enterprises. The object of the Doing Business Index is to help the respective governments in improving the quality and implementation of their rules and regulations for facilitating the private sector to thrive and grow. India ranks 142 out of 189 countries in the Doing Business Index. In this context, an attempt is made to discuss the broad legal and regulatory of business and corporate laws in India and critically examine the mechanism of enforcing contracts.



DOING BUSINESS INDEX EVALUATION SYSTEM

Doing Business Index evaluation system focuses on clarifying property rights, minimizing the cost of resolving disputes, increasing the predictability of economic interactions and enforcing contractual rights. These are – (i) starting a business, (ii) dealing

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➤ The Doing Business Index indicators measure the procedures, time and cost to reduce a commercial dispute between two enterprises and enforcing contractual contracts. The indicators focus on the efficiency of the commercial court and voluntary arbitration, conciliation and mediation methods of dispute resolution.

with construction permits, (iii) getting electricity, (iv) registering property, (v) getting credit, (vi) protecting minority investors, (vii) paying taxes, (viii) trading across borders, (ix) enforcing contracts; (x) resolving insolvencies; besides labour market regulations.

Doing business is essentially trading, transferring and enforcement of property rights in movable, immovable and trade related intellectual property. As such, doing business has not meaning unless the disputes relating to property rights are effectively settled and enforced.

The Doing Business Index indicators measure the procedures, time and cost to reduce a commercial dispute between two enterprises and enforcing contractual contracts. The indicators focus on the efficiency of the commercial court and voluntary arbitration, conciliation and mediation methods of dispute resolution.

LEGAL AND JUDICIAL FRAMEWORK IN INDIA

In India, there is modern legal and regulatory framework, besides rule of law, and well developed transparent and independent legal system for settlement of business disputes and enforcing contracts and property rights.

The business and corporate laws include the Contract Act, Sale of Goods Act, Arbitration and Conciliation Act, Transfer of Property Act, Limitation Act, Electricity Act, Industries (Development and Regulation) Act, Environment (Protection) Act, Industrial Disputes Act, Factories Act, Micro, Small and Medium Enterprises Development Act, Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, Companies Act, Competition Act, Banking Regulations Act, Recovery of Debts Due to Banks and Financial Institutions Act, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, Reserve Bank of India Act, Foreign Exchange Management Act, Income Tax Act, Insurance Regulatory and Development Authority Act, Securities and Contract (Regulation) Act, Securities and Exchange Board of India Act, Foreign Trade (Development and Regulation) Act, Copy Right Act, Patents Act,

Trade Marks Act, Design Act, Right to Information Act etc.

India has inherited its legal and judicial system from the British. Its major advantages are certainty of law, consistency in procedure and independence and impartiality of judiciary. As the ultimate protector of rights and final resort for dispensation of justice, the business community has faith in the judicial system. In addition, there are Alternative Dispute Resolution (ADR) methods for settlement and resolution of business and commercial disputes outside the court.

RECENT DEVELOPMENTS

The modern Companies Act, 2013 aims at ease of doing business, and includes:

- Expedient procedure for registration of limited liability company with minimum time, cost and capital.
- Enhancing quality of corporate governance.
- Protecting minority shareholders right by right to inspection of records, class action suit, appointment of directors elected by small shareholders.
- Preventing oppression and mismanagement.
- Strict regulation and check on related-party transaction.
- Expedient winding up and liquidation.
- Establishment of special courts, compounding of certain offences and mediation and conciliation methods of dispute resolution.

ALTERNATIVE DISPUTE RESOLUTION METHODS

The procedural law of judicial system Code of Civil Procedure, 1908 (CPC), has been amended in 2002 for expedite disposal of cases by streamlining the procedures and making the Alternative





Dispute Resolution (ADR) mechanism an integral part of the judicial system. The amendment empowers the court to refer certain disputes, where there exist elements of settlement by the parties, for settlement either by way of arbitration, conciliation, judicial settlement and mediation. The pre-condition of reference is that the Court shall formulate the terms of settlement and give them to the parties for their observation, and, after receiving their observations, again formulate the terms of settlement and refer the same for settlement to any of the aforesaid forums.

The Alternative Dispute Resolution (ADR) mechanism is a holistic concept of a “consensus-building” to resolve almost all disputes of compoundable nature - contractual, mercantile, commercial, banking, property, labour etc. The process of ADR aims at arriving at a workable solution to the disputes rather than going into legalities and raising merits and demerits. In ADR mechanism rules of natural justice are followed and contractual rights of the parties are protected. There is less of law and lawyers and more of business sense and goodwill. The emphasis is on win-win settlement rather than win-lose situation for the parties. The aim is to arrive at a workable consensual solution to the dispute in a flexible manner by focusing on substantive issues rather than procedural rules other advantages of ADR include speed, economy, and convenience, simplicity of procedure, secrecy and encouragement of healthy relationship between the parties.

ARBITRATION

The Arbitration and Conciliation Act, 1996, in India incorporates the core of the Model Law on adopted by the United Nations Commission on International Trade Law (UNCITRAL).

Arbitration method is statutory, speedy, economical method of resolution of civil dispute. The basis of arbitration is an agreement between the parties to submit their present or future disputes of civil nature to named arbitrator(s) or institutional arbitrator. Further, all national and international disputes, which are of civil nature, can be referred to arbitration. The obvious advantages of arbitration are party autonomy, procedural flexibility, speed, economy, simplicity, confidentiality, neutrality and impartiality of empire.

The final outcome of arbitration proceedings is “award” – interim and final. The final award under section 31 is a reasoned award settling all issues and signed by the arbitrator(s) and delivered to each party. An arbitration award is as good as a decree of a court for enforcement.

It is noteworthy that the Act also provides for “settlement” of dispute with the agreement of the parties by an arbitral tribunal by using `mediation, conciliation or any other procedures’ at any time during the arbitral proceedings to encourage settlement. If the dispute is settled, the arbitral tribunal may record the terms of settlement in the form of an arbitral award, which shall have the same status and effect as any other arbitral award on the substance of the dispute.

The Act, lacked provisions for checking and controlling the time and cost of arbitration and litigation and, therefore, arbitration was not a user friendly and preferred mode for settlement of commercial disputes. To remove the lacunae experienced during the working experience of the past two decades, the law has been amended by the Arbitration and Conciliation (Amendment) Ordinance, 2015.

The salient features of the amendments are:

- (1) Ensuring neutrality of arbitrators, the person to be approached for appointment as arbitrator, shall disclose in writing his existing relationship or interest of any kind, which is likely to give justifiable doubt about his independence and neutrality. A person having specified relationship shall be ineligible to appointed as an arbitrator.
- (2) Ensuring time-bound award within 12 months, extendable with the consent of parties up to six months and further extendable by court on sufficient cause. Court while granting extension, may reduce fees of arbitration by five percent for every month of delay if delay attributable to arbitral tribunal. However, if the award is made within six months, arbitrator may get additional fees, if the parties may agree.
- (3) Fast track procedure for conducting arbitration with the consent of the parties for resolution of disputes within six months.
- (4) Restricting the meaning of term `public’ policy as a ground for challenging an arbitral award by explaining that only where making of award was induced by fraud or corruption, or it is in contravention of the fundamental policy of Indian Law or is in conflict with the most basic notions of morality or justice, the award shall be treated as against Public Policy.
- (5) Insertion of a new provision to provide that application in a court for challenging the arbitration award is to be disposed within one year.
- (6) Mere filing of an application for challenging the arbitration award would not automatically stay execution of the award, unless the court passes a specific order.





➤ India has emerged as one of the most viable dispute resolution mechanisms for commercial transactions including cross border disputes realizing that a good arbitration mechanism is the essence of commercial progress.

- (7) Application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court as expeditiously as possible with an endeavour to dispose of within 60 days.
- (8) Providing comprehensive provisions for costs regime applicable to arbitrators as well as litigation in courts to avoid frivolous arbitration/litigation.
- (9) Empowering the arbitral tribunal to grant all kinds of interim measures which the court is empowered to grant and enforceable as an order of court.

With the above amendments, India has emerged as one of the most viable dispute resolution mechanisms for commercial transactions including cross border disputes realizing that a good arbitration mechanism is the essence of commercial progress.

CONCILIATION

The legal and regulatory framework of “conciliation” is also governed by the Arbitration and Conciliation Act.

Conciliation is a statutory but non-adjudicatory method in nature. If the parties want to resolve their dispute by conciliation, they have to reach an agreement to appoint a conciliator(s) and submit to him their dispute for resolution.

The conciliation assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

The conciliator is guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usage of the trade concerned and the circumstances surrounding the parties, including any previous business practices between the parties.

The parties in good faith co-operate with the conciliator and provide the required information and documents for settlement of disputes. The conciliator suggests solutions and persuades the parties to consider make amendments to make solution acceptable to them.

The conciliator, after settlement of disputes between the parties, draws the ‘Settlement Agreement’, which is enforceable an arbitral award.

The conciliation proceedings are terminated on signing the settlement agreement, and if conciliation do not succeed, a written declaration of termination of the conciliation proceedings by the parties.

Conciliation, being a consensus agreement, cannot be challenged and leads to personal empowerment of parties in mutual settlement.

The Act, however, prohibits the parties to the dispute from initiating arbitration or judicial proceedings during the conciliation proceedings.

MEDIATION

The philosophy of mediation is that conflict belongs to the parties, and, therefore, the solution must emerge from the parties in a democratic and collaborative manner. It is a structural negotiation process for voluntary resolving a wide range of civil disputes within the four corners of law.

In mediation, an impartial and neutral mediator tries to bring together the disputant parties to arrive at a mutually agreeable solution which stands the test of law. The parties in dispute freely express their grievances and the mediator helps them work out the solutions to meet their requirements.

The pre-requisite of conciliation is the confidence reposed by the parties in their mediator as the right person whom they can disclose their issues in confidence. The mediator(s) make parties to feel at ease and encourage them to communicate freely and share information and facts with each other to reach an amicable settlement. He is a facilitator to settlement. He patiently listens but do not impose his views on what should be a fair settlement. He encourages parties to focus on their future, generate options and come out with probable solutions to their disputes and help them selecting the best one which meets their requirements. The thrust is on harmony by creating win-win situation for the disputing parties.

The mediator with the consent of the parties settles all the disputes and drafts a compromise and settlement. Mediation Settlement, being a consensus agreement, cannot be challenged in a court of law.

ROLE OF PROFESSIONALS

Profession is a body of knowledge, intellectual skills, training and having a regulatory body with code of conduct to regulate members.

Professionals are members of a professional body, possessing domain expertise and ethical values with a code of conduct. Professional ethics are the values comprising spirit of service and care to society, contract of commitment and confidentiality with clients. A distinguishing characteristic of a professional is his ability to combine the technical skills with high ethical standards



Article

Ease of Doing Business – Enforcing Contracts In India

in practice as per the 'Code of Conduct' in discharge of their responsibilities.

Professionals play significant role in the functioning of business and corporate sector by advising and assisting the management. The professionals can contribute in following areas:

- (i) Acting as arbitrators, conciliators and mediators in resolution of business and commercial disputes;
- (ii) Representing clients before the ADR tribunals and assisting in reaching at win-win-situation;
- (iii) Advising on conflict resolution and dispute management to save time, cost and cordial business relationship;
- (iv) Enhancing satisfaction level of parties by encouraging and helping them to find practical solutions to their disputes ; and
- (v) ADR advocacy to empower society, avoid litigation and reducing the burden of judiciary.

The professional bodies can also interact and persuade the government and courts to provide for ADR mechanism under other business and corporate laws to carve out a niche for themselves.

SUGGESTIONS

There is need for swift, efficient and economical arbitration proceedings to win the confidence of the business community. In this context following suggestions deserve careful consideration:

- (a) The essentials of successful arbitration are - time, cost, efficiency and finality. As such, there is need to expedite the execution of arbitration award in India by fully in sync with the best practices in international arbitration.
- (b) Institutional arbitration should be the preferred mode of arbitration, particularly in cases where claims exceed certain amount, particularly by the public sector undertakings and commercial disputes of government agencies.
- (c) The Arbitration and Conciliation Act, prescribes the form and contents of arbitral award. The arbitral award to be final and binding must be a speaking award. It should be meticulously worded so that the directions and rulings are clear and capable of compliance. Monetary amount should be accurately calculated and the basis of calculations disclosed. The award should also specify the manner, mode and time of payment of the awarded amount, interest and fees by the parties.
 - (a) Mediation is gaining more popularity than arbitration in the US, UK and other western countries. In India also there is need for attitudinal change to accept conciliation and mediation as effective dispute resolution methods.
 - (b) 'Consent Award', mediation-arbitration (Med-Arb) and conciliation-arbitration (Con-Arb) methods should be used to eliminate extra costs, as well as to promote flexibility and create a conducive atmosphere for dispute resolution.

CONCLUSION

Doing business is essentially trading, transferring and enforcement of property rights in movable, immovable and trade related intellectual property. The objective of 'Doing Business' involves both strengthening physical infrastructure and making rules and regulations for enforcement of contracts and settlement of disputes for pro-business-users in the market. In the business and corporate world, the ADR methods have a number of inherent advantages for settlement and resolution of disputes and enforcement of property rights. First, the methods can be used at any stage of litigation – before or during adjudication. Second, the methods are economical, flexible and effective. Third, the methods are private and help parties appreciate each other's viewpoint better. Fourth, the methods empower parties to decide their disputes without advocates. Fifth, ADR methods provide amicable solution to disputes. In fact, the "consensus-oriented approach" is the essence of ADR methods. The ADR mechanism is ideally suitable for business as it encompasses "conflict avoidance", "conflict management" and "conflict resolution". The over-arching element of ADR is addressing these three aspects of conflict.

The ADR methods and techniques are well developed on scientific lines in the USA, UK, Canada, Australia, Hong Kong, South Africa, New Zealand, Japan, China and Singapore. In Asian countries, particularly China and Japan, use of hybrid system is quite common, which combines the practice of arbitration and conciliation. In practice, a neutral person assists the parties in fact finding and gathering relevant information, conducting dialogue and negotiations, clarifying issues and narrowing areas of dispute, identifying possible solutions and selecting the acceptable one.

In the final analysis, "adjudicative or determinative processes" are not "dispute resolution processes". Judiciary adjudicates and decides disputes, whereas arbitrator, conciliator and mediator endeavour to resolve of disputes. Ex-Justice Sandra Day O'Connor of the US Supreme Court rightly remarked: The courts should not be the places where resolution of disputes begins. They should be the places where the disputes end, after alternative methods of resolving disputes have been considered and tried."

It emerges from the discussion that India can improve its rank from ranks 142 to 100 out of 189 countries in the World Bank's Ease of Doing Business Index, by strengthening the physical infrastructure and making rules and regulations pro-business-users. In fact, enforcement of property rights and settlement of disputes are of key importance both for domestic and foreign investors. In fact, quality of legal infrastructure and its implementation in a transparent manner are important for India to emerge economically strong and attract higher level of foreign direct investment. The business psych has always to avoid court proceedings, which require disclosing their confidential information, appearing as witness, besides uncertainty of time and consequences of any un-favourable judgment.

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Ease of Doing Business in India

- The World Bank Report on Ease of Doing Business has identified a number of areas to improve the business climate in India- particularly around land acquisition, starting a business, taxation and contract enforcement. Many of the new initiatives started in some states that have led to positive change, could perhaps be leveraged at the national level.

India, a fastest growing economy in the world, ranked 134th among 135 countries lower than its BRICS (Brazil, Russia, India, China, South Africa) counterparts as per the 'Doing Business' annual reports published by the World Bank. Problems and restrictions plague the business throughout its lifecycle, making it difficult, expensive and cumbersome to start, grow or exit from a business. There is a need to focus on improving the business environment which is likely to spur growth and generate employment for millions across the country.

When arriving at the 'Doing Business' rankings, the World Bank ranks 11 parameters that impact businesses across various stages of their lifecycle – at start-up, getting a location, getting financing, daily operations and even when things go wrong. To maintain its growth trajectory, India needs to be a relatively attractive investment destination across each of these parameters.

Improvement areas in various aspects of doing business in India have been identified viz. starting a business, land acquisition, labour, and taxes. Specific recommendations have been identified for each of these areas.

EASE OF DOING BUSINESS: ISSUES

1. Land Acquisition

Lack of an effective process has made land acquisition a



complex and time-consuming procedure. The time taken for land acquisition is one of the major obstacles. The average time taken to acquire land is 14 months; also the number of departments to be visited as well as the number of visits to each department make the land acquisition process complex. High costs and transaction fees add to the overall costs. Investors and manufacturers need timely acquisition of contiguous land to contain project cost escalation and project timelines. However, landowners are often wary of selling-given the potential future price appreciation and non-transparent price benchmarks. As a consequence, land for industrial development is not as easily available as it used to be earlier.



Initiatives in India that have been identified

1. Computer-Aided Registration of Deeds (CARD), AP: It is a simple and decentralized digital property registration system across 200 sub-registrars' offices (SRO) of Andhra Pradesh. It reduces the time to register the property from 17 days to one day.
2. E-DharaBhulekh, Gujarat: It is a biometrics-enabled process to expedite registration and reduce fraud. It reduces the time to issue various land certificates from two days to one day.
3. SIR Ordinance (Special Investment Region), Gujarat: Gujarat promulgated SIR Ordinance in order to expedite the process of land acquisition and planned development, mainly in the Delhi-Mumbai Industrial Corridor. It provides for a single-window clearance system.
4. Gujarat Industrial Development Corporation (GIDC), Gujarat: It acquires land for industrial estates and allots to industry from within the existing industrial areas. It has acquired and developed 80,000 hectare of land.
5. Industrial Cluster, Ahmedabad Pharma Cluster, Gujarat: It creates a healthcare ecosystem through significant promotion of allied industries. It enables easier land acquisition with availability of required support facilities directly.
6. Rehabilitation and Resettlement of Land owners, Haryana: The State government assists all joint venture projects in the acquisition of land for the development of SEZs to the extent of 10 per cent NCR and 25 per cent non-NCR areas of Haryana. The State government also assists in acquiring left out pockets to help ensure contiguity of SEZs.
7. Online and 'Anywhere registration' (KAVERI), Karnataka: It enables Computerised land transactions and online registration expedite the generation of encumbrance certificates. It completes all registration processes in one day.
8. Karnataka Industrial Areas Development Board (KIADB) : KIADB promotes rapid development of industries in the state by acquiring land and forming industrial areas. It provides basic infrastructure like establishing roads, power and technical training centres. It has so far developed 141 industrial areas in 28 districts of the state.
9. Formation of an industrial cluster — Chennai automotive cluster, Tamil Nadu : The Chennai automotive cluster leads India in terms of production capacity, with an installed capacity of INR12.8 lakh passenger cars and

3.5 lakh commercial vehicles. It will enable employment of ~500,000 people by 2015.

Land acquisition – recommendations

There is a need for simplification and transparency in the land acquisition process; the government should encourage the establishment of industrial clusters.

Need for Simplification and Transparency

- Simplicity, transparency and speed should be introduced in the land acquisition process. The delays caused by bureaucracy need to be reduced.
- Simplify administrative procedures by facilitating single-window clearances, standardised documentation and timely approvals. Failure to do so would be automatically escalated to the industry minister within a week of the lapse of the due date.
- E-procedures can help improve land acquisition as it aims to curb unethical practices and complete work within agreed timelines.
- Lengthy land mutation and conversion processes need to be simplified.
- Government machinery needs to be proactive in handling land acquisition disputes.

Promote Industrial Clusters

- Encourage the establishment of industrial clusters of related industries, including large and small units.
- Location viability in terms of infrastructure of the industrial land should be studied before its acquisition.
- Promote industry clusters through a well-defined and targeted cluster development policy, owned and driven by state and local governments:
 - ✓ Identify suitable sectors for promoting clusters based on the study of existing industries in the state.
 - ✓ Industry centric infrastructure master plan should be put in place. Ring roads with dry ports and railheads must be created to link to the industrial corridors.
 - ✓ Simplify regulatory requirements, including elimination of several compliances and introduction of self-certifications.
 - ✓ State government can assume leadership role in creating clusters and building capacity for sustained development.



- √ Draft sector-specific policies with input from experts and industry leaders, to help create a sound ecosystem.
- Develop short-term fiscal incentives and ease tax requirements to encourage rapid cluster development.
- Benchmark clusters and survey industry members to understand critical infrastructure and facilities required.
- Facilitate access to funds by promoting linkages between industry and lending institutions.
- Aim to ensure access to quality and skilled manpower through improved curriculum and university collaborations.
- Create a government task force/ department for overseeing cluster development.

Land Value

- With respect to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, a major concern with the landowners is the possible undervaluation of their land that might be below market rate. There is a need to bring assurance in this regard.
- Introduce a market price-based pricing mechanism:
 - √ Make landowners partners and share with them the resources generated by projects from the allocations.
- Encourage partial or complete leasing of land (from landowners) as opposed to an outright sale to supplement acquisition efforts.

2. STARTING A BUSINESS

Obtaining approvals like environment clearance, land procurement, construction-related permits and NOCs is a major obstacle in starting a business.

Ease of 'starting a business' describes the ease/difficulty with which an entrepreneur is able to establish a new business, given a list of various procedures. A less cumbersome and less expensive process could result in prompt responses to starting a business. On the contrary, cumbersome regulations on start-up of businesses can act as a curb on entrepreneurship that may lead to increased informality and a smaller tax base. However, it is known that starting a business in India involves getting a host of clearances and permits.

The World Bank's 'Doing Business 2014' report states that India ranks 179 among 189 countries on the ease of starting a business; with a less than desirable performance in the batch of BRICS and other developing Asian countries.

Approvals related to environment clearances, land procurement, construction permits, industrial safety permits and power connection are top five obstacles in starting a business in India. Obtaining approvals and clearances is a time-consuming process involving multiple procedures; also costs incurred in the whole process is significantly high. Effective implementation of single-window clearance systems and the registration process can facilitate obtaining approvals and clearances.

Initiatives in India that have been identified- business approvals

1. The Single-Window Clearance Act, AP: The Single-Window Clearance Act was enacted in 2002, whereby all the clearances required to start and operate an industry are processed through a single point within a set time period. It ensures time-bound faster clearances.
2. Online building-plan Approval System, Karnataka: It allows simplified approval procedure through online submission and approval of building plans and automatic plan scrutiny system called Auto-DCR- checks the plans and simultaneously produces scrutiny reports. It reduces the time taken to obtain building plan approval from 10 days to 30 days.
3. Registering a Business, New Delhi: E-stamping is the computer-based stamping of registration documents where a record-keeping agency maintains the database electronically instead of physical stamping of documents, which can be forged or duplicated. It is a computer-based application and a secured electronic way of stamping documents. It curbs revenue and time loss by preventing the circulation of fake stamp papers and saves on the cost of printing and handling of stamp papers.
4. One-Stop Centre, Punjab: Punjab Bureau of Investment





➤ **Corruption is the major obstacle in doing business in India followed by cost of financing, tax administration and high taxes. Economic and regulatory policy, uncertainty and macroeconomic instability can create challenges in the operations and growth of business in India. Skill and education of workers, labour regulations, customs and trade regulations and access to land are some other major areas of concern in doing business in India.**

Promotion, a One-Stop Centre, has been established in 2013 for investors, with the intent of providing clearances, incentives and information on investment opportunities in a time-bound manner. It receive, process and approve all investment proposals and encourage new investment and its actualisation. It enables time-bound faster clearances.

5. **Single-Window Clearance Mechanism, Orissa:** OIFA envisages a three-tier approval mechanism to expedite clearances to industrial projects based on the level of investment. It enables time-bound faster clearances.

Besides obtaining approvals, inadequate infrastructure and the time taken in obtaining a new connection for water sewerage and power also act as hurdles in starting a business.

Initiatives in India that have been identified: Enabling Infrastructure

1. **Water and sewerage connection, Greater Noida:** The Layout for Greater Noida sectors, along with detailing of water and sewerage connection to individual plots, are pre-planned. Also Pre-possession of connections avoids repetitive road cutting at later stages.
2. **Critical infrastructure Project (CIP) scheme, Gujarat:** Assistance is given for upgrading infrastructure facilities of the industrial estate including construction of approach road, by-pass road, over bridge on road and rail and facilities specific to the industrial area. The state government has sanctioned Rs.1,433.54 crore under the CIP schemes for 187 projects in 184 estates.

Starting a Business - Operation and Growth

Unethical practices, macroeconomic instability, high financing

cost, taxes and the availability of skilled labour pose major obstacles in the operation and growth of business in India. Corruption is the major obstacle in doing business in India followed by cost of financing, tax administration and high taxes. Economic and regulatory policy, uncertainty and macroeconomic instability can create challenges in the operations and growth of business in India. Skill and education of workers, labour regulations, customs and trade regulations and access to land are some other major areas of concern in doing business in India.

Starting a business – Labour

Productive labour and harmonious labour relations are considered central to realising the demographic dividend that India is offered. There is a need to contain the inconsistencies that seemingly exist between different labour laws and other laws that concern labour indirectly. The National Manufacturing Policy aims to increase the manufacturing sector's share of the economy from 15 per cent of the gross domestic product to 25 percent by 2022. Of the ways in which it is expected to bring this about include the creation of national investment and manufacturing zones or NIMZs — greenfield industrial townships with flexible labour laws and simpler business regulations.

Initiative in india that have been identified: labour

1. **Labour Compliance, SEZ Act, Gujarat:**The Gujarat SEZ Act, 2004, has made key provisions with respect to the appointment and termination of labour for units established in SEZs.
2. **Skill Development, Gujarat:** With a goal of providing employment to the youth, the Directorate of Employment & Training started imparting skill development training to youth through village cluster training centres in villages, under the Swarnim Gujarat Gramya Kaushalya Vardhan Kendra (KVK) Yojana. 940 training institutes and one lakh candidates have been registered in the GSDM.
3. **Labour Management System (Mahashramm), Maharashtra:** It is an E-portal to provide users with efficient and time-bound services (online registrations, returns filings, license, exemptions, tracking of applications). It also allows direct reconciliation of returns with bank statements to reduce physical inspections.

Starting a Business – Recommendations

1. Effective implementation of the single-window clearance system for approvals related to starting a business.
2. Single window agency should aim to co-ordinate all legal approvals necessary for the setting up of a business.



3. Decrease the time taken to grant approval. Escalation could be done by a single-window clearance agency to the concerned authorities in case of delays.
4. Simplify applications by introducing a combined application form (CAF) instead of several different forms for various departments. Orissa has one common form which is accepted by all the departments.
5. Common register; Orissa has replaced the need for maintaining multiple registers (29 registers under various acts) by three combine registers.
6. A single-window clearance from the Ministry of Environment and Forests (MoEF) covering environment, CRZ, forest and wildlife to replace the current system of separate clearances.
7. Strengthen coordination between Central Pollution Control Board (CPCB) and the State Pollution Control Board (SPCB).
8. Environment norms should be clearly defined and implemented in a time bound manner.

3. TAXATION

Companies face issues while dealing with tax authorities, settling tax disputes, availing tax incentives and obtaining timely service tax refund. Companies across sectors face issues and challenges with respect to the direct tax regime and transfer pricing regulations.

Initiatives to address issues

Various states have taken initiatives to ease paying of taxes and reduce the cost of tax collection as under:

1. Registration, filling and payment of State VAT, AP: An e-registration application software has been developed to help dealers to apply for Value-added Tax (VAT) registration online and registration certificates are issued through VATIS, an online software application within 24 hours in case of non-risk dealers.
2. AASTHI, GIS based property tax system, Karnataka: A geographical information system (GIS) is being employed to bring all properties under the tax net. This facilitates the assessment of property and the creation of property records. It enables easy tracking of defaulters and notices served for nonpayment of tax.
3. VAT simplification and improvement, Rajasthan: All payments and returns have been made online compulsorily. Also, a Fast-track mode of return filing whereby 50 per cent of the claimed return is paid at the time of filing returns and the remaining 50

per cent paid after assessment of claims.

Taxation – Recommendations

Taxation in India needs structural, operational and administrative reforms; the burden of tax compliance should be reduced besides enabling e-filing of all taxes.

Ease of paying taxes

- Enable e-filing of all taxes with uninterrupted access to online services especially in rural areas.
- Time-bound subsidies and tax exemptions should be given to the units located in industrial areas, food parks and agro-export zones.
- The GST proposes to subsume all indirect taxes levied in the country but is yet to be implemented. It could help address the shortcomings in the existing indirect tax system like tax cascading complexity and poor technological infrastructure along with high cost of compliance.

Structural reforms

Reduce the number of levies and simplify their nature

Structural reform calls for:

- Clarity in policy and precision in drafting to help decrease the number of disputes.
- Clarity and precision in policy by aligning it to macroeconomic objectives.





Article

Ease of Doing Business in India

- Stability and predictability to avoid frequent amendments.
- Emphasis on restricting practice of retrospective amendments.
- **Direct Taxes**
 - Moderation in individual and corporate tax rates to spur domestic demand and investment.
 - Elimination of capital gains tax to boost domestic and foreign investment.
 - Clarify the non-availability of Minimum Alternate Tax (MAT) for foreign companies – need for certainty post-Authority of Advance Rulings (AARs) rulings.
- **Indirect Taxes**
 - GST needs to be implemented urgently to meet the goals of consolidation and simplification while generating more revenues.
 - Move away from the revenue generation aspects of customs, focus on anti-dumping and border security.
 - Facilitate consolidation of multiple taxes at the state and local levels, eliminate 'nuisance' levies.
 - Elimination of 'dual levies' e.g. software and Intellectual Property Rights (IPRs).
- Entry into force from 1 April 2015 need reassessment before introduction
- Detailed guidelines on GAAR applicability
- Need for clarity on interplay between Specific Anti-avoidance Rules (SAAR) and General Anti-avoidance Rules (GAAR), specific reference to Limitation of Benefits (LOB) Articles.
- **Cross-border Tax**
 - Reiterate the applicability of Central Board of Direct Taxes (CBDT) Circulars on the Mauritius treaty, need to eliminate uncertainty at the departmental level.
 - Downward revision in domestic withholding rates for royalty/Fees for Technical Services (FTS), significant impact on technology inflows.
 - Avoid the use of corporate level taxation (Dividend Distribution Tax (DDT)), Buyback tax) to bypass treaty limitations on source country taxation.

Operational Reforms - Focus on getting the tax base right and ushering in certainty and stability

Direct Tax

- Indirect Transfers
 - Implement the Shome Committee recommendations; clarifications and legislative amendments are necessary.
 - Clarification on items such as threshold, group reorganizations, stock market Taxation.
 - Need to eliminate retrospectivity.
 - Non-applicability of penalty and interest if applied retrospectively.
- General Anti-Avoidance Rules (GAAR)
 - Need for a comprehensive GAAR
 - Need for grandfathering of investments made prior to 1 April 2015

Transfer Pricing

- Clarification of the non-applicability of Transfer Pricing regulations on transactions not resulting in taxable incomes or tax deductible expenses in India e.g. equity infusions, transactions with regard to foreign companies.
- Clarifications regarding impermissibility of secondary adjustments.
- Issue guidelines regarding compensation to be recovered in case of creation of marketing intangibles – as a result of excess Advertising, marketing and promotion (AMP) expenditure.
- Non-availability of domestic Transfer pricing (TP) to payment of director remunerations and other non- tax arbitrage situations to avoid double taxation.





DTC

- Review the need for Controlled Finance Company (CFC) Provisions in the Indian context
- Rethink 'place of effective management' standard for establishing tax residency
- Address the need for robust dispute resolution mechanisms
- Delinking policy-making and legislative drafting, consider redrafting by an expert committee based on the final policy decisions.

Indirect Taxes

- Ease restriction on the availability of Cenvat credits
- Revisit the Fiat India issue, restore the primacy of actual transaction prices
- Equal incentives for the services sector, to bring them at par with manufacturing incentives
- Guidelines on refund processes and timelines
- Greater consistency and accountability in tax administration.

Administrative Reforms

- There is a need for consistency in approach, uniform interpretation and application of the law and judicial pronouncements.
- There is a need to adopt a trust based approach, avoid not well defined and onerous information requests during assessments.
- Increase stability in reporting, avoid frequent changes in the return format/other forms.
- Development of a strong IT backbone.
- Provide certainty and clarity on clauses. For example, the tax holiday for the IT sector faces issues while implementation due to ambiguity
- The function of tax administration should be distinct from that of an Strategic business unit (SBU), any ambiguity could lead to undue arbitrary taxation claim
- The administration, for taxes, should adopt a concentrated, rather than fragmented, approach.

CONTRACT ENFORCEMENT

Fair, speedy trials are essential for small enterprises embroiled in disputes. If courts take a long time in resolving such disputes,

small firms may not be left with enough finances to continue doing business for a long time. In such cases justice delayed may translate into justice denied. At present, it could take several years for a commercial litigation to get resolved. If a lawsuit aims at seeking damages, it may stretch for at least a decade-and-a-half to reach resolution. There is a need to address such a pressing issue. Though arbitration was proposed as a good and effective alternative to litigation, it has ended up being more expensive and almost equally time consuming.

ISSUES IN CONTRACT ENFORCEMENT

Legal processes around foreign judgements

A judgement/decree passed by a court of a country which is not a 'reciprocating territory', cannot be enforced in India per se. A fresh suit has to be filed in a high court that has jurisdiction over the Indian judgement-debtor.

Even for reciprocating territories, a foreign judgment/decree will not be enforceable in India if the court in India determines that:

- it has not been pronounced by a court of competent jurisdiction;
- it has not been given on the merits of the case;
- it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- the proceedings in which the judgment was obtained are opposed to natural justice;
- it has been obtained by fraud;
- it sustains a claim founded on a breach of any law in force in





➤ The electronic case filing system, which enables electronic submission, registration, service notification and access to court documents, began operating in 2010, and by June 2013 almost half of civil cases were e-filed. Implementation of e-court systems results in substantial savings from a reduction in the use of paper, time spent in court, cheaper service of process, low transportation costs, easy archiving of documents and payment of fees.

India.

REVIEW OF LAWS AND REGULATIONS

- **Reconstruction, mergers and amalgamations**

The process of reconstruction, mergers and amalgamations of companies has been cumbersome and time-consuming. Though the Companies Act, 2013, has sought to rationalise it, the process requires further streamlining to be more effective.

In some cases where it was felt that justice could have been served in a better way, courts in India have intervened and provided relief to the Indian contracting party, even where the parties to the contract had agreed to have a provision for exclusive non- India jurisdiction. As far as possible, this should be avoided in order to retain the faith of foreign contracting parties in the Indian judicial system.

- **Intellectual property laws**

Intellectual property laws are yet to evolve to be able to keep up pace with international trends and standards. Rights and liabilities of licensors and licensees of IP in proprietary technology, in particular, need to be defined and appropriately set to enable international commerce to thrive.

INITIATIVES TO ADDRESS ISSUES: CONTRACT ENFORCEMENT

- **Improving Court Efficiency, Korea:** Korea was a pioneer in using electronic features to streamline court processes and launching electronic case management in the mid-1980s. The electronic case filing system, which enables electronic submission, registration, service notification and access to court documents, began operating in 2010, and by June 2013 almost half of civil cases were e-filed. Implementation of

e-court systems results in substantial savings from a reduction in the use of paper, time spent in court, cheaper service of process, low transportation costs, easy archiving of documents and payment of fees.

CONTRACT ENFORCEMENT - RECOMMENDATIONS

Reforms at all levels may be required for the enforcement of contracts to be effective and efficacious.

Implement e-courts

- Effectively implement an electronic case filing system
- IT-intensive productivity improvement programmes can be implemented, in courts at all the levels, including district courts. Though the process of e-filing of proceedings has been initiated in some high courts, this could be the norm, instead of an exception. The process of e-court service of proceedings has been initiated by the Supreme Court, however it has yet to permeate to courts at all levels
- Savings from the implementation of e-court systems can be substantial and result from a reduction in the use of paper, time spent in court, need for storage space, as well as easy archiving of documents and a general streamlining of processes and services
- Results of the World Bank survey indicate that globally, the pace of contract enforcement is high in economies that have e-filing facility.

Increase in the number of courts and tribunals

- Increasing the number of courts alone may not expedite proceedings. There is also a need to establish special tribunals for resolving commercial cases under various acts for various levels of monetary limits
- Moreover, the number of judges/ presiding officers should





be increased and they should be provided with adequate infrastructure and manpower to facilitate effective functioning.

Alternative Dispute Resolution

- Instead of filing proceedings in court, alternative dispute resolution (ADR) processes should be considered. ADR processes may require further streamlining and they should adhere to the specified timelines as far as possible.

International treaties

- Subject to certain restrictions in law, a foreign judgment can be enforced by courts in India only if the said judgment is of a court in a 'reciprocative territory'. The number of 'reciprocative territories' with which India presently has such treaties is minimal. India should sign treaties with many more countries with which it does business regularly
- The process of enforcement of foreign judgments should be streamlined and definite time limits should be provided for achieving finality with regard to their enforcement of the same.

ANTIQUATED LAWS SHOULD BE UPDATED

- Updating certain antiquated laws viz. the Indian Contract Act, 1872, Transfer of Property Act, 1882, Indian Evidence Act, 1872, Indian Trusts Act, 1882, Indian Penal Code, 1860, etc. may help them be relevant to the changing times we live in
- Laws pertaining to intellectual property should continuously evolve to be in line with international trends and standards. Rights and liabilities of licensors and licensees of IP in propriety technology, in technology, in particular, need to be defined and appropriately set to enable international commerce to thrive
- Laws should be drafted in simple language so that they can be understood without difficulty and there is no need to issue clarifications regarding their interpretation. Laws should be consistent with economic reforms and there should be no conflict of the laws on the same issue.

CONCLUSION

The World Bank Report has identified a number of areas to improve the business climate in India- particularly around land acquisition, starting a business, taxation and contract enforcement. Many of the new initiatives started in some states that have led to positive change, could perhaps be leveraged at the national level.

The Government of India has taken up a series of measures to improve Ease of Doing Business. The measures taken are:

1. Process of applying for Industrial License (IL) and Industrial

Entrepreneur Memorandum (IEM) has been made online and this service is now available to entrepreneurs on 24x7 bases at the eBiz website. This had led to ease of filing applications and online payment of service charges.

2. Notification has been issued on 12-03-2015 by DGFT to limit number of documents required for export and import to three.
3. Ministry of Corporate Affairs has introduced an integrated process for incorporation of a company, wherein applicants can apply for Director's Identification Number (DIN) and company name availability simultaneous to incorporation application [Form INC-29].
4. The Companies Amendment Act, 2015 has been passed to remove requirements of minimum paid-up capital and common seal for companies. It also simplifies a number of other regulatory requirements.
5. Application forms for Industrial Licence (IL) and Industrial Entrepreneur Memorandum (IEL) have been simplified.
6. An Investor Facilitation Cell has been created in 'Invest India' to guide, assist and hand hold investors during the entire life-cycle of the business.
7. SEZ Units allowed removing goods for repair, replacement, testing, calibration, quality testing and research and development on self-attestation.
8. Process of applying for Environment and Forests clearances has been made online through Ministry of Environment and Forests' portals <http://environmentclearance.nic.in/> and <http://forestclearance.nic.in/>.
9. The issue of time taken in registration with Employees Provident Fund Organization (EPFO) and Employees State Insurance Corporation (ESIC) was taken up with the Ministry of Labour and Employment, Director General, ESIC and Central Provident Fund Commissioner. Both the processes have been automated and ESIC registration number is being provided on a real-time basis.
10. An order facilitating revival and rehabilitation of MSMEs through banker's committee has been issued by Ministry of MSME.
11. A unified portal for registration of Units for LIN, reporting of inspection, submission of returns and grievance redressal has been launched by Ministry of Labour and Employment.

REFERENCES:

1. Economic Times, the newspaper
2. KPMG Article on 'Ease of Doing Business in India'
3. Ministry of Commerce and Industries, DIPP, Government of India



Corporate Laws

Landmark Judgement

CS: LMJ: 2/12/2015

V.B. RANGARAJ v. V.B. GOPALAKRISHNAN & ORS [SC]

Civil Appeal Nos. 1946 & 1947 of 1980.

P.B. Sawant & B.P. Jeevan Reddy, JJ. [Decided on 28/11/1991]

Equivalent citations: AIR 1992 SC 453; (1992) 73 Comp Cas 201 SC; JT 1991 (4) SC 430; 1991 (2) SCALE 1135 & (1992) 1 SCC 160.

Companies Act, 1956- Section 3(iii)- private company- restrictions as to share transfer- private agreement between shareholders- articles of association did not include the terms of the private agreement-transfer of shares pursuant to the private agreement- whether binding on the company and members- whether valid- Held, No.

Brief facts:

The main question, that falls for consideration in both the appeals, is whether the shareholders can among themselves enter into an agreement which is contrary to or inconsistent with the Articles of Association of the company.

The third defendant is a private limited company and the joint family of the plaintiffs and defendants came to hold all the 50 shares of the company. The family consisted of Baluswamy Naidu and Guruviah Naidu who were brothers, and each of the brothers held 25 shares in the company. The plaintiffs and defendants 1 and 2 and one Selvaraj are the sons of Baluswamy

Naidu and defendants 4 to 6 are the sons of Guruviah Naidu. Baluswamy Naidu died on February 5, 1963 and Guruviah Naidu died on January 10, 1970. The plaintiffs alleged that in 1951 there was an oral agreement between Baluswamy Naidu and Guruviah Naidu that each of the branches of the family would always continue to hold equal number of shares, viz., 25 and that if any member in either of the branches wished to sell his share/shares, he would give the first option of purchase to the members of that branch and only if the offer so made was not accepted, the shares would be sold to others. Although on behalf of defendants, it was disputed that there was any such agreement entered into between the two brothers, the finding recorded by all the courts below is against the defendants. It is not in dispute that the Articles of Association of the company were not amended to bring them in conformity with the said agreement.

Contrary to the said agreement, the first defendant, i.e., son of Baluswamy Naidu sold the shares to defendants 4 to 6 who are the sons of Guruviah Naidu. Hence the plaintiffs who are Baluswamy's sons filed the present suit for (i) a declaration that the said sale was void and not binding upon the plaintiffs and the second defendant (who is also the son of Baluswamy Naidu but was joined as a pro forma defendant) and for (ii) an order directing defendants 1 and 4 to 6 to transfer the said shares to the plaintiffs and the second defendant and for (iii) a permanent injunction restraining defendants 4 to 6 from applying for registering the said shares in their names and from acting adversely to the interests of the plaintiffs and the second defendant on the basis of the transfer of the said shares.

The Trial Court decreed the suit by holding that the sale of the said shares was invalid and not binding on the plaintiffs and the second defendant, and directed both the first defendant and defendants 4 to 6 to transfer the said shares to the plaintiffs, and granted permanent injunction as prayed for. The appeals filed by the first defendant and defendants 4 to 6 were dismissed. In the second appeals filed by them the High Court held that the courts below had proceeded on a wrong basis. According to the High Court the suit was in effect one to enforce the agreement providing for pre-emption and the court was entitled to mould the reliefs on the facts proved in the case and accordingly the High Court modified the decree by directing substitution of the plaintiffs as shareholders in place of defendants 4 to 6. In other words, the High Court in terms held that (i) the sale of the shares by the first defendant in favour of defendants 4 to 6 was invalid and hence the plaintiffs and the second defendant became entitled to purchase the said shares, (ii) the agreement was binding on the company, and (iii) the company was bound in law to register the said shares in the plaintiffs' names.

Decision: Appeals allowed.

Reason: The provisions of the Companies Act, 1956 make it clear that the Articles of Association are the regulations of the company binding on the company and its shareholders and that



the shares are a movable property and their transfer is regulated by the Articles of Association of the company.

Whether under the Companies Act or Transfer of Property Act, the shares are, therefore, transferable like any other movable property. The only restriction on the transfer of the shares of a company is as laid down in its Articles, if any. A restriction which is not specified in the Articles is, therefore, not binding either on the company or on the shareholders. The vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles.

We may refer to certain authorities which reinforce the above proposition.

In *S.P. Jain v. Kalinga Tubes Ltd*, (1965) 35 Comp Cas 351(SC) it was held that the agreement, on the basis of which the shares of the company has been transferred, was not binding even on the private company and much less so on the public company when it came into existence in 1957. It was an agreement between a non-member and two members of the company and although for some time the agreement was in the main carried out, some of its terms could not be put in the Articles of Association of the public company. As the company was not bound by the agreement it was not enforceable.

In *Re Swaledale Cleaners Ltd*. (1968) 1 All ER 1132 it was held that it is well-established that a share in a company is an item of property freely alienable in the absence of express restrictions under the Articles. This view is reiterated in *Tett v. Phoenix Property and Investment Co. Ltd*. and Ors. 1986 2 BCC 99, 140.

In Chapter 16 of *Gore-Browne on Companies* (43rd Ed.) while dealing with transfer of shares it is stated that subject to certain limited restrictions imposed by law, a shareholder has prima facie the right to transfer his shares when and to whom he pleases. This freedom to transfer may, however, be significantly curtailed by provisions in the Articles. In determining the extent of any restriction on transfer contained in the Articles, a strict construction is adopted. The restriction must be set out expressly or must arise by necessary implication and any ambiguous provision is construed in favour of the shareholder wishing to transfer.

In *Palmer's Company law* (24th Ed.) dealing with the 'transfer of shares' it is stated at page 608-9 that it is well-settled that unless the Articles otherwise provide the shareholder has a free right to transfer to whom he will. It is not necessary to seek in the Articles for a power to transfer, for the Act (the English Act of 1980) itself gives such a power. It is only necessary to look to the Articles to ascertain the restrictions, if any, upon it. Thus a member has a right to transfer his share/shares to another person unless this right is clearly taken away by the Articles.

In *Halsbury's Laws of England* (4th Ed.) para 359 dealing with

'attributes of shares' it is stated that "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. 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".

Dealing with 'restrictions on transfer of shares' in *Pennington's Company Law* (6th Ed.) at page 753 it is stated that shares are presumed to be freely transferable and restrictions on their transfer are construed strictly and so when a restriction is capable of two meanings, the less restrictive interpretation will be adopted by the court. It is also made clear that these restrictions have to be embodied in the Articles of Association.

Against the background of the aforesaid legal position, we may now examine the Articles of Association of the third defendant-company. It is not disputed before us that the only Article of the Articles of Association of the company which places restriction on the transfer of shares is Article 13. The Article reads as follows:

"13. No new member shall be admitted except with the consent of the majority of the members on the death of any member of his heir or heirs or nominee, shall be admitted as member. If such heir, heirs or nominee is/are unwilling to become a member, such share capital shall be distributed at par among the members equally or transferred to any new member with the consent of the majority of the members."

The aforesaid Article in effect consists of three parts. The first part states that no new member shall be admitted except with the consent of the majority of the members. The second part states that on the death of any member, his heir or heirs or nominee/s shall be admitted as members. The third part states that if such heir or heirs or nominee/s is/are unwilling to become member/s, the share capital of the deceased member shall be distributed among the existing members equally or transferred to any new member with the consent of the majority of the members. It is, therefore, clear that even a new member can be admitted provided the majority of the members are agreeable to do so. It also appears from the word "nominee" that a living member has a right to nominate even a third party to succeed to him as a member on his death. Further the restriction on transfer by way of a right of pre-emption which is incorporated in the third part of the Article is only in respect of the shareholding of the deceased member and not of a living member. Whereas the heirs/nominees are as a matter of right entitled to become members if they are willing to do so, the restriction on the transfer of shares steps in only when they are unwilling to become members. The restriction states that in the latter event the shares of the deceased member shall be first distributed among the existing members equally and if they are to be transferred to any new member, it would be done so with the consent of the majority of the existing members. It may be noticed from this restriction, that firstly there



is no limitation on the transfer of his shares by a living member either to the existing member or to a new member. The only condition is that when the transfer is made to a new member, it will have to be approved by the majority of the members. The transfer may be to any existing member whether he belongs to one or the other branch of the family and in such case there is no need of a consent of the members. The Article in fact envisages the distribution of the shareholding of the deceased member (and not of the living member) equally among the members of both branches of the family and not of any one of the branches only. Even the shares of the deceased member can be transferred to any new member when his heirs/nominees are not willing to become members. However, this can be done only with the consent of the majority of the members.

Hence, the private agreement which is relied upon by the plaintiffs where under there is a restriction on a living member to transfer his shareholding only to the branch of family to which he belongs in terms imposes two restrictions which are not stipulated in the Article. Firstly, it imposes a restriction on a living member to transfer the shares only to the existing members and secondly the transfer has to be only to a member belonging to the same branch of family. The agreement obviously, therefore, imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of the Article 13. They are, therefore, not binding either on the shareholders or on the company. In view of this legal position, the finding recorded by the courts below that the sale by the first defendant of his shares to defendants 4 to 6 is invalid as it is in breach of the agreement, is erroneous in law. In view of our above finding, it is unnecessary to go into the question whether the High Court was justified in directing the transfer of shares by defendants 4 to 6 to the plaintiffs even if it's finding that the sale was invalid was correct.

In the circumstances, the appeals are allowed, the decree of the High Court is set aside and the plaintiffs' suit is dismissed with costs.

LW: 097: 12: 2015

Securities & Exchange Board of India v. Kakinada Fertilizers Limited

Company Application No. 125 of 2013 in Company Scheme Petition No. 235 of 2011 connected with Company Summons for Directions No. 126 of 2011

S.J.Kathavala, J. [Decided on 10/11/2015]

Companies Act, 1956 – Composite Scheme of Arrangement – approved by High Court – Scheme

effective – shares allotted - in-principle approval of Stock Exchanges for listing - subsequent allegation by SEBI to recall/ review Composite Scheme during application for Relaxation under Rule 19(2)(b) of the Securities Contract (Regulation) Rules, 1957.– whether tenable – Held, No.

Brief Facts:

In August 2010, The Hon'ble High Court of Bombay sanctioned a Composite Scheme of Arrangement and Amalgamation relating to Kakinada Fertilizers Ltd, Erstwhile Nagarjuna Fertilizers and Chemicals Ltd (NFCL), Ikisan Ltd and Nagarjuna Oil Refinery Ltd (NORL). The Scheme was made effective from September 2010, shares had been allotted and subsequently Audited accounts drawn up and dividend was paid, BSE and NSE had granted in-principle approval for listing and forwarded the application to SEBI for granting relaxation under Rule 19(2) (b) of the Securities Contract Regulation Act. The shares of demerged entity arising out the Composite Scheme, NORL were listed in March 2012 and were traded on BSE and NSE.

SEBI had filed Company Application seeking review of the Orders passed by the Court sanctioning the Composite Scheme claiming a fraud had been perpetrated on the Court by suppression and/or misrepresentation of facts and documents relating to the Court sanctioned composite scheme and challenged the manner in which valuation was carried out.

Decision: Appeal Dismissed

Reason: In relation to the locus of SEBI to intervene in a Scheme petition u/s 391 and 394 of Companies Act 1956, the observations of Hon'ble Supreme Court in the case of Sahara India are general in nature and the observation in Sahara judgment cannot be constructed to have overruled the categorical finding of the Divisional Bench of this Court in the Sterile case that SEBI cannot as a matter of right be heard in all Scheme petitions coming up before the Court under Section 391 of the Act.

SEBI cannot claim to be a person aggrieved and file Review Petition. SEBI having failed to look into the compliant of the shareholder which was received prior to this Court having sanctioned the Composite Scheme can hardly be heard to claim that it is an aggrieved party

On the allegation that SEBI had no right of notice in a scheme matter, it was observed that Clause 24(f) of Listing Agreement was introduced to enable Stock Exchanges to be able to peruse the Scheme so as to be able to check the schemes for violation of securities laws. The Scheme was duly approved by the Stock Exchanges after seeing relevant documents including valuation reports.



The question of any fraud committed by the Companies which have approached the Court seeking Orders on the Schemes by suppression of facts as alleged does not arise and in fact Regional Director has informed the Court that the Scheme is in interest of the shareholders of the Company

The mere non-compliance of Accounting Standards (though not true in the present case) cannot be a ground for recall or review of a court sanctioned scheme especially when due process of law has been complied with. As the petitioner has rightly contended, accounting takes place after the completion of the transaction, accounting only records the transaction and does not change the character or the value and alleged non-compliance in respect of accounting cannot and will not change the transaction or treatment of transaction. The ultimate test required to be seen is whether the transaction has been fair to all concerned and the test has been satisfied.

LW: 098: 12: 2015

Vse Stock Services Ltd. v. SEBI & Anr [SC]

Civil Appeal No.4664 of 2006

Vikramajit Sen & Shiva Kirti Singh, JJ. [Decided on 04/11/2015]

Securities & Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992- corporatisation of stock exchanges- merger of stock exchanges- whether fee continuity benefit is available to the resultant company- Held, No.

Challenge in this appeal is to order dated 18.5.2006 rendered by the Securities Appellate Tribunal, Mumbai (for short 'SAT') whereby Appeal No.342/2004 preferred by the appellant was dismissed by holding that the appellant is not entitled to the fee continuity benefit claimed under the provisions of Securities & Exchange Board of India (Stock Brokers and Sub- Brokers) Regulations, 1992 [for short, 'the Regulations'].

It would suffice to note that in terms of policy decision by respondent no.1, the Securities & Exchange Board of India (for brevity, 'the SEBI') reflected in its circulars dated 26.11.1999 and 16.12.1999, the Vadodara Stock Exchange Ltd incorporated a subsidiary company named as VSE Securities Ltd. on 24.12.1999. It got membership of Bombay Stock Exchange (BSE) as well as registration under the SEBI resulting in commencement of operation on BSE from 29.5.2000 but failed to get membership of National Stock Exchange (NSE) for the specific reason that it was a company limited by guarantee and not by stock or shares. To overcome this handicap, the Vadodara Stock Exchange Ltd. corresponded with the SEBI as well as NSE but without success because apparently it had ignored the clarifications contained in circular dated 16.12.1999 indicating

that a Stock Exchange could acquire the membership right of a major Stock Exchange through a subsidiary company but it should be a company limited by stocks. The bye-laws of NSE also permitted membership only to such a company and not to one limited by guarantee. Hence Vadodara Stock Exchange Ltd. incorporated another subsidiary company, the appellant herein, on 16.1.2002. Being limited by stocks, the appellant obtained membership of NSE on 16.4.2002. But SEBI refused to grant recognition to the appellant on the ground that as per its policy and circular dated 26.11.1999 only one subsidiary of Vadodara Stock Exchange Ltd. could claim registration as a broker. Such decision of the SEBI dated 31.12.2002 was accepted by the Vadodara Stock Exchange Ltd. and was never challenged.

In view of stand of the SEBI and clearly because the appellant wanted to operate on NSE, steps were taken to get the earlier subsidiary company – VSE Securities Ltd. amalgamated with the appellant. The High Court was moved and on completion of necessary formalities, amalgamation order was passed by the Gujarat High Court on 17.3.2003. Under the above scheme of amalgamation the appellant became a transferee company entitled to the assets and liabilities of the transferor company. Post amalgamation, the appellant obtained fresh registration from the SEBI in respect of its operation on BSE in the month of October 2003. On 30.04.2004, the SEBI granted registration for business on NSE on the usual conditions including payment of fees in the manner provided in the Regulations, particularly Regulation 10(1) read with Schedule III of the Regulations. The appellant paid the provisional fee liability but the demand of final fee by the SEBI was challenged before SAT on the ground that the appellant is entitled to fee continuity benefit in terms of circular of the SEBI dated 30.09.2002. The claim of the appellant, as noticed earlier, was rejected by SAT by the order under appeal.

Decision: Appeal dismissed.

Reason: The moot question falling for determination, as rightly noticed by SAT, is whether the appellant is entitled to the fee continuity benefit in terms of the Regulations.

We find that the facts of the case have been properly appreciated by SAT for coming to the conclusion that the amalgamation was not on account of any compulsion of law. The compulsion of the appellant was a business compulsion to do business as a broker with NSE. Initially the Vadodara Stock Exchange Ltd had chosen to form another subsidiary company limited by guarantee ignoring the circular of the SEBI dated 16.12.1999 and also the bye rules of NSE laying down conditions for membership but later it decided to have a subsidiary company which could get registration as a broker with NSE. Such decision was effected through amalgamation. Such a situation cannot be treated as a compulsion of law for amalgamation. Even if we accept the submission that the compulsion of law be given a liberal meaning so as to include orders and directions of the SEBI, in the present



case it is not possible to accept that amalgamation was forced upon the appellant under orders or directions of the SEBI. Only because the appellant and the parent company Vadodara Stock Exchange Ltd. subsequently decided and opted to do business as a broker with NSE, they chose the path of amalgamation. They could have as well chosen the path of winding up of the earlier subsidiary company. In the facts of the case it is not possible to accept that there was any compulsion of law for the merger/ amalgamation of the VSE Securities Ltd. with the appellant. So far as legal position is concerned, in the case of *Ratnabali Capital Markets Ltd. v. Securities & Exchange Board of India* (2008) 1 SCC 439 the contention that the assets and liabilities of the transferor company have passed into the hands of the transferee company did not cut any ice in respect of fees payable to the SEBI as per Regulations. In para 13 of that judgment it was held that on merger of the two companies, a new entity emerged which was given a right to operate in the derivative segment and therefore it had to pay fresh registration fees on the turnover basis. We find no good ground to take a different view. In paragraph 19 of that judgment this Court clarified that when the facts disclose that amalgamation/ merger had to be resorted to as an alternative to liquidation then it may be successfully urged that merger/ amalgamation was on account of compulsion of law so as to attract the exemption assured by the SEBI under the circular dated 30.09.2002. The facts of this case even remotely do not suggest any such or similar situation.

LW: 099: 12: 2015

SEBI & ORS v. ALLIANCE FINSTOCK LTD & ORS [SC]

Civil Appeal No.4493 of 2006 with Civil Appeal. No. 4743 of 2006

Vikramajit Sen & Shiva Kirti Singh, JJ. [Decided on 03/11/2015]

Securities & Exchange Board of India (Stock Brokers and Sub- Brokers) Regulations, 1992- corporatisation of individual/partnership membership of a stock exchange- whether fee continuity benefit is available to the resultant company- Held, Yes.

Brief facts:

Both the appeals have been preferred against a common judgment and order dated 09th May 2006 rendered by the Securities Appellate Tribunal (for brevity 'the SAT') to challenge the action of the SEBI denying them the benefit of fee continuity in terms of paragraph 4 of Schedule III to the Securities & Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations,

1992 [hereinafter called 'the Regulations'].

The SAT formulated the issue falling for determination in the form of a question – “whether stock brokers who have converted their individual/partnership membership into a corporate entity prior to April 01, 1997 are entitled to the fee continuity benefit in terms of paragraph 4 of Schedule III”.

Since the SAT answered the question in favour of the stock brokers (respondents herein), SEBI is in appeal.

Decision: Appeal dismissed.

Reason: Case of the SEBI is that since Para 4 of Schedule III was introduced by an amending notification dated 21.1.98 which states in Para 2 that the amendment will be effective from the date of notification i.e. 21.1.98, the annual fee payable by registered brokers would remain unaffected for the earlier year ending 31.3.97 and it can at best be effected only in respect of fees payable for the year 1.4.97 onwards. On such premise it has been forcefully contended on behalf of the appellants that the SAT has erred in granting retrospectivity to the provisions of para 4 by granting the benefit of fee continuity even to entities which acquired corporate membership on conversion even prior to 1.4.97.

Learned counsel appearing on behalf of respondents have supported the contentions that on plain construction of the concerned Regulation i.e. para 4 of Schedule III, it can safely be held that the provisions merely look at some past happenings but the benefits are to accrue to the eligible entities only in future and hence the provisions do not operate retrospectively. Further stand of the respondents is that SEBI itself cannot question the validity of the circulars and policy decisions declared by the SEBI Board and such circulars and declarations granting benefits even from a retrospective date cannot be held bad in law in view of law noticed and laid down in *CIT v. Vatika Township (P) Ltd.*, (2015) 1 SCC. The matter could have been different if SEBI had attempted to impose liabilities or create obligations upon stock brokers from a retrospective date. In case of conferment of benefits, no vested rights are adversely affected and in such cases retrospective operation is protected and permissible on the principles noticed in *Vatika* case.

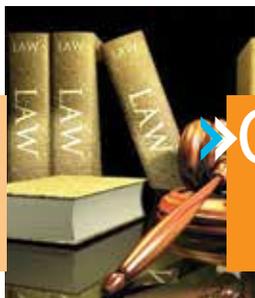
On a careful consideration of rival submissions and keeping in view the relevant case laws relied upon by the parties we have examined analytically and carefully paragraph 4 as well as the explanations thereto in Schedule III of the Regulations. We find that para 4 was no doubt inserted through an amendment with effect from 21.1.1998 but it does not disclose, either explicitly or even by necessary implication, that although possessing the required qualifications, a corporate entity formed earlier to 21.1.1998 would not be exempted from payment of fee for the period for which the erstwhile individual or partnership members has already paid the fees. In respect of a legislation of fiscal



character such as the present provision which relates to fees, it will not be proper or permissible to read into or delete words which do not exist in the provision. Further even if there is any scope of doubt, the benefit of such doubt will go to the subject i.e., the stock brokers and not to authority, in this case the SEBI. We further find that the explanation to para 4 introduced with effect from 20.2.2002 takes complete care of any doubt, if at all it could exist, by providing a deeming fiction that in the case of conversion of entities having individual or partnership membership card into a corporate entity, the corporate entity shall be deemed to be a continuation of the entity in respect of collection of fees from the converted corporate entity. Further, an embargo has been created against collection of fees again from the converted corporate entity. This explanation is statutory in nature and like para 4 it also does not restrict the benefits of conversion to entities converted on or after any particular date. The explanation does not talk of making any refund nor does it render the initial levy or assessment of fee as bad but forbids the collection of such fees if the converted corporate entity is entitled to fee continuation benefit in terms of paragraph 4 of Schedule III to the Regulations.

Even if we were to apply the test of fairness, no exception can be taken to the extension of the benefit of fee exemption as provided by the relevant provision in the Regulations. Since the policy behind grant of benefits is to encourage corporatization of individual or partnership members of a stock exchange, the action of extending such benefits without any curb on the basis of date of conversions cannot be held as unfair.

As noted earlier the SEBI itself extended the benefit to those converting not only from 21.1.1998 but from 1.4.1997. There is nothing in paragraph 4 or in the explanation to support the stand of the SEBI that the benefits must be confined to conversions taking place after a particular date when no such date finds place in the Regulations. As a result, appeals preferred by SEBI are dismissed and the judgments and orders under appeal passed by SAT are upheld.



Competition Laws

LW: 100: 12: 2015

TAJ PHARMACEUTICALS LTD & ORS v. THE



DEPARTMENT OF SALE TAX, MUMBAI & ANR [CCI]

Case No. 69 of 2015

Ashok Chawla, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta, M. S. Sahoo & G. P. Mittal. [Decided on 29/09/2015]

Competition Act, 2002- Section 4- abuse of dominance- state tax department demanded professional tax and issued demand notice- altercation between the officials and the assessee- FIR lodged by the department- whether tax department is an enterprise- Held, No- whether there was abuse of dominance by the tax department- Held, No.

Brief facts:

Informant No. 1 is a company, Informant No. 2 is its Chairman and the Informant No. 3 is one of its Directors ('Informant'). The Informant was primarily aggrieved by the conduct of OP 1 in issuing notices to the Informant for registration and payment of tax under the Professional Tax Act, 1975 for its sixteen companies which are not operational and registration of FIR against it for the alleged altercation between one of the official of OP 1 and the Informant. The Informant has alleged that OP 1 has abused its dominant position in contravention of the provisions of section 4 of the Act.

Based on the above, the Informant has alleged that OP 1, inter alia, has abused its dominant position in issuing notices and registration of FIR and had prayed to initiate investigation under the Act and to fix an appropriate penalty for the above said act.

Decision: Case dismissed.

Reason: The Commission has perused the information filed by the Informant and material available on record. From the facts of the case it is revealed that the Before proceeding to determine whether the alleged conduct of OP 1 is abusive in terms of section 4 of the Act or not, the primary issue that arise is whether OP 1 falls within the definition of 'enterprise' in terms of section 2(h) of the Act. For the purposes of ascertaining whether an entity is an enterprise or not within the meaning of section 2(h) of the Act, it is essential to examine the nature of the activity undertaken by the entity. Further, the assessment of whether an entity is an 'enterprise' or not is to be done based on the activity of the entity under consideration and the facts of the case.

The Commission observes that OP 1 is a department of the Government of Maharashtra. The activity of OP 1 under consideration in the instant case pertaining to the sovereign function undertaken by OP 1 as stated in Article 276 of the Constitution of India which deals with 'taxes on professions,



trades, callings and employments' wherein State Governments have given power to legislate for taxes in respect of professions, trades, callings or employment for the benefit of the State. By performing the said activity OP 1 is merely carrying out the sovereign function of the Government and as such is not engaged in any economic activity to be covered within the definition of an enterprise, given the facts of the present case. Hence, the Commission is of the view that the nature of the activities undertaken by OP 1 do not fall within the ambit of section 2(h) of the Act. Since, OP 1 is not an enterprise in terms of the provision of section 2(h) of the Act, the alleged abusive conduct of OP 1 need not be examined under the provisions of section 4 of the Act.

Further, the Commission observes that it is not germane to go into the grievances of the Informant arising out of lodging of FIR, subsequent filing of charge sheet and other related issues as these do not involve any question having a bearing on competition in the market and appropriate forum exists for the redressal of these issues. The 'Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975' also provides appellate remedy if a person is aggrieved.

In light of the above analysis, the Commission finds that no prima facie case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties in the instant matter.

unsuccessful bidders challenged the award- further challenge to awarding advertisement contract at the bus shelters to the successful bidder without inviting tender- whether the award of the works contract valid-Held, Yes. Whether awarding of the advertisement contract valid-Held, No.

Brief facts:

Respondent no. 3 - Aurangabad Municipal Corporation (for short "municipal corporation") invited tenders for replacement of existing street lights by Light Emitting Diodes (LED) fittings with refurbishment of street light infrastructure on Build, Operate and Transfer (BOT) basis. The contractor was required to complete the project within one year and recover the payment from the municipal corporation through Ninety six Equated Monthly Installments (EMIs) over a period of eight years. Response to E-tender notice was required to be made in two separate parts, namely, technical bid and price bid.

The present appellants and respondent No.1/writ petitioners submitted their bids but technical bids of the latter were rejected as they did not fulfill the terms as per the tender notice. The price bid of appellants was negotiated by the respondent - municipal corporation, and proposal was sent to the standing committee of the corporation. Where after, as per the resolution, the work order was issued in favour of the appellants. The two disqualified bidders filed the Writ Petitions (W.P. Nos. 7843 of 2014 and 8211 of 2014) before the High Court of Judicature of Bombay, Aurangabad Bench, challenging their disqualification, and acceptance of the appellants' bid. The High Court vide impugned order held that though disqualification of writ petitioners was correct but extraordinary favour was shown to appellants who were awarded work order, as such, the same was quashed. Hence these appeals.

Decision: Appeal partly allowed.

Reason: The only point to be considered by us is whether the High Court, even after finding that the technical bids of the writ petitioners were rightly rejected, was justified in quashing the work order given to the appellants whose technical bid was accepted by the municipal corporation.

Admittedly, respondent No. 3 Municipal Corporation invited online tenders for replacement of existing street lights by LED fittings. The e-tender was required to be made of technical bid and price bid. It is not disputed that the appellants and the respondent No. 1 uploaded their technical bid and submitted price/financial bid separately on the online portal of the municipal corporation. It is also admitted between the parties that the last date of submission of tenders was initially 20.08.2014, which was extended up to 28.08.2014. The technical evaluation of all the three bidders was carried



General Laws

LW: 101: 12: 2015

ELEKTRON LIGHTING SYSTEMS PVT LTD & ANR v. SHAH INVESTMENTS FINANCIALS DEVELOPMENTS AND CONSULTANTS PVT LTD & ORS [SC]

Civil Appeal Nos. 9151-9152 of 2015 (Arising out of S.L.P. (Civil) Nos. 34129-34130 of 2014)

Dipak Misra & Prafulla C. Pant, JJ. [Decided on 20/11/2015]

Building of bus shelters- Awarding of works contract-



out in their presence. It is relevant to mention here that the disqualification of other two bidders, who filed writ petitions, was found correct by the High Court, and said fact is not challenged before us. As such, the only issue required to be examined is as to whether the technical bid of the appellants was approved in accordance with the settled principle of law without giving them undue favour, or not.

It is pertinent to mention here that the tender was invited incorporating the National Lightening Code to ensure the safety of pedestrians and motorists. The tender also specified the Lux levels to be achieved and to be maintained for eight years. The power consumption required to be guaranteed and the contractor was made liable to bear the difference between the excess of actual energy bill over the quoted energy bill. The contractor was made responsible for comprehensive maintenance for all installed equipment over BOT period including any breakage, theft, and loss on any account whatsoever. It is worthwhile to mention here that in the pre- bid meeting, representatives of eight bidders stated to have participated and clarified various points regarding the tender notice.

In our opinion, there appears to be no hurry on the part of the municipal corporation, in awarding contract as the tender had been issued on 01.08.2014 and the same was finalized only on 03.09.2014, i.e. after a period of more than one month. Pre-bid meetings were held and the last date for submission of tender was extended twice from 20.08.2014 to 25.08.2014 and thereafter to 28.08.2014, which by itself shows that the process was not carried out in haste. Exhaustive pre-bid meeting was held on 12.08.2014, which was stated to have been attended by eight prospective bidders and the minutes of the pre-bid meetings running into several pages changed many terms in favour of the respondent Corporation to ensure even stricter contract execution responsibilities and thus became part of the tender through issuance of two corrigenda. The pre-bid meeting was held to understand the requirements of the contract viz. the opinion of the prospective bidders, to give sufficient time for bid preparation, evaluation of bids and award of contract. One month was consumed in carrying out the said activities and in no way can it be termed as a hurried process, as held by the High Court.

Therefore, in our opinion, the High Court has erred in law in holding that the work order was illegally given to the appellants in respect of replacement of street lights by LED fittings and refurbishment of street light infrastructure on BOT basis.

Now, we come to that part of work order and consequential agreement by which advertising rights were also granted to the appellants on the basis of letter dated 19.8.2014 sent by the appellants to the Municipal Corporation.

In our opinion, the matter regarding advertising rights was separate, and the municipal corporation which is a statutory

body and instrumentality of the State should have acted fairly by making it open for all eligible to submit their offers. As such, we think that the respondent No.3 was not justified in giving the advertisement rights to the appellants without inviting tender for it. To that extent, in our opinion, respondent No.3 has not acted fairly. As such, the manner in which the advertising rights are given to the appellants with the work order cannot be said to be fair and contract to that extent was liable to be quashed without interfering with rest of the work order.

Explaining the doctrine of severability contained in Section 57 of Indian Contract Act, 1872, in *B.O.I. Finance Ltd v. Custodian & Ors*, (1997) 10 SCC 488, a three Judge Bench of this Court has held that question of severance arises only in the case of a composite agreement consisting of reciprocal promises. In *Shin Satellite Public Co. Ltd. V. Jain Studios Ltd*, (2006) 2 SCC 628, this Court has observed that the proper test for deciding validity or otherwise of an order or agreement is "substantial severability" and not "textual divisibility". It was further held by this Court that it is the duty of the Court to sever and separate trivial and technical parts by retaining the main or substantial part and by giving effect to the latter if it is legal, lawful and otherwise enforceable.

Therefore, in the facts and circumstances and for the reasons as discussed above, the appeals deserve to be partly allowed.



Industrial & Labour Laws

LW: 102: 12: 2015

KAMAL PRASHAR v. NATIONAL AIRPORT AUTHORITY OF INDIA & ANR [SC]

Civil Appeal Nos.1434 & 1435 of 2008

Dipak Misra & Uday Umesh Lalit, JJ. [Decided on 28/10/2015]

Appellant employee of DGCA- through statutory provision absorbed in NAA- refused to work with NAA- dismissed from services for remaining absent- whether termination is valid- Held, Yes.



Brief facts:

The appellant was appointed as Assistant Aerodrome Officer with Director General Civil Aviation (“DGCA” for short) on 04.03.1974. In the year 1985, the National Airport Authority Act, 1985 was enacted which came into operation w.e.f. 07.12.1985 (hereinafter referred to as the Act). The Act provided for establishment of an authority namely National Airport Authority (“NAA” for short) for the management of Aerodromes and Civil Enclaves whereat domestic Air Transport Services are operated or intended to be operated and for management of all communication stations and matters connected therewith.

The record indicates that NAA was established w.e.f. 01.06.1986 and the employees, including the appellant, holding office under the DGCA as described in Section 13(3) of the Act were en-masse sent on deputation to NAA. On 31.03.1986 the appellant had written to the DGCA stating that he would like to continue his services in the office of the DGCA. Immediately upon establishment of NAA, the appellant again wrote to the DGCA on 04.06.1986 stating that he did not wish to join NAA and his services be retained with the DGCA.

However, NAA did not relieve him. By order dated 11.07.1986 the appellant was transferred to Civil Aerodrome, Varanasi and it was directed that he be relieved from his posting at Delhi and he must join the post at Varanasi w.e.f. 15.7.1986. The appellant did not join the duties at Varanasi and instead contested his posting with NAA and the transfer made by it. As he remained absent from duties he was dismissed from the services.

The dispute, after crossing all the stages, ultimately reached the Supreme Court.

Decision: Appeals dismissed.

Reason: The effect of Section 13(3) of the Act is clear and every employee holding any office under the DGCA in connection with the functions of the Authority under the Act stood statutorily deputed with NAA and continued to be on deputation till duly absorbed in its regular service by NAA. The expression used in said Section is “shall be treated on deputation” which unequivocally shows mandatory nature of the statutory provision. Neither the employee nor the DGCA could stop such statutory deputation or have any say in the matter. Second Proviso to Sub-section 3 of Section 13 of the Act contemplates exercise of discretion, within such time as may be specified, by the employee in respect of proposal of the Authority to absorb him. The discretion would therefore be available at a later point in time as and when the proposal for absorption is taken up for deliberation or consideration and not at the first stage when the services stood statutorily deputed with NAA.

The services of the appellant having thus been deputed with NAA, the appellant ought to have joined his post at Varanasi and was not justified in remaining absent unauthorisedly. The fact that the appellant prayed for disbursement of pay and allowances from NAA with effect from 15.07.1986 itself shows that he was conscious of the jural relation and that with effect from 15.07.1986 his services were with NAA. The tenor of his letters dated 04.06.1986, 11.07.1986 and 02.09.1986 further shows that he was well aware that his services stood deputed with NAA. In the circumstances and more particularly after 11.03.1987 the appellant was not at all justified in remaining absent. His continued absence from 15.07.1986 disentitles him from any relief.

The reliance on internal communication dated 04.02.1987 is completely misplaced. By said communication, the request was definitely made by the DGCA that the appellant be relieved to enable him to be repatriated to the parent department. However, such request was not acceded to and it was specifically conveyed to the appellant by communication dated 11.03.1987 that he should join his duty at Varanasi. In the face of such communication, the appellant could not have absented himself and if he did so, he alone would be responsible for the consequences.

As the services of the appellant were deputed with NAA, it was definitely competent to initiate the disciplinary proceedings for his continued absence. The order of dismissal passed on 02.08.2006 is not under challenge in these appeals. As regards the entitlement to seek disbursement of pay and allowances from NAA, in our view, the appellant is not entitled to any relief. We do not find any error in the assessment made by the High Court in the judgment and order under appeal. We, therefore, dismiss these appeals leaving it open to the appellant to raise any challenge as regards the order of dismissal, if so advised.



LW: 103: 12: 2015

COMMISSIONER OF CENTRAL EXCISE v. NESTLE INDIA LTD [SC]



Civil Appeal No.951 of 2008

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 24/11/2015]

Central Excise – exemption notifications- assessee 100% EOU transferred its products to its two sister units – exemption denied and duty imposed- whether enable-Held, No.

Brief facts:

The respondent herein is a 100% EOU engaged in the manufacture of instant tea falling under Chapter 2101.20 of schedule to the Central Excise Tariff Act, 1985. The present appeal is concerned with clearances of their product to two sister units on payment of duty in terms of Notification No.8/97 - CE dated 1.3.1997 and Notification No.23/2003 CE dated 31.3.2003. The first notification would cover the period 1.11.2000 to 30.3.2003 and the second notification would cover the period 31.3.2003 to 31.5.2005. Inasmuch as the instant tea was manufactured wholly out of indigenous raw materials, the notifications aforesaid applied and whatever was in excess of what is chargeable by way of excise duty on the said tea is exempted. It is not in dispute that the said notifications applied in the facts of the instant case.

After issuing a show cause notice, the Department assessed the assessable value of instant tea removed to the respondent's own units on the basis of the export price of similar goods and not 115% of the cost of production. This order was upheld in the appeal and on further appeal the CESTAT set aside the demand. Hence, the Revenue went in appeal to the Supreme Court.

Decision: Appeal dismissed.

Reason: The first thing to be noticed is that Section 5A under which the exemption notifications are issued states in the proviso that no exemption shall apply to excisable goods which are produced or manufactured by a 100% Export Oriented Undertaking and brought to any place in India unless specifically provided in such exemption notification. When we turn to the notification dated 1.3.1997, we find that there is specific provision for exemption of certain goods produced in a 100% EOU wholly from raw materials produced or manufactured in India. It is not disputed by the revenue that the instant tea manufactured by the respondent would be covered being a finished product specified in the schedule to the Central Excise Tariff Act. Further, the notification goes on

to state that the said tea should be "allowed to be sold" in India in accordance with the relevant EXIM policy. It further goes on to state that the exemption from payment of the duty of excise that is leviable thereunder under Section 3 is what is payable in excess of an amount equal to the duty of excise leviable on like goods produced or manufactured in India produced in an undertaking other than in a 100% Export Oriented Undertaking, if sold in India.

It is clear that the object of the notification is that so far as the product in question is concerned, so long as it is manufactured by a 100% EOU out of wholly indigenous raw materials and so long as it is allowed to be sold in India, the duty payable should only be the duty of excise that is payable on like goods manufactured or produced and sold in India by undertakings which are not 100% EOUs.

On the facts of the present case, it is clear that the said duty of excise arrived at based on Section 3(1) Proviso (ii) is more than the duty determinable for like goods produced or manufactured in India in other than 100% EOUs. Since the notification exempts anything that is in excess of what is determined as excise duty on such like goods, and considering that for the entire period under question the duty arrived at under Section 3(1) proviso (ii) is in excess of the duty arrived at on like goods manufactured in India by non 100% EOUs, it is clear that the whole basis of the show cause notice is indeed flawed. Further, the show cause notice is based on one solitary circumstance – the fact that goods captively consumed by the two sister units of the unit in question are not "sold". We are afraid this approach flies in the face of the language of the notification dated 1.3.1997. The test to be applied under the said notification is whether the goods in question are "allowed to be sold" in India. The aforesaid expression is obviously different from the expression "sold" and does not require any actual sale for the notification to be attracted. In fact revenue's case is also that even though the said notification is attracted, yet because there is no sale somehow the FOB export price of like goods alone is to be looked at. If this were to be so, not only would the object of the notification not be sub-served but even its plain language would be violated. It is clear that the said notification has been framed by the Central Government, in its wisdom, to levy only what is levied by way of excise duty on similar goods manufactured in India, on goods produced and sold by 100% EOUs in the domestic tariff area if they are produced from indigenous raw materials. If the revenue were right, logically they ought to have contended that the notification does not apply, in which event the test laid down under Section 3(1) proviso (ii) would then apply. This not being the case, we are of the view that the Tribunal's judgment is correct and requires no interference. The appeal is, accordingly, dismissed.



From the Government



Corporate Laws

01 The Companies (Management and Administration) Third Amendment Rules, 2015

[Issued by the Ministry of Corporate Affairs vide F. No. 1/34/2013 CL-V, dated 16.11.2015. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

In exercise of the powers conferred under sub-sections (2) and (3) of section 92 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

- Short title and commencement.-(1) These rules may be called the Companies (Management and Administration) Third Amendment Rules, 2015.
(2) They shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Management and Administration) Rules, 2014, for Form No. MGT-7, the following form shall be substituted, namely:-

FORM NO. MGT-7 **Annual Return**

(Pursuant to sub-section (1) of section 92 of the Companies Act, 2013 and sub-rule (1) of rule 51 of the Companies (Management and Administration) Rules, 2014)

Form language in English or Hindi
Refer the instruction kit for filing the form.

I. REGISTRATION AND OTHER DETAILS

(i) *Corporate Identification Number (CIN) of the company **Pre-fill**
 Global Location Number (GLN) of the company
 *Permanent Account Number (PAN) of the company

(ii) (a) Name of the company
 (b) Registered office address
 (c) *email-ID of the company
 (d) *Telephone number with STD code
 (e) Website

(iii) Date of incorporation

(iv) Type of the Company	Category of the Company	Sub-category of the Company
<input type="text"/>	<input type="text"/>	<input type="text"/>

(v) *Whether company is having share capital: O Yes O No
 *Whether shares listed on recognized Stock Exchange(s): O Yes O No

(vi) (a) Details of stock exchanges where shares are listed

S. No.	Stock Exchange Name	Code
1	<input type="text"/>	<input type="text"/>
2	<input type="text"/>	<input type="text"/>

(b) CIN of the Registrar and Transfer Agent **Pre-fill**
 Name of the Registrar and Transfer Agent

Registered office address of the Registrar and Transfer Agents

(vii) *Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)

(viii) *Whether Annual General Meeting (AGM) held: O Yes O No

(a) If yes, date of AGM

(b) Due date of AGM

(c) Whether any extension for AGM granted: O Yes O No

(d) If yes, provide the Service Request Number (SRN) of the application form filed for extension

(e) Extended due date of AGM after grant of extension **Pre-fill**

(f) Specify the reasons for not holding the same

II. PRINCIPAL BUSINESS ACTIVITIES OF THE COMPANY

*Number of business activities

S. No.	Main Activity group code	Description of Main Activity group	Business Activity Code	Description of Business Activity	% of turnover of the company
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
2	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

III. PARTICULARS OF HOLDING, SUBSIDIARY AND ASSOCIATE COMPANIES (INCLUDING JOINT VENTURES)

*No. of Companies for which information is to be given **Pre-fill & B**

S. No.	Name of the company	CIN / FCRN	Holding/ Subsidiary/ Associate / Joint Venture	% of shares held
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
2	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

IV. SHARE CAPITAL, DEBENTURES AND OTHER SECURITIES OF THE COMPANY

(i) *SHARE CAPITAL

(a) Equity share capital

Particulars	Authorised Capital	Issued capital	Subscribed capital	Paid Up capital
Total number of equity shares	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total amount of equity shares (in rupees)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of classes

Class of shares	Authorised Capital	Issued capital	Subscribed Capital	Paid Up capital
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of equity shares	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Nominal value per share (in rupees)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total amount of equity shares (in rupees)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(b) Preference share capital

Particulars	Authorised Capital	Issued capital	Subscribed capital	Paid Up capital
Total number of preference shares	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total amount of preference shares (in rupees)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of classes

Class of shares	Authorised Capital	Issued capital	Subscribed capital	Paid Up capital
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of preference shares	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Nominal value per share (in rupees)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total amount of preference shares (in rupees)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(c) Unclassified share capital

Particulars	Authorised Capital
Total amount of unclassified shares	<input type="text"/>

(d) Break-up of paid-up share capital

Class of Shares	Number of shares	Total Nominal Amount	Total Paid-up amount	Total premium
<input type="text"/>				



Equity shares			
At the beginning of the year			
Increase during the year			
i. Public issues			
ii. Rights issue			
iii. Bonus issue			
iv. Private Placement/ Preferential allotment			
v. ESOPs			
vi. Sweat equity shares allotted			
vii. Conversion of Preference share			
viii. Conversion of Debentures			
ix. GDRs/ADRs			
x. Others, specify			
Decrease during the year			
i. Buy-back of shares			
ii. Shares forfeited			
iii. Reduction of share capital			
iv. Others, specify			
At the end of the year			
Preference shares			
At the beginning of the year			
Increase during the year			
i. Issues of shares			
ii. Re-issue of forfeited shares			
iii. Others, specify			
Decrease during the year			
i. Redemption of shares			
ii. Shares forfeited			
iii. Reduction of share capital			
iv. Others, specify			
At the end of the year			

Date of Registration of Transfer			
Type of Transfer	1 - Equity, 2 - Preference Shares, 3 - Debentures, 4 - Stock		
Number of Shares/ Debentures/Units Transferred	Amount per share/debenture/unit (in Rs.)		
Ledger Folio of Transferor			
Transferor's Name	Surname	Middle Name	First Name
Ledger Folio of Transferee			
Transferee's Name	Surname	Middle Name	First Name

Date of Registration of Transfer			
Type of Transfer	1 - Equity, 2 - Preference Shares, 3 - Debentures, 4 - Stock		
Number of Shares/ Debentures/Units Transferred	Amount per share/debenture/unit (in Rs.)		
Ledger Folio of Transferor			
Transferor's Name	Surname	Middle Name	First Name
Ledger Folio of Transferee			
Transferee's Name	Surname	Middle Name	First Name

(iv) *Indebtedness including debentures (Outstanding as at the end of financial year)

Particulars	Number of units	Nominal value per unit	Total value
Non-convertible debentures			
Partly convertible debentures			
Fully convertible debentures			
Secured Loans (including interest outstanding/accrued but not due for payment) excluding deposits			
Unsecured Loans (including interest outstanding/accrued but not due for payment) excluding deposits			
Deposit			
Total			

Class of Debentures	Outstanding as at the beginning of the year	Increase during the year	Decrease during the year	Outstanding as at the end of the year
Non-convertible debentures				
Partly convertible debentures				
Fully convertible debentures				

(v) Securities (other than shares and debentures)

Type of Securities	Number of Securities	Nominal Value of each Unit	Total Nominal Value	Paid up Value of each Unit	Total Paid up Value
Total					

V. *Turnover and net worth of the company (as defined in the Companies Act, 2013)

(i) Turnover _____
 (ii) Net worth of the Company _____

(ii) Details of stock split/consolidation during the year (for each class of shares)

Class of shares		(i)	(ii)	(iii)
Before split / Consolidation	Number of shares			
	Face value per share			
After split / consolidation	Number of shares			
	Face value per share			

(iii) Details of shares/Debentures Transfers since closure date of last financial year (or in the case of the first return at any time since the incorporation of the company)*

Nil

[Details being provided in a CD/Digital Media] Yes No Not applicable

Separate sheet attached for details of transfers Yes No

Note: In case list of transfer exceeds 10, option for submission as a separate sheet attachment or submission in a CD/Digital Media may be shown.

Date of Previous A-3M





From the Government

VI. (a) *SHARE HOLDING PATTERN - Promoters

S. No.	Category	Equity		Preference	
		Number of shares	Percentage	Number of shares	Percentage
1.	Individual/Hindu Undivided Family				
	(i) Indian				
	(ii) Non-resident Indian (NRI)				
	(iii) Foreign national (other than NRI)				
2.	Government				
	(i) Central Government				
	(ii) State Government				
	(iii) Government companies				
3.	Insurance companies				
4.	Banks				
5.	Financial institutions				
6.	Foreign institutional investors				
7.	Mutual funds				
8.	Venture capital				
9.	Body corporate (not mentioned above)				
10.	Others				
	Total				

Total number of shareholders (promoters)

(b) *SHARE HOLDING PATTERN – Public/Other than promoters

S. No.	Category	Equity		Preference	
		Number of shares	Percentage	Number of shares	Percentage
1.	Individual/Hindu Undivided Family				
	(i) Indian				
	(ii) Non-resident Indian (NRI)				
	(iii) Foreign national (other than NRI)				
2.	Government				
	(i) Central Government				
	(ii) State Government				
	(iii) Government companies				
3.	Insurance companies				
4.	Banks				

5.	Financial institutions				
6.	Foreign institutional investors				
7.	Mutual funds				
8.	Venture capital				
9.	Body corporate (not mentioned above)				
10.	Others				
	Total				

Total number of shareholders (other than promoters)

Total number of shareholders (Promoters + Public/Other than promoters)

(c) *Details of Foreign institutional investors* (FIIs) holding shares of the company

Name of the FII	Address	Date of Incorporation	Country of Incorporation	Number of shares held	% of shares held

VII. *NUMBER OF PROMOTERS, MEMBERS, DEBENTURE HOLDERS

Details	At the beginning of the year	At the end of the year
Promoters		
Members (other than promoters)		
Debenture holders		

VIII. DETAILS OF DIRECTORS AND KEY MANAGERIAL PERSONNEL

(A) *Composition of Board of Directors

Category	Number of directors at the beginning of the year		Number of directors at the end of the year		Percentage of shares held by directors as at the end of year	
	Executive	Non-executive	Executive	Non-executive	Executive	Non-executive
A. Promoter						
B. Non-Promoter						

(i) Non-Independent				
(ii) Independent				
C. Nominee Directors representing				
(i) Banks and FIs				
(ii) Investing institutions				
(iii) Government				
(iv) Small share holders				
(v) Others				
Total				

Number of Directors and Key managerial personnel (who is not director) as on the financial year end date

(B) (i) *Details of directors and Key managerial personnel as on the closure of financial year

Name	DIN/PAN	Designation	Number of equity shares held	Date of cessation (after closure of financial year : if any)

(ii) Particulars of change in director(s) and Key managerial personnel during the year

Name	DIN/PAN	Designation at the beginning / during the financial year	Date of appointment / change in designation / cessation	Nature of change (Appointment/ Change in designation/ Cessation)

IX. MEETINGS OF MEMBERS/CLASS OF MEMBERS/BOARD/COMMITTEES OF THE BOARD OF DIRECTORS

A. MEMBERS/CLASS /REQUISITIONED/CLB/NCLT/COURT CONVENED MEETINGS

Number of meetings held

Type of meeting	Attendance

Date of meeting	Total Number of Members entitled to attend meeting	Number of members who attended the meeting	% of total shareholding of attended members

B. BOARD MEETINGS

*Number of meetings held

S. No.	Date of meeting	Total Number of directors as on the date of meeting	Number of directors attended	% of total directors
1				
2				

C. COMMITTEE MEETINGS

Number of meetings held

S. No.	Type of meeting	Date of meeting	Total Number of Members as on the date of meeting	Attendance	
				Number of members attended	% of total members
1					

D. *ATTENDANCE OF DIRECTORS

S. No.	Name of the Director	Board Meetings			Committee Meetings			Whether attended AGM held on <input type="text"/> (Y/N/NA)
		Number of Meetings which director was entitled to attend	Number of Meetings attended	% of attendance	Number of Meetings which director was entitled to attend	Number of Meetings attended	% of attendance	
1								



X. REMUNERATION OF DIRECTORS AND KEY MANAGERIAL PERSONNEL

Nil

Number of Managing Director, Whole-time Directors and/or Manager whose remuneration details to be entered

S. No.	Name	Designation	Gross salary	Commission	Stock Option/Sweat equity	Others	Total Amount
1.							
Total							

Number of CEO, CFO and Company secretary whose remuneration details to be entered

S. No.	Name	Designation	Gross salary	Commission	Stock Option/Sweat equity	Others	Total Amount
1.							
Total							

Number of other directors whose remuneration details to be entered

S. No.	Name	Designation	Gross salary	Commission	Stock Option/Sweat equity	Others	Total Amount
1.							
Total							

XI. MATTERS RELATED TO CERTIFICATION OF COMPLIANCES AND DISCLOSURES

A. Whether the company has made compliances and disclosures in respect of applicable provisions of the Companies Act, 2013 during the year Yes No

B. If No, give reasons/observations

XII. PENALTY AND PUNISHMENT - DETAILS THEREOF

(d) Where the annual return discloses the fact that the number of members, (except in case of one person company), of the company exceeds two hundred, the excess consists wholly of persons who under second proviso to clause (ii) of sub-section (68) of section 2 of the Act are not to be included in reckoning the number of two hundred.

Declaration

I am authorised by the Board of Directors of the company vide resolution no. dated (DD/MM/YYYY) to sign this form and declare that all the requirements of the Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that:

- Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
- All the required attachments have been completely and legibly attached to this form.

Note: Attention is also drawn to the provisions of section 447, sections 448 and 449 of the Companies Act, 2013 which provide for punishment for fraud, punishment for false statement and punishment for false evidence respectively.

To be digitally signed by

Director DSC

DIN of the director

To be digitally signed by DSC BOX

Company Secretary

Company Secretary in practice

Membership number Certificate of practice number

Attachments

- list of share holders, debenture holders;
- Approval letter for extension of AGM;
- Copy of MGT-8;
- Optional Attachment(s), if any;

List of attachments

Remove Attachment

This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the company.

Amardeep Singh Bhatla
Joint Secretary

02 The Companies (Share Capital and Debentures) Third Amendment Rules, 2015

[Issued by the Ministry of Corporate Affairs vide F. No. 1/4/2013 CL-V, dated 06.11.2015. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—

- (1) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2015.
- (2) They shall come into force from the date of their publication in the Official Gazette.
- In the Companies (Share Capital and Debentures) Rules, 2014,
 - in rule 18,-
 - In sub-rule (1), in clause (a) for sub-clause (iii) following sub-clauses shall be substituted, namely:-



"(iii) Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 201 1;

(iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years."

Amardeep Singh Bhatla
Joint Secretary

- (7) Shri B.M. Sharma -Member
B-2 Neelsadan Apartments, 1426,
Sadashiv Peth, Opp. Pune Vidyarthi
Griha, Pune-411030. [Appointed under section 22A of the
Cost and Works Accountants Act,
1959]
- (8) Ms. Preeti Malhotra -Member
1 Prithviraj Road, New Delhi 110011. [Appointed under section 22A of the
Company Secretaries Act, 1980]
- (9) Shri Sanjay Grover, B-88, First Floor, -Member
Ring Road, Defence Colony, New
Delhi 110024. [Appointed under section 22A of the
Company Secretaries Act, 1980]

03 Establishment of Appellate Authority by Central Government

(Issued by the Ministry of Corporate Affairs vide F. No. 12/15/2007-PI, G.S.R, 835(E), dated 03.11.2015. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 04.11.2015]

In exercise of the powers conferred by sub-section (1) of Section 22A of the Chartered Accountants Act, 1949 (38 of 1949), Section 22A of the Cost and Works Accountants Act, 1959 (23 of 1959) and Section 22A of the Company Secretaries Act, 1980 (56 of 1980), the Central Government hereby establishes an Appellate Authority consisting of the following persons, namely:—

- (1) Shri Justice P.K. Bhasin Judge -Chairperson
(Retd.), High Court of Delhi, New
Delhi.
- (2) Dr. Navrang Saini Director (Inspection - Member
and Investigation), Ministry of
Corporate Affairs, Shastri Bhawan,
New Delhi-110001.
- (3) Shri Praveen Garg - Member
Joint Secretary, Department of
Justice, Ministry of Law and Justice,
Jaisalmer House, New Delhi-110011.
- (4) Shri Kamelesh S. Vikamsey -Member
Sunshine Tower, Level 19, Senapati
Bapat Marg, Elphinstone Road,
Mumbai-400013. [Appointed under sub-section (1)
of section 22A of the Chartered
Accountants Act, 1949]
- (5) Shri Sunil Goyal -Member
SRG House, 2, M.I. Road, Opp.
Ganpati Plaza, Jaipur-302001. [Appointed under sub-section (I)
of section 22A of the Chartered
Accountants Act, 1949]
- (6) Shri Pravakar Mohanty -Member
HIG-188, Ph. VII, Sailashree
Vihar, Chandrasekharapur,
Bhubaneswar-751021 Odisha. [Appointed under section 22A of the
Cost and Works Accountants Act,
1959]

2. The term of office of the Chairperson shall be as per the provisions of sub-Section (1) of Section 22 B of the Chartered Accountants Act, 1949 and of Members shall be as per the provisions of sub-Section (2) of Section 22 B of the Chartered Accountants Act, 1949, Section 22 B of the Cost and Works Accountants Act, 1959 and Section 22 B of the Company Secretaries Act, 1980.
3. The Appellate Authority shall regulate its own procedure as per the provisions of sub-Section (2) of Section 22 D of the Chartered Accountants Act, 1949.
4. The terms and conditions of services and allowances of the Chairperson and Members of the Appellate Authority shall be governed by the Appellate Authority (Allowances payable to, and other terms and conditions of service of Chairperson and Members and the manner of meeting expenditure of the Authority) Rules, 2006.
5. This notification shall take effect from the date of publication in the Official Gazette.

MANOJ KUMAR,
Joint Secretary

04 Investor Grievance Redressal System and Arbitration Mechanism

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CDMRD/DIECE/02/2015, dated 16.11.2015.]

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 as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2015
2. This circular is issued with an objective to streamline and



strengthen the framework of investor redressal and arbitration mechanism at commodity derivatives exchanges in line with the securities market. The provisions of this circulars are as under :

A. Investor Service Centre(ISC)/ Investor Grievances Redressal Committee (IGRC) :

- i. The national commodity derivative exchanges shall set up investor service centers (ISC) for the benefit of the public/ investors in accordance with the circular CIR/MRD/DSA/03/2012 dated January 20, 2012.
- ii. The national commodity derivatives exchanges shall constitute IGRC in accordance with the SEBI circular no CIR/MRD/DSA/03/2012 dated January 20, 2012 and shall perform all such functions and responsibilities as stated in the SEBI circular no CIR/MRD/ICC/30/2013 dated September 26, 2013.

B. Arbitration Committee / Panel and Appellate Arbitration:

- i. The national commodity derivatives exchanges shall maintain panel of arbitrators, code of conduct for arbitrators, arbitration process, appellate arbitration, place of arbitration (nearest address provided by the client in the KYC form), implementation of arbitration award in favour of clients, records and disclosures as per the provisions of SEBI Circulars no CIR/MRD/DSA/24/2010 dated August 11,2010, CIR/MRD/DSA/04/2012 date January 20, 2012 and CIR/MRD/ICC/20/2013 dated July 05, 2013.
- ii. The national commodity derivatives exchanges shall make applicable the arbitration fees to each parties to the arbitration in accordance with the SEBI Circular No CIR/MRD/DSA/29/2010 dated August 31, 2010 read with CIR/MRD/ICC/29/2012 dated November 07, 2012 and CIR/MRD/ICC/29/2013 dated September 26, 2013.

C. Automatic Process and Common Pool of arbitrators :

- i. The national commodity derivatives exchanges shall pool all arbitrators of their exchange in the common pool across all national commodity derivatives exchanges, facilitate automatic selection of arbitrators from the common pool and shall also follow all other provisions mentioned in the SEBI Circular CIR/MRD/ICC/8/2013 dated March 18, 2013

3. All the provisions of this circular shall be implemented by national commodity derivatives exchanges latest by April 1, 2016, unless otherwise approved by SEBI.

4. The norms specified by Forward Markets Commission shall

continue to be in force to the extent not modified or repealed by this circular.

5. The implementation of this circular should be reported by the national commodity derivatives exchange to SEBI on monthly basis.

6. The national commodity derivatives exchanges are advised to:-

- make necessary amendments to relevant bye-laws for the implementation of this circular
- bring the provisions of this circular to the notice of the members of the commodity derivatives exchanges and also to disseminate the same through their website
- take necessary steps to make investors aware of the grievances redressal mechanism and arbitration process.
- 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

05 Annual System Audit, Business Continuity Plan(BCP) and Disaster Recovery (DR)

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CDMRD/DEICE/01/2015, dated 16.11.2015.]

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. While technological developments and innovations bring efficiency to the markets, they may also pose certain risks to the stability and integrity of the markets, if not identified and managed effectively. Further, any events of disaster will disrupt trading systems adversely, thereby impacting the market



From the Government

integrity and the confidence of investors. Exchanges should therefore have robust Business Continuity Plan (BCP) and Disaster Recovery (DR) to ensure continuity of operations.

3. In view of above, the guidelines relating to Annual System Audit, BCP and DR are as follows:

A. Annual System Audit

- I. The exchanges shall conduct annual system audit as per the prescribed audit framework which includes, audit process, auditor selection norms, Terms of Reference (TOR) and audit report guidelines in accordance with SEBI circular no. CIR/MRD/DMS/13/2011 dated November 29, 2011.
- II. First Annual System Audit of Exchanges shall be conducted on or before June 30, 2016 for the year 2015-16 as per the provisions of the above mentioned circular. The Systems Audit Report and compliance status should be placed before the governing board of the exchange and communicated to SEBI along with their comments.

B. Business Continuity Plan(BCP) and Disaster Recovery (DR)

- I. The exchanges shall have BCP& DR policy in place and implement the broad guidelines regarding the setting up of Disaster Recovery Site (DRS) and Near Site (NS), Configuration of DRS/NS with Primary Data Centre (PDC), DR drills / Testing, BCP DR policy document as per the provisions of SEBI circular no. CIR/MRD/DMS/12/2012 dated April 13,2012 read with circular no. CIR/MRD/DMS/17/2012 dated June 22,2012.
- II. The exchanges having DRS / NS shall align their entire set up in accordance with the provisions as mentioned in the circulars at Point B(I) on or before April 01, 2016
- III. The exchanges which do not have DRS / NS presently shall set up DRS/NS on or before September 30, 2016 in accordance with the provisions as mentioned in the circulars at Point B(I).
- IV. The exchanges shall submit their BCP – DR policy along with detailed plan of action for implementation to SEBI on or before April 01, 2016.

4. The national commodity derivatives exchanges are advised to:-
- Make necessary amendments to relevant bye-laws for the implementation of this circular
 - Communicate SEBI, the status of implementation of the provisions of this circular

5. All the provisions of this circular shall be implemented by national commodity derivatives exchanges, unless otherwise approved by SEBI.

6. 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.

7. The circular is available on SEBI website at i.e. www.sebi.gov.in.

B J Dilip
General Manager

06 Streamlining the Process of Public Issue of Equity Shares and Convertibles

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CFD/POLICYCELL/11/2015, dated 10.11.2015.]

1. As a part of the continuing endeavor to streamline the process of public issue of equity shares and convertibles, it has been decided, in consultation with the market participants -
- (i) to reduce the time taken for listing after the closure of issue to 6 working days as against the present requirement of 12 working days, and
 - (ii) to broad-base the reach of investors by substantially enhancing the points for submission of applications.

In this regard, necessary amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 have already been notified.

2. The operational details to implement the above are outlined below:

2.1. All the investors applying in a public issue shall use only Application Supported by Blocked Amount (ASBA) facility for making payment i.e. just writing their bank account numbers and authorising the banks to make payment in case of allotment by signing the application forms, thus obviating the need of writing the cheques.

2.2. In addition to the Self Certified Syndicate Banks (SCSBs), Syndicate Members and Registered Brokers of Stock Exchanges, the Registrars to an Issue and Share Transfer Agents (RTAs) and Depository Participants (DPs) registered with SEBI are now permitted to accept application forms (both physical as well as online) in public issues.

2.3. The RTAs and DPs shall provide their contact details, where



the application forms shall be collected by them, to the recognized stock exchanges by November 30, 2015 as per the format specified at Annexure-A and the same shall be disclosed by the stock exchanges on their websites. RTAs and DPs shall regularly update the said details by furnishing current information to the stock exchanges which shall be disclosed by the stock exchanges.

Processing of Applications by Intermediaries

- 2.4. Intermediaries accepting the application forms shall be responsible for uploading the bid along with other relevant details in application forms on the electronic bidding system of stock exchange(s) and submitting the form to SCSBs for blocking of funds (except in case of SCSBs, where blocking of funds will be done by respective SCSBs only). They shall undertake the various activities in accordance with indicative timelines as specified in this circular.
- 2.5. All applications shall be stamped and thereby acknowledged by the intermediary at the time of receipt.

Alerts by Stock Exchanges

- 2.6. Similar to the systems prevalent in case of secondary market transactions, the stock exchanges shall develop the systems to facilitate the investors to view the status of their public issue applications on their websites and sending the details of applications and allotments through SMS and E-mail alerts to the investors.

Timelines

- 2.7. The revised indicative timelines for various activities are specified at Annexure- B to this circular.
- 2.8. All intermediaries shall co-ordinate with one another to ensure completion of listing of shares and commencement of trading by T+6.

Other Requirements

- 2.9. Amount of commission payable to RTA / DP shall be determined on the basis of applications which have been considered eligible for the purpose of allotment. In order to determine to which RTA / DP the commission is payable to, the terminal from which the bid has been uploaded will be taken into account.
- 2.10. The details of commission and processing fees payable to each intermediary and the timelines for payment shall be disclosed in the offer document and this shall be implemented strictly.
3. The intermediaries shall provide guidance to their investors on making applications in public issues.

4. The merchant bankers shall ensure that appropriate disclosures are made in offer documents in accordance with this circular.
5. All intermediaries are advised to take necessary steps to ensure compliance with this circular.
6. The responsibilities of various intermediaries and indicative timelines, prescribed vide the following circulars, shall stand modified to the extent stated under this circular:
 - i. SEBI/CFD/DIL/ASBA/1/2009/30/12 dated December 30, 2009;
 - ii. CIR/CFD/DIL/2/2010 dated April 06, 2010; iii. CIR/CFD/DIL/3/2010 dated April 22, 2010; iv. CIR/CFD/DIL/7/2010 dated July 13, 2010;
 - v. CIR/CFD/DIL/8/2010 dated October 12, 2010;
 - vi. CIR/CFD/DIL/1/2011 dated April 29, 2011;
 - vii. CIR/CFD/DIL/2/2011 dated May 16, 2011;
 - viii. CIR/CFD/DIL/12/2012 dated September 13, 2012;
 - ix. CIR/CFD/DIL/13/2012 dated September 25, 2012;
 - x. CIR/CFD/DIL/14/2012 dated October 04, 2012;
 - xi. CIR/CFD/DIL/1/2013 dated January 02, 2013; and xii. CIR/CFD/DIL/4/2013 dated January 23, 2013.
7. This circular shall be applicable for all public issues opening on or after January 01, 2016.
8. This circular is being issued in exercise of the powers under section 11 read with section 11A of the Securities and Exchange Board of India Act, 1992.
9. This circular is available on SEBI website at www.sebi.gov in under the categories "Legal Framework" and "Issues and Listing".

Harini S Balaji
General Manager

Annexure-A Format for Submission of Details to Stock Exchanges

Name of the RTA / DP:
Registration No.
Nodal Officer

Name : xxx
Designation : xxx
Address : xxx
Telephone : xxx
Mobile : xxx
E-mail : xxx

Sl. No	State	City	Office Address	Contact Person	Contact Number	Fax	E-mail
1.	xxx	xxx	xxx	xxx	xxx	xxx	xxx
2.							
3.							



Annexure-B Indicative Timeline Schedule for Various Activities

S I . No.	Details of Activities	Due Date (working day*)
1.	An investor, intending to subscribe to a public issue, shall submit a completed bid-cum-application form to any of the following intermediaries: <ol style="list-style-type: none"> an SCSB, with whom the bank account to be blocked, is maintained a syndicate member (or sub-syndicate member) a stock broker registered with a recognised stock exchange (and whose name is mentioned on the website of the stock exchange as eligible for this activity) ('broker') a depository participant ('DP') (whose name is mentioned on the website of the stock exchange as eligible for this activity) a registrar to an issue and share transfer agent ('RTA') (whose name is mentioned on the website of the stock exchange as eligible for this activity) 	
2.	The aforesaid intermediaries shall, at the time of receipt of application, give an acknowledgement to investor, by giving the counter foil or specifying the application number to the investor, as a proof of having accepted the application form, in physical or electronic mode, respectively. <ol style="list-style-type: none"> For applications submitted by investors to SCSB: After accepting the form, SCSB shall capture and upload the relevant details in the electronic bidding system as specified by the stock exchange(s) and may begin blocking funds available in the bank account specified in the form, to the extent of the application money specified. For applications submitted by investors to other intermediaries: After accepting the application form, respective intermediary shall capture and upload the relevant details in the electronic bidding system of stock exchange(s). Stock exchange(s) shall validate the electronic bid details with depository's records for DP ID, Client ID and PAN, by the end of each bidding day and bring the inconsistencies to the notice of intermediaries concerned, for rectification and re-submission within the time specified by stock exchange. Stock exchange(s) shall allow modification of selected fields in the bid details already uploaded on a daily basis.	Issue opening date to issue closing date (where T is issue closing date)

3.	Issue Closes	T (Issue closing date)																						
4.	<p>Stock exchange(s) shall allow modification of selected fields (till 01:00 PM) in the bid details already uploaded.</p> <p>Registrar to get the electronic bid details from the stock exchanges by end of the day.</p> <p>Syndicate members, brokers, DPs and RTAs to forward a schedule as per format given below along with the application forms to designated branches of the respective SCSBs for blocking of funds.</p> <table border="1"> <thead> <tr> <th>Field No.</th> <th>Details*</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Symbol</td> </tr> <tr> <td>2.</td> <td>Intermediary Code</td> </tr> <tr> <td>3.</td> <td>Location Code</td> </tr> <tr> <td>4.</td> <td>Application No.</td> </tr> <tr> <td>5.</td> <td>Category</td> </tr> <tr> <td>6.</td> <td>PAN</td> </tr> <tr> <td>7.</td> <td>DP ID</td> </tr> <tr> <td>8.</td> <td>Client ID</td> </tr> <tr> <td>9.</td> <td>Quantity</td> </tr> <tr> <td>10.</td> <td>Amount</td> </tr> </tbody> </table> <p>(*Stock exchange(s) shall uniformly prescribe character length for each of the above-mentioned fields) SCSBs to continue / begin blocking of funds. Designated branches of SCSBs may not accept schedule and applications after T+1 day. Registrar to give bid file received from stock exchanges containing the application number and amount to all the SCSBs who may use this file for validation / reconciliation at their end.</p>	Field No.	Details*	1.	Symbol	2.	Intermediary Code	3.	Location Code	4.	Application No.	5.	Category	6.	PAN	7.	DP ID	8.	Client ID	9.	Quantity	10.	Amount	T+1
Field No.	Details*																							
1.	Symbol																							
2.	Intermediary Code																							
3.	Location Code																							
4.	Application No.																							
5.	Category																							
6.	PAN																							
7.	DP ID																							
8.	Client ID																							
9.	Quantity																							
10.	Amount																							
5.	<p>Issuer, merchant banker and registrar to submit relevant documents to the stock exchange(s) except listing application, allotment details and demat credit and refund details for the purpose of listing permission. SCSBs to send confirmation of funds blocked (Final Certificate) to the registrar by end of the day.</p> <p>Registrar shall reconcile the compiled data received from the stock exchange(s) and all SCSBs (hereinafter referred to as the "reconciled data").</p> <p>Registrar shall reject multiple applications determined as such, based on common PAN. Registrar to undertake "Technical Rejection" test based on electronic bid details and prepare list of technical rejection cases.</p>	T+2																						



6.	Finalisation of technical rejection and minutes of the meeting between issuer, lead manager, registrar. Registrar shall finalise the basis of allotment and submit it to the designated stock exchange for approval. Designated Stock Exchange(s) to approve the basis of allotment. Registrar to prepare funds transfer schedule based on approved basis of allotment. Registrar / Issuer to initiate corporate action to carry out lock-in for pre- issue capital held in depository system. Registrar and merchant banker to issue funds transfer instructions to SCSBs.	T+3
7.	Registrar to receive confirmation for pre-issue capital lock-in from depositories. SCSBs to credit the funds in public issue account of the issuer and confirm the same. Issuer shall make the allotment. Registrar / Issuer to initiate corporate action for credit of shares to successful allottees. Issuer and registrar to file allotment details with designated stock exchange(s) and confirm all formalities are complete except demat credit. Registrar to send bank-wise data of allottees, amount due on shares allotted, if any, and balance amount to be unblocked to SCSBs.	T+4
8.	Registrar to receive confirmation of demat credit from depositories. Issuer and registrar to file confirmation of demat credit, lock-in and issuance of instructions to unblock ASBA funds, as applicable, with stock exchange(s). Issuer to make a listing application to stock exchange(s) and stock exchange(s) to give listing and trading permission. Issuer, merchant banker and registrar to publish allotment advertisement before the commencement of trading, prominently displaying the date of commencement of trading, in all the newspapers where issue opening/closing advertisements have appeared earlier. Stock exchange(s) to issue commencement of trading notice.	T+5
9.	Trading commences	T+6

*Working days will be all days excluding Sundays and bank holidays.

07 Format for quarterly holding pattern, disclosure norms for corporate governance report and manner for compliance with two-way fungibility of Indian Depository Receipts (IDRs)

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CFD/CMD/9/2015, dated 04.11.2015.]

1. In terms of sub regulation (1) of regulation 69 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), listed entity shall file with the stock exchange the Indian Depository Receipt (IDR) holding pattern on a quarterly basis within fifteen days of end of the quarter in the format specified by SEBI. Accordingly, the listed entity that has issued IDRs shall file the holding pattern with the stock exchanges as per Annexure I.
2. Further, sub regulation (1) of regulation 72 of Listing Regulations requires the listed entity to comply with the corporate governance provisions as applicable in its home country and other jurisdictions in which its equity shares are listed and sub regulation (2) of regulation 72 requires such a listed entity to submit to the stock exchange, a comparative analysis of the corporate governance provisions that are applicable in its home country and in the other jurisdictions in which its equity shares are listed along with the compliance of the same vis-à-vis the corporate governance requirements applicable under regulation 17 to regulation 27, to other listed entities.
3. To give effect to sub regulation (2) of regulation 72, listed entities shall be guided by the formats prescribed under SEBI Circular CIR/CFD/CMD/5/2015 dated September 24, 2015. The listed entity shall include an additional column confirming whether the requirement in the row item, originating from the Listing Regulations, is applicable in its home country and other jurisdictions in which its equity shares are listed. Such reports shall follow the periodicity applicable in its home country and other jurisdictions in which its equity shares are listed.
4. Such information furnished by the listed entity to the stock exchanges in terms of sub regulation (1) of regulation 69 and sub regulation (2) of regulation 72 shall also be disclosed on the website of the such listed entity.
5. Further, sub regulation (3) of regulation 76 of Listing Regulations specifies that IDRs shall have two-way fungibility in the manner specified by the Board from time to time. Accordingly, the listed entity shall be guided by the procedure for partial two-way fungibility within the available headroom as per Annexure II.



6. 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. This circular shall come into force with effect from 90 days of notifications of regulations i.e. September 02, 2015.
7. This circular is issued under regulations 69, 72 and 76 read with regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
8. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Continuous Disclosure Requirements".

Harini S Balaji
General Manager

ANNEXURE I FORMAT FOR HOLDING PATTERN OF IDRs [See Regulation 69(1)]

Distribution of IDR holding as on quarter ending [.]:

Category of IDR holders	No: of IDR holders	No of IDRs held	Percentage of IDRs Held
Promoter's holding			
Promoters*			
Non-Promoters Holding			
Institutional Investors			
Mutual Funds			
Banks/ Financial Institutions/ Insurance Companies			
Sub-Total			
Others			
Private Corporate Bodies			
Persons resident outside India			
- Individuals			
- Others			
Indian Public			
Any other (please specify)			
Sub-Total			
GRAND TOTAL			

* as may be applicable.

Note 1: The name, number of IDRs held and percentage holding of entities / persons holding more than 1 percent of the IDRs issued by the listed entity shall be given under each head.

Note 2: The listed entity shall provide the following details: (i) number of underlying equity shares of the listed entity represented

by the total IDRs and (ii) percentage of equity shares underlying the IDRs as a proportion of the total equity share capital of the listed entity.

ANNEXURE II PROCEDURE FOR TWO-WAY FUNGIBILITY OF IDRs [See Regulation 76(3)]

1. The procedure for partial two-way fungibility prescribed herein shall be applicable to future IDR issuances as well as for the existing listed IDRs.
2. The partial two-way fungibility means that the IDRs can be converted into underlying equity shares and the underlying equity shares can be converted into IDRs within the available headroom. The headroom for this purpose shall be the number of IDRs originally issued minus the number of IDRs outstanding, which is further adjusted for IDRs redeemed into underlying equity shares ("Headroom")

A. GUIDELINES FOR FUNGIBILITY OF FUTURE IDR ISSUANCE

3. IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of listing of IDRs.
4. After completion of one year period from the date of listing of IDRs, the issuer shall, provide two-way fungibility of IDRs.
5. IDR fungibility shall be provided on a continuous basis.
6. The issuer shall provide said fungibility to IDR holders in any of the following ways:
 - (a) converting IDRs into underlying shares; or
 - (b) converting IDRs into underlying shares and selling the underlying shares in the foreign market where the shares of the issuer are listed and providing the sale proceeds to the IDR holders; or
 - (c) both the above options may be provided to IDR holders.

Provided that the option once exercised and disclosed by the issuer at the time of offering the IDRs to public cannot be changed without the specific approval of SEBI.
7. All the IDRs that have been applied for fungibility by the holder shall be transferred to IDR redemption account at the time of application. The issuer shall take necessary steps to provide underlying shares or sale proceeds as per the choice made under clause 6 above.
8. The Issuer may receive requests from the holders of underlying shares and convert these into IDRs subject to the Headroom



available with respect to the number of IDRs (“RBI”) from time to time.

B. GUIDELINES FOR FUNGIBILITY OF EXISTING LISTED IDRs

9. After completion of one year period from the date of issue of IDRs, the issuer shall, every year provide redemption/ conversion of IDRs into underlying equity shares of the issuer of up to 25% of the IDRs originally issued. The Issuer shall invite expression of interest from IDR holders by giving advertisements in leading English and Hindi national daily newspapers with wide circulation as well as notification to the stock exchanges giving the operating guidelines for redemption/ conversion of IDRs at least one month before the implementation.
10. The issuer shall exercise the option specified in sub-clause 11 below provided that the same is disclosed in accordance with sub-clause 20 below.
11. The mode of fungibility: The issuer shall provide the said fungibility to IDR holders in any of the following ways:
 - (a) converting IDRs into underlying shares; or
 - (b) converting IDRs into underlying shares and selling the underlying shares in the foreign market where the shares of the Issuer are listed and providing the sale proceeds to the IDR holders; or
 - (c) both the above options may be provided to IDR holders.
12. The periodicity for IDR fungibility shall be at least once every quarter. The fungibility window shall remain open for the period of at least seven days.
13. Provided that the option once exercised and disclosed by the issuer to public cannot be changed without the specific approval of SEBI. However, the issuer may decide to exercise the option provided in sub-clause 21 below without specific approval from SEBI.
14. Total number of IDRs available for fungibility during one fungibility window shall be fixed before the opening of the window. Re-issuances of IDRs during the fungibility window, if any, shall be considered for computation of Headroom only at the time of next cycle of fungibility. Fungibility window for this purpose shall mean the time period during which IDR holders can apply for conversion of IDRs into underlying equity shares.
15. In case of request for conversion in excess of the limit available, the manner of accepting IDRs for conversion/ redemption or shares for re-issuance shall be on proportionate basis.
16. A reservation of 20% of the IDRs made available for redemption/conversion into underlying equity shares in the fungibility window shall be provided to Retail Investors. Within this reserved window:
 - (a) in case of higher demand for fungibility, the demand shall be satisfied on proportionate basis. Further, the excess unsatisfied demand from the retail investors shall be included in the unreserved portion.
 - (b) in case of lower demand for fungibility from retail investors, the unallocated portion shall be added to the unreserved portion.
17. All the IDRs applied for fungibility shall be transferred to IDR redemption account at the time of application and in case of unsuccessful bids the balance IDRs shall be transferred back to the account of applicant. The issuer shall take necessary steps to provide underlying shares or cash as per the choice made under sub-clause 11 above.
18. The Issuer may receive requests from the holders of underlying shares and convert these into IDRs subject to the Headroom available with respect to the number of IDRs originally issued subject to the guidelines prescribed by RBI from time to time.
19. In case of option of converting IDRs into underlying shares and providing the sale proceeds to the IDR holders, the issuer shall disclose the range of fixed/variable costs in percentage terms up front and all the cost together shall not exceed 5% of the sale proceeds.
20. Available Headroom and significant conversion/ reconversion transactions shall be disclosed by the issuer on a continuous basis.
21. Existing issuers shall provide the option of redemption/ conversion within three months of notification of these guidelines.
22. The existing issuer of IDR may exercise the option of using the guidelines available for the new issuers as referred above from the anniversary of the date of listing of their IDRs after the issuance of this circular or from any of the subsequent quarters thereafter. For this purpose, the issuer shall disclose the exercising of the said option by giving advertisements in leading English and Hindi national daily newspapers with wide circulation as well as notification to the stock exchanges giving the operating the option. The said option, once exercised, cannot be reversed.
23. The issuer shall lay down the detailed procedures while taking into consideration the above broad guidelines in addition to other norms specified by SEBI and RBI, from time to time.



08 Format for Business Responsibility Report (BRR)

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CFD/CMD/10/2015, dated 04.11.2015.]

- At a time and age when enterprises are increasingly seen as critical components of the social system, they are accountable not merely to their shareholders from a venue and profitability perspective but also to the larger society which is also its stakeholder. Hence, adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance. This is all the more relevant for listed entities which, considering the fact that they have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive continuous disclosures on a regular basis. Ministry of Corporate Affairs, Government of India, in July 2011, came out with the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business'. These guidelines contain comprehensive principles to be adopted by companies as part of their business practices and a structured business responsibility reporting format requiring certain specified disclosures, demonstrating the steps taken by companies to implement the said principles. SEBI had introduced requirements with respect to BRR vide circular No.CIR/CFD/DIL/8/2012 dated August 13, 2012.
- Pursuant to notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), the aforesaid circular dated August 13, 2012 was rescinded. As per clause (f) of sub regulation (2) of regulation 34 of Listing Regulations, the annual report shall contain a business responsibility report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board. Accordingly, listed entities shall be guided by the format as per Annexure I.
- Certain key principles to assess the fulfillment of listed entities and a description of the core elements under these principles are detailed at Annexure II.
- Those listed entities which have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks need not prepare a separate report for the purpose of these guidelines but only furnish the same to their stakeholders along with the details of the framework under which their BR Report has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports.
- 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. This circular shall come into force with effect from 90 days of notifications of regulations i.e. September 02, 2015.

- This circular is issued under regulation 34 read with regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- This circular is available on SEBI website at www.sebi.gov.in in under the categories "Legal Framework" and "Continuous Disclosure Requirements".

Harini S Balaji
General Manager

ANNEXURE I

SUGGESTED FORMAT FOR BUSINESS RESPONSIBILITY REPORT

[See Regulation 34(2)(f)]

SECTION A: GENERAL INFORMATION ABOUT THE COMPANY

- Corporate Identity Number (CIN) of the Company
- Name of the Company
- Registered address
- Website
- E-mail id
- Financial Year reported
- Sector(s) that the Company is engaged in (industrial activity code-wise)
- List three key products/services that the Company manufactures/provides (as in balance sheet)
- Total number of locations where business activity is undertaken by the Company
 - Number of International Locations (Provide details of major 5)
 - Number of National Locations
- Markets served by the Company - Local/State/National/International

SECTION B: FINANCIAL DETAILS OF THE COMPANY

- Paid up Capital (INR)
- Total Turnover (INR)
- Total profit after taxes (INR)
- Total Spending on Corporate Social Responsibility (CSR) as percentage of profit after tax (%)
- List of activities in which expenditure in 4 above has been incurred:- (a), (b), (c).

SECTION C: OTHER DETAILS



1. Does the Company have any Subsidiary Company/ Companies?
2. Do the Subsidiary Company/Companies participate in the BR Initiatives of the parent company? If yes, then indicate the number of such subsidiary company(s)
3. Do any other entity/entities (e.g. suppliers, distributors etc.) that the Company does business with, participate in the BR initiatives of the Company? If yes, then indicate the percentage of such entity/entities? [Less than 30%, 30-60%, More than 60%]

SECTION D: BR INFORMATION

1. Details of Director/Directors responsible for BR

(a) Details of the Director/Director responsible for implementation of the BR policy/policies

1. DIN Number
2. Name
3. Designation

(b) Details of the BR head

No.	Particulars	Details
1	DIN Number (if applicable)	
2	Name	
3	Designation	
4	Telephone number	
5	e-mail id	

2. Principle-wise (as per NVGs) BR Policy/policies

(a) Details of compliance (Reply in Y/N)

No.	Questions	P 1	P 2	P 3	P 4	P 5	P 6	P 7	P 8	P 9
1	Do you have a policy/ policies for....									
2	Has the policy being formulated in consultation with the relevant stakeholders?									
3	Does the policy conform to any national / international standards? If yes, specify? (50 words)									

4	Has the policy being approved by the Board? If yes, has it been signed by MD/ owner/ CEO/ appropriate Board Director?																		
5	Does the company have a specified committee of the Board/ Director/ Official to oversee the implementation of the policy?																		
6	Indicate the link for the policy to be viewed online?																		
7	Has the policy been formally communicated to all relevant internal and external stakeholders?																		
8	Does the company have in-house structure to implement the policy/ policies.																		
9	Does the Company have a grievance redressal mechanism related to the policy/ policies to address stakeholders' grievances related to the policy/ policies?																		



From the Government

10	Has the company carried out independent audit/evaluation of the working of this policy by an internal or external agency?																			
----	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(b) If answer to the question at serial number 1 against any principle, is 'No', please explain why: (Tick up to 2 options)

No.	Questions	P 1	P 2	P 3	P 4	P 5	P 6	P 7	P 8	P 9
1	The company has not understood the Principles									
2	The company is not at a stage where it finds itself in a position to formulate and implement the policies on specified principles									
3	The company does not have financial or manpower resources available for the task									
4	It is planned to be done within next 6 months									
5	It is planned to be done within the next 1 year									
6	Any other reason (please specify)									

3. Governance related to BR

(a) Indicate the frequency with which the Board of Directors, Committee of the Board or CEO to assess the BR performance of the Company. Within 3 months, 3-6 months, Annually, More than 1 year

(b) Does the Company publish a BR or a Sustainability Report? What is the hyperlink for viewing this report? How frequently it is published?

SECTION E: PRINCIPLE-WISE PERFORMANCE

Principle 1

- Does the policy relating to ethics, bribery and corruption cover only the company? Yes/No. Does it extend to the Group/Joint Ventures/ Suppliers/Contractors/NGOs /Others?
- How many stakeholder complaints have been received in the past financial year and what percentage was satisfactorily resolved by the management? If so, provide details thereof, in about 50 words or so.

Principle 2

- List up to 3 of your products or services whose design has incorporated social or environmental concerns, risks and/or opportunities.
 - (a), (b), (c).
- For each such product, provide the following details in respect of resource use (energy, water, raw material etc.) per unit of product (optional):
 - (a) Reduction during sourcing/production/ distribution achieved since the previous year throughout the value chain?
 - (b) Reduction during usage by consumers (energy, water) has been achieved since the previous year?
- Does the company have procedures in place for sustainable sourcing (including transportation)?
 - (a) If yes, what percentage of your inputs was sourced sustainably? Also, provide details thereof, in about 50 words or so.
- Has the company taken any steps to procure goods and services from local & small producers, including communities surrounding their place of work?
 - (a) If yes, what steps have been taken to improve their capacity and capability of local and small vendors?
- Does the company have a mechanism to recycle products and waste? If yes what is the percentage of recycling of products and waste (separately as <5%, 5-10%, >10%). Also, provide details thereof, in about 50 words or so.

Principle 3

- Please indicate the Total number of employees.
- Please indicate the Total number of employees hired on temporary/contractual/casual basis.
- Please indicate the Number of permanent women employees.
- Please indicate the Number of permanent employees with disabilities



5. Do you have an employee association that is recognized by management.
6. What percentage of your permanent employees is members of this recognized employee association?
7. Please indicate the Number of complaints relating to child labour, forced labour, involuntary labour, sexual harassment in the last financial year and pending, as on the end of the financial year.

No.	Category	No of complaints filed during the financial year	No of complaints pending as on end of the financial year
1	Child labour/forced labour/involuntary labour		
2	Sexual harassment		
3	Discriminatory employment		

8. What percentage of your under mentioned employees were given safety & skill up-gradation training in the last year?
 - (a) Permanent Employees
 - (b) Permanent Women Employees
 - (c) Casual/Temporary/Contractual Employees
 - (d) Employees with Disabilities

Principle 4

1. Has the company mapped its internal and external stakeholders? Yes/No
2. Out of the above, has the company identified the disadvantaged, vulnerable & marginalized stakeholders.
3. Are there any special initiatives taken by the company to engage with the disadvantaged, vulnerable and marginalized stakeholders. If so, provide details thereof, in about 50 words or so.

Principle 5

1. Does the policy of the company on human rights cover only the company or extend to the Group/Joint Ventures/Suppliers/Contractors/NGOs/Others?
2. How many stakeholder complaints have been received in the past financial year and what percent was satisfactorily resolved by the management?

Principle 6

1. Does the policy related to Principle 6 cover only the company or extends to the Group/Joint Ventures/Suppliers/Contractors/NGOs/others.
2. Does the company have strategies/ initiatives to address global environmental issues such as climate change, global warming, etc? Y/N. If yes, please give hyperlink for webpage

- etc.
3. Does the company identify and assess potential environmental risks? Y/N
 4. Does the company have any project related to Clean Development Mechanism? If so, provide details thereof, in about 50 words or so. Also, if Yes, whether any environmental compliance report is filed?
 5. Has the company undertaken any other initiatives on - clean technology, energy efficiency, renewable energy, etc. Y/N. If yes, please give hyperlink for web page etc.
 6. Are the Emissions/Waste generated by the company within the permissible limits given by CPCB/SPCB for the financial year being reported?
 7. Number of show cause/ legal notices received from CPCB/SPCB which are pending (i.e. not resolved to satisfaction) as on end of Financial Year.

Principle 7

1. Is your company a member of any trade and chamber or association? If Yes, Name only those major ones that your business deals with:
 - (a). (b). (c). (d).
2. Have you advocated/lobbied through above associations for the advancement or improvement of public good? Yes/No; if yes specify the broad areas (drop box: Governance and Administration, Economic Reforms, Inclusive Development Policies, Energy security, Water, Food Security, Sustainable Business Principles, Others)

Principle 8

1. Does the company have specified programmes/initiatives/projects in pursuit of the policy related to Principle 8? If yes details thereof.
2. Are the programmes/projects undertaken through in-house team/own foundation/externa INGO/government structures/ any other organization?
3. Have you done any impact assessment of your initiative?
4. What is your company's direct contribution to community development projects- Amount in INR and the details of the projects undertaken.
5. Have you taken steps to ensure that this community development initiative is success fully adopted by the community? Please explain in 50 words, or so.

Principle 9

1. What percentage of customer complaints/consumer cases are pending as on the end off financial year.
2. Does the company display product information on the product label, over and above what is mandated as per local laws? Yes/No/N.A. /Remarks(additional information)
3. Is there any case filed by any stakeholder against the company regarding unfair trade practices, irresponsible advertising and/or anti-competitive behaviour during the last five years



and pending as on end of financial year. If so, provide details thereof, in about 50 words or so.

4. Did your company carry out any consumer survey/ consumer satisfaction trends?

ANNEXURE II PRINCIPLES TO ASSESS COMPLIANCE WITH ENVIRONMENTAL, SOCIAL AND GOVERNANCE NORMS [See Regulation 34(2)(f)]

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability

1. Businesses should develop governance structures, procedures and practices that ensure ethical conduct at all levels; and promote the adoption of this principle across its value chain. Businesses should communicate transparently and assure access to information about their decisions that impact relevant stakeholders.
2. Businesses should not engage in practices that are abusive, corrupt, or anti-competition.
3. Businesses should truthfully discharge their responsibility on financial and other mandatory disclosures.
4. Businesses should report on the status of their adoption of these Guidelines as suggested in the reporting framework in this document.
5. Businesses should avoid complicity with the actions of any third party that violates any of the principles contained in these Guidelines

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

1. Businesses should assure safety and optimal resource use over the life-cycle of the product - from design to disposal - and ensure that everyone connected with it-designers, producers, value chain members, customers and recyclers are aware of their responsibilities.
2. Businesses should raise the consumer's awareness of their rights through education, product labelling, appropriate and helpful marketing communication, full details of contents and composition and promotion of safe usage and disposal of their products and services.
3. In designing the product, businesses should ensure that the manufacturing processes and technologies required to produce it are resource efficient and sustainable.
4. Businesses should regularly review and improve upon the process of new technology development, deployment and commercialization, incorporating social, ethical, and environmental considerations.
5. Businesses should recognize and respect the rights of people who may be owners of traditional knowledge, and other forms of intellectual property.
6. Businesses should recognize that over-consumption results in unsustainable exploitation of our planet's resources, and should therefore promote sustainable consumption, including

recycling of resources.

Principle 3: Businesses should promote the wellbeing of all employees

1. Businesses should respect the right to freedom of association, participation, collective bargaining, and provide access to appropriate grievance Redressal mechanisms.
2. Businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation.
3. Businesses should not use child labour, forced labour or any form of involuntary labour, paid or unpaid.
4. Businesses should take cognizance of the work-life balance of its employees, especially that of women.
5. Businesses should provide facilities for the wellbeing of its employees including those with special needs. They should ensure timely payment of fair living wages to meet basic needs and economic security of the employees.
6. Businesses should provide a workplace environment that is safe, hygienic humane, and which upholds the dignity of the employees. Business should communicate this provision to their employees and train them on a regular basis.
7. Businesses should ensure continuous skill and competence upgrading of all employees by providing access to necessary learning opportunities, on an equal and non-discriminatory basis. They should promote employee morale and career development through enlightened human resource interventions.
8. Businesses should create systems and practices to ensure a harassment free workplace where employees feel safe and secure in discharging their responsibilities.

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

1. Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement, and commit to engaging with them.
2. Businesses should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.
3. Businesses should give special attention to stakeholders in areas that are underdeveloped.
4. Businesses should resolve differences with stakeholders in a just, fair and equitable manner

Principle 5: Businesses should respect and promote human rights

1. Businesses should understand the human rights content of the Constitution of India, national laws and policies and the content of International Bill of Human Rights. Businesses should appreciate that human rights are inherent, universal, indivisible and interdependent in nature.



2. Businesses should integrate respect for human rights in management systems, in particular through assessing and managing human rights impacts of operations, and ensuring all individuals impacted by the business have access to grievance mechanisms.
3. Businesses should recognize and respect the human rights of all relevant stakeholders and groups within and beyond the workplace, including that of communities, consumers and vulnerable and marginalized groups.
4. Businesses should, within their sphere of influence, promote the awareness and realization of human rights across their value chain.
5. Businesses should not be complicit with human rights abuses by a third party.

Principle 6: Business should respect, protect, and make efforts to restore the environment

1. Businesses should utilize natural and man made resources in an optimal and responsible manner and ensure the sustainability of resources by reducing, reusing, recycling and managing waste.
2. Businesses should take measures to check and prevent pollution. They should assess the environmental damage and bear the cost of pollution abatement with due regard to public interest.
3. Businesses should ensure that benefits arising out of access and commercialization of biological and other natural resources and associated traditional knowledge are shared equitably.
4. Businesses should continuously seek to improve their environmental performance by adopting cleaner production methods, promoting use of energy efficient and environment friendly technologies and use of renewable energy.
5. Businesses should develop Environment Management Systems (EMS) and contingency plans and processes that help them in preventing, mitigating and controlling environmental damages and disasters, which may be caused due to their operations or that of a member of its value chain.
6. Businesses should report their environmental performance, including the assessment of potential environmental risks associated with their operations, to the stakeholders in a fair and transparent manner.
7. Businesses should pro-actively persuade and support its value chain to adopt this principle.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

1. Businesses, while pursuing policy advocacy, must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines.
2. To the extent possible, businesses should utilize the trade and industry chambers and associations and other such collective platforms to undertake such policy advocacy.

Principle 8: Businesses should support inclusive growth and

equitable development

1. Businesses should understand their impact on social and economic development, and respond through appropriate action to minimise the negative impacts.
2. Businesses should innovate and invest in products, technologies and processes that promote the wellbeing of society.
3. Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.
4. Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

1. Businesses, while serving the needs of their customers, should take into account the overall well-being of the customers and that of society.
2. Businesses should ensure that they do not restrict the freedom of choice and free competition in any manner while designing, promoting and selling their products.
3. Businesses should disclose all information truthfully and factually, through labelling and other means, including the risks to the individual, to society and to the planet from the use of the products, so that the customers can exercise their freedom to consume in a responsible manner. Where required, businesses should also educate their customers on the safe and responsible usage of their products and services.
4. Businesses should promote and advertise their products in ways that do not mislead or confuse the consumers or violate any of the principles in these Guidelines.
5. Businesses should exercise due care and caution while providing goods and services that result in over exploitation of natural resources or lead to excessive conspicuous consumption.
6. Businesses should provide adequate grievance handling mechanisms to address customer concerns and feedback.

09 Format for Voting Results

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CFD/CMD/8/2015, dated 04.11.2015.]

1. Regulation 44(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "Listing Regulations"), has prescribed that the listed entity shall submit to the stock exchange, within forty eight hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the



From the Government

- Board.
- Accordingly, a format for voting results to be furnished by the listed entities is being specified under Annexure I.
 - 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.
 - This circular is issued in exercise of the powers conferred under Regulation 44(3) read with Regulation 101(2) of Listing Regulations.
 - This circular is available on SEBI website at www.sebi.gov in under the categories "Legal Framework" and "Continuous Disclosure Requirements".

Harini S Balaji
General Manager

Annexure I

Format for Voting Results

Date of the AGM/EGM	
Total number of shareholders on record date	
No. of shareholders present in the meeting either in person or through proxy: Promoters and Promoter Group: Public:	
No. of Shareholders attended the meeting through Video Conferencing Promoters and Promoter Group: Public	

Agenda- wise disclosure (to be disclosed separately for each agenda item)

Resolution required: (Ordinary/ Special)								
Whether promoter/ promoter group are interested in the agenda/resolution?								
Category	Mode of Voting	No. of shares held	No. of votes polled	% of Votes Polled on outstanding shares	No. of Votes – in favour	No. of Votes – against	% of Votes in favour on votes polled	% of Votes against on votes polled
		(1)	(2)	(3)=[(2)/(1)]* 100	(4)	(5)	(6)=[(4)/(2)]*100	(7)=[(5)/(2)]*100
Promoter and Promoter Group	E-Voting							
	Poll							
	Postal Ballot (if applicable)							
	Total							
Public-Institutions	E-Voting							
	Poll							
	Postal Ballot (if applicable)							
	Total							
Public-Non Institutions	E-Voting							
	Poll							
	Postal Ballot (if applicable)							
	Total							
Total								



General Laws

10

Review of Foreign Direct Investment (FDI) policy on various sectors

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion (FC-I Section) vide Press Note No. 12 (2015 Series), dated 24.11.2015.]

The Government of India has reviewed the extant FDI policy on various sectors and made following amendments in the Consolidated FDI Policy Circular of 2015 (FDI Policy), effective from May 12, 2015, and as amended from time to time.

2. After para 2.1.25 of the FDI Policy, following definition of the term 'Manufacture' is added:

2.1. 25 bis: "Manufacture", with its grammatical variations, means a change in a nonliving physical object or article or thing- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

Para 6.2.5 of the FDI Policy is amended to read as under:

Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.

3. Para 3.2.5 of the FDI Policy is amended to read as under:

FDI in LLPs is permitted, subject to the following conditions:

(a) FDI is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

(b) An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in

another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

(c) FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

4. Para 2.1.7 of the FDI Policy is amended to read as under:

'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

For the purposes of Limited Liability Partnership, 'control' will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.

5. Para 2.1.28 of the FDI Policy is amended to read as under:

A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.

6. Para 3.10.4.2 of the FDI Policy is amended to read as under:

Downstream investments by Indian companies/LLPs will be subject to the following conditions:

(i) Such a company/LLP is to notify SIA, DIPP and FIPB of its downstream investment in the form available at <http://www.fipbindia.com> within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(ii) Downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a shareholders agreement, if any;

(iii) Issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

(iv) For the purpose of downstream investment, the Indian companies/LLPs making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies/LLPs,



From the Government

with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 3.10.3 and 3.10.4.1. For the purposes of FDI policy, internal accruals will mean as profits transferred to reserve account after payment of taxes.

7. Para 3.10.3.3 of the FDI Policy is amended to read as under:

For undertaking activities which are under automatic route and without FDI linked performance conditions, Indian company which does not have any operations and also does not have any downstream investments, will be permitted to have infusion of foreign investment under automatic route. However approval of the Government will be required for such companies for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

8. Para 3.5.6 of the FDI Policy is amended to read as under:

In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Government will also be a prerequisite for investment by swap of shares for sector under Government approval route. No approval of the Government is required for investment in automatic route sectors by way of swap of shares.

9. Insertion of a new para after para 3.1.3 of the FDI Policy:

A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians can invest in India with the special dispensation as available to Non-Resident Indians under the FDI policy.

10. Para 3.6.2 of the FDI Policy is amended to read as under

Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident entities, in sectors under government approval route. Foreign investment in sectors/activities under government approval route will be subject to government approval where:

- (i) An Indian company is being established with foreign investment and is not owned by a resident entity or
- (ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or
- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian

companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or

- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.
- (v) It is clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FII, FPIs, QFIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares/debentures, regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.
- (vi) Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents.
- (vii) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations and such investment will also be deemed domestic investment at par with the investment made by residents.

11. Para 5.2 of the FDI Policy is amended to read as under:

- 5.2.1 The Minister of Finance who is in-charge of FIPB would consider there commendations of FIPB on proposals with total foreign equity inflow of and below Rs. 5000 crore.
- 5.2.2 The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 5000 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA).
- 5.2.3 The CCEA would also consider the proposals which may be referred to it by the FIPB/the Minister of Finance (in-charge of FIPB).

12. Para 6.2.1.1 of the FDI Policy is amended to read as under: The term "under controlled conditions" covers the following:

- (i) 'Cultivation under controlled conditions' for the categories of floriculture, horticulture, cultivation of vegetables and mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other



- improved infrastructure facilities where micro-climatic conditions are regulated an thropogenically.
- (ii) In case of Animal Husbandry, scope of the term 'under controlled conditions' covers -
 - (a) Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation,temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems as prescribed by the National Livestock Policy, 2013 and inconformity with the existing 'Standard Operating Practices and Minimum Standard Protocol.'
 - (b) Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc.
 - (iii) In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers -
 - (a) Aquariums
 - (b) Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control.
 - (iv) In the case of apiculture, scope of the term 'under controlled conditions' covers-
 - (a) Production of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.

13. Para 6.2.2 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
(i) Tea sector including tea plantations (ii) Coffee plantations (iii) Rubber plantations (iv) Cardamom plantations (v) Palm oil tree plantations (vi) Olive oil tree plantations Note: Besides the above, FDI is not allowed in any other plantation sector/activity.	100%	Automatic

6.2.2.2 Other Condition

Prior approval of the State Government concerned is required in case of any future land use change.

14. Para 6.2.3.3.2 of the FDI Policy is amended to read as under:

- (1) FDI for separation of titanium bearing minerals & ores will be subject to the following conditions viz.:
 - (A) value addition facilities are set up within India along with transfer of technology;
 - (B) disposal of tailings during the mineral separation

shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

- (ii) FDI will not be allowed in mining of "prescribed substances" listed in the Notification No. S.O. 61(E), dated 18.1.2006, issued by the Department of Atomic Energy.

Clarification:

- (1) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition, Ilmenite can be processed to produce 'Synthetic Rutile or Titanium Slag as an intermediate value added product.
- (2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.

15. Para 6.2.6 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.6.1 Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	49%	Automatic up to 49% Above 49% under Government route on case to case basis, wherever it is likely to result in access to modern and 'state-of-a if technology in the country.

6.2.6.2 Other Conditions

- (i) Infusion of fresh foreign investment within the permitted automatic route level, in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.
- (ii) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.
- (iii) Foreign investment in the sector is subject to security clearance and guidelines of the M/o Defence.



From the Government

- (iv) Investee company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.

16. Para 6.2.7.1 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.7.1.1 (i)Teleports (setting up of up-linking HUBs/Teleports); (2) Direct to Home (DTH); (3)Cable Networks (Multi System Operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4)Mobile TV; (5)Headend-in-the Sky Broadcasting Service(HITS)	100%	Automatic up to 49% Government route beyond 49%
6.2.7.1.2 Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	100%	Automatic up to 49% Government route beyond 49%

Para 6.2.7.2 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.7.2.1 Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
6.2.7.2.2 Up-linking of 'News & Current Affairs' TV Channels	49%	Government
6.2.7.2.3 Up-linking of Non-'News & Current Affairs' TV Channels, Down-linking of TV Channels	100%	Automatic

Consequent to increase in sectoral cap in certain activities of the sector, para 4.1.3 (v)(d) of FDI Policy will read as under:

In the I & B sector where the sectoral cap is up to 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

(A) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956 or Section 2 (72) of the Companies Act, 2013, as the case may be. The term 'largest Indian shareholder', used in this clause, will include any or a combination of the following:

- (I) In the case of an individual shareholder,
- (aa) The individual shareholder,
 - (bb) A relative of the shareholder within the meaning of Section 2 (77) of Companies Act, 2013.
 - (cc) A company/group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(II) In the case of an Indian company, (aa) The Indian company (bb) A group of Indian companies under the same management and ownership control.

(B) For the purpose of this Clause, "Indian company" shall be a company which must have a resident Indian or a relative as defined under Section 2 (77) of Companies Act, 2013/ HUF, either singly or in combination holding at least 51% of the shares. (C) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (I) and (II) of clause 4.1.3(v)(d) (A) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

17. Para 6.2.9.3 of the FDI Policy is amended to read as under:

SECTOR/ACTIVITY	FOREIGN INVESTMENT CAP	ENTRY ROUTE
(1) (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (b) Regional Air Transport Service	49% FDI (100% for NRIs)	Automatic
(2) Non-Scheduled Air Transport Service	100%	Automatic
(3) Helicopter services/ seaplane services requiring DGCA approval	100%	Automatic



There is no change in other conditions mentioned at 6.2.9.3.1 of the FDI Policy and Note thereto.

representation on the Board of Directors based upon their shareholding.

18. Para 6.2.9.4 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
(1) Ground Handling Services subject to sectoral regulations and security clearance	100%	Automatic
(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic

21. Para 6.2.11 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.11.1 Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)	100%	Automatic

19. Para 6.2.13 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.13.1		
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government

20. Para 6.2.18.5 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.18.5.1 Credit Information Companies	100%	Automatic

6.2.18.5.2 Other Conditions

- (1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.
- (2) Foreign investment is permitted subject to regulatory clearance from RBI.
- (3) Such FII/FPI investment would be permitted subject to the conditions that:
 - (a) A single entity should directly or indirectly hold below 10% equity.
 - (b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and
 - (c) FIIs/FPIs investing in CICs shall not seek a

6.2.11.2

Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. Investment will be subject to the following conditions:

- (A) (i) The investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage.
- (ii) Notwithstanding anything contained at (A) (i) above, a foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed. Further, transfer of stake from one non-resident to another non-resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval.
- (B) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.
- (C) The Indian investee company will be permitted to sell only developed plots. For the purposes of this policy "developed plots" will mean plots where trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage, have been made available.
- (D) The Indian investee company shall be responsible for obtaining all necessary approvals, including those of the



From the Government

building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.

- (E) The State Government/Municipal/Local Body concerned, which approves the building/development plans, will monitor compliance of the above conditions by the developer.

Note:

- (i) It is clarified that FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).

"Real estate business" means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent/ income on lease of the property, not amounting to transfer, will not amount to real estate business.

- (ii) Condition of lock-in period at (A) above will not apply to Hotels & Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.
- (iii) Completion of the project will be determined as per the local bye-laws/rules and other regulations of State Governments.
- (iv) It is clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period,
- (v) "Transfer", in relation to FDI policy on the sector, includes,—
 - (a) the sale, exchange or relinquishment of the asset; or
 - (b) the extinguishment of any rights therein ; or
 - (c) the compulsory acquisition thereof under any law ; or
 - (d) any transaction involving the allowing of the

possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

- (e) any transaction, by acquiring shares in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

- 22. Para 6.2.16.1.2 (f) of the FDI Policy is amended to read as under:

A wholesale/cash & carry trader can undertake single brand retail trading, subject to the conditions mentioned in para 6.2.16.3. An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions of the FDI policy for wholesale/cash and carry business and for retail business have to be separately complied with by the respective business arms.

- 23. Para 6.2.16.3 of the FDI Policy is amended to read as under:

Sector/Activity	Foreign Investment Cap	Entry Route
Single Brand Product Retail Trading	100%	Automatic up to 49% Government route beyond 49%

(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

(2) FDI in Single Brand product retail trading would be subject to the following conditions:

- (a) Products to be sold should be of a 'Single Brand' only.
- (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
- (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.



- (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval.
- (e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met annually from the commencement of the business i.e. opening of the first store. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of Foreign Investment for the purpose of carrying out single-brand product retail trading.
- (f) Subject to the conditions mentioned in this Para, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.
- (3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI.

- (4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

Note:

- (i) Conditions mentioned at Para 6.2.16.3 (2) (b) & 6.2.16.3 (2) (d) will not be applicable for undertaking SBRT of Indian brands.
- (ii) An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms.
- (iii) Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers.
- (iv) Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens.
- (v) Government may relax sourcing norms for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.

24. After para 6.2.16.4 of the FDI Policy, following new para is added:

Sector/Activity	Foreign Investment Cap	Entry Route
6.2.16.5 Duty Free Shops	100%	Automatic
(i) Duty Free Shops would mean shops set up in custom bonded area at International Airports/International Seaports and Land Custom Stations where there is transit of international passengers, (ii) Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations, (iii) Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.		

25. Para 6.2.18.2.2.4(i) of the FDI Policy is amended to read as under:

The permissible limits under portfolio investment schemes through stock exchanges for FIIs/FPIs and NRIs will be as follows:

- (i) In the case of FIIs/FPIs, as hitherto, individual FII/FPI holding is restricted to below 10 per cent of the total paid-up capital, aggregate limit for all FIIs/FPIs/QFIs cannot exceed 24 per cent of the total paid-up capital,



From the Government

which can be raised up to sectoral limit of 74 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.

- (a) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.
- (b) Applications for foreign direct investment in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority of India (IRDAI) in order to ensure that the 49 percent limit of foreign shareholding applicable for the insurance sector is not being breached.
- (c) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per para 3.6.2 above as applicable.
- (d) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDAI on these matters will continue to apply.
- (e) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to nonresident investors as well.

26. The above decision will take immediate effect.

Atul Chaturvedi
Joint Secretary

11 Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment) Regulations, 2015

[Issued by the Reserve Bank of India, Foreign Exchange Department Central Office vide Notification No. FEMA. 345/2015-RB, dated 16.11.2015. Published vide G.S.R. No. 859(E) in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 16.11.2015]

In exercise of the powers conferred by sub-section (2) of Section 6, sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes, in consultation with the Central Government, the following amendments in the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 (Notification No. FEMA.1/2000-RB dated 3rd May 2000), namely:-

1. Short Title & Commencement:-

- (i) These Regulations may be called the Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment) Regulations, 2015.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment to the Regulation:-

In the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 (Notification No. FEMA 1/2000-RB dated 3rd May 2000), in Regulation 4, in sub-regulation (b), the existing Explanation (i) shall be substituted by the following namely:

“(i) For the purpose of this regulation, “real estate business” shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014”

B.P. Kanungo
Principal Chief General Manager

12 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2015

[Issued by the Reserve Bank of India, Foreign Exchange Department Central Office vide Notification No. FEMA. 355/2015-RB, dated 16.11.2015. Published vide G.S.R. No. 858(E) in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 16.11.2015]

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No.FEMA 20/2000-RB dated 3rd May 2000) namely:-

1. Short Title & Commencement:-

- (i) These Regulations may be called the Foreign Exchange



Management (Transfer or Issue of Security by a Person Resident Outside India) (Eleventh Amendment) Regulations, 2015.

- (ii) They shall come into force from the date of publication in the official Gazette.

2. Amendment to Regulations:-

A. Amendment to Regulation 2

- (i) After the existing sub-regulation (ii f) the following shall be added namely:-

“(ii g) ‘Investment Vehicle’ shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.”

- (ii) After the existing sub-regulation (xi), the following shall be added namely:-

“(xi A) ‘Unit’ shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.”

B. Amendment to Regulation 5

In the principal Regulations, in Regulation 5, after the existing sub-regulation (9), the following shall be added, namely:-

“(10) A person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI) may acquire, purchase, hold, sell or transfer units of an Investment Vehicle, in the manner and subject to the terms and conditions specified in Schedule 11.”

C. Amendment to Regulation 9

In the principal Regulations, in Regulation 9, for the words, “shares or convertible debentures or warrants,” and “shares or convertible debentures or warrants of an Indian company”, wherever they appear, the words, “shares or convertible debentures or warrants of an Indian company or units of an Investment Vehicle” shall be substituted.

Provided that the words “shares or convertible debentures or warrants of an Indian company or units of an Investment Vehicle” shall not be substituted in the qualification clause of Regulation 9(1) beginning with “Further” and ending with “subject to lock-in period requirement”.

D. Amendment to Regulation 12

In the principal Regulations, in Regulation 12, after the

existing sub-regulation (v), the following shall be added, namely:

“(vi) Any person who is a non-resident and holds units of an Investment Vehicle in accordance with these Regulations, may pledge such units to secure credit facilities being extended to the non-resident investor.”

E. Addition of a new Schedule

After the existing Schedule 10, the following shall be added

Schedule 11

[See Regulation 5(10)]

Investment by a person resident outside India in an Investment Vehicle

1. A person resident outside India including an RFPI and an NRI may invest in units of Investment Vehicles subject to the conditions laid down in this Schedule.
2. The payment for the units of an Investment Vehicle acquired by a person resident or registered / incorporated outside India shall be made by an inward remittance through the normal banking channel including by debit to an NRE or an FCNR account.
3. A person resident outside India who has acquired or purchased units in accordance with this Schedule may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.
4. Downstream investment by an Investment Vehicle shall be regarded as foreign investment if neither the Sponsor nor the Manager nor the Investment Manager is Indian ‘owned and controlled’ as defined in Regulation 14 of the principal Regulations.

Provided that for sponsors or managers or investment managers organized in a form other than companies, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

Explanation 1: Ownership and control is clearly determined as per the extant FDI policy. AIF is a pooled investment vehicle. ‘Control’ of the AIF should be in the hands of ‘sponsors’ and ‘managers/investment managers’, with the general exclusion of others. In case the ‘sponsors’ and ‘managers/investment managers’ of the AIF are individuals, for the treatment of downstream investment by such AIF as domestic, ‘sponsors’ and ‘managers/investment managers’ should be resident Indian citizens. As ownership and control cannot be determined in LLP under the extant FDI policy, a LLP shall not act as sponsor or manager/investment manager.

Explanation 2: The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine as to whether downstream investment of the Investment Vehicle



concerned is foreign investment or not.

5. Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made as per the FDI Policy or Schedule 1 of the principal Regulations.
6. Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the principal Regulations as well as the extant FDI policy for foreign investment in LLPs.
7. An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a Registered Foreign Portfolio Investor is allowed to invest under the principal Regulations.
8. The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to Reserve Bank of India or to SEBI as may be prescribed by them from time to time.

A K Pandey
Chief General Manager

13 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015

[Issued by the Reserve Bank of India, Foreign Exchange Department Central Office vide Notification No. FEMA.354/2015-RB, dated 30.10.2015.]

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) namely:-

1. Short Title & Commencement
 - (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015.
 - (ii) They shall come into force from the date of their publication in the Official Gazette
2. Amendment of the Regulation
In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No.FEMA 20/2000-RB dated 3rd May

2000), (A) in Regulation 14,
(i) in sub-regulation 1, in the existing clause '(x)' the following shall be inserted, namely:

"Explanation:

- (i) Total Foreign Investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1, Schedule 2, Schedule 2A, Schedule 3, Schedule 6, Schedule 8, Schedule 9 and Schedule 10 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. (ii) Foreign Currency Convertible Bonds (FCCB) and Depository Receipts (DR) having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from any conversion of any debt instrument under any arrangement shall be reckoned as foreign investment."

(ii) in sub-regulation 3, the existing clause (ii) shall be substituted by the following, namely:

"Counting of indirect foreign investment: For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all types of foreign investments regardless of whether the said investments have been made under Schedules 1, 2 (FII holding as on March 31), 2A (FPI holding as on March 31), 3, 6, 8, 9 and 10 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment."

B. Amendment of Schedule 1

- (i) In Schedule 1, in paragraph 2 (1), after the words "from time to time" the following proviso shall be inserted "Provided that
 - a. In the sectors/activities mentioned in the Annex B to the Schedule, foreign investment upto the limit indicated against each sector/activity is allowed subject to the conditions of the extant policy on specified sectors and applicable laws/regulations; security and other conditionalities. In sectors/activities not listed therein, foreign investment is permitted upto 100% on the automatic route, subject to applicable laws/regulations; security



- and other conditionalities.
- b. Wherever there is a requirement of minimum capitalization it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.
 - c. "Sectoral cap" i.e. the maximum amount which can be invested by foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1, 2, 2(A), 3, 6, 8, 9 and 10 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap. Sectoral cap is as per table appended below.
 - d. Total foreign investment, direct and/or indirect, in an entity will not exceed the sectoral/statutory cap.
 - e. Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.
 - f. Notwithstanding anything contained in paragraphs (a), (b) and (e) above, portfolio investment upto aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy,
 - g. The onus of compliance with the sectoral/statutory caps on foreign investment and attendant

conditions, if any, shall be on the company receiving foreign investment.

- (ii) In the existing provision, for the words, " Provided", the words "Provided further" shall be substituted.
- (iii) In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No.FEMA 20/2000-RB dated 3rd May 2000), in Schedule 1, Annex B shall be substituted as under*.

*Not reproduced here for want of space. Readers may log on to rbi.org.in for the entire Notification.

14 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2015

[Issued by the Reserve Bank of India, Foreign Exchange Department Central Office vide Notification No. FEMA.353/2015 RB, dated 06.10.2015. Published vide G.S.R. No. 759(E) in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 06.10.2015]

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA.20/2000-RB dated 3rd May 2000), namely:-

1. Short Title & Commencement
 - (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) (Ninth Amendment) Regulations, 2015.
 - (ii) They shall come into force from the date of their publication in the Official Gazette.
2. Amendment to Schedule 5:-

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in Schedule 5,

 - (A) in paragraph 2,
 - (i) the existing sub-paragraph (3) shall be re-numbered as Paragraph 2C
 - (ii) after the existing sub-paragraph (2), the following shall be added namely:-

“(3) A Non- Resident Indian may subscribe to National Pension System governed and administered by



Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.”

(iii) after adding sub-paragraph (3) in paragraph 2, the existing paragraph 2C shall be re-numbered as sub-paragraph (4) in Paragraph 2.

(B) In paragraph 3, after the existing sub-paragraph (2), the following shall be inserted namely:-

“(2A) A non-resident Indian who subscribes to the National Pension System, under sub-paragraph (3) of paragraph (2) of this Schedule shall make payment either by inward remittance through normal banking channels or out of funds held in his NRE/FCNR/NRO account.”

B.P. Kanungo
Principal Chief General Manager

15 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2015

[Issued by the Reserve Bank of India, Foreign Exchange Department Central Office vide Notification No. FEMA.351 /2015 RB, dated 30.09.2015. Published vide G.S.R. No. 745(E) in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 30.09.2015]

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA.20/2000-RB dated 3rd May 2000), namely:-

1. Short Title & Commencement

- (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) (Seventh Amendment) Regulations, 2015.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment to Schedule 9:-

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in Schedule 9, in Para 7, after clause (iii), the following shall be inserted, namely:-

“(iv) All LLPs which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled ‘Annual Return on Foreign Liabilities and Assets’ as specified by the Reserve Bank from time to time”

B.P. Kanungo
Principal Chief General Manager

16 External Commercial Borrowings (ECB) Policy - Issuance of Rupee denominated bonds overseas

[Issued by the Reserve Bank of India vide RBI/2015-16/193, A.P. (DIR Series) Circular No.17, dated 29.09.2015.]

Attention of Authorized Dealer Category - I (AD Category - I) banks is invited to the provisions contained in A.P. (DIR Series) Circular No. 5 dated August 01, 2005 as amended from time to time on External Commercial Borrowings (ECB).

2. In order to facilitate Rupee denominated borrowing from overseas, it has been decided to put in place a framework for issuance of Rupee denominated bonds overseas within the over arching ECB policy. The broad contours of the framework are as follows:

- i. Eligible borrowers: Any corporate or body corporate as well as Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs).
 - ii. Recognised investors: Any investor from a Financial Action Task Force (FATF) compliant jurisdiction.
 - iii. Maturity: Minimum maturity period of 5 years.
 - iv. All-in-cost: All in cost should be commensurate with prevailing market conditions.
 - v. Amount: As per extant ECB policy.
 - vi. End-uses: No end-use restrictions except for a negative list.
3. The detailed guidelines for issuance of Rupee denominated bonds overseas are set out in the Annex.
 4. All other provisions of extant ECB guidelines regarding reporting requirements (including obtaining Loan Registration Number (LRN) through submission of Form 83 where type of ECB is to be specifically mentioned as borrowing through issuance of Rupee denominated bonds overseas), parking of bond proceeds, security / guarantee for the borrowings, conversion into equity, corporates under investigation, etc., not appearing in the Annex will be applicable for borrowing by issuance of Rupee denominated bonds overseas.
 5. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers.



6. The directions contained in this circular have been issued under Section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

B. P. Kanungo
Principal Chief General Manager

Annex Issuance of Rupee denominated bonds overseas

S r. No.	ECB parameter	Framework
1.	Eligibility of borrowers	Any corporate or body corporate is eligible to issue Rupee denominated bonds overseas. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) coming under the regulatory jurisdiction of the Securities and Exchange Board of India are also eligible.
2.	Type of instrument	Only plain vanilla bonds issued in a Financial Action Task Force (FATF) compliant financial centres; either placed privately or listed on exchanges as per host country regulations.
3.	Recognised investors	Any investor from a FATF compliant jurisdiction. Banks incorporated in India will not have access to these bonds in any manner whatsoever. Indian banks, however, can act as arranger and underwriter. In case of underwriting, holding of Indian banks cannot be more than 5 per cent of the issue size after 6 months of issue. Further, such holding shall be subject to applicable prudential norms.
4.	Maturity	Minimum maturity period of 5 years. The call and put option, if any, shall not be exercisable prior to completion of minimum maturity.
5.	All-in-cost	The all-in-cost of such borrowings should be commensurate with prevailing market conditions. This will be subject to review based on the experience gained.
6.	End-uses	The proceeds can be used for all purposes except for the following: <ol style="list-style-type: none"> Real estate activities other than for development of integrated township / affordable housing projects; Investing in capital market and using the proceeds for equity investment domestically; Activities prohibited as per the foreign direct investment (FDI) guidelines; On-lending to other entities for any of the above objectives; and Purchase of land.

7.	Amount	Under the automatic route the amount will be equivalent of USD 750 million per annum. Cases beyond this limit will require prior approval of the Reserve Bank.
8.	Conversion rate	The foreign currency - Rupee conversion will be at the market rate on the date of settlement for the purpose of transactions undertaken for issue and servicing of the bonds.
9.	Hedging	The overseas investors will be eligible to hedge their exposure in Rupee through permitted derivative products with AD Category - I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.
10.	Leverage	The leverage ratio for the borrowing by financial institutions will be as per the prudential norms, if any, prescribed by the sectoral regulator concerned.

17 Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015.

[Issued by the Reserve Bank of India, Foreign Exchange Department Central Office vide Notification No. FEMA. 348 /2015-RB, dated 25.09.2015. Published vide G.S.R. No. 738(E) in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 25.09.2015]

In exercise of the powers conferred by section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations relating to regularization of assets held abroad by a person resident in India, namely:-

1. Short title and commencement:-

- These regulations may be called the Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015.
- They shall come into force from the date of their publication in the Official Gazette.

2. Definitions:-

In these Regulations unless the context otherwise requires, -

- 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- 'Black Money Act' means The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);
- The words and expressions used but not defined in these



Regulations shall have the same meanings respectively assigned to them in the Act

3. Save as otherwise provided in these regulations or with the general or special permission of Reserve Bank, no person resident in India shall continue to hold an asset located outside India for which a declaration has been made under section 59 of the Black Money Act.
4. Regularization of assets held abroad by persons resident in India -

No proceedings shall lie under the provisions of the Act, against a person resident in India who has made a declaration under section 59 of the Black Money Act, in respect of any undisclosed asset located outside India and has paid the tax and penalty in accordance with the provisions of Chapter VI of the Black Money Act.

Provided that where the declarant intends to continue to hold the asset so declared, he shall apply to the Reserve Bank within 180 days from the date of declaration, for permission under the relevant provisions of the Act, or rules and regulations framed thereunder, if such permission is necessary as on the date of application.

Provided further that where the declarant does not intend to hold the asset so declared or the permission to hold such asset is refused by the Reserve Bank, as the case may be, the declarant shall dispose of the said asset within 180 days from the date of making such declaration or the date of receipt of the communication from the Reserve Bank conveying refusal of permission or within such extended period as may be permitted by the Reserve Bank and bring back the proceeds to India immediately through the banking channel.

Indira Nanu
Chief General Manager

18 Clarification on FDI Policy on Facility Sharing Arrangements between Group Companies

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, D/o IPP File No. 12/15/2009-FC-1, dated 15.09.2015.]

This Department has received certain references on the issue as to whether entering into facility sharing agreements through leasing/sub-leasing arrangements within group companies for the larger purposes of business activities would be construed to mean 'real estate' business within the provisions of Consolidated FDI Policy Circular of 2015.

2. In this regard it is hereby clarified that:

"Facility sharing agreements between group companies through leasing/subleasing arrangements for the larger interest of business will not be treated as 'real estate business' within the provisions of the Consolidated FDI Policy Circular of 2015, provided such arrangements are at arm's length price in accordance with relevant provisions of Income Tax Act 1961, and annual lease rent earned by the lessor company does not exceed 5% of its total revenue."

R.D. Diwakar
Under Secretary

19 Clarification on FDI Policy on Single Brand Retail Trading

(This clarification is without prejudice to other conditions of the extant FDI policy on the sector)

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion.]

(As contained at para 6.2.16.3 of Consolidated FDI Policy Circular of 2015)

Issue	Clarification/ Comment
Can the brand owner or non-resident entity/entities undertake single brand retail trading of the specific brand through more than one company in India?	A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. Such non-resident entity or entities can undertake single brand retail trading business through one or more wholly owned subsidiaries or joint ventures.
Does the FDI policy on single brand retail trading apply to Indian brands seeking foreign investment?	It is clarified that FDI policy on single brand retail trading as contained in para 6.2.16.3 of Consolidated FDI Policy Circular of 2015 equally applies to Indian brands.



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175	MR. SAI RAM GANDIKOTA	ACS - 41606	SIRC	222	MR. PAWAN KUMAR VERMA	ACS - 41653	NIRC
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177	MR. SANTOSH RADHESHYAM BHUTADA	ACS - 41608	WIRC	224	MS. SHREYA MEHTA	ACS - 41655	NIRC
178	MR. AMIT RAMESH BHAI KATHORE	ACS - 41609	WIRC	225	MS. ANCHAL MEHTA	ACS - 41656	NIRC



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226	MS. PRIYANKA JAIN	ACS - 41657	NIRC	273	MR. SHIVIR KUMAR SHUKLA	ACS - 41704	NIRC
227	MS. JUHI MATHUR	ACS - 41658	NIRC	274	MR. PIYUSH CHORARIA	ACS - 41705	WIRC
228	MS. KIRAN PAREEK	ACS - 41659	NIRC	275	MS. RISHIKA GIRDHARLAL JHAWAR	ACS - 41706	WIRC
229	MR. VIKAS	ACS - 41660	NIRC	276	MR. AKASH JAIN	ACS - 41707	WIRC
230	MR. AMAN KUMAR GUPTA	ACS - 41661	NIRC	277	MR. DARSHAN VAJUBHAI GONDALIA	ACS - 41708	WIRC
231	MS. AKANKSHA ASWANI	ACS - 41662	NIRC	278	MR. CHANDER PRAKASH KARWA	ACS - 41709	SIRC
232	MS. MEENU VERMA	ACS - 41663	NIRC	279	MR. RAHUL KHANNA	ACS - 41710	NIRC
233	MS. NISHTHA JUNEJA	ACS - 41664	NIRC	280	MS. SHREYA SHRIVASTAVA	ACS - 41711	WIRC
234	MS. MRIDULA AGARWAL	ACS - 41665	NIRC	281	MR. ABHISHEK JAIRAJ DUBEY	ACS - 41712	WIRC
235	MS. ANUSHREE BHATT	ACS - 41666	NIRC	282	MR. ARVIND KUMAR MEENA	ACS - 41713	WIRC
236	MR. S PALANI KUMAR	ACS - 41667	SIRC	283	MR. ANKUR KUMAR JAIN	ACS - 41714	NIRC
237	MS. USHA HEGDE	ACS - 41668	SIRC	284	MR. RANJEET KUMAR	ACS - 41715	NIRC
238	MR. D ASHWIN BHAT	ACS - 41669	SIRC	285	MS. NEHA	ACS - 41716	EIRC
239	MR. ANANT HEGDE	ACS - 41670	SIRC	286	MR. SURAJ KISHORE JHA	ACS - 41717	EIRC
240	MR. VIJAYA RAGHAVAN NE	ACS - 41671	SIRC	287	MR. SAURABH KRISHNA	ACS - 41718	EIRC
241	MS. PRIYANKA	ACS - 41672	SIRC	288	MR. VIKRAM KUMAR	ACS - 41719	EIRC
242	MS. G S A SRAVANI	ACS - 41673	SIRC	289	MR. RAJEEV PANDEY	ACS - 41720	SIRC
243	MR. ARUN RAGHAV M S	ACS - 41674	SIRC	290	MR. HARSHA RAJ	ACS - 41721	EIRC
244	MR. R SUBRAMANIYAM	ACS - 41675	SIRC	291	MR. ROHIT KUMAR KESHRI	ACS - 41722	EIRC
245	MS. SAI KIRANMAYI PAIDIMARRI	ACS - 41676	SIRC	292	MR. ABHISHEK TULSHYAN	ACS - 41723	EIRC
246	MS. SHUBHADA VENKATARAMANA BHAT	ACS - 41677	SIRC	293	MS. KAVITA CHITORIA	ACS - 41724	EIRC
247	MR. ABISHEK S JAIN	ACS - 41678	SIRC	294	MS. CHANDNI PODDAR	ACS - 41725	EIRC
248	MS. PRATHYUSHA M	ACS - 41679	SIRC	295	MS. SUPRIYA CHAKRABORTY	ACS - 41726	EIRC
249	MS. MERIN PHILIP	ACS - 41680	SIRC	296	MS. PUJA BHATTACHARJEE	ACS - 41727	EIRC
250	MR. NANDISHA NR	ACS - 41681	SIRC	297	MS. ANUSKHA BAJAJ	ACS - 41728	EIRC
251	MS. SONAKSHI JAIN	ACS - 41682	SIRC	298	MS. SEEMA SHARMA	ACS - 41729	EIRC
252	MR. KEMPE GOWDA G N	ACS - 41683	SIRC	299	MR. AKASH SHARMA	ACS - 41730	EIRC
253	MR. RAJNISH NATWARLAL MEHTA	ACS - 41684	WIRC	300	MS. SUCHARITA BHAUMIK	ACS - 41731	EIRC
254	MS. RUCHITA TUSHAR PATEL	ACS - 41685	WIRC	301	MS. KAVITA SHAH	ACS - 41732	EIRC
255	MS. SAYALI RAMDAS MOKASHI	ACS - 41686	WIRC	302	MR. MOHIT GUPTA	ACS - 41733	EIRC
256	MS. PRATIXA SATISH SEJU	ACS - 41687	WIRC	303	MS. VINITA CHHAJER	ACS - 41734	EIRC
257	MS. CHHAYA BHAGUBHAI JOSHALPHAL	ACS - 41688	WIRC	304	MS. CHARU SAPRA	ACS - 41735	NIRC
258	MR. PRASHANT DHONDIBHAU PAWAR	ACS - 41689	WIRC	305	MS. NEHA JOSHI	ACS - 41736	NIRC
259	MS. KRUPA MAHENDRA RAJPUT	ACS - 41690	WIRC	306	MS. DEEPEEKA ARORA	ACS - 41737	NIRC
260	MR. SHAILESHBHAI KHIMJIBHAI BHARVAD	ACS - 41691	WIRC	307	MR. HARIOM SHARMA	ACS - 41738	NIRC
261	MS. DEEPIKA CHOURASIA	ACS - 41692	WIRC	308	MR. RAKESH KUMAR	ACS - 41739	NIRC
262	MS. POOJA JEETENDRA OJHA	ACS - 41693	WIRC	309	MS. TARUNI SHARMA	ACS - 41740	NIRC
263	MR. TARANG KISHOR KULKARNI	ACS - 41694	WIRC	310	MS. NIKKI SHRIVASTVA	ACS - 41741	NIRC
264	MR. JEET HITESH PUROHIT	ACS - 41695	WIRC	311	MS. ASHU RANI	ACS - 41742	WIRC
265	MS. HARPREET KAUR JOGA SINGH SAINI	ACS - 41696	WIRC	312	MR. RAHUL JHAWAR	ACS - 41743	NIRC
266	MS. PRITI PRAMOD SURTI	ACS - 41697	WIRC	313	MR. ANKIT SINGHAL	ACS - 41744	NIRC
267	MR. NILESH RAMBHADRA DUBEY	ACS - 41698	WIRC	314	MS. RUCHI SHRIVASTAVA	ACS - 41745	NIRC
268	MS. BHAVINI KALPESH RAVAL	ACS - 41699	WIRC	315	MR. ARGHA ROY	ACS - 41746	NIRC
269	MS. SHALAKA VIJAY KULKARNI	ACS - 41700	WIRC	316	MS. MONISHA MEGHNA	ACS - 41747	NIRC
270	MR. SAURABH VISHWAS KARMASE	ACS - 41701	WIRC	317	MS. NIVEDITA PANDE	ACS - 41748	NIRC
271	MS. BARAKHA SHANKAR TANNA	ACS - 41702	WIRC	318	MR. SAURABH MATHUR	ACS - 41749	NIRC
272	MS. POOJA DATTA	ACS - 41703	NIRC	319	MR. KARANJEET SINGH	ACS - 41750	NIRC



320	MR. VISHAL MEHRA	ACS - 41751	WIRC	366	MR. PRASHANT DATTATRAYA HEGDE	ACS - 41797	SIRC
321	MS. RITU KANSAL	ACS - 41752	NIRC	367	MR. MOVVA RAGHAVENDRA PRASAD	ACS - 41798	SIRC
322	MS. SONAM SABARWAL	ACS - 41753	NIRC	368	MS. KISHORI GULAB PAWDE	ACS - 41799	WIRC
323	MS. RENU KUMARI KUSHWAHA	ACS - 41754	NIRC	369	MR. KAUSHIK SESHADRI	ACS - 41800	WIRC
324	MR. TUSHAR GOEL	ACS - 41755	NIRC	370	MR. SUMIT NAHATA	ACS - 41801	WIRC
325	MS. ADITA TALREJA	ACS - 41756	NIRC	371	MS. SNEHAL BHAGWANDAS RATHOD	ACS - 41802	WIRC
326	MS. RANGOLI JHUNJHUNWALA	ACS - 41757	NIRC	372	MR. MAYANK SHAH	ACS - 41803	WIRC
327	MS. SHILPA SHEKHAWAT	ACS - 41758	NIRC	373	MS. SONIA KAHLON	ACS - 41804	WIRC
328	MS. PREETI JAIN	ACS - 41759	NIRC	374	MS. SALONI PRADEEP SADALAGE	ACS - 41805	WIRC
329	MR. PAWAN KUMAR	ACS - 41760	NIRC	375	MR. SATYANARAYAN PATIDAR	ACS - 41806	WIRC
330	MS. DEEPIKA SINGH	ACS - 41761	NIRC	376	MR. PARAS GUPTA	ACS - 41807	WIRC
331	MS. MAMTA	ACS - 41762	NIRC	377	MR. ABHISHEK SONI	ACS - 41808	WIRC
332	MS. LAVINA KESWANI	ACS - 41763	NIRC	378	MS. FARZANA ALTAF MERCHANT	ACS - 41809	WIRC
333	MR. TANUJ VIJAY	ACS - 41764	NIRC	379	MR. JANNADA VIJAY KUMAR	ACS - 41810	SIRC
334	MR. ASHISH MISHRA	ACS - 41765	NIRC	380	MS. SURABHI SHARMA	ACS - 41811	NIRC
335	MR. SHASHANK SHARMA	ACS - 41766	NIRC	381	MR. MAHIR NACHIKET BHATT	ACS - 41812	WIRC
336	MR. YUGESH VERMA	ACS - 41767	NIRC	382	MS. ISHA RAJESH BAKRE	ACS - 41813	WIRC
337	MR. IMRAN KHAN	ACS - 41768	NIRC	383	MR. SURAJ BALU GAIKWAD	ACS - 41814	WIRC
338	MS. RASHMI DANSINGHANI	ACS - 41769	NIRC	384	MR. ANAND BAPUSAHEB PHALKE	ACS - 41815	WIRC
339	MS. SWASTI SUBRATA MOHAPATRA	ACS - 41770	EIRC	385	MS. ASTHA PANDEY	ACS - 41816	WIRC
340	MS. SULAKXI AGARWAL	ACS - 41771	NIRC	386	MR. AJAY SHRIVASTAVA	ACS - 41817	WIRC
341	MS. SHIVANI SHARMA	ACS - 41772	NIRC	387	MS. TANVI JAGDISHCHANDRA LAHOTI	ACS - 41818	WIRC
342	MS. DEEPANSHI SINDHWANI	ACS - 41773	NIRC	388	MR. RONAK BHARATBHAI LADHAWALA	ACS - 41819	WIRC
343	MS. PREETI VERMA	ACS - 41774	NIRC	389	MR. BHANU SHARMA	ACS - 41820	WIRC
344	MS. PRITI SHARMA	ACS - 41775	NIRC	390	MS. BIJAL SUNIL SHAH	ACS - 41821	WIRC
345	MS. PAYAL GIROTRA	ACS - 41776	NIRC	391	MR. SAKHAVADA KAUSHIK KUMAR	ACS - 41822	WIRC
346	MS. POOJA AJMERA	ACS - 41777	NIRC		PARSOTAMBHAI		
347	MS. JAGPREET KAUR GILL	ACS - 41778	NIRC	392	MR. DEEPAK KUMAR MEENA	ACS - 41823	WIRC
348	MR. NARENDER AGGARWAL	ACS - 41779	NIRC	393	MR. ANURAG SHARADKUMAR VYAS	ACS - 41824	WIRC
349	MS. AKSHARA PAREEK	ACS - 41780	NIRC	394	MS. RACHANA JAYANTILAL MARU	ACS - 41825	WIRC
350	MR. HARI BABU P	ACS - 41781	SIRC	395	MR. RAHUL NEMICHANDJI CHOPRA	ACS - 41826	WIRC
351	MS. RAGINI GUPTA	ACS - 41782	NIRC	396	MS. VAISHNAVI BHUPENDRA SURATWALA	ACS - 41827	WIRC
352	MR. ASHOK KUMAR AGRAWAL	ACS - 41783	NIRC	397	MR. JAY ASHOK BHAI GOHIL	ACS - 41828	WIRC
353	MR. GAURAV KUMAR	ACS - 41784	NIRC	398	MS. SUHANI JAIN	ACS - 41829	WIRC
354	MS. PRIYA ARORA	ACS - 41785	NIRC	399	MS. SURABHI RATHI	ACS - 41830	WIRC
355	MS. SWETHA S	ACS - 41786	SIRC	400	MR. BHUSHAN DILIP BHAGWAT	ACS - 41831	WIRC
356	MS. ALIMA D	ACS - 41787	SIRC	401	MS. SHIWANI ANIL CHURIWAL	ACS - 41832	WIRC
357	MR. ARJUN N A	ACS - 41788	SIRC	402	MS. AMIT KUMAR DHARMANI	ACS - 41833	WIRC
358	MS. SNEKA S	ACS - 41789	SIRC	403	MS. GRISHMA AJAYARO SHEWALE	ACS - 41834	WIRC
359	MS. AMITA KARNEWAR	ACS - 41790	SIRC	404	MR. SANDIP KANUBHAI NAGARIYA	ACS - 41835	WIRC
360	MR. RAMESH A	ACS - 41791	SIRC	405	MR. SIDVILAS VELUGULA	ACS - 41836	SIRC
361	MR. G KRISHNA MOHAN REDDY	ACS - 41792	SIRC	406	MS. NIYATI AMOL SURLAKAR	ACS - 41837	WIRC
362	MR. MOHAMED AMJATH ALI M	ACS - 41793	SIRC	407	MR. ANURAG PANDEY	ACS - 41838	NIRC
363	MR. DHANEESH MADACHIMPARA RAMAKRISHNAN	ACS - 41794	SIRC	408	MR. RAJESH KUMAR AHUJA	ACS - 41839	NIRC
364	MR. SYED WASIM	ACS - 41795	SIRC	409	MR. ARVIND SINGAL	ACS - 41840	NIRC
365	MR. NAJEEB KHAN	ACS - 41796	SIRC	410	MR. PRATHIK GUPTA	ACS - 41841	SIRC
				411	MR. SAMEER RAVINDRA SIDDHESHWAR	ACS - 41842	WIRC



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413	MS. ISHWARI DHANANJAY NIRGUDKAR	ACS - 41844	WIRC	460	MS. NEHA RAMESH BORKAR	ACS - 41891	WIRC
414	MR. DEEPAK CHAUHAN	ACS - 41845	NIRC	461	MR. RAHUL MACCHINDRA SONAWANE	ACS - 41892	WIRC
415	MS. ANITA CHHAJER	ACS - 41846	EIRC	462	MS. KHUSHBU JAYESH DESAI	ACS - 41893	WIRC
416	MR. BHAVIK VYAS	ACS - 41847	EIRC	463	MR. SUMEET BHALEKAR	ACS - 41894	WIRC
417	MS. PRIYANKA KUMARI	ACS - 41848	EIRC	464	MS. JAYANTI CHAURASIA	ACS - 41895	WIRC
418	MS. NITA BHUWALKA	ACS - 41849	EIRC	465	MS. PRACHI RAJENDRA KAWADE	ACS - 41896	WIRC
419	MS. KOMAL DESAI	ACS - 41850	EIRC	466	MS. MOHAN SHREYA AKHILESH	ACS - 41897	WIRC
420	MR. BINU THOMAS	ACS - 41851	SIRC	467	MS. ABHILASHA MUKESH RAJANI	ACS - 41898	WIRC
421	MR. KRISHAN KUMAR AGRAWAL	ACS - 41852	NIRC	468	MR. RONAK VIJAYBHAI AADSHRA	ACS - 41899	WIRC
422	MS. HARPREET	ACS - 41853	NIRC	469	MS. SHRUTI BABURAO AKKALKOT	ACS - 41900	WIRC
423	MS. RICHA	ACS - 41854	NIRC	470	MR. ROHAN SHASHISHEKHAR DESHPANDE	ACS - 41901	WIRC
424	MR. RAHUL MATHUR	ACS - 41855	NIRC	471	MS. VIBHA PRADEEP AMBANI	ACS - 41902	WIRC
425	MR. ROUNAK SHAH	ACS - 41856	NIRC	472	MR. BIRJUKUMAR MOHANBHAI GODHANI	ACS - 41903	WIRC
426	MR. VIRAJ SINGH	ACS - 41857	NIRC	473	MS. PRIYAL NITIN SHAH	ACS - 41904	WIRC
427	MS. RAJNI NEGI	ACS - 41858	NIRC	474	MS. SHILPA MANOJ DADHICH	ACS - 41905	WIRC
428	MS. ARPITA AGARWAL	ACS - 41859	NIRC	475	MS. PREKSHA SURANA BASANTILAL	ACS - 41906	WIRC
429	MS. NEHA YADAV	ACS - 41860	NIRC	476	MS. EKTA KESHAVDAT PATHAK	ACS - 41907	WIRC
430	MR. AKSHAY KUMAR SHARMA	ACS - 41861	NIRC	477	MR. KESHAV MADHUSUDAN DALIYA	ACS - 41908	WIRC
431	MS. SONAM JAIN	ACS - 41862	NIRC	478	MS. SNEHA MURLIMANO HAR BANGAD	ACS - 41909	WIRC
432	MS. GAYATHRI S C	ACS - 41863	NIRC	479	MS. PRIYA SHUKLA	ACS - 41910	WIRC
433	MS. NITI VOHRA	ACS - 41864	NIRC	480	MR. FARUK HANIFKHAN DIWAN	ACS - 41911	WIRC
434	MR. SANDEEP KUMAR	ACS - 41865	NIRC	481	MR. MIRAJ MUKESH SHAH	ACS - 41912	WIRC
435	MS. GURPREET KAUR	ACS - 41866	NIRC	482	MR. RONAK JAIN	ACS - 41913	WIRC
436	MS. POOJA	ACS - 41867	NIRC	483	MS. YASHIKA CHHATANI	ACS - 41914	WIRC
437	MS. RASHMEET KAUR BHATIA	ACS - 41868	NIRC	484	MS. SHIVANGI GUPTA	ACS - 41915	WIRC
438	MR. AMAN AGGARWAL	ACS - 41869	NIRC	485	MS. POONAM HARISHANKAR MAURYA	ACS - 41916	WIRC
439	MS. PRIYANKA DHAMIJA	ACS - 41870	NIRC	486	MR. SAMEER VIBHAV MAHAJAN	ACS - 41917	WIRC
440	MS. IPSA GARG	ACS - 41871	NIRC	487	MR. ASHISHKUMAR HANSRAJBHAI DOBARIA	ACS - 41918	WIRC
441	MS. SHINKEE GOYAL	ACS - 41872	NIRC	488	MR. VENKAT NARSAIAH KOVURI	ACS - 41919	SIRC
442	MS. MEENAKSHI BHATIA	ACS - 41873	NIRC	489	MS. NARRA SWARUPA RANI	ACS - 41920	SIRC
443	MR. GAGAN PAL SINGH CHHABRA	ACS - 41874	NIRC	490	MS. BUDDA PAVANI REDDY	ACS - 41921	SIRC
444	MS. JYOTI SRIVASTAVA	ACS - 41875	NIRC	491	MR. MIHIR SATISHKUMAR SHAH	ACS - 41922	WIRC
445	MR. NISHCHAL KALA	ACS - 41876	NIRC	492	MS. POOJA SARDA	ACS - 41923	NIRC
446	MS. ANSHU KHANDELWAL	ACS - 41877	NIRC	493	MR. UMAKANT SARAOGI	ACS - 41924	EIRC
447	MS. CHANDNI MATHUR	ACS - 41878	NIRC	494	MR. NAVEEN JAIN	ACS - 41925	NIRC
448	MR. JASBIR SINGH MARJARA	ACS - 41879	NIRC	495	MR. SACHIN GUPTA	ACS - 41926	NIRC
449	MR. PRAKASHA C R	ACS - 41880	SIRC	496	MS. GARIMA GARG	ACS - 41927	WIRC
450	MS. SUSHMA G	ACS - 41881	SIRC	497	MS. SIFAT KHAN	ACS - 41928	NIRC
451	MR. PRASHANT SUKHADEORAO THAKRE	ACS - 41882	WIRC	498	MS. NAINA KHERA	ACS - 41929	NIRC
452	MR. NISHANT SHARMA	ACS - 41883	WIRC	499	MS. KUSUM LATA MATHURIA	ACS - 41930	NIRC
453	MS. PALLAVI BHAWANISHANKER BHATRA	ACS - 41884	WIRC	500	MS. LATA DUA	ACS - 41931	NIRC
454	MS. NEELAM BHOJWANI	ACS - 41885	WIRC	501	MS. PRIYANKA MEHTA	ACS - 41932	NIRC
455	MS. PRIYANKA NAGAR	ACS - 41886	WIRC	502	MS. S ANIKA MERCYLIN	ACS - 41933	NIRC
456	MS. SUVARNA UMESH CHAVAN	ACS - 41887	WIRC	503	MS. SONAL GROVER	ACS - 41934	NIRC
457	MS. NIKKI BANKA	ACS - 41888	WIRC	504	MS. JINCY JOSE	ACS - 41935	NIRC
458	MS. ANKITA SHREEKANT PATWARDHAN	ACS - 41889	WIRC				



505	MS. ROMA	ACS - 41936	NIRC
506	MR. RAHUL BHATIA	ACS - 41937	NIRC
507	MR. VIPIN KUMAR SINGH	ACS - 41938	WIRC
508	MS. SHRADHA JAIN	ACS - 41939	NIRC
509	MR. SAGAR TRIPATHI	ACS - 41940	NIRC
510	MS. DAMAN PREET KAUR	ACS - 41941	NIRC
511	MS. ANJALI VASUDEV SANGTANI	ACS - 41942	NIRC
512	MS. SURABHI SRIVASTAVA	ACS - 41943	NIRC
513	MS. AKANSHA	ACS - 41944	NIRC
514	MR. SUNNY GARG	ACS - 41945	NIRC
515	MR. AMRENDER KUMAR YADAV	ACS - 41946	NIRC
516	MS. ADITI JAIN	ACS - 41947	NIRC
517	MR. SHIVAM SINGHAL	ACS - 41948	NIRC
518	MS. MANISHA KUMARI	ACS - 41949	NIRC
519	MR. NITIN KUMAR BOHARA	ACS - 41950	NIRC
520	MR. BALASUBRAMANI P	ACS - 41951	SIRC
521	MS. ANUSHA ASTHANA	ACS - 41952	SIRC
522	MR. SUDHIR BABAJI SUTAR	ACS - 41953	SIRC
523	MS. SAKTHI A	ACS - 41954	SIRC
524	MR. VISHWAS HEGDE	ACS - 41955	SIRC
525	MR. THAKUR VISHAL SINGH	ACS - 41956	SIRC
526	MR. AKSHAY GOWDA G	ACS - 41957	SIRC
527	MS. DIVYA SARDA	ACS - 41958	WIRC
528	MS. DEEPTHI RAMACHANDRAN MOOTHEDEATH	ACS - 41959	WIRC
529	MR. RAHUL NARESHBHAI BHANDARI	ACS - 41960	WIRC
530	MS. KASHMEERA KRISHNAKANT PARKAR	ACS - 41961	WIRC
531	MR. MOHIT	ACS - 41962	WIRC
532	MS. GEETA LALCHAND AMESAR	ACS - 41963	WIRC
533	MR. CHEKURI VENKAT RAMESH	ACS - 41964	SIRC
534	MS. SONAM JAISWAL	ACS - 41965	SIRC
535	MS. HIRANMAYI V	ACS - 41966	SIRC
536	MR. HARINATH PUNNA	ACS - 41967	SIRC
537	MS. BHAVANA R	ACS - 41968	SIRC
538	MR. ASWIN SARMA M	ACS - 41969	SIRC
539	MS. T KRISHNA VENI	ACS - 41970	WIRC
540	MR. MAYANK TARKESHWAR TIWARI	ACS - 41971	WIRC
541	MR. PHONDEKAR AJINKH PRADIP	ACS - 41972	WIRC
542	MS. SONAM AGARWAL	ACS - 41973	EIRC
543	MR. YATHIN NARAYANADAS SUMA	ACS - 41974	SIRC
544	MR. SREENIVASA BHAT S	ACS - 41975	SIRC
545	MS. PAVITRA SHRIVASTAVA	ACS - 41976	WIRC
546	MR. JITENDRA KUMAR PRADEEPBHAI PARMAR	ACS - 41977	WIRC
547	MS. JANKI KISHORBHAI DEDANIA	ACS - 41978	WIRC
548	MR. CHAND MAL KUMAWAT	ACS - 41979	NIRC
549	MR. BHARADWAJ REDDY MOTHE	ACS - 41980	SIRC

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1	F	1266 SH. P GOPIDASAN	SIRC
2	F	3028 SH. HARPREET SINGH PURI	NIRC
3	F	4101 SH. ASHOK KUMAR	WIRC
4	F	4700 SH. N MURALI	WIRC
5	F	4783 MS. KALYANI SRINIVASAN	SIRC
6	F	5360 SH. R VISWANATHAN	SIRC
7	F	6597 SH. VIKAS SAXENA	NIRC
8	A	5874 SH. R GANESH	WIRC
9	A	7740 SH. M N K MOSES	WIRC
10	A	10352 MS. LATHA B NAYAK	SIRC
11	A	10502 SH. ASHOK KUMAR UPADHYAY	EIRC
12	A	11358 SH. SANTANU MALLICK	WIRC
13	A	12008 SH. BHARAT BHUSHAN JAIN	NIRC
14	A	12759 SH. RAJESH GOYAL	NIRC
15	A	12776 SH. RAHUL BHANDARI	WIRC
16	A	13311 SH. K V RAJASHEKAR	SIRC
17	A	13602 SH. C LASITHANANDAN	SIRC
18	A	13855 SH. KRISHNAMURTHI CHANDRASEKARAN	SIRC
19	A	14430 SH. SAURABH SINGAL	NIRC
20	A	14491 SH. GANESH VISWANATHAN	WIRC
21	A	15020 SH. AJAY KUMAR GUPTA	NIRC
22	A	16502 SH. RAJEEV KUMAR CHECHANI	WIRC
23	A	19713 SH. MILAP JAGDISH RAVAL	F/WIRC
24	A	20817 MS. DESHPANDE PALLAVI ANIL	WIRC
25	A	20936 SMRITI VASHISHT	NIRC
26	A	23641 SH. MANDAR UDAY PILGAONKAR	WIRC
27	A	23901 SH. FOUZIA AHMED	F/WIRC
28	A	24040 MS. NEHA SHARMA	NIRC
29	A	26492 SH. MAYURI PRIYANK HARIWALA	WIRC
30	A	31571 MS. BHUWANESHWARI RATHORE	NIRC
31	A	34033 MS. ISHA DUHAN	NIRC

Certificate of Practice**

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MRS. POONAM SADANA	ACS - 15712	15299	NIRC
2	MS. SHWETA PAHUJA	ACS - 27993	15300	NIRC
3	MR. PANKAJ TRIVEDI	ACS - 30512	15301	WIRC
4	MRS. NITA ASHOK BUGADE	ACS - 34576	15302	WIRC
5	MS. SHREYA AGARWAL	ACS - 36117	15303	EIRC
6	MS. RUCHI WALIA	ACS - 37553	15304	NIRC
7	MR. SACHIN VISHWAS KATKAR	ACS - 39421	15305	WIRC
8	MS. ANJU ARORA	ACS - 39902	15306	NIRC
9	MS. RADHIKA GUPTA	ACS - 40106	15307	NIRC

*Restored from 01.10.2015 to 31.10.2015.

**Issued during the month of October 2015





News From the Institute

10	MS. NANDINI MITTAL	ACS - 40795	15308	WIRC	62	MS. NAINA GOYAL	ACS - 39018	15360	NIRC
11	MS. KANCHAN KUMARI SAH	ACS - 40907	15309	NIRC	63	MS. NEELAM BINJWA	ACS - 39252	15361	WIRC
12	MR. PRASUN TIBREWAL	ACS - 40964	15310	EIRC	64	MS. SHWETA YADAV	ACS - 39456	15362	NIRC
13	MR. PREM PRAKASH KHANDELWAL	ACS - 41046	15311	NIRC	65	MR. MAYUR CHHABRA	ACS - 39732	15363	NIRC
14	MS. HARSHALA PURUSHTTAM MUSALE	ACS - 41140	15312	WIRC	66	MR. SWAPNIL SURESH BORAWAKE	ACS - 39774	15364	WIRC
15	MR. GAURAV KESWANI	ACS - 41159	15313	NIRC	67	MS. NISHITHA PRABHU	ACS - 39803	15365	SIRC
16	MR. GOVIND SINGH	ACS - 41173	15314	NIRC	68	MS. RACHNA KANWAR PANWAR	ACS - 40035	15366	NIRC
17	MR. AMIT KUMAR CHANDRASHEKHAR SHARMA	ACS - 40995	15315	WIRC	69	MR. DURGESH KUMAR JHA	ACS - 40224	15367	EIRC
18	MS. SANTOSH KHANDELWAL	FCS - 4968	15316	NIRC	70	MS. VANITA PASHUPATINATH AGARWAL	ACS - 40506	15368	WIRC
19	MS. PRIYANKA KHIROLIA	ACS - 38059	15317	NIRC	71	MR. GULSHAN KUMAR	ACS - 40573	15369	NIRC
20	MS. NIDHI BHUTRA	ACS - 40125	15318	NIRC	72	MS. POOJA KISHOREBHAI SHAH	ACS - 40608	15370	WIRC
21	MS. RANJITHA B P	ACS - 29773	15319	SIRC	73	MS. SHILPI MANGLIK	ACS - 40668	15371	NIRC
22	MR. PRASANA ADITYA P	ACS - 32000	15320	SIRC	74	MR. PRINCE KUMAR	ACS - 41094	15372	NIRC
23	MR. MOHIT BAJAJ	ACS - 33214	15321	NIRC	75	MS. MADHU BAID	ACS - 41143	15373	EIRC
24	MS. KHUSHBOO KOTHARI	ACS - 33720	15322	WIRC	76	SH. SANTOSH KUMAR SONI	FCS - 7778	15374	WIRC
25	MS. ZALAK MANOJKUMAR TALREJA	ACS - 33890	15323	WIRC	77	MS. PREETI CHAUHAN	ACS - 31448	15375	NIRC
26	MS. KAMINI MAHER	ACS - 34799	15324	NIRC	78	MS. RAMANDEEP KAUR BHATIA	ACS - 35850	15376	WIRC
27	MR. SANDEEP YADAV	ACS - 36449	15325	NIRC	79	MR. ARUNSREENIVAS	ACS - 35865	15377	SIRC
28	MR. ASHOK CHHAGANBHAI PATEL	ACS - 37323	15326	WIRC	80	MS. GEETIKA JAIN	ACS - 40235	15378	NIRC
29	MR. AMIT AJIT CHOUGULE	ACS - 38165	15327	SIRC	81	MR. ANKUR MISHRA	ACS - 41218	15379	EIRC
30	MS. KIRTI KUMARI	ACS - 38205	15328	NIRC	82	SH. VIKAS KHANDELWAL	FCS - 7322	15380	NIRC
31	MS. GARIMA GULATI	ACS - 39008	15329	NIRC	83	SH. RAGHUNATH S BHANDARI	FCS - 8048	15381	WIRC
32	MR. MANOJ KUMAWAT	ACS - 39174	15330	NIRC	84	MS. NISHANKA SRIVASTAVA	ACS - 28684	15382	NIRC
33	MS. KHYATI GULATI	ACS - 39525	15331	NIRC	85	MR. PANKAJ KUMAR	ACS - 29826	15383	NIRC
34	MS. VIDHI KIRITKUMAR VYAS	ACS - 39935	15332	WIRC	86	MS. RICHA BHAMOTRA	ACS - 30493	15384	SIRC
35	MR. PRATHAM MALHOTRA	ACS - 40039	15333	NIRC	87	MR. ARJIT GUPTA	ACS - 30696	15385	NIRC
36	MS. RIPPLE NAGPAL	ACS - 40468	15334	NIRC	88	MR. KETAN RAVINDRA SHIRWADKAR	ACS - 37829	15386	WIRC
37	MR. LILADHAR SINGH	ACS - 40954	15335	EIRC	89	MS. SHWETA MANOJ KUMAR MUNDRA	ACS - 38115	15387	WIRC
38	MS. MANASI JOSHI	ACS - 40968	15336	EIRC	90	MS. AAYUSHI SINGAL	ACS - 40579	15388	NIRC
39	MR. SUMEET SOMANI	ACS - 41095	15337	WIRC	91	SH. T SAMPATHKUMAR	FCS - 8070	15389	SIRC
40	MR. VIPUL ARORA	ACS - 41152	15338	NIRC	92	MS. SEEMA OMPRAKASH KOTHARI	ACS - 32658	15390	WIRC
41	MR. MOHAMMAD FARHAN SIDDIQUI	ACS - 41166	15339	NIRC	93	MR. GAURAV AGARWAL	ACS - 41269	15391	NIRC
42	MR. AMAN PARNAMI	ACS - 41178	15340	NIRC	94	MR. MOHAMMAD TAUSIF SHAMIM	ACS - 32291	15392	EIRC
43	MS. SUDHA NARAYANAN	ACS - 13508	15341	SIRC	95	SH. RAJESH AGRAWAL	ACS - 18911	15393	EIRC
44	MS. KANIKA TAKKIAR	ACS - 24226	15342	NIRC	96	MRS. NITI CHOUDHARY	ACS - 27427	15394	EIRC
45	MR. THIRUMALAI RAJU G.	ACS - 33024	15343	SIRC	97	MS. ARPITA BASU ROY	ACS - 28972	15395	NIRC
46	MR. ALOK SINGH	ACS - 33718	15344	NIRC	98	MR. MAHESH POPATBHAI SABHADIYA	ACS - 34654	15396	WIRC
47	MS. SANGEETA	ACS - 34577	15345	EIRC	99	MR. KARAN KHURANA	ACS - 39746	15397	NIRC
48	MS. ANUPMA MITTAL	ACS - 35899	15346	NIRC	100	MR. AWASHESH DIXIT	ACS - 39950	15398	NIRC
49	MS. ANKITA AGARWAL	ACS - 37153	15347	NIRC	101	MS. RITU GUPTA	ACS - 40060	15399	NIRC
50	MR. K SHANMUGAM	ACS - 37566	15348	SIRC	102	SH. NAVEEN WISHWABANDHU	FCS - 7034	15400	NIRC
51	MR. SURAJ SINGH	ACS - 37626	15349	NIRC	103	MR. ANKIT GUPTA	ACS - 30245	15401	NIRC
52	MS. KRITI KUMARI BIMAL KUMAR DHANUKA	ACS - 38923	15350	WIRC	104	MR. DEEPAK GUPTA	ACS - 37308	15402	NIRC
53	MR. RAHUL PARASRAMPURIA	ACS - 40999	15351	EIRC	105	MR. UMANG ANILKUMAR LALPURWALA	ACS - 38420	15403	WIRC
54	MS. ANITA SANKHLA	ACS - 41078	15352	NIRC	106	MS. SHRUTI VYAS	ACS - 38686	15404	NIRC
55	MS. RASHMI SAINI	ACS - 41082	15353	EIRC	107	MR. DIWAKAR JAIN	ACS - 40165	15405	NIRC
56	MRS. NEHA MUNDRA	ACS - 22385	15354	EIRC	108	MS. MANISHA KHARKWAL	ACS - 40792	15406	NIRC
57	MRS. ARCHANA SAPRA	ACS - 22550	15355	NIRC	109	MR. VARUN VINOD KUMAR GUPTA	ACS - 40969	15407	NIRC
58	MS. DOLLY VILACHA	ACS - 27277	15356	NIRC	110	MR. PANKAJ KUMAR	ACS - 41090	15408	NIRC
59	MS. SWATI SINGHAL	ACS - 28199	15357	NIRC	111	MR. PRATIK GIRISH MONDKAR	ACS - 41203	15409	WIRC
60	MS. AYUSHI RASTOGI	ACS - 33536	15358	NIRC	112	MR. PRASHANT KUMAR VERMA	ACS - 41278	15410	EIRC
61	MS. YATIKA AGARWALLA	ACS - 35989	15359	NIRC					



113	MR. SHYAM SUNDAR PANDIA	ACS - 41298	15411	EIRC
114	MR. NIKUNJ KHANDELWAL	ACS - 41311	15412	NIRC
115	MS. RUMA CHOWDHURY	ACS - 11157	15413	EIRC
116	MS. AKANKSHA GARG	ACS - 35087	15414	NIRC
117	MS. SHALINI	ACS - 40209	15415	NIRC
118	MS. NAINA JHANWAR	ACS - 40365	15416	NIRC
119	SH. S RAMAKRISHNAN	FCS - 1982	15417	SIRC
120	SH. SANDEEP GAMBHIR	ACS - 16097	15418	NIRC
121	SH. SACHIN BHARDWAJ	ACS - 23232	15419	NIRC
122	MS. C SHARDA SHASTRY	ACS - 23602	15420	SIRC
123	MS. SHWETA DHINGRA	ACS - 35969	15421	NIRC
124	MS. PRERNA JAIN	ACS - 36308	15422	NIRC
125	MS. K KAVITHA	ACS - 38894	15423	SIRC
126	MS. RITU SINGHAL	ACS - 39462	15424	NIRC
127	MR. NEMINATH NANDAKUMAR RAVANNAVAR	ACS - 39483	15425	WIRC
128	MS. SWATI SITARAM AGRAWAL	ACS - 39560	15426	WIRC
129	MS. SWATI KHATTER	ACS - 40594	15427	NIRC
130	MR. PRADEEP GANSHYAM RATNANI	ACS - 41096	15428	WIRC
131	MR. JIGNESH SUNILBHAI KADIVALA	ACS - 41320	15429	WIRC
132	MR. GAURAV SHARMA	ACS - 41365	15430	NIRC
133	MS. SHILPA TANEJA	ACS - 34748	15431	NIRC
134	MS. KOKILA S	ACS - 37604	15432	SIRC
135	MS. VAISHALI JAIN	ACS - 30765	15433	NIRC
136	MR. ALOK KUMAR MISHRA	ACS - 40349	15434	EIRC
137	MS. K LOGANATHAN MEKALA	ACS - 41033	15435	SIRC
138	MR. ROHIT UPPAL	ACS - 41226	15436	NIRC
139	SH. ANIL SEETARAM VAIDYA	FCS - 3631	15437	WIRC
140	SH. A A NARAYANAMURTHY	ACS - 4796	15438	SIRC
141	SH. VINAY A SHAH	ACS - 5751	15439	WIRC
142	SH. SHRIKANT W HAWALDAR	ACS - 10173	15440	WIRC
143	MS. CHITRA GUPTA	ACS - 16240	15441	EIRC
144	MR. YATISH BHARDWAJ	ACS - 29932	15442	NIRC
145	MS. SHILPA TIWARI	ACS - 30141	15443	WIRC
146	MR. GIRISH RAMANAND TIWARI	ACS - 31304	15444	WIRC
147	MS. SHUBHANGEE NILESH SAWANT	ACS - 32981	15445	WIRC
148	MR. ARJUN JAGDISH SONI	ACS - 34612	15446	WIRC
149	MS. SNEHAL RAMESH GHATPANDE	ACS - 34881	15447	WIRC
150	MR. RAHUL JOSHI	ACS - 35684	15448	EIRC
151	MS. SHAFALI AGARWAL	ACS - 37087	15449	NIRC
152	MS. CHANCHAL KHANDELWAL	ACS - 37630	15450	NIRC
153	MS. AANCHAL JAIN	ACS - 37790	15451	NIRC
154	MR. SUNIT JAIN	ACS - 38344	15452	NIRC
155	MS. SHIKHA SHARMA	ACS - 38460	15453	NIRC
156	MS. NEHA BHATIA	ACS - 26306	15454	NIRC
157	MS. TULIKA KATARIA	ACS - 39967	15455	NIRC
158	MR. AMIT NAMDEV PATIL	ACS - 41406	15456	WIRC
159	MS. ANKITA AGGARWAL	ACS - 41442	15457	NIRC

CANCELLED*

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MS. KRUTI SHAH	ACS 29550	13367	WIRC
2	MR. VISHAL MANTRI	ACS 36127	13421	NIRC
3	MS. REEPAL VASANT LAL SHAH	ACS 17790	6860	WIRC
4	MR. SUMIT NIRMAL DAS	ACS 39980	14846	WIRC
5	MR. KALASH PURUSHOTTAM PUROHIT	ACS 36404	13567	WIRC
6	MS. DIVYA BHARAT KUMAR ZAVERI	ACS 39586	14727	WIRC
7	MRS. VANDANA KHATUWALA	ACS 22266	8179	WIRC
8	MR. RAHUL DATTATRAYA CHANDRA-TRE	ACS 30607	11141	WIRC
9	MR. G BUTCHI BABU	FCS 5983	6045	SIRC
10	MS. NITHYA KALYANI M	ACS 26886	10712	SIRC
11	MR. R R GNANASEKARAN	FCS 6500	11432	SIRC
12	MR. VIKASH BANSAL	ACS 30969	13495	NIRC
13	MS. RAMYA P	ACS 34597	14803	SIRC
14	MR. DEVENDRA KHANDERAO KHANDE	ACS 3232	14625	WIRC
15	MR. JATINKUMAR DEVENDRA KUMAR BHAVSAR	ACS 25835	12818	WIRC
16	MR. PANKAJ KUMAR AGGARWAL	ACS 31463	11936	NIRC
17	MR. MAYANK NIGAM	ACS 35514	13404	NIRC
18	MS. POOJA DODIA	ACS 28158	11237	NIRC
19	MS. JOLLY PADAMSEN MITTAL	ACS 37285	13990	WIRC
20	MR. OMKAR CHANDRAKANT MHA-MUNKAR	ACS 26645	13642	WIRC
21	MS. HIMA BINDU DULI PALA	ACS 35703	13324	SIRC
22	MR. SATYANARAYANA VISWANADHA	FCS 7224	7752	SIRC
23	MR. ADITYA DANESH SHAH	ACS 37969	14756	WIRC
24	MRS. DIPASHREE ABHISHEK JOG	ACS 30467	13060	WIRC
25	MS. SWATI MAHAWAR	ACS 36157	13992	WIRC
26	MRS. DIPTI BHAVIK DAVE	ACS 26987	13012	WIRC
27	MS. DIPANKY THAKUR	ACS 35887	14431	EIRC

LICENTIATE ICSI**

Sl. No.	L.No.	NAME	Region
1	6792	MR. PAVANKUMAR SHRIKANT GAHUKAR	WIRC
2	6793	MS. ANJU RADHESHYAM TIWARI	WIRC
3	6794	MS. SHRITHEE MAGAJI SHEKAR	SIRC
4	6795	MS. ISWARIYA R	SIRC
5	6796	MR. CHAITANYA KISHORKUMAR GANATRA	WIRC
6	6797	MS. SONAL MANISHKUMAR AGRAWAL	WIRC
7	6798	MR. KARTIK N V SURYANARAYANAN IYER	WIRC
8	6799	MR SURYANSH JAIN	NIRC
9	6800	MR. R. KAUSHIK GANESH	SIRC
10	6801	MR. SAUMITRA BAJPAI	NIRC
11	6802	MR. ABHISHEK JAIN	NIRC

*Cancelled during the Month of October, 2015.

**Admitted during the month of October, 2015.

ICSI Programme - Webinar on new e-form MGT-7 for filing of Annual Return - Please log on to <https://www.youtube.com/watch?v=64T587-C-sU> for the proceedings of the programme.



Company Secretaries Benevolent Fund



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

Region	LM No.	Name	Membership No.	City	Region	LM No.	Name	Membership No.	City
NIRC					15	11027	SH. KUNDAN KUMAR LAL	ACS - 15180	BANGALORE
1	11018	MR. NIRAJ KUMAR MURARKA	ACS - 41596	NOIDA	16	11028	MR. VASANT PARAMESHWARA BHAT	ACS - 41405	SIRSI
2	11030	MS. VISHAKHA TANWAR	ACS - 40517	BIKANER	17	11033	MR. UPPU RAJU	ACS - 41475	HYDERABAD
3	11031	MS. SHAGUN TANEJA	ACS - 38841	DELHI	18	11034	MR. BHARADWAJ REDDY MOTHE	ACS - 41980	WARANGAL
4	11039	MR. RAHUL JHAWAR	ACS - 41743	FARIDABAD	19	11035	MR. VENKAT NARSAIAH KOVURI	ACS - 41919	HYDERABAD
SIRC					20	11036	MR. THAKUR VISHAL SINGH	ACS - 41956	HYDERABAD
5	11013	MRS. RITU DUNGARWAL	ACS - 41476	CHENNAI	21	11038	MR. TEJOMURTULA RAVI KIRAN	ACS - 38248	VISAKHAPATNAM
6	11015	MR. SESHADRI VASAN GOLLUR	ACS - 41600	SECUNDERABAD	22	11037	MS. DIVYA SARDA	ACS - 41958	HYDERABAD
7	11016	MR. PRADIP KUMAR SAMAL	ACS - 41570	BANGALORE	23	11040	MR. ARJUN N A	ACS - 41788	KRISHNAGIRI DISTT
8	11017	MS. M V PADMAJA KALYANI	ACS - 41605	HYDERABAD	24	11041	MS. R KAVITHA	ACS - 41998	CHENNAI
9	11019	MS. RAVICHANDRAN SOUMYA	ACS - 41572	HYDERABAD	WIRC				
10	11020	MS. SAI KIRANMAYI PAIDIMARRI	ACS - 41676	HYDERABAD	25	11014	MR. SWAROOP SINGH BHATI	ACS - 31397	JODHPUR DISTT
11	11022	MR. S PALANI KUMAR	ACS - 41667	COIMBATORE	26	11021	MR. PIYUSH CHORARIA	ACS - 41705	NASHIK
12	11023	MR. SRIPATHI DUNNA	ACS - 41571	KRISHNA DISTT	27	11026	SH. ANKIT AGRAWAL	ACS - 29561	TITWALA (E)
13	11024	MR. MOVVA RAGHAVENDRA PRASAD	ACS - 41798	TENALI	28	11029	MR. SATISH HARKUNATH DESHMUKH	ACS - 38173	THANE
14	11025	MR. SYED WASIM	ACS - 41795	HYDERABAD	29	11032	MS. CHITRANGDA VISHWAKARMA	ACS - 41337	HOSHANGABAD

*Enrolled during the period from 21/10/2015 to 20/11/2015.



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			
Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP
(b) Unique Code Number (i) Individual/Proprietorship concern (ii) Partnership firm			
3. Area of Practice			
Sl. No.	Area of Practice	Please tick (If Applicable)	
1	Corporate Law		
2	Financial Service and Consultancy		
3	Securities/Commodities Exchange Market		

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		
14	Monopolies/Restrictive Trade Practices/Competition Law		
15	Consumer Protection Laws		
16	Arbitration and Conciliation		
17	Import and Export Policy & Procedure		
18	Environment Laws(Specify the areas)		



News From the Institute

19	Environment Laws(Specify the areas)		
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)		
21	Financial Consultancy		
22	Other Economic Laws		
23	SEBI / Securities Appellate Tribunal		
24	Banking and Insurance		
25	Any Other Service (Please specify)		

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*.
- v. 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**

Services Rendered by Practising Company Secretary/ Firm of Practising Company Secretaries issued by the Institute*.

- viii. I hereby declare that I have complied with KYC norms issued by the Council of the ICSI.
- ix. I undertake to subject myself to peer review as and when directed by the Peer Review Board.
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 _____:

Sr. No.	Name of Programme	Organised by	Place	Date	Duration*	No. of Program Credit Hours Secured**	Details of Certificate for Program Credit Hours ***

* 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 October, 2015

ADITI RENUKADAS JOSHI
4, SANJANA VILLA, OPP. SAMARATHNAGAR,
WADGAON BK, SINHAGAD ROAD Pincode:411041,
PUNE

AMIT AGARWAL
130, UPPER GROUND FLOOR, SANT NAGAR, EAST
OF KAILASH Pincode:110065, DELHI

AMIT SAXENA
105/12, 1ST FLOOR, ADITYA COMPLEX, PREET
VIHAR Pincode:110092, NEW DELHI

AMIT TIWARI
C-122, GROUND FLOOR, BACK SIDE, SECTOR-10
Pincode:201301, NOIDA

ANIL DEVILAL HINGAD
18, 4TH FLOOR, UMA MAHESH, SOCEITY, SHIV
MANDIR
ROAD, RAMNAGAR, Pincode:421201, DOMBIVLI (E)

ANKUR JAIN
8/300, OLD POST OFFICE STREET, CHHOTA BAZAR,
SHAHDARA Pincode:110032, DELHI

ANSHUMAN JAIN
C/O AJAY BHANSALI & ASSOCIATES, ASHOKA
HOUSE, K C ROAD
NEAR MAHESHWARI BHAWAN, AATGAON
Pincode:781008, GUWAHATI

ARTIBEN ASHOKBHAI AGRAWAL
B-46, PAVANDUT NAGAR, OPP. VITTHLESH
HOSPITAL, NEAR ALWA NAKA, GIDC ROAD,
MANJALPUR Pincode:390011, VADODARA

ASHA RANI
K-8, GROUND FLOOR, JANGPURA EXTENSION,
Pincode:110014, NEW DELHI

ASHOK CHHAGANBHAI PATEL
104,BLDG NO.2, RAM RAHIM PARK, SAI NAGAR
VASAI WEST Pincode:401202, THANE

CHANDRADIP BHARATI
28 L, 1ST FLOOR, POCKET 2, MAYUR VIHAR PHASE
III Pincode:110096, NEW DELHI

DEEPAK PRAJAPAT
408, 4TH FLOOR, JOHRI PALACE, M G ROAD Pincode:
INDORE

DIGVIJAY SINGH
C/O LALITA DEVI, B-97, MADHU VIHAR, UTTAM
NAGAR, DWARKA Pincode:110059,NEW DELHI

DIVYANI
KF -137 A, NEW KAVI NAGAR, Pincode:201002
GHAZIABAD

HARDIKKUMAR RAJENDRAKUMAR BHATT
B/57, PULIN SOC., PART -1, NR. PAYAL NAGAR,
NARODA Pincode:382325, AHMEDABAD

ISHWAR PRATAP SINGH
HOUSE NO. 6, GROUND FLOOR, SECTOR - 5
TRIKUTA NAGAR Pincode:180012, JAMMU

JISHNU R G
ROOM NO. 2, NAVAS QUARTERS, Y.S.C GROUND
ROAD
EDARIKODE P O Pincode:676501, MALAPPURAM

KALPANA MANHARLAL PATEL
C-46/2, GALI NO.20, NEAR AGARWAL STATIONARY
SHOP
RAMAVIHAR, NEAR ROHINI SECTOR 22
Pincode:110081
NEW DELHI

KAVITA KHATRI
207, HEMKOOT, B/h, LIC BUILDING, NR. GANDHI
GRAM RAILWAY STATION, ASHRAM ROAD
Pincode:380009 AHMEDABAD



News From the Institute

KUNAL RAJESH SARPAL
WHITE COLLAR LEGAL LLP, OFFICE NO.6, 2ND
FLOOR, DEVIKA HEIGHTS, SHIVAJINAGAR
Pincode:411005, PUNE

LAVKUSH YADAV
120/1, YAMUNA SECTOR -1, TRIVENIPURAM, JHUNSI
Pincode:211019, ALLAHABAD

LOKESH MATHUR
223, MAHAVEER NAGAR - 1ST, NEAR DURGAPURA
RAILWAY STATION, TONK ROAD Pincode:302018,
JAIPUR

MANISH
172, POWER COLONY, INDUSTRIAL AREA PHASE
-2, Pincode:134115, PANCHKULA

MANISH KUMAR MISHRA
2-288, SECTOR -2, JANKIPURAM EXTENSION
Pincode:226021, LUCKNOW

MD SHAHNAWAZ
78 BENTIC ST., SHREE KRISHNA CHAMBER, 4TH
FLOOR, BLOCK - B, ROOM NO. 2-D Pincode:700037,
KOLKATA

MUMTAJ
L - 14, SECTOR - 58, Pincode:201301, NOIDA

NAGA KISHORE MITTAPALLI
PLOT NO.226, 2ND FLOOR, KALYAN NAGAR, S.
R. NAGAR, NEAR ICICI BANK VENGAL RAO BR
Pincode:500038, HYDERABAD

NEERAJ NAGAR
2ND FLOOR, ABOVE STATE BANK OF, INDIA, OPP.
HOTEL, GULZAR, MAHANANDA, MADAMMAHAL
Pincode:482001
JABALPUR

NEHA AGARWAL
16, RAMESHWAR MALIA, 1ST BYE LANE, 6TH FLOOR,
Pincode:700001, HOWRAH

NEHA RAWAT
C -8/78-B, LAWRENCE ROAD, KESHAVPURAM
Pincode:110035 DELHI

PRASHANT RAJENDRABHAI PRAJAPATI
1246, ZADIA'S., KHADAKI RAJAMEHTA'S POLE
KALUPUR Pincode:380001, AHMEDABAD

PRINCE TIWARI
H.NO. 22, SECTOR 26/A, SHANTI NAGAR,
Pincode:147301
MANDI GOBINDGARH

PRIYANKA GUPTA
B-379, ASHOK NAGAR, SHAHDARA, GALI NO.2
Pincode:110093
DELHI

R RAMCHANDAR
21, 3RD FLOOR, ML LUND COMPLEX, VARIETY HALL
ROAD Pincode:641001, COIMBATORE

RADHA KRISHNA GUPTA
29 A, DAYANAND COLONY, TONK ROAD, OPPOSITE
GLASS FACTORY Pincode:302018, JAIPUR

RAKESH KUMAR
C-532, AMAN VIHAR, NEAR ROHINI SECTOR 20,
Pincode:110086, DELHI

RASHMI AGARWAL
AMBEY GARDEN, FLAT NO. F, 2ND FLOOR, BLOCK
-1, BANGALAXMI ABASON, CHECK POST, NEAR R D
MOTORS, RAJARHAT RD Pincode:700136 KOLKATA

RIA MAINGI, PLOT NO. 8, KRISHNA MARKET,
PITAMPURA
Pincode:110034, DELHI

RUPANJANA DE
17, NABANAGAR, JADAVPUR, Pincode:700032,
KOLKATA

SAJEEV S
34/446, PANAMTHODI (H), THIRUNELLAYI POST,
Pincode:678004, PALAKKAD

SANDIP KUMAR JEJANI
A-3/212/1, SECTOR -7, ROHINI, Pincode:110085, NEW
DELHI



SANTOSH KUMAR
C/O KRISHNA NAND THAKUR, ADVOCATE, 2ND
FLOOR, NEAR GIRLS H S KASHIPUR, WARD NO. 13
Pincod:848101, SAMASTIPUR

SANTOSH MACHHINDRA AMBRE
FLAT NO. B-4, USHAKIRAN HSG., SOC., OPP.
VASANT MARKET,
SHARANPUR ROAD, CANADA CORNER
Pincod:422007, NASHIK

SAYED SUBUHI HUSSAIN
186 A, RAM GALI NO.2, PANCHWATI CIRCLE, RAJA
PARK Pincod:302004, JAIPUR

SHALINI
112, FIRST FLOOR, BEST SKY TOWER, NETAJI
SUBHASH PLACE Pincod:110034, DELHI

SHASHIDHARA S
NO.1, 5TH MAIN, 2ND CROSS, HMS LAYOUT,
AREHALLI Pincod:560061, BANGALORE

SHILPA PAREKH
FLAT NO. 201, SOMNATH DARSHAN, KASTUR PARK,
SHIMPOLI ROAD, BORIVALI (WEST) Pincod:400092,
MUMBAI

SHRIDHI JAIN
HOUSE NO. 39, SECTOR 9, CHIRANJEEV VIHAR
Pincod:201002
GHAZIABAD

SHYAM KRISHNA GARIKAPATI, S/O SHRI DAMODARA
RAO
7-107/1, SRI KRISHNA NILAYAM, SHANTINAGAR,
HANDANAGAR Pincod:500050, HYDERABAD

SNEHAL RAMESH KULKARNI
'PURTATA' 15, MILAN CHS, MAYUR COLONY,
KOTHRUD, Pincod:411038, PUNE

SUSANTA KUMAR NAYAK
6/3, L N MOTILAL ROAD, BEHALA, Pincod:700061,
KOLKATA

SWARNALI DAS
82,H. L. SARKAR ROAD(SOUTH), BANSDRONI,
Pincod:700070 KOLKATA

V SWAMIDASON
PLOT NO. 347, COOPERATIVE NAGAR,
MATHIRAIVEDU, THIRUVERKADU, Pincod:600077,
CHENNAI

VAIBHAV RAMESHCHANDRA BAGADIYA
F-402, SAHAJ SOLITAIRE, NR.VAISHALI TOWNSHIP,
OPP.APMC MARKET, GUPTANAGAR, Pincod:380007,
AHMEDABAD

VARUN KUMAR
ISHAN NIWAS, GROUND FLOOR, FROOD, LOWER
SMITRI, SANJAULI Pincod:171006, SHIMLA DISTT

VARUN VINOD KUMAR GUPTA
24 PARSHURAM COLONY, KAYAD ROAD,
GHODGHRA Pincod:302023, AJMER

VIKAS VIJAY GUPTA
H.NO. 843, PREMNAGAR SQUARE, BESIDE RAVI
HAIR DRESSES, NEAR SARDAR, FLOOR MILL,
PREMNAGAR Pincod:440002
NAGPUR

VINITA KUMARI
G-3, BASEMENT, PART - I, LAJPAT NAGAR,
Pincod:110024
NEW DELHI

VINUTA NIKHIL DHADD
FLAT NO. 1 & 3, UPKAR TOWERS, NEAR HOTEL RAJ
CASTLE
SANGLI ROAD, ICHALKARANJI Pincod:416115,
KOLHAPUR DISTT

YOGESH MAHESHBHAI SOMAIYA
426, STAR CHAMBERS, HARIHAR CHOWK,
Pincod:360001
RAJKOT



News From the Institute



List of Companies Registered for Imparting Training during the month of October, 2015

ALLIED REFRACTORY PRODUCTS INDIA PRIVATE LIMITED
SM-5, BOL GIDC, B/H TATA NANO, TALUKA-SANAND
AHMEDABAD

AML STEEL & POWER LIMITED
NEW NO.9(OLD NO.3) GOPALAPURAM, 6TH MAIN STREET
CHENNAI

ANAND AUTOMOTIVE PRIVATE LIMITED
1 SRI AUROBINDO MARG, HAUZ KHAS, DELHI

ANKIT ISPAT PRIVATE LIMITED
NEW NO.9(OLD NO.3), GOPALAPURAM, 6TH MAIN STREET
CHENNAI, CHENNAI

ASSAM ENTRADE LIMITED
16 TARA CHAND DUTTA STREET, KOLKATA

BERI UDYOG (P) LTD
PLOT NO. 235,236,238,239,240, SECTOR-3
HSIIDC, KARNAL-PANIPAT

BESTECH HOSPITALITIES PVT.LTD
124, SECTOR 44, GURGAON 122 002 HARYANA, GURGAON

BESTECH INDIA PRIVATE LIMITED
PLOT NO. 124, SECTOR 44, URBAN INSTITUTIONAL AREA,
GURGAON

BHARAT INDUSTRIAL ENTERPRISES LIMITED
VILLAGE AND POST TARAORIDELSTICT, KARNAL-PANIPAT

BHARATHI CEMENT CORPORATION PRIVATE LIMITED
RELIANCE MAJESTIC, ROAD NO.10,BANJARA HILLS,
HYDERABAD

BTB MARKETING PRIVATE LIMITED
UNIT NO.2C, GROUND FLOOR, BUILDING NO.10C, DLF,
CYBER CITY, GURGAON

CAPSUGEL HEALTHCARE PVT. LTD.
21, JONIAWAS, DHARUHERA, DISTT. REWARI,
HARYANA-122100, REWARI

CITYCOM NETWORKS PRIVATE LIMITED
PLOT 21-22, 3RD FLOOR, UDYOG VIHAR, PHASE IV
GURGAON

DABON INTERNATIONAL PRIVATE LIMITED
3RD FLOOR PUNJABI BHAWAN, 10 ROUSE AVENUE
NEW DELHI

DIAMOND LEASING AND FINANCE LIMITED
7/3 2ND FLOOR, JANGPURA EXTENSION,
DELHI

DSM SINOCHEM PHARMACEUTICALS INDIA PVT LTD
9TH FLOOR, TOWER A, INFINITY TOWER, DLF PHASE-II
GURGAON

GENESIS LUXURY FASHION PRIVATE LIMITED
51-52, UDYOG VIHAR, PHASE IV, GURGAON

GOKUL AGRO RESOURCES LIMITED
B-402, SAPATH HEXA, NEAR GANESH MEREDIYAN
OPP.GUJARAT HIGH COURT, SOLA, S. G ROAD, AHMEDABAD

IMPACT MEDIA EXCHANGE LIMITED
53/1, MEDIA INFO TECH PARK, ROAD NO. 7, NR. AKRUTI
TRADE CENTRE, ANDHERI (EAST), MUMBAI

ISUCCESS INFORMATION AND TECHNOLOGIES PVT LTD
OFFICE 5, WING B, MALATI COMPLEX, 4/129 IDEAL COLONY,
PAUD ROAD, KOTHRUD, PUNE

ITRON INDIA PRIVATE LIMITED
C - 7, SECTOR - 3, NOIDA, NOIDA

JASH ENGINEERING LIMITED
31, SECTOR C, SANVER ROAD INDUSTRIAL AREA, NEAR
MODERN BREAD CHOURAHA, INDORE

KUNVARJI FINSTOCK PVT LTD
BLOCK B, FIRST FLOOR, SIDDHIVINAYAK TOWERS,
OFF S.G. HIGHWAY, MAKARABA, AHMEDABAD



LISTER TECHNOLOGIES PRIVATE LIMITED
NO.232, V.M STREET, MYLAPORE, CHENNAI

LUTHER CORPORATE SERVICES PRIVATE LIMITED
GERMAN CENTRE, UNIT NO.7, 14TH FLOOR, BUILDING 9B,
DLF CYBER CITY, PHASE 3, GURGAON

MARGDARSHAK FINANCIAL SERVICES LIMITED
118 DAYAL FARMS, GANESHPUR-REHMANPUR, CHINHAT-
DEVA ROAD, LUCKNOW

NEOGROWTH CREDIT PRIVATE LIMITED
503, TOWER 2B, ONE INDIABULLS CENTRE, 841, S. B. MARG,
MUMBAI 400013

PEARL INTERNATIONAL TOURS AND TRAVELS LIMITED
903, ROHIT HOUSE, 3, TOLSTOY MARG, NEW DELHI
DELHI

PRASANNA PURPLE MOBILITY SOLUTIONS PRIVATE
LIMITED
396 SHANIWAR PETH, NEAR AHILYADEVI HIGH SCHOOL,
PUNE

PRATIBHA KRUSHI PRAKRIYA LIMITED
OFFICE NO. 110, WEST WING, AURORA TOWERS, CAMP
PUNE, PUNE

ROOP AUTOMOTIVES LIMITED
PLOT NO. 19, ROZ-KA-MEO INDUSTL. AREA, SOHNA
GURGAON

SANMINA - SCI INDIA PRIVATE LIMITED
PLOT OZ-1, SIPCOT HI - TECH SEZ, ORAGADAM,
SRIPERUMBUDUR TALUK, KANCHEEPURAM DISTRICT,
CHENNAI

SANMINA-SCI TECHNOLOGY INDIA PVT LTD
PLOT OZ-1, SIPCOT HI-TECH SEZ, ORAGADAM,
SRIPERUMBUDUR TALUK, KANCHEEPURAM DISTRICT
CHENNAI

SELECT INFRASTRUCTURE PRIVATE LIMITED
A-3, DISTRICT CENTER, SAKET, NEW DELHI- 110017
DELHI

VEEKAY POLYCOATS LIMITED
7D , HANSALYA BUILDING, 15 BARAKHAMBA ROAD
CP, DELHI

ABHISHEK FINLEASE LIMITED
402, WALL STREET - I, OPP. ORIENT CLUB, NR. GUJARAT
COLLEGE, ELLISBRIDGE, AHMEDABAD

AML STEEL LIMITED
AML TOWERS, NO.9 , 6TH STREET, GOPALAPURAM,
CHENNAI-600 086.

DHANLAXMI BANK LIMITED
P.B NO. 9, DHANALAKSHMI BUILDINGS
NAICKANAL, THRISSUR

ESAB INDIA LIMITED
PLOT NO.13, 3RD MAIN ROAD, INDUSTRIAL ESTATE,
AMBATTUR, CHENNAI

HELPAGE FINLEASE LIMITED
S-191/C 3RD FLOOR MANAK COMPLEX, SCHOOL BLOCK
SHAKAR PUR, DELHI

HITACHI HOME & LIFE SOLUTIONS (INDIA) LTD.
9TH FLOOR, ABHIJEET, MITHAKHALI SIX ROADS,
AHMEDABAD

JDS FINANCE COMPANY LIMITED
308, LUSA TOWER, AZADPUR, DELHI

ORIENT BELL LIMITED
IRIS HOUSE,16 BUSINESS CENTER, NANGAL RAYA, NEW
DELHI -110046

PROGRESSIVE FINLEASE LIMITED
S-2, GROUND FLOOR, PLOT NO. A-2/3, LUSA TOWER,
AZADPUR, DELHI-110033

ZUARI AGRO CHEMICALS LIMITED
JAI KISAAN BHAWAN, ZUARINAGAR, GOA



EASTERN INDIA REGIONAL COUNCIL

Name of the programme	website link
Study Circle Meeting on 'Annual Return' - 7th November, 2015, at ICSI-EIRC House, Kolkata.	https://www.icsi.edu/Portals/69/Reports/Study%20Circle%20Meeting%20(07.11.2015).pdf
100th Management Skills Orientation Programme (MSOP) of EIRC of ICSI - 5th September, 2015 to 22nd September, 2015, at ICSI-EIRC House, Kolkata.	https://www.icsi.edu/Portals/69/Reports/100th%20MANAGEMENT%20SKILLS%20ORIENTATION%20PROGRAMME%20(MSOP)%20%E2%80%93%2005.09.2015%20to%2022.09.2015.pdf
102nd Management Skills Orientation Programme (MSOP) of EIRC of ICSI - 28th October, 2015 to 14th November, 2015, at ICSI-EIRC House, Kolkata.	https://www.icsi.edu/Portals/69/Reports/102nd%20MANAGEMENT%20SKILLS%20ORIENTATION%20PROGRAMME%20(MSOP)%20%E2%80%93%2028.10.2015%20to%2014.11.2015.pdf
11th Regional Conference of Practising Company Secretaries on "CS – A Partner in Enabling Growth" - 10th of October, 2015 at Hotel Lalit Great Eastern, Kolkata.	https://www.icsi.edu/Portals/69/Reports/11th%20Regional%20Conference%20of%20Practising%20Company%20Secretaries(10.10.2015).pdf

Programmes 1. Swachh Bharat (02.10.2015) 2. Inauguration of 1st& 2nd days Induction. 3. Valedictory Session of 1st& 2nd days Induction 4. 47th CS Day (04.10.2015) 5. Two Day Residential Programme (Theme: Good Life –Exalt and Ennoble Yourself) 6. One Day Seminar on Dissection of Annual Forms & MCA Updates	http://www.icsi.edu/portals/2/AROct15CharteredSecretary.pdf
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KOCHI CHAPTER

Name of the programme	website link
Crash Course for December 2015 Exams	http://www.icsi.edu/kochi/NewsEvents.aspx
PDP On Competition Law Compliances By Enterprises	
Special Session On How To Prepare & Interpret The Balance Sheet & Statement of Profit & Loss of Company	
All Kerala Company Law Quiz Competition 2015	
Career Awareness Session	

SOUTHERN INDIA REGIONAL COUNCIL

BANGALORE CHAPTER

Name of the programme	website link
Half Day Interaction on "Filing and Filing of AOC-4 & MGT -7" – 17th October 2015	http://bit.ly/1H5WHhS
Moot Academy Second Programme on "Interpretation of Statutes" on 3rd October 2015	http://bit.ly/1ObhKkj
2 Days Induction Programme - 2nd & 3rd October 2015	http://bit.ly/1ONdwCx
Students Study Circle Meetings - October 2015	http://bit.ly/1STdaJq
Training Mela – Campus Recruitment for Trainees – 28th October 2015	http://bit.ly/1Nz7Ar2

HYDERABAD CHAPTER

Name of the programme	website link
Career Awareness Programmes	http://www.icsi.edu/hyderabad/CAP.aspx

SALEM CHAPTER

Name of the programme	website link
Study Circle Meet & Group Discussion	http://www.icsi.edu/salem/Activities/StudyCircleMeetGroupDiscussion.aspx
Seminars & PDPs	http://www.icsi.edu/salem/Activities/SeminarPDPs.aspx

WESTERN INDIA REGIONAL COUNCIL

PUNE CHAPTER

Name of the programme	website link
1. Training Mela	https://drive.google.com/file/d/0B2dW_wq9LDXeUWpsUi0xRIFUc3M/view?usp=sharing
2. Rashtriya Ekta Diwas	
3. 3rd batch of two days induction programme	
4. 1st batch of three days e-Governance Programme	
5. 2nd batch of three days e-Governance Programme	

THE INSOLVENCY AND BANKRUPTCY BILL 2015- PROVISIONS RELATING TO NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Broad overview on adjudication aspects recommended by the Bankruptcy Law Reforms Committee in its Report

The Bankruptcy Law Reforms Committee headed by Dr. Viswanathan submitted its report on November 04, 2015 and the Insolvency and Bankruptcy Bill, 2015 based on the same was available for public comments during November 2015.

The draft Bill has consolidated the existing laws relating to insolvency of companies, limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals which are presently scattered in a number of legislations, into a single legislation.

Adjudication aspects with respect to Corporate Persons

Under Companies Act, 2013, the National Company Law Tribunal (NCLT) has jurisdiction over the winding up and liquidation of companies. National Company Law Appellate Tribunal (NCLAT) has been vested with the appellate jurisdiction over NCLT. Similarly, the Limited Liability Partnership Act, 2008 also confers jurisdiction to NCLT for dissolution and winding up of limited liability partnerships, while appellate jurisdiction is vested with NCLAT. Accordingly adjudication aspects of corporates and LLP are introduced with NCLT as adjudicating authority for corporates and LLPs, are introduced in the Insolvency and Bankruptcy Bill 2015. Appeals from the order of NCLT shall lie to the National Company Law Appellate Tribunal ("NCLAT"). The NCLAT will have jurisdiction to hear appeals arising from an order passed by the insolvency regulator also.

Adjudication aspects with respect to individuals and unlimited liability partnership firms

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").

The Committee has recommended that corporate bankruptcy matters the jurisdiction of the NCLT should be determined according to the location of the registered office of the debtor firm. In individual insolvency matters, the jurisdiction of the DRT must be determined according to the place where the debtor actually

and voluntarily resides or carries on business or personally works for gain. The proposed Code envisages the NCLT as an exclusive forum for firm insolvency and liquidation adjudication, while DRT is envisaged as an exclusive forum for individual insolvency and bankruptcy adjudication.

Jurisdiction of Civil Court barred

The committee recommended that the jurisdiction of any civil court or authority should be specifically barred where NCLT or DRT has jurisdiction. No injunction can be granted by any court or authority in respect of any action that the NCLT/NCLAT or DRT/DRAT is empowered to take under the Code.

Further, following from current law, once a liquidation or bankruptcy order has been made, leave of the NCLT or DRT would be necessary to proceed with any pending suit or proceeding or to file any fresh suit or proceeding by or against the debtor firm or individual. This will ensure the sanctity of the liquidation or bankruptcy process. The NCLT or DRT may also have jurisdiction to entertain and dispose of any pending or fresh suit or legal proceeding by or against the debtor company or individual; question of priorities or any other question, whether of law or facts, in relation to the liquidation or bankruptcy.

ADJUDICATION ASPECTS OF NATIONAL COMPANY LAW TRIBUNAL UNDER INSOLVENCY AND BANKRUPTCY BILL 2015(CLAUSE 60 TO 66)

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

60. Adjudicating Authority for corporate persons

- (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons, including corporate debtors, shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a company is located and can entertain an application under this Act regarding such corporate debtor or corporate person.
- (2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Act, where a corporate insolvency resolution process or liquidation

proceeding of a corporate debtor is pending before National Company Law Tribunal -

- (a) an insolvency resolution process or bankruptcy proceeding of a personal guarantor of such corporate debtor must be filed before the National Company Law Tribunal and at any point of time during the pendency of a corporate insolvency resolution process or liquidation proceeding of a corporate debtor before National Company Law Tribunal, the National Company Law Tribunal may pass an order transferring to itself an insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in Debt Recovery Tribunal; and
 - (b) the National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Act for the purpose of clause (a) of this sub-section.
- (3) Notwithstanding anything to the contrary contained in any other law for the time being in force, the Adjudicating Authority of the National Company Law Tribunal shall, have jurisdiction to entertain or dispose of -
- (a) any suit or proceeding by or against the corporate debtor or corporate person;
 - (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its branches in India; and
 - (c) any question of priorities or any other question whatsoever, whether of law or facts, arising out of or in relation to the individual debtor of the corporate debtor or corporate person.
- (4) The National Company Law Tribunal shall have jurisdiction to entertain or dispose of any suit, proceeding, claim or question under sub-section (3) whether such suit, proceeding, claim or question has been instituted or has arisen on, before or after the date of commencement of insolvency or liquidation process.
- (5) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal by or under this Act.
- (6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a corporate debtor for which an order of moratorium has been made

under this Part, the period during which such moratorium is in place shall be excluded.

61. Appellate Authority.

- (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, an appeal from an order of the National Company Law Tribunal under this Act shall be filed within forty five days before the National Company Law Appellate Tribunal.

Provided an appeal against a liquidation order passed under section 33 may only be admitted on grounds of material irregularity or fraud committed in relation to such a liquidation order.

- (2) The National Company Law Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty five days, allow the appeal to be filed within a further period not exceeding fifteen days.
- (3) An appeal from an order of the National Company Law Appellate Tribunal on a question of law under this Act shall be filed within ninety days before the Supreme Court.

62. Appeal to Supreme Court

The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within ninety days, allow the appeal to be filed within a further period not exceeding thirty days.

63. Civil court not to have jurisdiction

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Act.

64. Expeditious disposal of applications

Notwithstanding anything contained in the Companies Act, 2013, where an application is not disposed of or order is not passed within the period specified in the Act, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act by a period not exceeding five days.

65. Fraudulent or malicious initiation of proceedings

- (1). If, during the conduct of a corporate insolvency

resolution process or a liquidation process, an insolvency professional finds that the initiation of the corporate insolvency resolution process by a creditor or a corporate debtor, as the case may be, was fraudulent and/or was initiated with malicious intent for any purpose other than the resolution of an insolvency, the insolvency professional shall make an application to the Adjudicating Authority for an order under this section.

- (2) If, during the conduct of a voluntary liquidation process, the liquidator finds that the initiation of the voluntary liquidation process by the corporate debtor was fraudulent and/or was initiated with the intent for defrauding any person, the liquidator may make an application to the Adjudicating Authority for an order under this section.
- (3) If the Adjudicating Authority passes an order that the finding of the resolution professional or the liquidator under sub-section (1) or (2), as the case may be, is accurate, any person who knowingly and wilfully authorised or permitted such conduct by the corporate debtor or the creditor, as the case may be, shall be liable for a penalty which shall not be less than one lakh rupees but which may extend to three lakh rupees.

66. Fraudulent trading or wrongful trading

- (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or creditors of any other person, or for any fraudulent purpose, then the Adjudicating Authority on the application of the resolution professional may order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions (if any) to the assets of the corporate debtor as the Adjudicating Authority may deem fit.
- (2) If during the corporate insolvency resolution process it is found that sub-section (3) of this section applies in relation to a person who is or has been a director or partner of the corporate debtor as the case may be, the Adjudicating Authority, on the application of the resolution professional, may order that that person shall be liable to make such contribution (if any) to the assets of the corporate debtor as the Adjudicating Authority may deem fit.
- (3) This sub-section applies in relation to a person if—
 - (a) before the insolvency commencement date, that person knew or ought to have known that the commencement of a corporate insolvency resolution process was imminent in respect of such corporate debtor; and

- (b) that person was a director or a partner of the corporate debtor, as the case may be, at that time:

Provided that the Adjudicating Authority shall not make an order under sub-section (2) with respect to any person if it is satisfied that after the conditions mentioned in clause (a) of sub-section (3) were first satisfied in relation to that person, that person exercised due diligence in minimising the potential loss to the creditors of the corporate debtor.

Explanation. – For the purposes of this section a person shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by that director or partner as the case may be in relation to the corporate debtor.

67. Proceedings under section 66

- (1) Where the Adjudicating Authority passes an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—
 - (a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and
 - (b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation. – For the purposes of this section, “assignee” includes a person to whom or in whose favour, by the directions of the person (made liable under clause (a) of this sub-section), the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the declaration has been made.

- (2) Where the Adjudicating Authority makes an order under sub-section (1) or (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in priority after all other debts owed by the corporate debtor and after any interest on those debts.

Interview with a 100 year young Company Secretary!



By CS S.C. Sharada, Company Secretary in Practice, Bangalore who is also Past Chairman of Bangalore Chapter of the ICSI. sharada.sc@lexvalorem.com

CS V Krishnamurti (V K Murti) turned 100 in February, 2015. Perhaps he is the **ONLY LIVING GRAND OLD MAN OF OUR CS FRATERNITY IN INDIA!!**

I had the rare privilege of meeting him personally and chatting with him for nearly 2 hours in September. At 100+ he looks just about 80 but feels and talks enthusiastically like an 18 year old. He was well dressed in his white dhoti and full shirt and was waiting for me eagerly at the appointed time. His wife, companion and friend – all of 92 years – took a dig at him that he was dressed like a 'bride' for the interview ☺



I was amazed at Mr. Murti's elephantine memory, his dedication to the CS profession (though he is a CA also), his work ethics, his coherent conversation and his child-like curiosity in understanding what's happening with the economy and the world around him. Listening to him, I got a deep insight into the professional that he is.

There was no way I could keep all this to myself. Read the excerpts from this interview. Several gems of wisdom from a seasoned professional! (Note: Text in italics are my comments).



S.C. Sharada with V. K. Murti

1. I heard you read the Economic Times (ET) everyday. What interests you most in that ?

President Mukherjee reads ET every day, must read it for an hour every day. I was reading TOI earlier. Reading ET now for the past 15 years. My wife is mad at me that I spend so much time on ET but I enjoy reading it. It helps me stay updated. I read about shares and annual reports of companies.

However I don't understand the start-up system. I subscribed to profitable companies like ACC, HUL and have stayed invested for several decades. I did not speculate. What companies stand for is important. Intrinsic worth goes up in profitable companies. My advice would be to **invest in solid companies which provide utility for public.**

2. How did you choose the CS course?

I enrolled for CA in 1931 and completed it in 1934 from Mumbai. There was no CS course in the country then. Pursued CS from Bennet College in Sheffield, UK, in 1940 through postal tuition. Queen Elizabeth is a patron. Took a public exam in Bombay - Intermediate & Final and became a fellow member. In 1956 there were only 40 people in India with CS qualification. We were allowed up to 5 years to become members of ICSI. My membership no. is 9. I received a "Top of 3 senior most Company Secretaries" certificate in Delhi region from NIRC (*proudly displays it*). Much later I got an MBA from Las Salle University, USA. **One professional qualification is not enough. One needs to constantly upgrade oneself.**



3. What is the secret of your mental alertness and longevity ?

Don't worry about anything, dismiss worries. Do not get disturbed. Ensure there is no mental conflict. Norman Vincent Peale said "Fear kills more people than anything else." I started writing Ram Naam since the last 18 years. (*which means began at 82 years age!*). Have written 7.5 million times. **I derive pleasure in meeting targets and climbing up and progressing. This keeps me away from worries along with prayers to God.**

(Mrs. Murti gestures - What worry when I used to take care of everything? Big joint family gave lot of happiness. Others would take care and he had no worries. He was 'married' to the CS profession)

4. What was your approach to work? Did you face challenges at work?

At work, I didn't confront any problems at all. Always deployed different perspectives for solving problems.

Never felt diffident and shaky. **Always felt I can and I will, much before Obama said it (chuckles).** Get your priorities right and shuffle them frequently. One at a time. Learnt this by listening to cassettes on time management from USA.

Your mantra should be - "I can + I will + set priorities + don't worry". How to make this work ? Groom your successor over a period of time, not just before leaving. Don't do everything yourself. Choose a right person and delegate.

As a Company Secretary, I always focussed on right communication. For example, when writing letters or **making applications to the Government for approval, my style was - be brief, precise, clear and keep it short.** Hit the nail on the head. Don't write history, three lines will do but it must convince the other side to give a favourable reply.

5. Please take me through your professional life.

Stared my first assignment on 15th September, 1934 with a Britisher handling taxation of individuals, partnership firms and foreign companies under the IT Act of 1922. My professional career spans over 65 years across 3 metros - **in Mumbai for more than 30 years, in Calcutta for more than 5 years and in Delhi for more than 30 years.** Worked in General Motors, the world's largest automotive company and Good Year, the world's largest tyre company. Retired from Good Year in 1973. Thereafter took up consulting - converted public to private company, did all

types of CS work in Delhi viz., conversion, approvals and number of public issues. In the last professional job, I used computers with assistance for shareholders' update and dividend payment. Retired from active profession in the year 2000 (*at the age of 85 years!*) and moved to Bangalore. I recall distinctly that CS V Sridharan (*our past Central Council Member*) took me along to vote at the ICSI elections when I came to Bangalore in 2000. When Companies Act, 1956 replaced the 1913 Act, I wrote a summary of the provisions and presented it to the management. **Did proof reading and sense reading of 9th edition of Companies Act, 1956 by Ramaiya.** My name is mentioned in the Preface. I also set CS papers and contributed as an evaluator.

6. What is your message to corporates and professionals today?

- **Be courageous.** Don't worry about job, promotion, job satisfaction etc. Focus on the thing in hand. It will take care of you.
- Don't get shaky. **Be firm and strong.** Be bold in pointing out violations. I think section 54 or 59 makes CS at par with directors. One of the foreign directors lost his job because he did not get govt approval. I told him that you should have told me before the Board meeting and not after. Be truthful to the Board.
- Be bold in telling the Board what is right and what is not. No violation should be permitted. **Uphold sanctity of the section.** Uphold the rights and duties prescribed under the section and do not tolerate violation. However, I am not saying that we can topple boards. A CS should uphold rights and duties fearlessly.
- Be upright and build your reputation by creating confidence in the management.

7. You must have qualified when Companies Act 1913 was in place. After that 1956 Act was enforced. Now it is the 2013 Act. What are your thoughts on the changing legislation and economy?

During the 1913 Act I was a student. During the 1956 Act I was working. 2013 Act, I have not read.....somebody gifted me the book. **Understand that this Act does not satisfy the corporate sector as per newspaper reports.**

Perhaps it is not drafted with full consultation of chambers of commerce. They should be the guiding factor since they know where the shoe pinches. Otherwise changes were made in the 1956 Act. Why again changes? Consult Chambers of Commerce and not the law department.

In the previous legislations also, delays were excused but not violation. As a professional, we must point out consequences. We must be a 'watch dog, not a blood hound'. I understand that a CS is elevated as a Chief Compliance Officer. He is responsible to the public, answerable to the Government and other stakeholders. **He must be kind, considerate, smooth and understanding when public approach him. There should be no room for high handedness just because he is elevated as a KMP.**

8. Any mantras for good work-life balance?

Umm... (thinks for a while). No specific mantras. I would say,

- **Don't bring work home.** After work forget about office things. Helps you to be fresh. (so relevant in today's 24x7 connected world!)



- **Exercise well. Walk every day.** I used to do this in Bombay daily, come what may. I would play Tennis though I wasn't good at it. I love Tennis. Forget about things. Breathe fresh air and feel fresh.

(CS Murti used to walk around his apartment complex until a few months back till he had a fall. Even now he moves around the house independently. After a 2 hour long Q&A session, he gets up and walks to his room comfortably to fetch his CS certificates and other documents. He displays them with child-like pride and joy.)

9. **Any specific corporate life experiences you want to share...how did you handle conflict of interest, office politics ?**

No conflict of interest in buying shares. Was always open about my holdings.

No office politics ever gotten to me. I had 60 people belonging to 3 depots in Bombay. I have always tried to help people and learn from them. People, not awards are dear to me. It is important how you go about your life. **Approach people with tact and caution.** Be careful and diligent. I have dealt with people at all levels, including the President's office. I recall how I wrote to President Radhakrishnan for an appointment for the top management of Good Year. I began by saying "You had inaugurated the world's biggest facility of Good Year.....". Call and acceptance came immediately. **What you write and how you write is critical.** Look at this ... I have still preserved this 1967 meeting confirmation from ADC to President with my name on it. *(shows me the yellowed document with a sparkle in his eyes)*. I had the privilege of meeting President Radhakrishnan for 45 mins. Mr. Ranganathan, Secretary to Industries Minister also gave me an interview.

10. **You turned 100 in Feb, 2015. Congratulations! Are you ready to start a 2nd innings now?**

May not be. I have lived a full, peaceful life. I am content with my Raama naama japa. *(His wife adds we have seen life. Nothing left now.)*

11. **Who was or is your inspiration in life?**

No great personality in particular. Oh, yes, one electrical engineer in Bombay who inspired me early in life. He said **personal efficiency is most important. Do as best as you can.** I have been following this throughout my life.

Books are an inspiration.....recall Winson Pele's "In tune with Infinite". I always used to buy books in airports...inspirational books rejuvenate me.

My advice would be "Read and try to condense and write a book in 20 lines. It will do wonders for you".

I had printed out the questions for Mr. Murti since he is slightly hard of hearing. He read every one of them and answered patiently and at length. As I got up to thank him, his words rang loud and clear in my head - **'Be bold, be courageous, prioritise, delegate, be precise & brief, don't worry, help others, be vigilant, uphold the sanctity of the section and stay fit'.**

I felt enriched with all the take aways I had gathered. I felt proud to belong to a profession that he belonged to, that he revered, that he dedicated his life to – the profession of a Company Secretary. I took his blessings and also his wife's who no doubt has played a significant role in his life by being the 'invisible and often unrecognized' woman behind the success of a man!

I felt honoured to have got a first hand account from perhaps the First Citizen of the CS profession!!

Mr. & Mrs. V. K. Murti



COMPANY SECRETARIES EXAMINATIONS - DECEMBER, 2015
TIME-TABLE & PROGRAMME
EXAMINATION TIMING : 2:00 P.M. TO 5:00 P.M.

Date and Day	Professional Programme (Old Syllabus)	Executive Programme	Professional Programme (New Syllabus)
21.12.2015 Monday	Company Secretarial Practice (Module - I)	Cost and Management Accounting (Module-I)* OMR Based	Advanced Company Law and Practice (Module - I)
22.12.2015 Tuesday	Drafting, Appearances and Pleadings (Module-I)	Tax Laws and Practice (Module-I)* OMR Based	Secretarial Audit, Compliance Management and Due Diligence (Module - I)
23.12.2015 Wednesday	Financial, Treasury and Forex Management (Module-II)	Industrial, Labour and General Laws (Module-II)* OMR Based	Corporate Restructuring, Valuation and Insolvency (Module - I)
24.12.2015 Thursday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
25.12.2015 Friday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
26.12.2015 Saturday	Corporate Restructuring and Insolvency (Module-II)	Company Law (Module-I)	Information Technology and Systems Audit (Module - II)
27.12.2015 Sunday	Strategic Management, Alliances and International Trade (Module-III)	Economic and Commercial Laws (Module-I)	Financial, Treasury and Forex Management (Module - II)
28.12.2015 Monday	Advanced Tax Laws and Practice (Module-III)	NO EXAMINATION	Ethics, Governance and Sustainability (Module - II)
29.12.2015 Tuesday	NO EXAMINATION	Company Accounts and Auditing Practices (Module-II)	Advanced Tax Laws and Practice (Module - III)
30.12.2015 Wednesday	Due Diligence and Corporate Compliance Management (Module-IV)	Capital Markets and Securities Laws (Module-II)	Drafting, Appearances and Pleadings (Module - III)
31.12.2015 Thursday	Governance, Business Ethics and Sustainability (Module-IV)	NO EXAMINATION	Elective 1 out of below 5 subjects (Module - III)
			(i) Banking Law and Practice
			(ii) Capital, Commodity and Money Market
			(iii) Insurance Law and Practice
			(iv) Intellectual Property Rights - Law and Practice
			(v) International Business - Laws and Practices

*(The three papers, i.e., (i) Cost and Management Accounting; (ii) Tax Laws and Practice; and (iii) Industrial, Labour and General Laws to be held in OMR Mode on 21st, 22nd and 23rd December, 2015 respectively)

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SEMINAR(S) ON "SEBI LISTING REGULATIONS, 2015"

SEBI notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 dated 2nd September, 2015 which shall come into force on the ninetieth day from date of publication in the official gazette i.e. 1 December, 2015.

To sensitize the stakeholders about the SEBI Listing Regulations, the Institute of Company Secretaries of India (ICSI) in association with BSE Ltd. is organizing a series of Seminars on the subject with the following tentative schedule:

Place(s)	Date(s)*
Mumbai	November 20, 2015 (organised)
Delhi	November 26, 2015 (organised)
Pune	December 05, 2015
Ahmedabad	December 12, 2015
Chennai	December 26, 2015
Hyderabad	December 29, 2015
Bangalore/Mysore	January 02, 2016/ Proposed in January 2016
Kolkata	January 09, 2016
Guwahati	Proposed in January 2016

* For updates, please visit www.icsi.edu

Timings: 09:30 AM to 02:00 PM
tentative(Followed by Lunch)

Programme Credit Hours
Four PCH

All are cordially invited to participate

For Registration, please contact respective Regional/Chapter offices of ICSI

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ICSI

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Council Member, ICSI &
Chairman, Financial Services Committee

CS Atul H. Mehta
President
ICSI

ELEVATION

"Shri Debasis Sinha, ACS, on his being elevated to the position of Director (Mines & Regulatory Affairs) and Company Secretary of The Durgapur Projects Ltd, (a Govt of West Bengal Enterprise). Earlier he was working in the capacity of GM(F&A) & Company Secretary in the same organization".

OBITUARY

"Chartered Secretary" deeply regrets to record the sad demise of **CS SHIPRA CHATTREE**, (12.02.1967-25.09.2015), an Associate Member of the Institute from New Delhi.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed soul rest in peace.



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