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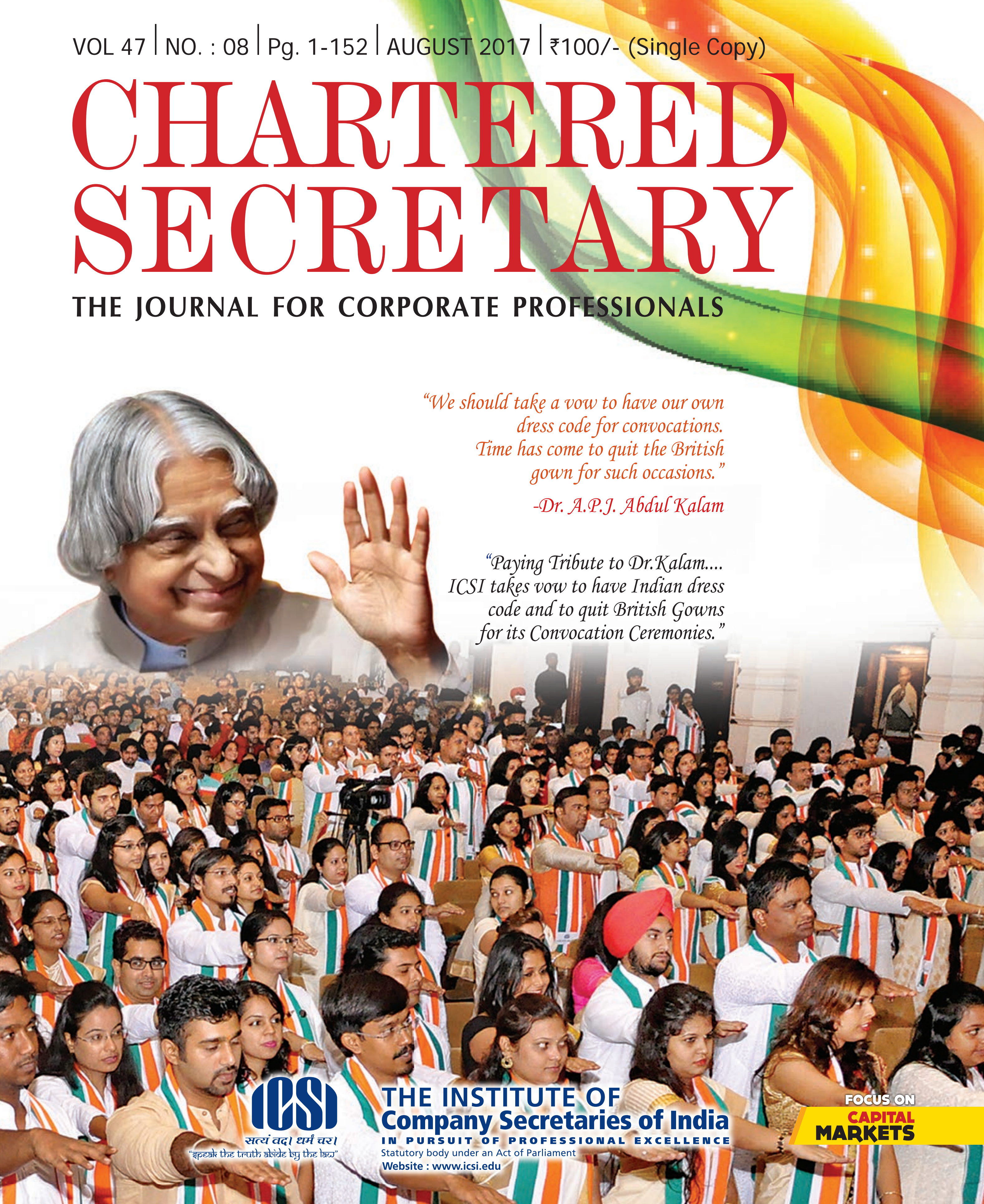

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01. ICSI CONVOCATION 2017 (NORTHERN REGION) – Suresh Prabhu (Hon'ble Minister for Railways) awarding degrees in newly adopted 'Indian attire' at ICSI Convocation 2017 held at New Delhi
02. ICSI CONVOCATION 2017 (NORTHERN REGION)- Arjun Ram Meghwal (Hon'ble Minister of State for Finance) awarding degrees in newly adopted 'Indian attire' at ICSI Convocation 2017 held at New Delhi.
03. ICSI CONVOCATION 2017 (NORTHERN REGION)- Sushil Kumar Modi (Hon'ble Deputy Chief Minister Bihar) awarding degrees in newly adopted 'Indian attire' at ICSI Convocation 2017 held at New Delhi.
04. ICSI CONVOCATION 2017 (EASTERN REGION) - Dignitaries Present in the programme held at Kolkata.
05. ICSI CONVOCATION 2017 (WESTERN REGION)- Dignitaries Present in the programme held at Mumbai.
06. ICSI CONVOCATION 2017 (SOUTHERN REGION) - Dr. Anita Sumanth (Hon'ble Justice Madras High Court) awarding degrees in newly adopted 'Indian attire' at ICSI Convocation 2017 held at Chennai.

07. Meeting of ICSI delegation with Revenue Secretary – Sitting clockwise from Left: Hasmukh Adhia (Revenue Secretary), CS Ruchika Arnold, CS Shashank Gupta, CS Sonia Baijal, CS Ranjeet Kumar Pandey, CS Satwinder Singh, CS(Dr.) Shyam Agrawal and Vijay Kumar Jhalani.

08. Meeting of ICSI delegation with Secretary, Economic Affairs, Ministry of Finance - CS (Dr.) Shyam Agrawal presenting a planter to Dr. Subhash Garg (Secretary, Economic Affairs, Ministry of Finance). Others standing from Left: CS Sonia Baijal, CS S K Agrawala, and CS C Ramasubramaniam.

09. Meeting of ICSI delegation with Chairman, CCI – CS (Dr.) Shyam Agrawal presenting a planter to Devender K Sikri (Chairman,CCI). CS Ranjeet Kumar pandey is also present on the occasion.

10. CS (Dr.) Shyam Agrawal presenting Chartered Secretary being brought out by the Institute to Bramha Kumarn (First Secretary (Commerce & Information) and HOC, High Commission of India, Kuala Lumpur, Malaysia).

11. ICGN Annual Conference held at Kuala Lumpur, Malaysia – Session on regional round up: unique characterestics in Asian Markets – Dignitaries standing from Left: Waratchya Srimachand (Senior Assistant Secretary-General, SEC Thailand) CS (Dr.) Shyam Agrawal (President, ICSI), Jamie Allen (Founding Secretary General, ACGA), Dr. Mike Cho (Professor, Korea University Business School and President, Korea Corporate Governance Services) and Daisuke Hamaguchi (Chief Investment Officer, Pension Fund Association, Japan).

12. Launch of First Ever ICSI Residential Corporate Leadership Development Programme (CLDP) – On the dais from Left: Dr. S K Jena, Manohar Thairani (President, Lloyd Law College), CS (Dr.) Shyam Agrawal, CS Preeti Malhotra, Dr. S. Sivakumar (Member, Law Commission of India) and CS Dinesh C Arora.

13. A view of the third ICSI GST Core Advisory Group meeting in progress.

14-15. President, ICSI Meeting with CMA Sanjay Gupta (President, ICAI) and CMA H. Padmanabhan (Vice President, ICAI) respectively.

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21.-24. Inaugural Session and address by the speakers at the programme held at Kolkata.

Celebration of Capital Markets Week (July 22-28, 2017)
Glimpses of some of the events held in India

25.-29. Inaugural Session and address by the speakers at the programme held at New Delhi.
30.-33. Inaugural Session and address by the speakers at the programme held at Chennai.
34. Programme held at Vadodara.
35.-36. Programme held at Thane.
37. Programme held at Ranchi.

My Valued ICSI Members

In this month all of my fellow countrymen will be celebrating the most coveted day for our country; the auspicious 71st Swatantra Diwas (Independence Day) as well as 75th anniversary of Bharat Chodo Andolan (Quit India Movement). The struggle of freedom was fought rigorously for so many decades, and generations sacrificed their lives and youth, some of them even spending their whole lives behind bars. Today, while penning my views down on this sacred occasion, I pay my respect, greetings and homage to all such patriots who laid their lives so that we can live independent in our country. Along with, I deem it as our core duty to take a solemn pledge of working whole-heartedly for the welfare of our Mother India and the welfare of its citizens.

This is also an occasion when we have to contribute to rebuild and refine national character. Hon'ble Prime Minister Narendra Modi gave a clarion call on 75th anniversary of 'Bharat Chodo Andolan' to get the country rid of corruption, poverty and illiteracy and create New India by 2022. He inspired countrymen to reignite the spirit of 1942 and work by imbibing the spirit of 'Sankalp se Siddhi tak' (commitment to fulfilment) for the period 2017-2022. Let us take a Sankalp (pledge) to get our country rid of all evils cited by our Prime Minister. We did not get an opportunity to 'die' for the country but we have the opportunity to 'live' for the country. May the Tri-Color of our country fly very high. Happy Independence Day 2017!!

I am further proud to share that ICSI's way of paying tribute to the Nation and to the most coveted Indian educationist Dr. Abdul Kalam this year is bidding farewell to an age old legacy of British Empire in India i.e. Ceremonial Victorian robes and hoods worn during our Convocation ceremonies and adopting our ethnic Indian attire made of our 'Signature Fabric Khadi' this year onwards. This was need of the hour indeed and a much expected initiative. I feel content that the response given to this patriotic drive by our revered stakeholders was massive and our new members were exhilarated with the spirit of Nationalism as they adorned this new ethnic attire in convocations held this year. We have been and we will keep leading by example for the cause of our Nation always. There are many such initiatives in the pipeline.

My dear colleagues......you are a member of an Institute that is making its exemplary contribution towards Nation Building by holding the torch of Corporate Governance Profession in India high since the last 49 years. This year, in the month of October, we would be commemorating our propitious Golden Jubilee as we enter the 50th year of our existence. **I am glad to share with you all that Hon'ble Prime Minister Sh. Narendra Modi has extended his gracious consent to inaugurate the celebrations meant to mark the beginning of this Golden Jubilee 'in person' on 4th October 2017**. Though, we are making every endeavour to make this event historical, yet, we also firmly believe that your invaluable and innovative inputs may make these celebrations even glorious. Therefore, *we cordially invite your creative suggestions and innovative ideas for the same.* You may please send the same to my office at the earliest.

I wish to share that we are very close to shape our Vision 2022 for heading towards a 'New ICSI'. Your suggestions to contribute towards this sunrise will be most welcome. Some other initiatives taken by ICSI in the month of July are:

Commencement of ICSI Residential Corporate Leadership Development Programme (CLDP)

Innovation is key at ICSI. Based on the feedback received from the stakeholders, Industries, Corporate, Ministry, Regulators and Senior Members, it has been decided to prepare our students absolutely for the requirements of the corporate word, ICSI has launched its first ever Residential

Programme on Corporate Leadership Development starting from 1st August, 2017 to 14th September, 2017. Initially, it is being introduced for 45 days on Pilot basis, which is planned to be extended to 90 days or so for in future for all professional pass students before getting the membership. The Programme was inaugurated by CS Preeti Malhotra, the First Women President of ICSI and Dr. S. Sivakumar, Member, Law Commission of India. It would be our best endeavour to provide excellent learning platform to its participants.

GST Stride

With a view to equip future professionals with the knowledge of newly introduced Goods and Services Tax law, GST has been included in the syllabus of Executive and Professional Programme. Further, a complete guide on GST Practitioner will soon be released to guide the members of the Institute about the registration procedure and other aspects of a GST Practitioner.

ICSI Welcomes and Supports Government's initiative on Shell Companies

As you are aware, a 'Task Force on Shell Companies' under the Joint Chairmanship of Revenue Secretary and Secretary, Ministry of Corporate Affairs was constituted in February, 2017 for effectively tackling the malpractices by shell/ponzy/ khoka companies adopting whole of the government approach. With a view to create awareness and association of professionals by proper due diligence in their services, a joint programme with the MCA on "Shell Companies" is proposed to be scheduled during the month of August/ September, 2017.

ICSI Suggestions on Draft Rules relating to Commencement of Provision relating to Restrictions on Number of Layers of Subsidiaries

With a view to check misuse of multiple layers of subsidiaries for diversion of funds/siphoning off funds, MCA has proposed to commence the proviso to Section 2(87). Proviso to section 2(87) provides the restriction on number of layers of subsidiaries. ICSI has submitted suggestions on draft Companies (Specification of Definitions Details) Amendment Rules, 2017 which contains such prescription relating to restrictions on number of layers of subsidiaries.

Improvement in Annual Filing Compliance

Annual Filings by Companies is an integral part of Regulatory compliance that creates an interface with the regulators in ensuring the compliance regulatory prescriptions by companies. The Institute has been sensitising its members to ensure the filing requirements by companies with which they are associated with, within the stipulated time, especially with regard to Annual Filings such as filing of Annual Return and Financial Statements with Ministry of Corporate Affairs.

Initiatives Concerning The Competition Act, 2002

The Competition Act, 2002 empowers the Company Secretaries to appear before the Competition Commission of India on behalf of a person or enterprise. The Company Secretaries were also permitted to appear before erstwhile COMPAT. After dissolution of COMPAT this year, the appeals in competition cases shifted to NCLAT, where the Company Secretaries are permitted to appear. ICSI delegation led by me had a meeting with Mr. Devender Kumar Sikri, Chairperson, CCI; Ms. Smita Jhingran, Secretary, CCI & Officials of CCI on different issues in competition law and to show case the Company Secretaries' profession. The following matters were discussed during the meeting:

i. The Institute will be organising capacity building programmes on Competition Law jointly with CCI, we urge our members to actively participate in such programmes. A 'Competition Law Week' may be organised by the ICSI sometimes in October 2017.
ii. The March, 2018 issue of the Chartered Secretary Journal would HAVE Competition Law as its theme. Further, that issue would be circulated in the International Competition Network (ICN) Conference, 2018 in Delhi.
iii. ICSI to organise a 'Train the Trainer' programme in which some trainers will be trained about competition law. CCI will provide support in the form of one or two resource persons.
iv. ICSI to form a Core Group on Competition Law to commission a market study on a sector of mutual interest.
v. The Chartered Secretary Journal of ICSI to feature a Competition Corner on a quarterly basis.

I wish to inform you that the Institute organised a "Roundtable Discussion on Competition Law" on August 3, 2017 at NSE, Mumbai. Mr. Devender Kumar Sikri, Hon'ble Chairperson of Competition Commission of India graced the event and interacted with members.

Model Governance Code for Meetings of Gram Panchayats

In the journey of promoting excellence in Governance and connecting the dots between 'Local to Global' and in pursuance of the ICSI's idea to formulate a standardised code for meetings of Panchayats which aims to bring uniformity in diverse practices followed by the Panchayats in their meetings; the draft of "Model Governance Code for Meetings of Gram Panchayats" was submitted to Ministry of Panchayati Raj, Government of India for its consideration.

Approval of Revised Secretarial Standards (SS-1 & SS-2)

As you are aware that the Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meeting (SS-2) issued by the ICSI under Section 118(10) of the Companies Act, 2013 are effective from 1st July, 2015 for observance by all the companies (except the exempted class of companies). Since then, the Secretarial Standards have been revised by the ICSI considering the feedback/suggestions received from different stakeholders and the approval of the Central Government as required under Section 118(10) of the Companies Act, 2013 has been received for issuance of revised version of SS-l and SS-2 effective from 1st October, 2017.The revised SS-l and SS-2 will be released/announced shortly.

ICSI IPA Initiatives

In our constant endeavour to foster ongoing education and awareness of our professionals in the field of insolvency, ICSI IPA has introduced an online mock test to facilitate the

professionals in preparing themselves for the Limited Insolvency Examination. The mock test has been specially designed in accordance with the new syllabus notified by IBBI, which places more emphasis on case laws and case studies. I appeal to the professionals to take the mock test that would help in mapping themselves with the expectations of IBBI while preparing for the Limited Insolvency Examination. In addition, ICSI IPA is regularly bringing out a weekly update on the various judicial pronouncements in the area of insolvency.

ICSI Capital Market Week, 2017

In persistence to this commitment towards promoting and sustaining investor education and good governance in Capital Markets, the Institute observed ICSI Capital Markets Week during July 22-28, 2017 pan India on the theme of "Capital Market of New India: The Reform Agenda for Inclusive Growth". The mega program was inaugurated at Mumbai on July 22, 2017 which was duly attended by members from industry, regulators and practice, current and former members of Central Council of the Institute. The Mega Inaugural Program also witnessed the release of numerous publications and videos on topical interest of the profession which are listed as below:

- Backgrounder - ICSI Capital Market Week
- Company Secretary - Professional Catalyst in Capital Market
- Compliance Manual on Capital Market
- Issue and Listing of Debt Securities
- Real Estate (Regulation and Development) Act, 2016
- Compliance Mechanism Harbinger for Robust Capital Market
- Video on Financial Literacy
- Video on Role of CS in Capital Market
- A beta version of ICSI Financial Service App is also launched which is now available at Google play store for download

These publications are downloadable from ICSI website for adding to the knowledge of our readers. Not only this, looking at the huge response fetched by the Capital Market Week 2017, ICSI has taken forward the theme 'Capital Markets' as the polestar of this issue.

Launch of CCGRT Website

The modified website of ICSI-CCGRT was inaugurated on its Foundation Day on July 31, 2017 to enhance the utility of the users. The CCGRT always has always played a vital role in the development of a quality professionals as well as researchers in the sphere of Governance. The new website is interactive and gives better access to Research Material including E-Bulletin Chintanam, Geeta Saar, GyanJyoti, AmrutDhara, Research Papers, Students/Members Corner which includes upcoming programs, Presentations, Activities, Photo gallery, ICSI Integrated CS Course, Residential MSOP announcements, Contact us and many more. Amongst the new features, the website has a specific corner of Bare Acts which includes Bares Acts of Corporates Laws and other allied Laws of the Country and Corporate Laws of Other Countries. This website's mobile version is also very user friendly. The same may be accessed at http://www.icsi.edu/ccgrt/Home.aspx. We welcome your feedback/suggestions for further development of CCGRT website on ccgrt@icsi.edu

Epilogue

Last night, while scanning through some magazines, I came across a wonderful story **"They Sent Me to Finish...!!!"** that was so inspiring that I was tempted to share with you all. Many a times in life, the doldrums of life push us to become completely hopeless and surrender before circumstances. We feel blues and waste precious days of our life shattered by the miserable trials life puts before us. I am sure after reading this, we all will think twice before giving in before hardships and reach our 'finish lines'.

"The Olympic Games, Mexico, 1968. The marathon is the final event of the program. The Olympic stadium is packed and there is excitement as the first athlete, an Ethiopian runner, enters the stadium. The crowd erupts as he crosses the finish line.

Way back in the field is another runner, John Stephen Akwhari of Tanzania. He has been eclipsed by the other runners. After 30 kilometers, his head is throbbing, his muscles are aching and he falls to the ground. He has serious leg injuries and officials want him to retire, but he refuses. ***With his knee bandaged Akwhari picks himself up and hobbles the remaining 12 kilometers to the finish line.*** An hour after the winner has finished Akwhari enters the stadium. All but a few thousand of the crowd have gone home. Akwhari moves around the track at a painstakingly slow pace, until finally he collapses over the finish line.

It is one of the most heroic efforts of Olympic history. Afterward, asked by a reporter why he had not dropped out, Akwhari says, ***"My country did not send me to start the race. They sent me to finish."***

One feels so perked up after reading the 'never say die' attitude of Akwhari.......We all are sent to finish.....to finish our ultimate purpose on this earth......and before that, we never have to surrender and ought to finish our race." After all, Bhagvad Gita stresses the same in Shaloka 33 of Chapter 2:

अथ चेतत्वमिमं धर्म्यं स्ंगामं न करिष्यति।
तत स्वधर्मं कीर्तिं च हित्वा पापमवाप्स्यसि ।।33।।

atha chet tvam imaṁ dharmyaṁ saṅgrāmaṁ na kariṣhyasi
tataḥ sva-dharmaṁ kīrtiṁ cha hitvā pāpam avāpsyasi

If, however, you refuse to fight your righteous war, abandoning your duty and reputation, you will certainly incur sin.

Happy reading!!

Best wishes.

Yours sincerely

AUGUST 08, 2017
New Delhi

सी एस (डॉ.) श्याम अग्रवाल
अध्यक्ष, भारतीय कंपनी सचिव संस्थान

RECENT INITIATIVES TAKEN BY ICSI

In furtherance to our earlier communications, we are pleased to share the following initiatives taken by the Institute during the month of July, 2017:

1. Meetings with Dignitaries

Taking forward our pursuit for exploring opportunities for the profession and also for joint participation in flagship government initiatives, the Institute met the following dignitaries:

- Shri Devender Kumar Sikri, Chairperson, Competition Commission of India
- Shri Subhash Chandra Garg, Secretary, Department of Economic Affairs, Ministry of Finance
- Smt. Smita Jhingran, Secretary, Competition Commission of India
- CMA Sanjay Gupta, President, Institute of Cost Accountants of India
- CMA H. Padmanabhan, Vice President, Institute of Cost Accountants of India

2. Suggestions/Representations Submitted

With a view to explore professional opportunities for our esteemed members and participate in vivid initiatives of the Government in ensuring better governance, the Institute submitted its suggestions and representations as mentioned below:

- To Ministry of Corporate Affairs on Voluntary Revision of Financial Statements under Section 131 of Companies Act, 2013
- To Ministry of Corporate Affairs on Amendment to the Companies (Specification of Definition Details) Rules, 2014
- To Ministry of Corporate Affairs on Amendment to Section 169 of the Companies Act, 2013 on providing for the removal of independent directors by way of a special resolution
- To Ministry of Corporate Affairs on Companies (Registered Valuers and Valuation) Rules, 2017

3. ICSI Capital Markets Week, 2017

As you are aware that the Institute is dynamically engaged in promoting the interests of investors along with ensuring well-ordered compliance and governance towards the development of the capital market in India. In persistence to this commitment towards promoting and sustaining investor education and good governance in Capital Markets, the Institute observes Capital Markets Week annually as one of the mega event throughout the country. This year also, the Institute observed ICSI Capital Markets Week during July 22-28, 2017 PAN India on the theme of "Capital Market of New India: The Reform Agenda for Inclusive Growth".Mega Programmes were organised at Kolkata, Chennai, Delhi and Mumbai. In addition, nationwide events such as Academic Development Programmes, panel discussions, lectures, interactive meetings with capital market regulators/stock exchanges and investor awareness programmes were also held by the respective ICSI Regional Councils and Chapters during this week.

4. Releases at ICSI Capital Markets Week, 2017

Capital Markets Week also witnessed the release of numerous publications and videos on topical interest of the profession which are listed as below:

1. Backgrounder - ICSI Capital Markets Week
2. Company Secretary - Professional Catalyst in Capital Market
3. Compliance Manual on Capital Market
4. Issue and Listing of Debt Securities
5. Real Estate (Regulation and Development) Act, 2016
6. Compliance Mechanism Harbinger for Robust Capital Market
7. Video on Financial Literacy
8. Video on Role of CS in Capital Market

A beta version of ICSI Financial Services App was also launched which is now available at Google play store for download

5. 45th National Convention of Company Secretaries, 2017

As you are aware that with a view to build the capacities of the professionals in the emerging trends of compliance, governance and related aspects, the Institute organizes a Pan India annual and mammoth congregation for all its members, students and related stakeholders known as National Convention of Company Secretaries. This year also, we are set to celebrate the 45th National Convention of Company Secretaries, 2017, to take place during November 22-24, 2017 at Thiruvananthapuram, Kerala. The other details would be made available at the Institute's website shortly.

6. Approval of Revised Secretarial Standards (SS-1 & SS-2)

As you are aware that under the jurisdiction of Section 118(10) of the Companies Act, 2013, the Institute has issued Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) duly effective from July 1, 2015 for observance by all the companies (except the exempted class of companies) respectively.

Considering the feedback and suggestions received from various stakeholders, the Institute revised Secretarial Standards (SS-I and SS-II), which are accordingly approved by the Central Government as per the requirements of Section 118(10) of the Companies Act, 2013 for issuance of revised version

of SS-I and SS-2 duly effective from October 1, 2017.

The revised SS-I and SS-2 would be released shortly.

7. ICSI Financial Services App

With a view to enable users to easily access and get updated with the latest news, articles, regulations and various publications of the Institute related to Financial Services including Securities Laws, Banking Laws and Insurance Laws, the Institute launched ICSI Financial Services App (Beta Version) for public at large in the inauguration ceremony of Capital Markets Week, held on July 22, 2017 at Mumbai. An event list tab in the App is designed to keep the users updated about the events on Financial Services organized by the Institute across India. The App is presently available on android platform and can be downloaded from Google Play Store.

8. Meeting with Competition Commission of India

A delegation of the Institute met Shri Devender Kumar Sikri, Chairperson, CCI, Smt. Smita Jhingran, Secretary, CCI & other Officials of CCI, deliberating upon several issues related to competition law and to further apprise the role of Company Secretaries in the area of Competition Law. The deliberations in the meeting resulted in the following schedules in the near future

- Institute to organize capacity building programs on Competition Law jointly with CCI.
- CCI agreed to impart training to members of the Institute, who would further disseminate information/conduct advocacy programs on competition law across the Nation.
- To bring special issue of Chartered Secretary on Competition Law tentatively in March, 2018.

9. Beginners Guide on Goods and Services Tax

In order to apprise the clear understanding on the concepts of GST along with latest updates, news and relevant information related to GST, the Institute has come up with various initiatives including GST App, GST Newsletter, Online Certificate Course in GST and alike. In furtherance to this, Institute has also published a Beginners Guide on Goods and Service Tax to facilitate the public at large with the basic understanding and thorough indulgence to the concepts of GST at large. The hindi version of the same is in press and would be released soon.

10. Companies Act, 2013- Enable, Evaluate, Excel

As you are aware that to build the capacity of the professionals in consonance with the emerging trends in company law, the Institute began with one of its initiative in organising weekend webinar series titled as “Enable, Evaluate, Excel” on the Companies Act, 2013 specially for the young members who have been admitted during the transition periods for notification of the Companies Act, 2013 and who might not have got the opportunity to study the Companies Act, 2013. This special drive will be helpful to revive, refresh and sharpen the knowledge of such members on the Companies Act, 2013. In continuation with successful organization of twelve (12) such webinars on various topics, the 13th webinar session under the Companies Act, 2013 – Enable , Evaluate and Excel Series has taken place on Appointment of Director and KMP’s, Re-appointment, Removal and Managerial Remuneration in the month of July 2017.

11. Webinar on Corporate Leadership Development Program

To create next generation Corporate Leaders to effort and enterprise the inclusive growth of Indian economy at par, the Institute has come up with an initiative to organize a 45 Days Residential Corporate Leadership Development Program, scheduled to take place from August 1 to September 14, 2017, which is focussed on imbibing Smart Corporate Leadership Proficiencies, Soft Skills, Business Communications and alike along with the facilitating the practical orientation of the candidates to experience the corporate world as emerging leaders.

12. Training Programmes to empanel Peer Reviewers

In order to ensure that the objective of the peer review is achieved in letter and spirit and the reviewers are duly equipped with the thorough understanding and indulgence of the procedure, manner, prescriptions, guidelines and other related aspects of conducting Peer Review, the Institute persistently conducts training programmes to empanel more Peer Reviewers. In the month of July, 2017 also, the Training Programmes to empanel the Peer Reviewers were conducted at Noida, Navi Mumbai and Jaipur on July 7, July 8 and July 15 respectively. More such Training Programmes have been scheduled at other locations during August, 2017.

13. Convocation (s)

Under the benign presence of eminent dignitaries as the Chief Guest and Guest of Honour of the event, the first round of Institute’s Convocations in year 2017 has been successfully organized in the month of July, 2017. The convocations took place in all the four regions respectively at Chennai, Kolkata, New Delhi and Mumbai, to award the Certificate of Membership of the Institute to the members duly admitted during the period from October 1, 2016 to March 31, 2017. National level meritorious students were also awarded certificates/medals/cheques to honour their merits.

The highlight of these convocations was the

introduction of the Indian attire, doing away with the earlier system of wearing black gowns and caps. Male members wore white/cream coloured 'kurta' and white/cream coloured 'pyjama' with black/brown sandals or shoes. Female members wore white/cream coloured sarees with different colour borders or white/cream coloured 'kameej' with white/cream coloured 'salwar', white/cream coloured 'dupatta' with black/brown shoes or sandals. A "Angvastram", made of Khadi, was given to the members by the Institute to wear around their neck and shoulders over their Indian attire.

The brief detail of the Region-Wise Convocation is as under:

- In the Southern Region, the Convocation took place on July 2, 2017 wherein around 186 members were awarded the certificates of Institute's membership during the eminent presence of Hon'ble Justice (Dr.) Anita Sumanth, Madras High Court as the Chief Guest of the Event.
- In the Eastern Region, the Convocation took place on July 7, 2017 wherein around 297 members were awarded the Certificates of Institute's Membership in the august presence of Shri Amit Kumar Sen, MD, East India Pharmaceutical Works Limited as the Chief Guest of the Event.
- In the Northern Region, the ceremony took place in two sessions held on July 24, 2017. The first session witnessed the eminent presence of Shri Suresh Prabhu, Hon'ble Union Minister of Railways as the Chief Guest of the session along with Shri Sushil Kumar Modi, Hon'ble Deputy Chief Minister of Bihar (and the then Leader of Opposition, Bihar Assembly) as the Guest of Honour and Shri Rajesh Sharma, Government Nominee on the Council of ICSI as the Special Guest of the Session, indorsing the award of the Certificates of Institute's Membership to around 455 members.

  The second session witnessed the award of the Certificates of Institute's Membership to around 511 members at the gracious hands of Shri Arjun Ram Meghwal, Hon'ble Union Minister of State for Finance and Corporate Affairs as the Chief Guest of the Session.
- In the Western Region, the convocation ceremony took place in two sessions held on July 31, 2017. In the first session, Certificates of Institute's Membership were awarded to around 331 members in the august presence of Shri J.N. Mishra, CEO, Indian Institute of Banking and Finance, Mumbai and Shri Gopal Krishna Agarwal, Government Nominee on the Council of ICSI as the distinguished guests of the session.
- In the second session, Certificates of Institute's Membership were awarded to around 352 members in the eminent presence of Shri Gopal Krishna Agarwal, Government Nominee on the Council of ICSI and Shri P. Venugopal, Secretary General, Insurance Institute of India, Mumbai as the distinguished guests of the session.

14. e-MSOP

With a view to register an out and out support to the Government of India's Digital India programme, the Institute has taken an initiative to digitize MSOP in order to register maximum reach to aspiring Company Secretaries and to make certification easy and convenient. This e-MSOP is aimed to be pursued at any time anywhere at the comfort of the candidate. This would be delivered in e-Mode and serve a large community of Professional pass students to get their membership.

15. Girisagar Vidyarthi Vikas Yojana

Under the perspective of streamlining its social responsibility and in view to develop and empower the students in each and every part of the country even in the remotest areas of the nation, with the professional erudition of the course of company secretaries, the Institute has come up with ICSI Giri Sagar Vidhyarthi Vikas Yojana duly launched on July 1, 2017 at Vadodara. This initiative is having a prime objective to reach out to the students and schools/colleges to create clear visibility and presence of the institute among the students initially with a focus on Hilly and Coastal Cities endorsing the huge potential for the growth of the profession. Around 300 cities have been identified and this drive would be effective from July 2017 to September 2017 for sensitizing the students, schools and college about the profession of company secretaries.

Members of the Institute will also be participating in this drive of nurturing budding youth of India. Apart from Career Awareness Programmes, study centres are also being established to facilitate our existing students in these cities.

The following four study centres were opened so far under ICSI Giri Sagar Vidhyarthi Vikas Yojana:

1. Alibag, Maharashtra
2. Imphal, Manipur
3. Aizawl, Mizoram
4. Kottayam, Kerala

16. Theme Competition for All India Student's Conference, 2017

As you are aware that Institute is enthusiastically dedicated in building the capacity of its students with the emerging trends in governance and the area of contemporary knowledge. Under this outlook, the Institute is scheduling an All India Student's Conference, 2017 on September 25, 2017 at Jaipur. To make this conference for the students and of the students, in true letter and spirit, the Institute invited the students to suggest the theme of the respective competition through a Theme Competition for All India Student's Conference, 2017.

17. Sampark -Missed call facility

To enhance the reach of ICSI to the students at each and every corner of the nation and also to facilitate students' access to the CS Program on ease and zero cost, the Institute has recently come up with one of its initiative known as "ICSI – SAMPARK", which is Missed Call Facility. Under this initiative, the prospective students may give a missed call at "8824401155" to get guidance on Company Secretary Course. Subsequent to the Missed Call, Institute's officials across India would contact the students and answer their queries pertaining to Company Secretary Course.

18. My ICSI Virtual Platform

As you are aware that in view to create a comprehensive digital platform for the members, students and other stakeholders, wherein the varied services and facilities of the Institute could be availed with ease and efficacy, the Institute witnessed the launch of MY ICSI Virtual Platform through gracious hands of Justice Dinesh Maheshwari, Hon'ble Chief Justice, High Court of Meghalaya and CS (Dr.) Shyam Agarwal, President, ICSI on June 24, 2017.

This platform in thorough dedication to the stakeholders is now open to all for use. This electronic platform could be used on day to day basis for not only expressing one's views but it could also be used to access and enlighten oneself with the views of the others.

My ICSI Virtual Platform services are also available at the Student Member Application Software Hosting Platform (SMASH) through a direct link at https://smash.icsi.in/Scripts/Swift/GenericScreen.aspx?PageID=2184#no-back-button or https://goo.gl/rAo8um.

This feature is easily accessible with a single click under "My ICSI Virtual Platform" menu on both mobile and desktop versions on the SMASH Portal.

19. Student Month, 2017

With a view to provide a platform for the students to register their all-rounded development and to enhance their professionals interfaces inter as well as intra commune, the Institute celebrated July, 2017 as the "Student Month". In furtherance to the celebration of Student Month, several activities for the students were organized in the entire month in various Regions and Offices of the Institute throughout the country. Along with the organisation the core activities pertaining to the profession, the Institute also took up numerous activities on socially relevant issues including Plantation of Trees, Blood Donation Camp on Doctor's Day, Swachh Bharat Abhiyan, Declamation Competition on World Nature Conservation Day, Essay Writing Competition on Kargil Victory Day and alike to inculcate such values in the budding professionals.

Interview of the Paramvir Chakra winner Late Captain Vikram Batra's twin brother Shri Vishal Batra was also taken and excerpts of the same were also sent to the students to motivate them to become a leader and decision maker like him.

20. Applicability of GST in December, 2017 Examinations

In the wake of the recent application of Goods and Services Tax as a uniform tax replacing a structure of multiple indirect taxes in the country and also to enhance the knowledge of students and to equip them in the new indirect taxation regime, the Institute has made applicable Goods and Services Tax (GST) in the Taxation Curriculum of CS Professional Programme under Part B of Advance Tax Laws and Practice and of CS Executive programme under Tax Laws and Practice papers respectively for December 2017 examination. The applicability of GST for Examination purposes is limited, at present, only to the four Acts under GST.

A self contained Supplement on GST has been made available at the Institutes' website at https://www.icsi.edu/AcademicCorner.aspx

21. Declaration of the Result of CS Foundation Programme Examination

The Institute announced the result of CS Computer Based Examination for Foundation Programme on July 5, 2017. The result along with the Subject wise break-up of marks and e-Result-cum-Marks Statement was made available at the website of the Institute.

22. New Exam Centres for CS Examination

In view to facilitate the students with the ease of writing the exams at their nearest possible exam centre, the Institute announced the opening of two new Examination centres one at Moradabad, Uttar Pradesh (Centre Code - 247) and Solapur, Maharashtra (Centre Code - 436) on a pilot basis beginning from December, 2017 examinations onwards.

23. Study Centre Scheme

As you are aware the Institute has launched the Study Centre Scheme in order to break the distance barrier for students belonging to cities / locations wherein the representative offices of the Institute are not in existence. So far, 45 Study Centres have been established in collaboration with reputed colleges in different locations.

During the period from January to July, 2017, the following Study Centres have been established in various parts of the country:

1. National College, Dindigul Main Road, Karumandapam, Tiruchirapalli, 620001

2. Jai Bharth Arts & Science College, Vengola PO, Arackapady, Perumbavoor, Ernakulam District, , Kerala, 683556,
3. Shri Shivaji College of Arts, Commerce & Science, Near Shivaji Park, Akola, 444003
4. Bir Bikram Memorial College, College Tila, Agartala, Tripura, 799004
5. Marudhar Kesari Jain College for Women, Marudhar Nagar, Chinnakallupalli, Vaniyambadi, Tamil Nadu, 635751
6. Edurite College of Management Studies, Savlanga Road, Ravindra Nagara, Shivamogga, Karnataka, 577201
7. Ismailsaheb Mulla Law College, Karmaveer Samadhi Parisar, Ravivar Peth, Powai Naka, Satara, 415002
8. Janata Shikshan Mandal's Sau. Janakibai Dhondo Kunte Commerce College (JSM College), Behind State Bank of India, Post Alibag, Dist Raigad, Maharashtra, 4044011
9. Pachhunga University College, College Veng, Aizwal Mizoram, 796005
10. Baselius College, Manorama Junction, Near Malayala Manorama, K K Road, Kottayam, Kerala, 686001
11. D M College of Commerce, DM College Campus, Imphal, Manipur, 795001

    The details of all the 45 Study Centres established so far by the Institute is available at the website of the Institute, which could be easily accessed at https://www.icsi.edu/docs/Webmodules/Study_Centre.pdf

24. ICSI Signature Award Scheme

In January, 2016, the Institute came up with ICSI Signature Award Scheme under which top rank holders in B.Com. Final Examinations in reputed universities and also specialised programmes/ papers of IITs / IIMs are awarded a Gold Medal and a Certificate.

In the month of July 2017, one MoU on ICSI Signature Award have been signed with the Maharaja Ganga Singh University, Bikaner, Rajasthan.

The details of Universities wherein the ICSI Signature Award has been instituted are as under:

- Alagappa University, Karaikudi (TN)
- Adikavi Nannaya University, Rajahmundry AP)
- Andhra University, Visakhapatnam (AP)
- Bhagat Phool Singh MahilaVishwavidyalaya, Sonepat (HR)
- Guru Nanak Dev University, Amritsar (PB)
- Himachal Pradesh University, Shimla(HP)
- Indian Institute of Management, Indore (MP)
- Indian Institute of Management, Raipur (CG)
- Indian Institute of Management, Tiruchirappalli (TN)
- Kumaun University, Nainital (UK)
- Maharaja Ganga Singh University, Bikaner (RJ)
- Panjab University, Chandigarh (UT)
- SNDT Women's University, Mumbai (MH)
- Sri Dev Suman Uttarakhand University, Tehri (UK)
- University of Kalyani, Nadia (WB)

With ICSI Signature Award, the Institute excelled in developing synergies with the various reputed Universities and its senior functionaries like Vice Chancellors, Registrars along with enhancing the visibility of the Institute during the respective Convocation Ceremonies wherein the Award is bestowed on the toppers.

25. Forward-Looking IT Services

As you are aware that Institute is persistently active in keeping pace with the advanced technologies in view to serve its stakeholders effectively and efficiently with more ease at their hand to access the services of the Institute. In continuation to our pace with recent cutting age digital platform, following technological advancements have taken place in the month of July, 2017:

1. Upgradation of ERP, Receipt Accounting System (RAS) and Online membership fee payment module to cater GST requirements
2. Launch of online service for Verification of Marks request in SMASH
3. Launch of Online Vision 2022 Survey
4. Launch of Chid Portal on Capital Market Week
5. Upgradation of Student Month Portal
6. Implementation of Data Centre and Network for the ICSI House at Sector – 62, Noida

ICSI Tribute to Dr. Abdul Kalam

Creating a Dress Code with an Indian Essence for ICSI Convocations!!!

We should take a vow to have our own dress code for convocations. Time has come to quit the British gown for such occasions."
– Dr. A.P.J. Abdul Kalam

As the convocations to be held in the year 2017 were approaching, the above desire of country's former President, Dr. Abdul Kalam expressed by him in the year 2010, was deep rooted in the minds and heart of ICSI somewhere. Therefore, it was thought that if we really wanted to pay a real tribute to this the most respected and legendary educationist and visionary of India, his desire needs to be turned into reality and ICSI should go a step forward to shun Colonial Hangover as there was a need to '**Create our own dress code with an Indian essence'** for all its convocations before his death anniversary on 27 July, 2017.

The educational institutions usually mirror the ideals, philosophies and culture of a nation and enable us to understand the spirit of its civilization, in our case, our Indian civilization which is one of the oldest in the world. In this context, we are fortunate that India is also home to one of the oldest universities or a pioneer in establishing centres of learning for higher education system such as 'Takshila' and 'Nalanda'. Along with, the cultural history of India also goes parallel and is centuries old too. Even, the British Sanskrit Scholar **Arthur Anthony Macdonel**l (1854-1930) who authored the book 'A History of Sanskrit Literature' notices "Some hundreds of years must have been needed for all that is found" in her (India's) culture.

The aim of education in ancient India aimed at the manifestation of the divinity in men and to touch the highest point of knowledge in one's life. In order to attain the goal, the whole educational method was based on 'simple living and high thinking' pursued through eternity. In ancient India, 'Gurukul' or 'Acharayakulam' is considered to be one of the best systems of learning which prepared its disciples for living an ideal life full of purpose. When the students used to complete their education in 'Gurukul', they were sent home to start his new life journeys and the entry into the new professional world was facilitated through a ceremony called **"Samavartana Sanskar"** or 'Deekshant Samaroh'. These convocations were so well thought of and organized that even the farewell speech was pre-defined and the Guru (teacher) used to instruct some very imperative lessons of life to the students who have completed their study of the Vedas' (Taittireeya Upanishad: 1/11). Even, the meticulously chosen ICSI Motto **सत्यं वद। धर्मं चर।** (Speak the Truth, Abide by the Law) is a part of the sermons delivered at Samavartan Sanskar in those times itself.

However, it is a catastrophe that over the years under the influence of western culture after British invasion in India, these 'Deekshant Samarohs' converged into the 'Convocations full of Pomp and Show' and a symbol of pride for natives. Going back to trace history of this colonial dress, the gown, which is technically called an 'academic dress' was first worn for tertiary education and later on, secondary education in Europe. The tradition of wearing an academic dress to graduation started rather as a 'necessity' rather than as official wear to the rite of passage. The custom started during the 12th century when early universities were still beginning to be formed in Europe and these universities were born of religious orders. The uniform of the student was therefore the garb of a cleric or a monk, meaning a long plain robe with a hood, with a cap and/or a stole added along the way to indicate rank. Besides, at those times, no sufficient heating system could be provided in such universi-

ties, these long and heavy robes and hoods were devised to protect the students from the chilled weather.

Times passed and as Europeans invaded in other countries and had their mark on their education system, this tradition of Western Convocations made a room in Indian education system to cast a shadow on traditional Deekshant Samarohs' too. The tragedy was that attention was hardly paid to shun this system even after seven decades of Independence rather it became a symbol of pride for many who are still influenced by western culture, till in the year 2010, Dr. Abdul Kalam pointed out towards the need of doing away with this practice.

Aping the western world sans any solicitous consideration whatsoever and following pointless traditions just because they have been there for eons was making no sense to ICSI. But, there is an adage – "Trees that forget their roots often tumble even in slightest of the winds". Therefore, before it is too late, it's time that we get back to our roots and take pride in our rich heritage and this is precisely what the Institute of Company Secretaries of India has chose to do for its convocation, the beginning of which was done with the all regional convocations held in the year 2017.

The participants who were going to turn the 'new members' of the Institute were urged to wear ethnic Indian attire and to adorn themselves with 'White/Cream Kurta Pyjama/Saree' with a 'Tricolor' Angavastram (stole) as to instil the feeling of pride and Nationalism in them.

Another unique of this Angavastram (stole) is the fabric it was made of. ICSI went a step further choose 'Signature Fabric of India – Khadi' to make our contribution to Sustainable Development of Rural India as Khadi is aimed "to revive the handloom industry of India". Handloom fabrics were part of the country's rich culture and heritage and provided a livelihood for rural people engaged in weaving. Hand spinning and handloom weaving was promoted by 'the Father of the Nation' Mahatma Gandhi to give a boost to the Country's independence movement against Colonial British rule, as a protest against industry-made cloth imported from Britain, which almost ruined India's vibrant textiles industry.

This endeavour of ICSI is also in line with Hon'ble Prime Minister Narendra Modi's vision to revive Khadi as he said

"When we purchase a Khadi, we are brightening the lives of the lakhs of weavers who toil day and night".

-Hon'ble Prime Minister, Sh. Narendra Modi

CS (Dr.) Shyam Agrawal, President of the Institute of Company Secretaries of India is very enthusiastic about this move and opined that:

"Convocation ceremonies are seen as the zenith of a vital stage in student life, so major universities around the world choose to send off young graduates with much pomp and show where flying caps and colourful robes have become very much part of a tradition. But, we chose to return to our roots by announcing an ethnic Indian attire reflecting spirit of Nationalism by including Tricolour in it. It was an effort to break free from the shackles of Victorian practices and return to our tradition ethos and a salutation to most respectable educationist of India- Dr. Abdul Kalam. After the huge exhilarating response we have got from the stakeholders, I feel content about righteousness of this historical move in the direction of patriotism."

-CS (Dr.) Shyam Agrawal, President,ICSI

CS (Dr.) Shyam Agrawal, President ICSI addressing the New Members of ICSI at NIRC Convocation 2017 The response to this drive was not only admired by new members, but, also myriad dignitaries.

Sh. Suresh Prabhu
Hon'ble Minister for Railways

Sh. Suresh Prabhu, Hon'ble Minister for Railways awarding degrees in newly adopted 'Indian attire' at ICSI Convocation 2017

About the Indian attire in the form of Tricolor around the necks of new members, I wish to say that it is not just enough to wear these around your necks only, but this is essential that the spirit of Tricolor resides in your hearts. This is when you are able to do justice to your professional responsibilities and set high standards for many others to imitate.

Sh. Arjun Ram Meghwal
Hon'ble Minister of State for Finance

Sh. Arjun Ram Meghwal, Hon'ble Minister of State for Finance awarding degrees in newly adopted 'Indian attire' at ICSI Convocation 2017

"Kudos to the entire team of ICSI and professionals associated with it for the successfully holding its annual convocation ceremony on the 24th July 2017. It was indeed a pleasure to be part of this ceremony which was unique since it marked a

departure from the well established convention of scholars and faculty being dressed in ceremonial robes. I was very happy to note that the ICSI has begun a new initiative of holding the convocation ceremony with traditional Indian Attire as the standard dress code.

A student from the early school days starts to learn about the various aspect of the Culture & Nationalism and this learning continues for life. In this Convocation ceremony, I feel this affirmative change towards realizing the Innate roots of the Indian culture & old tradition is a very welcome step and is worthy to be emulated by other institutions of academic excellence. This welcome step of wearing Kurta Payjamma / Saree along with a TRICOLOR shows the cultural strength of our country “Unity in Diversity”, that student belonging from various parts of Nation represent the United India by wearing “Bhartiya Paridhan” during one of the important phases of their life.

112 years ago, on August 7, 1905, our freedom fighters had launched the Swadeshi Movement, from the Calcutta Town Hall, in Bengal. Freedom fighters including the Bal Gangadhar Tilak encouraged Swadeshi and Boycott of British goods after the British government decided to partition of Bengal. By commencing swadeshi movement at that time, Our freedom fighters who had a great role in shaping the future of the Nation had shown this path of the Nationalism by promoting the use of Swadeshi goods.

The use of traditional Bhartiya Paridhan during convocation ceremony by ICSI will be a humble tribute to those, who fought for the Nation.

Over a hundred years after the Swadeshi Movement was launched in India on August 7, now we are witness to the genesis of another wave by the Modi ji government to protect and promote the timeless legacy of Indian handlooms. In Continuation to that, the Government under the leadership of Narendra Modi had declared 7 August as the National Handloom Day in July 2015. This unique change by ICSI will be a step towards fulfilling the appeal of PM Modi Ji to promote the handloom industry in the country with the vision of Sabka Sath Sabka Vikas.

My best wishes to the entire ICSI family and all graduate students for their future endeavours.”

Sh. Sushil Kumar Modi
Deputy Chief Minister of Bihar

Sh. Sushil Kumar Modi, Hon’ble Deputy Chief Minister Bihar awarding degrees in newly adopted ‘Indian attire’ at ICSI Convocation 2017

The Institute of Company Secretaries of India has set a new tradition in the Indian education system by adopting Indian attire as there are many traditions of British era which are required to be eluded in modern day India. In this context, I wish to support my view with an example which relates to the presentation of Union Budget in India. As the budget of India was presented in the evening to suit the needs of British Parliament, now, with the end of Colonial era in India, the timing of presenting the

Budget has been changed to present the same in the morning at 11 am rather than presenting it in the evening as the then Prime Minister Atal Bihari Vajpai in the paid a thought that such custom had become irrelevant in Indian context in independent India and changed the same in the year 2002. The step taken by ICSI is a similar step taken in the right direction as per the need of the hour.

I am of the view that there is no harm in practices adopted in other countries, yet, that should actually suit the requirements of our Nation. The British practice of wearing robes and neck ties was based on the climatic requirements of Europe which require shield from the cold weather; however, I don't agree that such attire suits Indian climatic requirements which are warm and humid. However, changing traditions going on since ages takes time and courage. Therefore, I would like to extend my congratulations and appreciation to the Institute of Company Secretaries of India and ICSI President CS (Dr.) Shyam Agrawal.

Sh. Kalraj Mishra
Hon'ble MSME Minister

'Khadi' has been a symbol of the true Indian spirit and its independence. To revive the vigor of Nationalism through Khadi, Hon'ble Prime Minister Sh. Narendra Modi has also urged upon to promote this 'Signature Fabric' of India.

I am glad to know about endeavour of the Institute of Company Secretaries of India's to instil core national values in its members by adopting 'Khadi' as its Convocation dress code for the first time in the history of the Institute. This initiative is an example to be replicated nationwide by other educational institutes too. I convey my congratulations to the Institute of Company Secretaries for this nationalistic endeavour during the commencement of its Golden Jubilee Celebrations. This accomplishment is indeed a message to the world that our culture is uniquely founded on the contributions of our rural masses.

The above views of various dignitaries have multiplied zeal of ICSI to work in the direction Nation Building and turn the future governance professionals in contributors to the sustainable development of India. ICSI endeavours to create professionals who will 'Think Global and Act Local'. Few countries have used 'fabric' as a tool to achieve freedom. And that's the reason why nearly seven decades after India gained its hard-won independence, Khadi continues to inspire and amaze people around the globe. ICSI move may be a drop in the ocean, yet, these drops matter in making of a new economy of New India which will be based on uplifting rural India where indeed the 'heart of India lives'. This move of ICSI makes me feel proud as an India and to say

''मैं भारतीय हूं मेरा भारतीय होना मेरे लिए पर्याप्त है और मेरा भारतीय होना ही मेरे लिए गर्व की बात है''

Jai Hind, Jai Bharat!!
Happy Independence Day 2017!!

Dr. Harpreet Raman Bahl
Office of the President, ICSI
harpreet.bahl@icsi.edu

CS WOMEN
EMPOWERED AND EMPOWERING...!!!

JAYSHREE S. JOSHI

Jayshree S. Joshi enjoys the honour of being one of the First Ladies to Start Whole Time Practice of Company Secretaries in India when she started her Whole Time Practice of Company Secretaries in February, 1983. Her core area of practice is Companies Act, SEBI Guidelines and Regulations, Stock Exchange & RBI compliances, rendering services to the Banks for furnishing Search Reports, registration of charges, advising on drafting of various Charge Documents, acting as a scrutinizer for Postal Ballot Process (including with e-voting option) etc. Her Core Competence is in the areas of Due Deligence, Voluntary Winding up of Company and various Petitions under Companies Act, 1956 & Companies Act, 2013, and Conciliation (as an Alternative Dispute Resolution - ADR). She has successfully resolved disputes through Conciliation Process.

Her firm is associated with many Companies on Retainership basis and also on advisory basis for handling various matters under the Companies Act, 1956, the Companies Act, 2013, FEMA and also SEBI Regulations. She also appears before authorities like the CLB; RD (MCA); ROC; Official Liquidator, SAT etc. Her firm has also handled assignments of various IPOs, Rights Issues, Preferential Issues etc. as Counsel to the Merchant Bankers and Registrars and Share Transfer Agents. Her Firm's Corporate Clients base includes MNCs, Listed Cos., closely held Pub. Cos., Pvt. Cos. & LLPs. Apart from having various reputed Corporates in the Private Sector, the Firm is registered on the Panel of Company Secretaries of various Nationalised and Private Sector Banks.

Her Firm has successfully and satisfactorily handled an assignment of Due Deligence and is having its counter-parts at Delhi, Ahmedabad, Chennai, Bangalore and Pune.

I am Jayshree S. Joshi, and I am proud to be one of India's first women Practicing Company Secretaries. Yes, I joined the profession when 'Practice' was perceived to be the domain of 'Male Company Secretaries' only and this challenge attracted me to make an indentity of my own, to pave the way for all women who would be entering this glorious profession in the times to come. Today, when ICSI is going to celebrate its Golden Jubilee this year, I feel content that I dared to dream at that time.

Family Background

I hail from a common Middle class family of Mumbai with six other siblings and parents. Though being from a typical Gujarati - Baniya family, due to my father's progressive thinking and belief in Gandhian philosophy, I got equal rights and opportunities for growth as my brothers got without any gender discrimination. My father strongly believed that 'Best Education' is an invaluable dowry. Throughout my life, he had been a source of inspiration as well as guidance and a strong driving force for me to achieve the present successful professional career.

Starting of My Journey

I was a meritorious student throughout and was a all rounder who also excelled in extracurricular activities like Dance, Elocution Competition etc. When, it came to the beginning of the journey of CS profession. With lots of hardships, including inter alia **visiting 13 times the then office of WIRC of ICSI for just getting the Prospectus** of CS Curriculum, studied through Postal Coaching only as there was no Oral Coaching available except Refresher Batches. I passed my Final CS Exams in December, 1979 batch. After that, I did get job with a small but listed company where there was hardly any work (because there were no complicated compliances as they are today). Being frustrated due to petite scope of work in the company, I left it without any other job on hand.

And then the real struggle started - getting the job in the CS field. I tried for job for 7 months, but a complete failure due Gender discrimination as being a female was not bane perhaps. Fully frustrated, I approached Mr. Ramchandran, Past President, ICSI and a very helpful Senior Member with an agitated suggestion **to keep the CS Course reserved only for Males** because a female was not welcomed for the position of CS. He tried to pacify me with many consoling views and suggested me to think of joining Practising Profession. According to him, my neutral and indifferent kind of thinking approach would be an asset for me to be successful in the Practice. He guided me for how to obtain the Certificate of Practice - the First step to start the practice. He also added that the bigger issue could be that no female member has yet entered the whole time Practice. **And that made me to determine that if there is no female in whole time practice, I will definitely go for the whole time practice any how to prove that at least as a Practitioner, Females can achieve Success, name, fame and all what a Professional can dream and wish.**

On records of the ICSI, I can say and claim proudly that **I ENJOY THE PRIVILEGE OF BEING ONE OF THE FIRST FEMALE COMPANY SECRETARIES *IN INDIA* TO START 'WHOLE TIME PRACTICE'.**

The Struggle

Knowing fully well that for Practisinig Professional Career, being in the heart of the city was essential. As I did not want any financial burden on my father, I decided for taking a table space on rent. Days were tough, yet, I had faith in God, trust in my parents' blessings and confidence in my capabilities. Of course, my strong asset of my Membership of ICSI and my knowledge backed by my willingness for sincere & hard work were my invaluable assets.

Every day, I was meeting members of other profession like Advocates, Solicitors, Chartered Accountants etc. Hardly any one knew that there was a Profession like CS existing, scope of a CS work, what was the need for having such a professional etc. etc. After all 12 days of wandering, on the 13th day, I was blessed with my first assignment of becoming a Guardian of 13 Orphan companies from a senior CA. I was given 5 files and I started working on that day itself. And….. *that is how the **PCS Jayshree P. Dagli** began her journey.*

This was an achievement in terms of procuring the work. But a million dollar question was still unresolved - where from to get at least Rs. 100/- so that I could pay next month's rent? By the way, to save those Rs. 300/- on hand, for all those 13 days, I was commuting by walking to office & back home approx. 4 K.mtrs a day and not even spending for bus fare as there was no sign of earning even a rupee till then.

After completing the first 5(five) files, I could be successful to get an on account payment of Rs. 500/- which gave me relief to take care of next two months' rent - inclusive of balance of Rs. 300/- with me on hand). The balance 8(eight) files were completed in next 1 week's The fees fixed was Rs. 1000/- per co. i.e. totally Rs. 13,000/-. **But, the difficult time was waiting for me. Even after completing those 13 files' pending work and additionally incorporation of 2 companies, for reasons beyond any logic and explanations, I was not being paid. THE UNACCEPTABLE FACT BUT YET THE RELITY IS THAT TILL TODAY (EXCEPT THOSE RS. 500/- RECD ON ACCOUNT) I HAVE NOT RECEIVED ANY PAYMENT TOWARDS THAT FIRST ASSIGNMENT. And that CA has already left for Heavenly abode about 7-8 years back.**

But that First Assignment was proved very important in following terms:

1. It gave me tremendous confidence that there will be recognition of the CS Profession and CS Professionals also provided continuous and sincere efforts are put in;
2. It gave me the platform to approach other professionals; and
3. realized that lots of efforts would be required on the part of ICSI as well as its Members for creating awareness of the Profession of Company Secretaries.

The process of getting assignments continued - slowly but steadily.

Then in late 1984, an assignment of Oppression & Mismanagement was handled very successfully where I ultimately acted as a Conciliator between the two disputing parties, I could fetch to my client much more than what he expected / desired. This assignment gave me confidence that if an assignment is handled with honesty, sincerity & dedication, the results would be much beyond standards of normal success.

In the year 1988, God then got me one more opportunity of acting as Conciliator in a case of family dispute – the age of members of the family was ranging from 70+ years to about 22 – 23 years. The estate involved there was of almost more than Rs.100 crores then. The mediation / conciliation process was completely accepted by all the members and at the end solution was to the satisfaction of all. Even today, I am recognized and respected as the daughter of that family.

These two matters of mediation / conciliation gave me an idea that I could be a better and more effective mediator / conciliator in resolving disputes - within the frame work of the Companies Act 1956.

I also realized that my lecturership in College had helped me to improve my communication skill. Due to this, I could be successful in conveying the same thing in the same sense as I was thinking. This opened another area of practice: to take up the matters of Oppression and Mismanagement under Sections 397 / 398 of the Companies Act, 1956. Further, to sharpen my abilities to act as the Conciliator to resolve the disputes**, I also took formal Training under the Arbitration and Conciliation Act with a recognized Trainer.** There, I learned fine points for acting as Conciliator. **I loved this concept of acting as Conciliator as right from my childhood, I had the nature of jumping into the scene where two of my friends would be arguing/fighting on any issue where I would**

FACULTY AT INTERNATIONAL WOMEN'S DAY CELEBERATION - 2017

try to pacify both and would see that both continue to be good friends for ever. Hence, accepting this new ROLE of CONCILIATOR was a pleasure for me not only as a Professional but also as an Individual.

God also helped me in terms of getting me many such assignments of Oppression and Mismanagement under Sections 397/ 398 of the Companies Act, 1956. I was able to resent the case to the Authorities very clearly and concisely with effective mode of communication. **I can proudly say that except in one matter, in all the other matters, I could be successful in getting the disputes resolved by me acting as Conciliator. A very senior Officer of the Dept. of co. Affairs had commented to another Professional Attorney asking her to learn from me how to convince the parties to stop disputing and settle the disputes mutually and amicably rather than making the parties keep on disputing on issues which could be resolved otherwise. Such compliment was an invaluable achievement in my professional career. *This was really giving me eternal pleasure and happiness.***

In February 1986, with initiation and hardwork of a professional Colleague CS Mr. Lalit Ratadia, I could become one of the first Six PCS empanelled by the State Bank of India. This carved out a new area of Practice for the CS.

During the period of 1988 to 1995, I got an opportunity of being associated with a Merchant Banker Corporate body. During the boom period in the Capital Market, I could get opportunity of being a part of number of Issues of Equity Shares by many companies - taking care of all the secretarial compliance with advance visualization of probable shortfalls of client companies and taking corrective actions, drafting of Offer Documents and getting the same approved by the SEBI as well as the ROC. Here, in the process, I had to deal with various types of people which taught me important lessons of life. This was another colour added in the picture of my professional career.

In this process, I could earn good name in professional circle – as a Professional with High Moral and Ethical values always insisting for perfection in compliance and taking care of the clients within the ambit of Law.

In the year 1992, along with my husband and my brother, I took over a company engaged into the business of Registrar and Share Transfer Agents. I came in touch with management of many Reputed Listed companies. This platform helped in developing fine approach in handling the compliance work of Listed companies. It helped me in discharging my duties and responsibilities as Secretarial Auditor.

My Role as a Secretarial Auditor is also unique. I go with a mind-set that the purpose of the Secretarial Audit is to regularize the compliance by the concerned company and not to penalize the company. I, myself and also with the help of my Audit team, go for thorough checking of relevant records of the Company. In case, there is any error which is possible to be rectified, I would guide them for corrective steps, monitor that the corrective steps and actions are taken and then issue my Report.

I do not believe in acting as a Rubber Stamp CS certifying anything and everything for money. RATHER I STRONGLY BELIEVE THAT EVEN IF IT RESULTS IN MY LOOSING AN ASSIGNMENT OR A CLIENT, I DON'T BOTHER BUT I DON'T COMPROMISE WITH MY PRINCIPLES OF ACCURACY AND PERFECTION. **IT IS IMPORTANT TO NOTE THAT DUE TO MY SUCH APPROACH, MANY OF MY CLIENTS INSIST THAT I SHOULD BE ASSOCIATED WITH THEM UNDER ANY CIRCUMSTANCE. AND THOSE WHO DO NOT APPROVE OF MY SUCH APPROACH AND PRINCIPLES, I DON'T MIND EVEN LOSING THEM AS I DON'T BELIEVE IN GETTING**

MONEY BY COMPROMISING WITH MY LIFE PRINCIPLES.

During the period of 2007 – 2010, I was a member of the WIRC of ICSI. That was altogether a different platform which provided me lots of lessons of life which otherwise I would never had learnt.

I always believe that in my progress, success and achievements on the path of my professional career, there is an invaluable contribution of the ICSI. I always feel indebted to the ICSI. To pay back a part of my debt to the ICSI, I decided to provide the Apprenticeship Training to the students of the CS curriculum. I have to my credit, more than 60-70 Trainees whom I imparted Apprenticeship Training. I can proudly say that almost all of them have achieved envious progress and success in their Professional Career. **It is not only the VIDYA DAAN but also the sense of having contributed in life of so many in numbers, make me feel that yes, I have made my life worthy of living. I did something which God might have expected of me. And most important is that I could prove my father's confidence in my abilities and potentials as true. This gives me satisfaction that I could *pay back a part of my debt* to my parents more particularly my father and the Almighty God.**

Last but the most important, the ICSI had gifted me with an invaluable gift - my husband – Sudesh Kumar Joshi. Yes, it is the common platform of CS profession which made me meet him and ultimately have him as my life partner. Without his support, contribution, inspirations and guidance at every stage of my professional career, all my professional achievements would not have been possible. I owe my success to him too.

To Conclude:

It was not a smooth sailing at all. Lots of humiliations, people looking with doubtful way, gender discrimination, clients not paying at all, with that the problem of getting assignments which not only can get you money but also some position and respect are some of the hick ups in the way of a female CS to get settled and be successful as the Professional. However, honest, sincere, persistent, confident approach backed by clarity of knowledge of the subject can certainly take to the stage of success which one might not have thought.

I once again recognize the contribution of my father - mother, CS R. Ramchandran, my husband CS Sudeshkumar Joshi, my long standing associate CS Ajay Mehta and of course above all, the Almighty God in my success and achievements as a PCS.

My mantra for success is:
If you are sincere, honest and dedicated to your work, God has to bless you with nothing less than complete Success.

RAPID FIRE ROUND WITH ICSI

Dr. Harpreet: What is the definition of a 'woman' in your words?

CS Jayshree S. Joshi: Woman is a source of strength/ power not only to her own self but to the family, society, country and the world at large. Such power and strength when used constructively & progressively - can create, maintain and nurture VIRTUES and when used destructively - can destroy/kill/end the VICES. What is needed is that she should note and consider this blessing of God to her and then decide judiciously how, when and where is she supposed to make use of her blessed power.

Dr. Harpreet: How ICSI can extend support to Women CS in practice?

CS Jayshree S. Joshi: Even today, the Women CS are still facing difficulties due to the mindsets influenced with discrimination based on Gender. Though, the situation has certainly improved but there is still a long way to go. I agree that the visibility of the ICSI is immensely augmented as compared to the years gone, so the difficulties faced by me while I was trying to pave my way as a woman CS have diminished. However, it is still not enough to leave an impression on the public at large that Women CS are in no way less competent / capable than the CS men. (In fact I have witnessed in a few cases where the Woman CS had performed far better and more perfect than a man CS.)
For achieving this target of providing better visibility to the Women CS, I am very happy to say that the present President-ICSI, Dr. Shyam Agrawal has already begun this process of giving visibility to the Women CS achievers. The process of recognising "CS WOMEN, EMPOWERED AND EMPOWERING ..." is an appropriate step in this direction. I wish, this process and trend may please be continued by the future Presidents also. This can help bringing out many more Women CS Jewels of the ICSI. Some special recognition can also be carved out for the outstanding achiever Women**.**

Dr. Harpreet: What are the particular areas where women CS in practice can take leverage?

CS Jayshree S. Joshi: Areas such as Legal Compliance, Corporate Governance, Petitions before the RD/NCLT / NCLAT, Advising Capital Market compliances are where women CS in Practice can take leverage.

Dr. Harpreet: Do women in practice still face more difficulties as compared to their male counterparts as you faced in the starting of your own career or the scenario has changed?

CS Jayshree S. Joshi: In my opinion, this difficulty is not so acute now in practice as compared to jobs/ employment. However, women CS in practice are at times taken for granted not only by the clients but also by the authorities. But contrary to that, there are instances where the women CS are more respected, believed and accepted.

Dr. Harpreet: How women should strike a 'work-family' balance?

CS Jayshree S. Joshi: There is no charm in the life without being surrounded by a content family around. It is the 'time management' which is of utmost importance. However, you should be blessed enough to have other members of the family to be understanding and accommodative apart from

JAYSHREE S. JOSHI HONOURED AT PCS DAY CELEBERATION - 2017 - SEEN WITH CHAIRMAN WIRC PRAKASH PANDYA & ROC, MUMBAI S. P. KUMAR

being supportive and helping. Yes, I was one of such blessed and fortunate enough women CS to get the supportive and helping family not only at parents side but more so at the in-laws side too.

Giving due importance and priority to the family responsibilities and duties is equally important. However, today the professional commitments are so demanding that one will tend do injustice to the family responsibilities. My message to those women CS who may not be able to pursue the professional career due to family commitments - more so commitments and responsibilities to the children - is that she should not think that all her efforts and pains in taking the professional qualification has gone down the drain - a waste. I strongly believe that ***an educated and learned mother is equal to thousand teachers***. She can multiply the professionals by training her children how to become thorough professionals not only in career but even in life too.

Dr. Harpreet: What is your recipe for 'success'?

CS Jayshree S. Joshi: I strongly believe in the principle ***if you are sincere, diligent, honest and loyal to your work, god has no choice but to bless you with 'success'.***

Dr. Harpreet: What steps need to be taken by ICSI to emerge as a Global Leader in Corporate Governance?

CS Jayshree S. Joshi: In my opinion, the Members of the ICSI are the Ambassadors of the ICSI. So, right from the stage of Foundation Course, if the base is built of awareness of the substance of Corporate Governance, the long term effect thereof will be a strong image with impact as Global Leader in Corporate Governance can be achieved.

As short term steps, more number of seminars, workshops etc. organised on Corporate Governance not only at regional, national but global level can also help in strengthening the position as Global Leader in Corporate Governance.

In fact, ICSI has already created (as deserved) its position as a Global Leader in Corporate Governance. However, it is the responsibility of each and every member of the ICSI by following the principles of good Corporate Governance in letter and in spirit to strengthen this position of the ICSI as Global Leader in Corporate Governance. We,the members should create and enhance the importance of Corporate Governance in the Corporate entities and their management attached to us. Ultimately, the management has to rely upon the CS members (whether in employment or in Practice) to meet the targets of Legal Compliance.

Dr. Harpreet: ICSI is going to celebrate its Golden Jubilee commencing this year. Being one of the first women company secretaries, you have also travelled a fairly long path with ICSI. How do you sum up this journey with ICSI in your own words?

CS Jayshree S. Joshi: I have witnessed the ICSI a child that was growing up. Today, it is a mature entity. Yes, it was the time when within India neither the Corporate world nor other professionals were even aware of the existence of such an Institute or a Profession. Today, the presence of the ICSI and the CS Profession is felt, considered and accepted as essential and important not only by the Corporate world but other professionals, the Govt. and other authorities as well as by the people at large - not only in India but also in Globe. There was a phase when authorities and the Corporate World used to think that it was to give employment to the members of the ICSI, certain recognitions were given to the CS Profession. Today, there is general acceptance that to ascertain respectable level of Legal Compliance, the CS is NECESSITY. It is echoed even by the Law framers who recognised the eligibility of

the CS Professionals to appear before the Hon'ble NCLT & NCLAT in the matters like M&A, Winding up. The CS are also eligible to be registered. IPs and undertake the matters under IBC.

To begin with, there were lots of hurdles, difficulties and obstacles to even move further. Today, am able to walk around in my own speed with head high and receiving and witnessing respectful response from all concerned people around which gives immense pleasure and satisfaction of having been proved to be a successful Professional. Though there was a tough and difficult beginning, I found the journey to be challenging, colourful but ultimately giving immense pleasure and satisfaction. I have tried my best to add to the dignity of the ICSI not only by following the path of moral and ethical Principals but also imbibing the same in my all the Trainees. I am happy to place on record that almost all of them today have achieved great success in their respective professional career. Some of them are overseas also who have also created (as initially there was no recognition of CS professional qualification in that country) a position of a professional whose contribution and involvement cannot be ignored in strengthening the compliance levels of their Corporate entity.

I am very optimistic about a very bright future of the profession of CS and the name, fame and prestige of the ICSI. The proof thereof is that I insisted and guided my daughter-like niece to join the CS curriculum and make career as a Successful CS professional.

To conclude, all the members of the ICSI should take an oath to contribute our mite to enhance and strengthen the name, fame and goodwill of our Hon'ble Institute The ICSI.

Dr. Harpreet: What will be your piece of advice to the young women CS who aspire to start their practice?

CS Jayshree S. Joshi: Today, the young women CS are generally found to be very anxious to get success on day one. In my opinion, everything has to be given its due time. Even Lord Krishna told it to Arjuna - ***you have a right on your Karma and not on its result.***

Only having theoretical knowledge of subject is not enough. You should have the mind set - approach to find out a way / solution for the problem of your client within the four corners of law. No short cuts to get undue attention of the client.

Further, I strongly believe that 'First impression is the last impression'. By this I wish to give lots of importance to how you present yourself. Your attire, the dressing up pattern, body language and eye contact should pass a message of your position of a professional and not a casual, care-free and immature woman. I strongly believe that unless you respect yourself and present yourself as respectable, you have no right to expect that others should respect you.

Last but the most important: There is no scarcity of work. You should be filled with required knowledge of subject backed by total readiness to put in your all the best efforts to get the desired results. You should not ever think of adopting any unprofessional or unethical practice to procure the work. Do not be just a rubber stamp nor allow anyone to take you as such.

LIGHTING LAMP AT SEMINAR ON SECRL. AUTID & SS - AUG. 2012 -WITH DY. DIR. MCA SAJEEVAN & CS PRAMOD SHAH

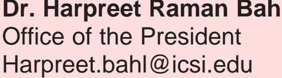
Please do not forget that Self-confidence (and not ego) and self-esteem are the basic pillars on which success of a professional can be built.

Epilogue

Jayshree's journey is indeed a marvellous living example for us to follow. If one is proud being a 'Pioneer' in any field, behind the veils, this pride is an outcome of unyielding struggle and undying spirit. As esteemed President, ICSI, CS (Dr.) Shyam Agrawal, in his message in this issue has rightly exemplified through John Stephen Akwhari story "we were sent to finish", Jayshree's is a living example that '**she finished…..as she was meant to finish**" and so is every other empowered CS women is. We all are 'sent to finish' and we would be 'finishing' for sure.

Let us salute and celebrate our spirit of womanhood 365 days a year.

Happy reading….!!!



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ARTICLES

Can Fintech disrupt the Capital markets?

P-35

Prof. Gourav Vallabh and Suraj Chatrath

Usage of technology is not new in the financial services sector, however, recently emerged technologies like Artificial Intelligence (AI), Blockchain, Robotic Process Automation (RPA), Internet of Things and cloud technologies are today disrupting almost all domains in the financial services and capital markets. India is quickly catching up with the global trends in this space. Fintech has also necessitated that regulators create an environment where both traditional capital market firms and fintech companies can co-exist based on their relative strengths and ability to serve the customer. Company Secretary professionals should also enhance their professional skills to handle the changes brought in by Fintech.

Corporate Debt Market & Management of Counterparty Risk

P-40

M. K. Datar

It is well known that large loans account for disproportionate share of NPAs. Recently RBI has initiated certain steps that would put a tight limit on banking systems' overall exposure to counterparty concentration risk over longer term to give leeway to corporate debt market development. This article reviews the performance of corporate debt market in terms of funds raised in primary market & liquidity in secondary market trading. The analysis presented suggests that primary corporate debt markets may be able to raise additional funds corporate sector may require for fresh investment expenditures, the secondary market liquidity necessary for risk management is rather limited. Whether institutional investors in Corporate Debt market would display superior risk management skills vis-a-vis commercial banks is also an open question.

Hybrid Financial Instrument

P-43

Dr. Indrajit Dube and Rohit Jain

There is no fixed rule for designing a hybrid instrument owing to the great flexibility that it provides. The financial requirement of each company varies from the other. If designed carefully; hybrid financial instruments provide an optimal way to fill the vacuum left by conventional instruments. So, It is proposed that a design of hybrid instrument will be optimal when tax, corporate governance and future access to capital, are considered synergistically.

SME IPOS: Growing Dimension of the Indian Capital Market

P-47

Rekha Handa

SMEs are an essential component to help India realize its aspirations of a global super power. Their growth however has been seen to be stunted for want of capital and here capital market has come to their rescue. Indian capital markets have provided an alternate listing and trading platform for SMEs inspired by the international examples. The growth of the SME exchange platforms in India has been traced through this article and their contribution in resuscitating the SMEs is attempted to be studied in this article. SME IPOs listed on the BSE have been picked up for analysis and a profile of these companies is studied for meaningful interpretations.

Capital Market of New India: The Reform Agenda for Inclusive Growth Emerging Financial Products – Harnessing Opportunities

P-51

Anu Amodia

The objective of this article is to reveal the fulcrum of capital market on economic growth in new India. Indian Capital Markets have shown tremendous growth in the post Liberalization era. It remains one of the most resilient globally and poised to be one of the Top destinations for domestic and global businesses to expand and invest into. As global economy moves for imminent recovery, India has shown extraordinary strength to bounce back with greater stability and sustainability. Raising capital is a strategic priority across India and role of Capital Markets has assumed far greater importance and urgency. The steep rise in number of retail investors has brought into focus further issues of corporate governance and investors protection more prominently. The efforts of the Regulators and the Government to protect the interests of investors in securities and to promote the development of, and to regulate the securities market towards enlightened Governance, has been lauded by all stake holders. The real inclusive growth also needs penetration of capital market to the last mile. The article aims to assemble investors, practitioners, policy makers and other stake holders of the Indian capital market Eco-system to provide them an excellent platform to share views, experiences and research results on every aspect of Indian capital market. The size of a nation's capital markets is directly proportional to the size of its economy. The new emerging financial products in the capital market can be a harnessing opportunity for the investors.

Alpha, Beta and XBRL: Some Observations from Indian Capital Market

P-58

D. V. Ramana

The article is an effort to show the impact of XBRL on the alpha and beta of the Indian capital market. It examines the change in alpha and beta over the years. Alpha and beta are the popular measures of the return and risk. The paper shows very clearly the inverse relationship between the risk and return of stock in the capital market. To understand the behaviour of alpha, beta before and after the introduction of XBRL the secondary data from NSE was used. The data was collected from the Prowess of the CMIE. The article says that the market has not yet responded to the introduction of XBRL. The paper urges the professional bodies and academic institutes to create the necessary awareness about the XBRL among the stakeholders of the capital market.

Taxation of Shares and Securities

P-62

Ankit N. Anjaria

As per the statistics released by the Income Tax Department for the Assessment Year 2014-15, the total reported Long Term

Capital Gains was a whopping 64,521 crore and the Short Term gains stood at 20,971 crore. The article covers the taxation of Equity Shares, Preference Shares and Debt Securities, Hybrid Instruments such as Warrants etc., Portfolio Management Schemes, Bonds, Mutual Fund Schemes, Stock and Index - Futures and Options, Currency Futures and Unit Linked Insurance Plans. The article also elaborates the tax position with respect to Buy Back of Shares, Rights issue, Bonus Stripping and Dividend Stripping etc. the author has also attempted to cover in-detail various financial instruments which are available in the market be they equity, fixed income securities etc. In addition, tax provisions, methodology with relevant examples, explaining how each instrument can be used to maximize the creation of wealth has also been explained.

Green Bonds – A game changer in raising finance for Green Projects

P-67

(Dr.) S K Gupta and Barkha Chhetri

Green bonds are like any other debt instrument but the funds raised from such bond sale are used exclusively for funding 'green' projects. Green bonds are a game changer in financing of sustainability projects. The global green bond market is growing rapidly attracting increasingly diverse issuers and investors. In January 2016, Securities and Exchange Board of India (SEBI) rolled out a concept paper defining the guidelines for issuance and listing of Green Bonds. To enter the mainstream, the green bond market will need to foster an increased awareness of what green bonds are and why they are an easy and beneficial investment. What is needed is the policy initiatives supplemented with tax benefits, interest subsidies and capital relief to the issuers as well as investors.

The Indian Capital Debt Market: Lack of It

P-73

Dr. V. Gopalan

The size of the Bond Markets in the USA and China in absolute terms are respectively 20 and 5 times the size of the Indian Bond Market. The Indian Corporate Bond Market is underpenetrated as compared to most Developed and Emerging economies. The outstanding Indian Corporate Debt to the Country's Gross Domestic Product stood at only 23% as at 31st March, 2017. This is far lower than the corresponding numbers of the Developed economies, for e.g. USA has a Corporate Debt to GDP ratio of 123%, South Korea (77%), Malaysia (44%) and Singapore (32%). Indian Debt Market is far below the International levels due to non-availability of options in Debt instruments at attractive terms. McKinsey in their recent study pointed out that taking advantage of this potential depends on policymakers' ability to build vibrant Capital Markets for which they require both the tools for a detailed diagnosis and a change management approach to carry out the necessary changes.

Alternative Investment Funds

P-77

Ashish Gupta

Alternative Investment Funds (AIFs) are a relatively new concept for raising funds. In the current environment, these funds are gaining popularity because of the fact that they cater to the requirements of the "Start up ", and "New Age" sectors, which are perceived to be either non-traditional or risky by the conventional funding sources. Depending on the objective of the fund, they may be sector specific or have a generic investment objective. In addition to funding, many of these AIFs also act as partners to the business by providing technical and management knowhow. The Article touches upon describing the context of AIFs, their different categories, the Regulatory framework within which these funds operate, various types of AIFs, the key requirements for setting up and listing of these funds on the stock exchanges, and the tax implications.

Supreme Court Affirms Capital Market Regulator SEBI's Action Against Non-Compliant Stock Brokers and Intermediaries

P-81

Delep Goswami and Anirrud Goswami

The Supreme Court has in some important judgments, highlighted in the attached article, affirmed the powers of SEBI to regulate the capital market and to prevent fraudulent and manipulative practices and thereby vindicated the role of SEBI. The Supreme Court judgments analysed in the article scores the important message to the stock-brokers and other intermediaries that any clever device used by them to circuitously bypass the clear-cut mandate of the stock market regulations cannot be allowed to go scot-free and thus, they will have to comply with regulatory measures for a healthy capital market.

State of Bond Markets in India

P-85

Aman Nijhawan

A vibrant corporate bond market is undoubtedly a very essential segment of the financial market since it not only supports the banking system in meeting the long term funding of the corporates but also a reliable source of finance in situations when the equity market is unstable. In the recent years Indian corporate bond market has experienced development both in number and volume. However, when compared with Indian government bond market, it has still a long way to go. Globally bond financing is more popular than bank financing, but in India situation is totally reverse. This article examines the current status, issues and challenges faced by the Indian bond market and recent policy initiatives taken by the regulators to put impetus in the growth of the Indian bond market.

Importance of Ratings in Capital Markets

P-89

Poonam Joshi

Capital market is a wide and complex subject matter and it takes into its ambit whole range of products, processes, regulations, rules, statistical and other data to study. The idea behind selecting the topic 'Importance of ratings in capital markets' was to revisit the subject which most of us have studied. Also, the recent updates in CRA regulations have cast more responsibility, accountability and disclosures about the issuer. As a professional, one needs to inform the Board or client otherwise. The article starts with an introduction of Capital Markets with meaning, definition and Indian capital markets. As we approach ahead, comes the Ratings - introduction, meaning, importance. Further, it takes one to Rating - criteria, process, code of conduct for CRA, regulatory framework (with a capture on recent developments) and finally to symbols with a conclusion and references at the end.

RESEARCH CORNER P-95

E- Retailing Growth in India: A Study of Influencing Factors

P-96

D. Mahipal and Professor K. Shankaraiah

The business world is changing at an inimitable pace. Further, electronic retailing will set a new platform for the expansion of the business, as E-Retailing business has proved itself as part of the new economy and a preferred way to do business across the world. An effort has been made this paper to examine the growth of E-Retailing in India and identify some of the important influencing factors of E-Retailing growth in India. The study concludes that there would be a prospective growth of E-Retailing in India if more number of people brought under the fold of internet access and training programs are conducted to enable them to use electronic shopping.

ICSI – CCGRT ANNOUNCES Unique Critical Research Analysis of Indian Companies Act, 2013

LEGAL WORLD P-103

- **LMJ 22:08:2017** Payment of commission out of profits also hit by the restrictions/prohibitions prescribed under section 76. [SC]
- **LW 55:08:2017** The corporate veil of the parent company and the target company cannot be lifted to ascertain whether the appellant was a promoter of the target company on the ground of being the promoter of the parent company, with respect to inter se share transfer between promoters.[SC]
- **LW 56:08:2017** Short-term business strategy of an entrant to penetrate the market and establish its identity cannot be considered to be anti-competitive in nature and as such cannot be a subject matter of investigation under the Act.[CCI]
- **LW 57:08:2017** While imposition of ToP liability as per contractual terms cannot per se be regarded as abuse of dominant position, the same being imposed in an exploitative manner without justification or to ensure de facto exclusivity thereby hurdling potential entries or expansion of competitors warrants investigation.[CCI]
- **LW 58:08:2017** What is relevant for an exemption notification is the manufacture of drugs, whereas what is relevant for a price fixation notification relates to sale and not manufacture. [SC]
- **LW 59:08:2017** Accordingly, this Court cannot adjudicate the issues on merits which were not addressed in the arbitration proceedings. [Del]
- **LW 60:08:2017** In the facts of the present case, it cannot be held that the breach by the respondent was the cause, much less the dominant cause for loss of anticipated profits by the appellant. [SC]
- **LW 61:08:2017** Once an export transaction has been used for seeking discharge of Advance Authorizations issued under the CA, the same export transaction cannot be used for seeking rebate of duty under CER. [Del]
- **LW 62:08:2017** The Agreement in question was crucial for setting up of the plant project in question for manufacturing of the goods, the expenditure in the form of royalty paid would be in the nature of capital expenditure and not revenue expenditure. [SC]

FROM THE GOVERNMENT P-89

- Corrigendum
- National Company Law Tribunal (Amendment) Rules, 2017
- Clerification regarding applicability of exemption given to certain private cornpanies under section 143(3)(i) of the Companies Act, 2013- reg.
- Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017
- Companies (Removal of Difficulties) Order, 2017
- Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017
- Companies (Appointment and Qualification of Directors) Amendment Rules, 2017.
- Amendments to Schedule IV of the Companies Act,2013
- Companies (Incorporation) Second Amendment Rules,2017
- Action against Exclusively Listed Companies and its Promoters/ Directors pending Exit Offer to the Shareholders
- Online Filing System for Alternative Investment Funds.
- Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 – Amendments
- Position Limits for Agricultural Commodity Derivatives
- 14 Online Filing System for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)
- Investments by FPIs in Corporate Debt
- Disclosure of divergence in the asset classification and provisioning by banks
- Guidelines for participation/functioning of Eligible Foreign Investors (EFIs) and FPIs in IFSC - Amendment
- Amendment to Investor Grievance Redressal System and Arbitration Mechanism
- Guidelines for issuance of ODIs, with derivative as underlying, by the ODI issuing FPIs.
- Online Filing System for Foreign Venture Capital Investors.
- Investments by FPIs in Government Securities
- Policy of Annual Inspection of Members by Stock Exchanges/ Clearing Corporations
- Monitoring and Review of Ratings by Credit Rating Agencies (CRAs)
- Clarification on monitoring of Interest/ Principal repayment and sharing of such information with Credit Rating Agencies by Debenture Trustees
- Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- Acceptance of e-PAN card for KYC purpose
- Participation of Non Resident Indians (NRIs) in the Exchange Traded Currency Derivatives (ETCD) segment
- Review of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism
- Margin Trading Facility- Clarification

OTHER HIGHLIGHTS P-99

- Members Restored
- Certificate of Practice cancelled
- Ethics & Sustainability Corner
- GST Corner
- CG Corner

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- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription/Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
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Contact

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

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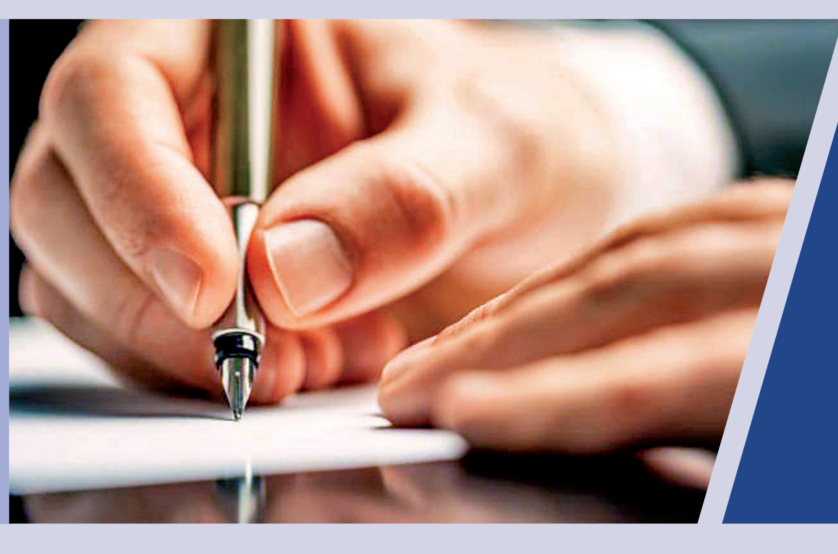
ARTICLES



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Can Fintech disrupt the Capital markets?

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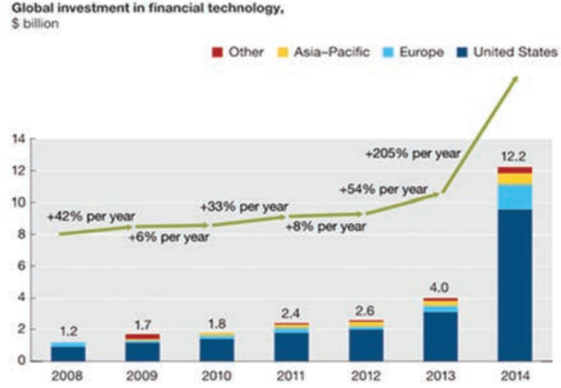
"Fintech" is a commonly used phrase, often quoted to refer to technology-enabled firms that are bringing disruption to the capital markets and financial services space through innovative use of technology. While some may ignore this as a hype, however, the pace at which these technologies are disrupting the entire financial services landscape, its only a matter of time that the traditional financial services and capital market firms have to shun their resistance to change and collaborate such technologies or else they will struggle for survival.

Fintech today is no more a buzzword but a market reality. The article studies some of the key market segments like lending, payments, investment technology, custodian and regulation technology to understand the impact of fintech in the financial services and capital markets. It is very important that the entire ecosystem including traditional capital market institutions, regulators and professionals adapt to the new paradigm.

Financial technologies evolved over the last few decades from simply electronic trading to digital banking and then spread across various domains of financial services and capital markets like payment, remittance, lending and equity funding through crowdsourcing, trading, compliance etc. As per Ernst & Young report on "Capital markets: Innovation and Fintech landscape", over the last few years there has been a substantial increase in utilization of technology in capital markets spanning across front, middle and back-office. These solutions are using technological advances such as Artificial Intelligence (AI), Robotic Process Automation (RPA), distributed ledgers and cloud technologies, among others, to deliver innovation to problems that was previously hard to solve. Fintech has also dissected the entire financial services value chain to provide solutions for single element of that chain.

Globally, nearly $23 billion of venture capital and growth equity has been deployed to Fintech over the last five years, and this number is growing quickly ($12.2 billion was deployed in 2014 alone).



Source: CB Insights, Mckinsey

According to a PricewaterhouseCoopers study "Capital Markets 2020", by year 2020, majority of the technology and operational infrastructure in financial services and capital markets will not be operated by the banks and traditional capital market firms but by financial technology (Fintech) companies who will bring cost and efficiency benefits. Mckinsey in its study "Cutting through the Fintech noise" notes that this new fintech era is being shaped by changes in market conditions, new regulations, and shifts in consumer demands and behaviors. The study finds that number of fintech

companies in 2016 were over 2,000 compared with only 800 in April 2015.

Collaborative partnerships will become increasingly important as fintech's seek scale and traditional financial institutions seek digital expertise. World economic forum recently came up with a report on key innovation clusters within financial services and identified six core functions where disruptive innovation will happen in financial services. These include Payments, Market Provisioning, Investment Management, Insurance, Deposits & Lending and Capital Raising. We will analyze some of these financial services and capital market segments.

Source: World Economic Forum

LENDING

Lending has been the domain of traditional brick and mortar banks and financial institutions since decades. However, technology is rapidly moving the center of gravity from these traditional institutions to an alternative new age technology enabled fintech companies. These fintech startups leverage digital technologies to automate the loan processing decision process at lower costs as compared to traditional banks. Numerous fintech companies have recently come-up in the lending space which are changing the entire value chain of lending. Some of them are in form of P2P (peer to peer) lending and others are using crowd funding as a way to establish the alternative. This impact is more pronounced in the retail lending space. Fintech has enabled faster loan application processing, deeper credit risk management, quick approvals and automation of underwriting processes, which was not possible in traditional model due to various productivity and efficiency concerns. Due to lower cost of operations and scalable technologies, fintech companies in some cases are able to price the lending products cheaper than the traditional banks. Another area where fintech companies have scored an edge over the traditional banks is fraud detection through usage of the data. In last few years, fintech has also disrupted the small business lending space, however, it is still early

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days. Traditional banks are very strong on business lending as it involves relationship element whereas fintech are more technology focused. According to a research, Fintech revenues from lending and financing segment are set to reach $10.5 billion globally by 2020, which is double of $5.2 billion in 2016. Globally, Sofi, Lending Club, Prosper, onDeck, Kabbage and funding circle are some of the prominent names in this category.

EQUITY CROWDSOURCING

Over the last few years, technology driven equity crowdfunding platforms is one of the areas, which has attracted a lot of attention from companies as means to raise capital compared to traditional sources of capital. Most of these platforms allow investors to invest in private companies either as a marketplace or akin to a venture capital firm. These platforms provide entrepreneurs an access to diverse set of investors to raise capital. Most of these platforms charge a fee to their customers based on the amount of capital raised through their platform. The interesting part about these platforms is that it provides access to small investors and place them alongside large investors for any investment opportunity. Additionally, these platforms leverage technology and operational efficiency to reduce cost of raising capital for entrepreneurs. Some of the prominent names globally in this space are AngelList, circleUp, Wefunder, seedinvest, Gofundme etc.

INVESTMENT TECHNOLOGY

Another domain attracting keen interest from both retail and institutional investors is the investment technology domain. One such example is automated investment management where the investment amount, timing of investment, portfolio monitoring and time-to-time rebalancing is done by an algorithm instead of a human being. These processes require high human touch earlier and are now being automated through fintech.

On retail investment side, there has been advent of robo-advisor platforms, which give smarter portfolio planning, asset allocation and risk assessment tools in the hands of retail investors. These platforms leverage technology to offer economical and automated solutions for investing. Some of the well-known global players in this space are Wealthfront, betterment, motif etc. On the institutional side, technology is being leveraged for superior asset allocation and rebalancing.

CUSTODIANS

Custodian banks are financial institutions, which hold client's securities for safekeeping in electronic or physical form. They also help customers with settlements, account administration,

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taxation support and various forex activities. Typically, these firms charge a custody fee based on the account holdings and activity. Custodial banks are one of the layers between a typical buyer and seller of the financial security.

A number of Fintech companies have sprung up which are trying to disrupt the custodial space by bringing in automation for settlements and new concepts like “Smart contracts” using Blockchain technology. Smart contracts are intended to facilitate, verify, or enforce the negotiation or performance of contracts and are akin to legal contracts. These smart contracts would enable automation of process intensive custodial systems related to servicing of various types of financial instruments. While block technologies are still in their nascent stage, however, most of the large banks expecting a structural shift have already setup technology labs around Blockchain trying to figure out the appropriate approach. As per Ernst & Young report on “Capital markets: Innovation and Fintech landscape”, notes that “the potential of distributed ledger technology to provide an immutable asset ledger-supporting custody and asset servicing processes is significant”.

PAYMENTS/REMITTANCE

Alongside lending, payment is another domain where fintech has made significant inroads. Payments were once traditional bank’s stronghold is now getting drastically disrupting with new age payment and remittance providers which are much more nimbler than the conservative large banks and financial institutions. Additionally, the convenience provided by the new fintech players is far superior than the traditional banks. All spaces ranging from consumer payments to corporate payments are being disrupted by fintech. Retail payments space has witnessed newer innovations like wallets and peer-to-peer (P2P) mobile transfer. Mobile wallets allow customer to transfer funds from their cards linked to their wallets and P2P transfer allow customers to transfer money between their mobile devices. Digital currency solutions for retail payments are also enabling P2P transfer without a need for an intermediary. Bitcoin is a well-known digital currency based on the blockchain. A recent report by a large international bank BNY Mellon notes “Indeed, while it is possible that the Bitcoin may not succeed in the long-term as a cryptocurrency, it has the technology behind it – the blockchain – that is the real innovation, which a growing number of banks (including BNY Mellon) believe may be effectively leveraged to transform payments. The structure of the blockchain could, for instance, help to reduce risk and transaction costs, and improve speed, efficiency and transparency”. Forex payment space is also witnessing newer non-bank players coming into the market. Corporate payment space has seen a considerable activity in form of standardization of payment frameworks across geographies.

CORE INFRASTRUCTURE AND OPERATIONS

Fintech has touched the entire value chain in the capital markets from front office to back office including the core operations and infrastructure piece. For example, tasks like client servicing, research, pre-trade analytics, trading, post trade analytics, data management and post trade operations like settlement, reconciliation, compliance, reporting, invoicing, risk management and taxes are being automated. In fact, in a recent EY analysis titled as “Capital markets: Innovation and Fintech landscape”, it was identified that over 35 functions spread across 10+ domain present a significant opportunity for disruption by fintech.

Domain	Function
Client servicing	Client onboarding
	Client insight/analytics
	Research
	Client relationship management
	Issuance, mergers and acquisitions
Trading	Pre-trade analytics
	Trade execution
	Post-trade analytics
Business management	Cost transparency
	Business continuity management
Data management	Market news and data
	Reference data
Post-trade Operations	Clearing and settlement
	Collateral and margin management
	Custody and asset servicing
	Treasury operations
	Reconciliations
	Transaction reporting
	Fees and invoicing
	Tax operations
Risk control and management	Credit, market and liquidity risk
	Enterprise risk management
Financial Control	Capital management
	Independent price verification
	Product control
	Financial/regulatory reporting
Compliance	Regulatory horizon scanning and compliance
	Anti-money laundering and surveillance
	KYC
	Anti-bribery and corruption
	Employee surveillance, market abuse and conduct
	Policy setting, monitoring and testing
IT	Cybersecurity
	Identity and access management
	IT service operations

Source: EY report on capital market innovation and fintech landscape

REGULATION TECHNOLOGY

Regtech is a domain within fintech which refers to regulations technology. Regtech is the usage of technology for managing regulatory requirements and compliances. It has become very crucial as the reporting requirement and frequency increases in the financial markets. Current regulations need deep analysis of large sets of data clubbed with analytics.

Additionally, regulators now want to view the data at very frequent intervals, where new technologies like cloud computing, big data and blockchain can be harnessed.

There are multiple use cases where regtech can leverage the benefits of technology like improving the cost of compliance and assisting firms to proactively identify risks and mitigate them. Some of the specific areas getting attention in regtech are identity verification, fraud monitoring, risk data aggregation, stress testing, compliance risk analysis, KYC, Anti-money laundering (AML) and compliance reporting.

INDIAN CONTEXT

Indian fintech ecosystem is constantly evolving with significant growth witnessed in last 5 years. As per KPMG and NASSCOM report "Fintech India", the Indian fintech software market is forecasted to touch USD 2.4 billion by 2020 from a current USD 1.2 billion, as per NASSCOM. The transaction value for the Indian fintech sector is estimated to grow at CAGR of 22% from USD 33 billion in 2016 to reach USD 73 billion in 2020. Almost all services across the value chain like lending, wallets, insurance and infrastructure are getting redefined by the fintech revolution. Some of the prominent fintech companies which have rapidly grown in last few years are Paytm, Billdesk, Mobikwik, Freecharge, Policybazaar etc

From government perspective also, there have been various initiatives to move towards a cashless society. For example, demonetization has resulted in significant increase in digital transactions from 671 million digital transactions in November 2016 to 894 million transactions in March 2017. Further, governments other initiatives like digital India are providing more opportunities for fintech companies to provide more product and services which traditional banks were not able to offer.

REGULATORS VIEW ON FINTECH

In India, RBI has been very supportive and has acted as an enabler for development of fintech ecosystem and has introduced policy frameworks to appropriately regulate the fintech companies. In 2016, RBI issued a discussion paper for peer-to-peer lenders who connect borrowers with lenders.

RBI has also constituted an inter-regulatory Working Group (WG) to study the entire gamut of regulatory issues relating to Fintech and Digital Banking in India. The Working Group has been set up in view of the growing significance of Fintech innovations and their interactions with the financial sector as well as the financial sector entities. In view of the competition, RBI is also asking banks to reorient their business model and look at collaborating with more efficient players after assessing the likely impact of disruption.

Globally also, Central banks and regulators have formed forums and working groups to better understand these new technologies and its impact on the overall financial system. For example, in USA, Securities and Exchange Commission has formed panels where issues such as blockchain technology, automated investment advice or robo-advisers, online marketplace lending and crowdfunding are discussed and its impact on investors is studied.

Since most of the regulators come from traditional background and have been in these institutions for a long time, it is really difficult for them to comprehend large banks and financial institutions being disrupted by small companies driven by

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software engineers. Regulators should be open to dialogue with various industry participants and fintech companies and gather market views in order to promote innovation and create common integrated standards.

FINTECH AND COMPANY SECRETARIES

Company secretaries should keep a keen watch on the technology and trends developing in the marketplace, as it would have a deep impact on the profession. These new technologies are creating more opportunities and changes in business processes, which company secretaries should adapt to. Company secretaries are responsible for conducting due diligence in banking and financial services industry whereby they check compliance with the provisions of various laws, rules and regulation. Company secretaries need to adapt the process of due diligence keeping in mind that the new age fintech companies are completely different from traditional brick and mortar banks. As fintech becomes more prevalent, company secretaries would also need to factor in newer type of risks like data security and anti-money laundering in their due diligence exercise.

IN A NUTSHELL

Disruptive innovations in financial technologies are today rapidly changing the face of financial services across the value chain. At the heart of this data-based innovation is the value that these fintech companies are delivering to their customers efficiently and at lower cost. Traditional banks, institutions and capital market firms are now stepping up to the challenge being presented to them by these small, nimble and technology-enabled fintech companies. Some of the key industry segments like banking and capital market has seen the maximum disruption. It is imperative that the incumbent banks, financial institutions and capital market firms adapt to these technologies simultaneously by embracing technology internally and also collaborating with the new fintech startups so that they can trade their scale for gaining technological strength. At the end, the incumbent capital market firms have to adapt to serve their customers in a best possible manner. CS

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Corporate Debt Market & Management of Counterparty Risk

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As the bank loan stress situation gets prolonged the public attention is understandably focused on actions (or inactions) of the lending bankers and borrowers. While Government and RBI are initiating various short term steps that would help designing a resolution process are extensively commented on, certain long term measures initiated by the RBI has missed the attention of analysts and researchers. Even as resolution was moving in slow lane, the RBI has initiated certain steps that would put a tight limit banking systems' overall exposure to counterparty concentration risk over longer term.

> Even as resolution of stressed banks assets is moving in slow lane, the RBI has initiated certain steps that would put a tight limit banking systems' overall exposure to counterparty concentration risk over longer term to give leeway to corporate debt market development. But whether institutional investors in Corporate Debt market would display superior risk management skills *vis-a-vis* commercial banks is an open question.

The proposed measures are distinct from exposure limits set for individual banks regarding maximum exposure they could take over a single company and a business groups. The proposed limits, termed as "Enhancing credit supply for large borrowers through market mechanism" notified in August 2016 are effective from April 1, 2017. As per these guidelines at least half of incremental fund requirement by large corporate are expected to be financed through borrowings from corporate debt market while banking system could fund up to a maximum of the remaining half. If Banks' exposure exceeds this 50% limit it would be necessary for banks to make higher provisions (additional provisions of 3% percentage points). Such extra provisions would be distributed among different banks based on % share of each bank in overall funded exposure to such large corporate entities. Besides, such extra exposure would carry higher risk weight of 75 percentage point over and above normal risk weight. This burden of additional risk weight would also be distributed among different banks in the form of risk weighted assets in proportion to each bank's funded exposure to the specified large borrower. The cut off limit for defining large borrower is Rs. 25,000 crore for 2017-18. Therefore any company that has borrowed more than Rs.25,000 crore can fund only 50% of its incremental fund requirement from banks. Given the extra regulatory burden (by way of additional provisions and risk weights) banks would face, if they wish to fund in excess of the set limit, banks would need to charge higher interest rate by factoring additional provisions and capital (arising from larger risk weight). Thus by making bank loans costlier beyond a limit companies are encouraged to tap additional funds.

If anyone thinks Rs. 25,000 crore limit is too high and therefore may not pinch too much immediately it needs to be pondered over the fact that the exposure is defined to include both fund based and non-fund based credit limits. More importantly the limits would be progressively reduced to Rs. 15,000 crore for FY 2018-19 and Rs. 10,000 crore for April 1, 2019 onwards. While the success of the proposed system would also depend on monitoring of exposure at the level of entire banking system that includes RRBs, co-operative banks and branches of Indian Banks abroad, To erect such monitoring mechanism is admittedly quite demanding. But the success of the new mechanism would also be contingent on state of corporate debt market so as to support such fund raising by large borrowers through debt securities. While the limits set at

* The views are personal.

It needs to be remembered that w.e.f. April1, 2019 the prudential limits set for individual banks too would be re-set to align them with international BCBS standards. At present, banks can lend up to 25% of their capital funds to a single borrower while maximum permissible group exposure limit is 40%. In addition, banks are permitted additional 5% exposure (10% to a business group) if it is extended for infrastructure segments.

banking system's level may not be effective immediately these may become pinching if not biting from April 2019 onwards.

It needs to be remembered that w.e.f. April1, 2019 the prudential limits set for individual banks too would be re-set to align them with international BCBS standards. At present, banks can lend up to 25% of their capital funds to a single borrower while maximum permissible group exposure limit is 40%. In addition, banks are permitted additional 5% exposure (10% to a business group) if it is extended for infrastructure segments. Further, bank Boards at their discretion, are allowed to assume additional 5% exposure both to a company & a business group. Come April 2019, and these limits would be set hereafter in terms of Tier 1 capital alone. Currently, these limits are set in terms of % of Total (i.e. tier I + tier II) capital. Board discretion to take additional exposures is retained but no relaxation is allowed for infrastructure segments. More interestingly, the group limit is no different from single borrower limit. Thus besides the system wide limit on exposures to large corporate entities, prudential limits on exposure by individual banks would further reduce banks' ability to finance large corporate entities. In such situation borrowing from debt market would be one major alternative.

DEVELOPMENT OF DEBT MARKET

Development of Debt market is on the reform agenda since the early days of financial sector reforms. In absence of well-developed debt market results in heavy reliance of corporate sector on borrowings from financial institutions & banks. It also limits risk management tools that are available to different participants as derivative markets development presupposes well diversified, liquid debt markets. Though capital markets have come off age, it is centered largely on equity & equity linked derivatives. Indian debt markets were and still are predominantly government security oriented. Government is able to raise significant portion of its fund requirements through issue of securities.

As Government securities were part of mandated investments by banks as also long term investors like insurance companies & provident fund primary market was thriving but secondary market trading was thin. While there have been several improvements in Government debt market, corporate debt market still remains largely an unfinished agenda. However, importance of vibrant debt market is also gaining importance in the light of high stressed loan situation facing commercial banks. It need to be noted that the proposed banking system wide limits for exposure to large corporate entities emanates from recommendation of the Khan Committee Report on Corporate Bond Market (RBI, 2016).

It is well known that large loans account for disproportionate share of NPAs. Recent Financial Stability Report by RBI has stated that while top 100 accounts of SCB account for 15% of total credit, NPAs in such account for 25% of total NPAs. Such a situation has led to attribute stressed loan situation in part to banks' significant exposures to certain sectors such as Road/Port construction, Power Generation. It would therefore be necessary to develop alternative financing channels for investors so that future exposure of banking system to such projects would be contained at lower levels. For this to materialize corporate debt market in long term debt securities - both in primary & secondary segments - should be deeper & vibrant.

STATE OF CORPORATE DEBT MARKET

Table 1 below gives some indicators of primary corporate debt market. The amount raised per annum has increased with some year to year variation. Private placement of debt has increased steadily while amounts raised through public issues have remained comparatively small. Institutional investors have a prominent role. This enables corporates to raise funds at short notice as compared to public issue.

Table 1: Primary Corporate Debt Market

(Amounts in Rs. Bn.)

Year	Public issues by Non-Government Companies		Pri. Plac. of Corp. Debt (4)	PSU Bonds			Grand Total (3+4+7)	% share of PSUs
	No. issues (2)	Amount (3)		Tax free (5)	Taxable (6)	Total (5+6) (7)	(8)	(9)
2010-11	6	26.3	218.8	16.4	587.9	604.3	849.4	71.1
2011-12	14	75.3	261.3	280.2	599.8	880.6	1217.2	72.3
2012-13	6	22.7	361.5	148.6	378.5	527.2	911.4	57.8
2013-14	17	58.6	276.0	342.4	166.2	508.6	843.2	60.3
2014-15	23	77.4	404.1	-	372.8	372.8	854.3	43.6
2015-16	9	27.1	458.1	435	90.05	525.0	1010.2	52.0

Source: RBI, Handbook of Statistics & SEBI, Handbook of Statistics

Similarly large amounts have been raised by PSUs through taxable and tax free bonds. But the amounts raised display large yearly variations. The activities in primary debt market have remained arrested becomes clear in comparison with outstanding Commercial Papers - which has a maturity of 3/6 months but can be rolled over - to vary over time but have remained higher or equal to yearly raisings through corporate debt securities. Commercial papers sprung in times of ample liquidity when corporates can access CP market to meet a part of their working capital requirement. Amounts raised through corporate debts may be juxtaposed with incremental bank credit. During 2015-16 bank credit rose by Rs. 7132 billion as against issuance of debt securities worth Rs. 1010 billion. However, total incremental bank credit may not be relevant as sectors such as agriculture & retail would not matter in relation to financing needs of corporate borrowers. But even if incremental loans to manufacturing & services sector alone are considered, incremental loans would be in the vicinity of about Rs. 3000 crore. The amounts raised in primary market are thus small both in relation to short term funds raised by corporates through CPs as also incremental loans raised by industry & services sector from banks.

The differential advantages of debt market *vis-à-vis* come from transactions based approach in securities lending as against relationship factor prevalent in bank lending. The transactional efficiency would be linked to trading & liquidity in the secondary market. Only if markets are liquid, investors would be able to vote by their feet if the performance of the company is not up to the desired standards. Moreover, certain class of investor would stay away from less traded instruments if they have strong preference for liquidity.

Table 2: Activities in Secondary Corporate Debt Market

(Amounts in Rs. Bn.)

Year	Trading Turnover in Corporate Debt		Stock of Debt Securities *		MF Debt transactions	
	No.	Value	No.	Amount	Purchase	Sale
2010-11	44,043	605.2	5341	4511.3	764.1	515.3
2011-12	51533	593.7	6058	4052.8	1116.7	781.9
2012-13	66383	738.6	5892	4988.1	1523.4	1049.9
2013-14	70887	970.8	2607	5235.9	1538.1	994.8
2014-15	75,783	10,91.3	3101	6364.4	1717.1	1130.1
2015-16	70,123	10,22.5	2895	7315.6	1497.5	1121.4

Source: SEBI, Handbook of Statistics

*Stock of rated debt securities with >1 year maturity.

Table 2 lists certain parameters related to trading in corporate debt securities. Trading activity both in terms of number of trades and value have increased steadily over the last few years. The turnover is understandably low in relation to equity turnover but its low in relation to listed stock of corporate debentures as well. Turnover ratio is admittedly a crude measure of liquidity but even on that count the improvement is marginal as turnover as a proportion of listed stock of securities increased from about 13% in 2010-11 to 14% in 2015-16.

The developments in corporate debt markets are shaped by institutional investors. This is hardly surprising as bulk of financial saving of Household sector is intermediated through banks (40%) Insurance (18%) and Pension/provident funds (14%). Pension / insurance funds are mandated for G sec investment to a large extent, MFs tend to invest portion of their assets under income schemes in corporate bonds who carry higher coupon though they are bundled with non-sovereign risks. The Assets under Management (AUM) with MF were Rs. 1646 Bn. As at December 2016. Of these Rs. 1075 Bn. (65% of AUM) were invested in income/debt oriented schemes. Within income schemes 69% funds were under Debt schemes which invest in long/medium term securities while 28% were in liquid / money market funds and only a small portion was deployed in Gilt schemes. AUM under Debt oriented schemes have increased remarkably from Rs. 292 Bn. At the end of March 2011 to 516 Bn at March end 2015 and Rs. 78 Bn. In December 2016. MF debt transactions are likely to be corporate debt securities related transactions. While open ended debt MF schemes are subject to greater amount of liquidity risk, arising from potential request for redemption from investors, long term investor like Insurance / pension funds tend to enter the market as purchasers. As the funds are mobilized for long duration, they prefer to stay invested which limits the trading & liquidity of instruments.

Improvements in liquidity in debt markets are high on agenda of government and regulators as reflected in recommendations of Khan Committee (RBI, 2016). Important among these recommendations are related improvement in liquidity. These are introduction of Repo transactions in Corporate debentures; it suggests structure of a tripartite repo where a third pay would intermediate to provide additional comfort and acceptance by RBI of corporate bonds under LAF repo are most noticeable. Similarly a look at research / regulatory report would indicate that there is a convergent view about the future policy direction to increase depth & liquidity in corporate bond market and even about direction of next set of policy measures. (Chaudhary (2014), SEBI (2014) and RBI (2016) .

IMPLICATIONS

The proposed measures initiated by RBI are guided by twin considerations of limiting banking system's large exposure to corporate borrowers as also to create a space for debt market to finance at least half of incremental financing requirements of large corporate entities. This task may not appear daunting given the current tepid investment climate and reluctance on part of corporate sector to undertake large capital exposure. Therefore, it may not be too difficult for primary corporate debt markets to enable raising of a part of fresh requirements of large corporate entities through issue debt securities. But would corporate debt market be able to manage risk inherent in such large exposures is still an open question. As noted above, institutional investors like Mutual Funds as also insurance & pension funds are active in secondary debt trading in corporate securities. Whether such institutional investors would display superior risk management skills *vis-a-vis* commercial banks is an open question. Recent instances of MFs suspending redemption facilities due to defaults on interest payments on certain debt securities indicates need to refine MFs approach to deal with risk arising from counterparty exposures. This is linked to liquidity in corporate debt securities and accounting policies of MFs regarding valuation (marked to market) of corporate securities. Deep & liquid markets would alone help capture early signs of emerging stress in corporate sector as reflected in changing price trends. Accounting policies, on the other hand, would incentivize MFs to churn their portfolio in response to changing prices reflecting early signs of credit risk. In absence of liquid corporate debt market, MFs ability to manage large counterparty risk get constrained and may be no different from that of commercial banks who by the nature of loan exposures generally don't have an exit option. In the final analysis both Banks and institutional investors like MFs are financial intermediaries. The ultimate risk is with retail investors who put their savings in bank deposits or subscribe to debt MF schemes. The proposed measures to increase liquidity in corporate debt securities are therefore of crucial importance to improve risk management/ sharing skills of institutional investors; whether these are banks or MFs. CS

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Hybrid Financial Instrument

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The hybrid financial instrument is designed to take into account – share ownership, capital markets, and business culture.[1] In cross-border transactions, the companies try to take advantage of the difference in tax policies of various jurisdictions with the use of hybrid instruments. The instruments are designed such that they are treated as debt in one jurisdiction and as equity in the other to take advantages of both the categories.[2] This paper takes three parameters, i.e. tax, corporate governance and future access to capital in the design of the hybrid financial instrument.

In cross-border transactions, the companies try to take advantage of the difference in tax policies of various jurisdictions with the use of hybrid instruments which take into account share ownership, capital markets, and business culture. The instruments are designed in such a way that they are treated as debt in one jurisdiction and as equity in the other to take advantages of both the categories. This article takes three parameters, i.e. tax, corporate governance and future access to capital in the design of the hybrid financial instrument.

TAX – CONSIDERATIONS

Debt and equity are treated differently in tax law. Debt is met with a relatively preferential treatment compared to equity since interests paid on debt are tax deductible. From this principle, the ideal logic would be that the optimal capital structure must be all debt. However, it is not so; the tax rate is cheaper on dividends paid to the investor than the interested company pay on the capital raised via debt.[3] The company will convince its investors of the benefit by raising capital by debt because of tax benefits.[4]

However, a problem arises as there exists a confusion over how to classify, for tax purposes, instruments that do not closely straightforwardly resemble 'ordinary' debt or 'ordinary' equity i.e. hybrid instruments. There is no significant theory or legal concept in tax that distinguishes debt and equity. Theoretically, debt and equity are in essence indistinguishable, and in cases of hybrid instruments, the distinction is further blurred as to whether the tax treatment of that instrument will be debt or equity.[5] The only way to enforce the distinction in the context of hybrid instruments is to characterise such instruments as either all debt or all equity. This provides companies with an opportunity to use hybrid instruments to satisfy the requirements of debt to enjoy tax benefits but also give the advantages of equity to investor. However, these over-ambitious approaches of companies sometimes lead to expensive litigations resulting in enormous amounts of money being exposed at stake[6].

[1] See Ronald J. Gilson and Mark J. Roe, 'Understanding the Japanese Keiretsu: Overlaps Between Corporation Governance and Industrial Organization', 102 Yale Law Journal 871 (1993); Mark J. Roe, 'Some Differences in Corporation Structure in Germany, Japan, and the United States', 102 Yale Law Journal 1927 (1993); Bernard S. Black and John C. Coffee, 'Hail Britannia? Institutional Investor Behavior Under Limited Regulation', 92 Michigan Law Review 1997 (1994).

[2] Tufano P., Financial Innovation, in Handbook of Economics of Finance (Constantinides G.M., Harris M. and Stulz R.M. eds), Vol. 1, Part 1, 2003, Ch. 6, at 307-335.

[3] Miller M.H., 'Debt and Taxes', The Journal of Finance, 32(2) 1977, 269 and 270, where the author says the value of the firm in equilibrium will be independent of its capital structure but "there would be no optimum debt-equity ratio for any individual firm".

[4] Farrar D. and L. Selwyn, 'Taxes, Corporate Financial Policy and Return to Investors' 20(4) National Tax Journal, 444-454; Myers S.C., 'Capital Structure', 15(2) The Journal of Economic Perspectives, 2001, 87-88; Stapleton R.C., 'Taxes, the Cost of Capital and the Theory of Investment', 82 The Economic Journal, 1972, 1273-92; Stiglitz J.E., 'Taxation, Corporate Financial Policy and the Cost of Capital', 2(1) Journal of Public Economics, 1973, 1-34.

[5] If payments to holders of both debt and equity were deductible, the corporate income tax would effectively be abolished by being reduced to a tax solely on retained earnings. Allowing deduction of payments under neither debt nor equity would require the elimination of a longstanding element of tax policy that interest payments should be deductible as an ordinary and necessary cost of doing business. Thus, either of these solutions would entail dramatic changes in the structure of the corporate income tax.

[6] Cochin International Airport Ltd. v. Presiding Officer, DRT & Ors., (2010) 173 DLT 247. See also Khoday Distilleries Ltd. v. CIT, (2009) 1 SCC 256; Narendra Kumar Maheshwari v. Union of India, 1990 (Supp) SCC 440.

In India, the use of hybrid instruments have picked up fairly recently, and use of hybrid instruments such as convertible debentures began around the 1980s. A big reason for the popularity of hybrid instruments was the tax advantage. However, the over-ambitious approach of the companies in designing hybrid instruments, focussing only on tax advantages, has resulted in litigations, especially the hybrid instrument i.e. Optionally Fully Convertible Debentures.[7] The Tribunal observed, "These tax benefits could be further optimised by hybrid financing instr*uments such as profit participating loans, convertible loans or where instrument is treated as debt in the source country of the income (i.e. resulting in tax deductible interest) and as equity in the residence country of the lender (i.e., where lender may claim the participation exemption of interest income because of its characterisation as distribution of profits)".* [8] However, a sole focus on tax benefits may result in 'Thin Capitalisation'.

Thin Capitalisation refers to a situation in which capital of a business is made up of the greater portion of debt than equity, and its such gearing or leverage ratio i.e. debt equity ratio, is too high. The tax treatment being given to the equity capital and debt capital being fundamentally different, it is often more advantageous in an international context to arrange financing of a company by loan rather than by equity. It does affect the legitimate tax revenues of the source country in which business is carried out because while dividends and interest are taxable at the same rate in the hands of the recipient in the source country, e.g. under India – Belgium tax treaty. That is how tax considerations at times do result in a company being too thinly capitalised, or, to put it differently, financed by a disproportionate ratio of debts.

A classic practical example to understand the use of tax planning using hybrid instruments can be the case of Tata Steel issuing hybrid perpetual notes in 2011 to raise $333 million of capital. Tata Steel, at the time of issue, already had a high debt-equity ratio of 2.3. Therefore, raising capital by debt was not a good option available to the company. Further, it did not want to issue equity as it would have diluted holding of the owner. They needed an in-between thing. The company opted for hybrid perpetual notes with no stated fixed maturity. Also, they are considered to be subordinate to creditors on the repayment obligations of the company and hence are expensive. However, since they have the feature of both debt as well as equity, it allows the securities to be counted as debt for tax purposes and as equity for ratings.

From capital finance perspective the hybrid instrument designed as a debt instrument. For example, Compulsorily Convertible Debentures not considered as debt for tax. There are many hybrid instruments which lie in the grey area between debt or equity for taxation.

CORPORATE GOVERNANCE - CONSIDERATIONS

Tax[9] and Regulatory[10] considerations seem to be the two straightforward considerations which come to one's mind while designing hybrid instruments for capital financing. However, the differences in tax, accounting and regulatory treatment give rise to distortions which greatly affect the more often than not neglected

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aspect of corporate governance.[11] The flexibility of combining governance and cash-flow rights through hybrids has real implications for the governance of companies, offering some advantages that could not achieve in the same form by simply combining standard debt and equity contracts (i.e. ordinary shares).

ALIGNING EX-ANTE INCENTIVES

The principal-agent model has long been the dominant economic theory of corporate governance.[12] The agency costs analysis identifies problems in corporations, particularly regarding how investors of equity and debt capital find it difficult to observe to regulate managerial discretion. As a result, the directors may put into practice opportunistic behaviours such as transferring company resources for their self-enjoyment, seeking higher than market salary or job security. They need to be controlled so that a formal control and incentive compensation system is established which will eventually be reflected in the company's shares value.[13]

The existence of debt can also mitigate these agency costs of equity. In fact, the larger the part of the corporate finance financed by debt, the more control and pressure on the management the debt holders will exert and this will be useful for the shareholders too. Since debt legally obliges the company to pay out cash to satisfy the bondholders' contractual rights, the amount of 'free' cash available to managers to spend on their benefits and perquisites is reduced.[14] Managers have a strong incentive to avoid a financial distress situation, because, if the company is declared insolvent, they may lose all their benefits of control and reputation. Debt allows the company to raise new funds without diluting the shareholders' residual claim. In simple words, debt presents a right to a fixed asset rather than any ownership in the company, which is why these payoffs are less sensitive to the distribution of information.[15] However, debt finance has its agency costs. To maximise shareholders' benefit, managers may invest in a way that transfers wealth from the bondholders to the shareholders. It is so often seen that the managers exploit the limited liability of the company to invest in riskier projects with higher returns instead of choosing more valuable investments with the lower risk factor. This creates an unfair situation which acts against the debt instrument holder. In the scenario mentioned above, equity holders gain the

7. Sahara India Real Estate Exch. Cor. Ltd. & Anr. v. SEBI, AIR 2013 SC 3829.
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most if investment yields large returns otherwise, even if the investment fails, their risk is limited. Economists have termed this problem as "asset substitution".

Similarly, when the company's cash flow from existing assets does not provide a sufficient return for the shareholders, managers have an incentive to discriminate and eventually turn down some profitable investment opportunities. More often than not, management will choose to invest in a project only if its net present value exceeds the face value of the debt; else only creditors will benefit from this new project. This condition termed as "underinvestment" or "debt overhang".[16] If the bondholders perceive the risks of being appropriated by an overinvestment in high-risk projects or by an underinvestment in low-value projects, they may well adjust downward the price they are willing to offer for the bonds or demand a higher interest rate for the credit and thus pass back the agency costs to the company.[17]

REDUCING EX-POST CONFLICTS

Ownership is considered important for economic efficiency from the practical perspective considering that transaction costs do exist. Contractual arrangements are the tools that can be used to control conflicts that arise from managers' opportunistic decisions. They revolve around three things: firstly, information privileges; secondly, control; and thirdly, property rights. Thus, well-designed contracts enable the parties to choose optimal governance.[18] However, contracts also suffer from positive transaction costs.

These costs have two specific effects: they may preclude trade, or they may cause contracts to be incomplete. Contracts are incomplete either because terms are not specified or are not differentiated for certain possible states of the world.[19] The contract incompleteness is not only due to the cost of bargaining, but can also be because of imprecise language, which leaves it open to interpretation, limited foresight and asymmetries in information which will discourage more specific bargaining.[20] The law can address some of these incompleteness problems by providing standard terms that parties might be expected to agree to as, for example, share capital guidelines embedded in corporate legislations.

But this is not possible in every case to emulate contractually. It applies to persons who are not parties to the corporate contracts

16. Myers S.C., 'Capital Structure', (2001) 15(2) The Journal of Economic Perspectives, 97.
17. Jensen M. and W. Meckling, 'Theory of the Firm: Managerial Behaviour, Agency costs and Ownership Structure', (1976) 3 J. Fin. Econ., 335-336.
18. The term used by Williamson O.E., 'Market and Hierarchies: Analysis and Antitrust Implications' (New York: The Free Press 1975) 70 to denote ex post opportunism.
19. Williamson O.E., 'The Economic Institutions of Capitalism' (1985) 2 J. Fin. Econ., 256-257.
20. Schwartz A., 'Relational contracts in the courts: an analysis of incomplete agreements and judicial strategies', (1992) 21 Journal of Legal Studies, 271-318.

as, for example, the prohibition on the creditors of shareholders enforcing their debts against the assets of the company.[21] Since corporations run their business in the presence of uncertainty, contracts may also be incomplete due to difficulties in contemplating in advance all possible future contingencies and estimating performance under each contingency. Also, a court cannot verify the states of the world on which the parties would like to condition their contractual pay off often. An insufficiently state-contingent contract creates an incentive to renegotiate or to breach.[22] For example, an undertaking to pay a fixed interest will mean the promisor must bear the risk in case that the revenues fail, for whatever reason, to produce the expected profits.

By theory, *ceteris paribus*, a complete contract is one that confers less residual property rights. The parties will adopt a clear organisational structure that allows transparent information exchange between managers and the debt-holders to control managerial opportunism. The parties will allocate property rights in a way that allow managers to act in the interests of investors and at the same time to permit persons holding debt instruments to ensure that their costs are also adequately covered.[23]

FUTURE ACCESS TO CAPITAL

This section focusses on the importance of regulatory and future access to capital considerations to design hybrids instrument. In perfect capital markets, there is no need to construct a regulatory payoff pattern to suit companies or investors. As a result, instruments are assumed to be fairly priced and regulatory considerations are therefore irrelevant. Investors can always create any payoff structure they want, assuming that no transaction cost exists.

Companies that are regulated need to keep certain amounts of capital for regulatory reasons. Financial metrics such as debt – equity ratio play an important role in determining the credit ratings of regulated companies. These credit ratings are highly important as they serve two-forth purpose – a healthy credit rating empowers the company to ready future access to capital from markets in case of any emergency; secondly, a healthy credit rating also empowers the company to enjoy favourable investor sentiments which result in higher share value for its investors.

In the case of hybrids, the classification securities into debt and equity may not depend on their actual payoff structure. Companies may be able to issue hybrid securities to take advantage of this situation. The credibility of companies applies more generally to credit rating agencies. If these agencies are willing to give companies equity credit for certain instruments, even though the payoff structure of these instruments is more debt-like, companies can take advantage of this situation. Let us refer example of Tata Steel. The company was already suffering from a high debt – equity ratio and the owners did not want to dilute their control. Thus, neither of the conventional debt nor conventional equity instrument could have proved to be an optimum choice. This is an example of the hybrid instrument being designed taking both tax and regulatory considerations.

21. Hansmann H. and R. Kraakman, 'The Essential Role of Organizational Law', (2000) 110 Yale LJ, 387, 407-408.
22. Hart O., 'One-Share One-Vote and the Market for Corporate Control', (1988) 20 Journal of Financial Economics, 119–139.
23. Hart O., 'Firms, Contracts and Financial Structures' (1995) 18 Journal of Financial Economics, 95-96.

To illustrate further, let us consider convertible instruments. It has become a trend for foreign investors to take up convertible instruments in Indian companies. These instruments are issued as either preference shares or debentures, to begin with and are convertible into equity shares of the Indian company at a later date. The conversion usually occurs in one of two ways: firstly, either at the option of the investor; or secondly, compulsorily i.e. without any option whatsoever. From a foreign direct investment standpoint, the question is whether such convertible instruments constitute debt, thereby falling within the purview of regulations governing External Commercial Borrowings (ECBs), or whether they constitute equity, thereby falling under the guidelines pertaining to Foreign Direct Investment (FDI).

All preference shares with an option to convert into equity were treated as FDI, and thus were subjected to the sectoral caps. As regards convertible debentures, although the policy does not appear to have been entirely clear, there have been instances where convertible debentures have been allowed by the Foreign Investment Promotion Board (FIPB) under the FDI policy. The general understanding has been that wherever there was a possibility that the instrument would be converted into equity that would be treated as equity investment for FDI purposes.

However, this understanding was being exploited by the foreign companies to overcome the sectoral restrictions provided under the FDI. As a result, the policy was made significantly tighter by the Reserve Bank of India (RBI) in 2007 for preference shares and debentures, whereby, only fully and mandatorily convertible instruments are now considered to be FDI. All other preference shares and debentures, and including those that are optionally convertible, are considered to be debt and hence, governed by the guidelines on ECBs.[24] In its 2007 policy on convertible debentures, the RBI noted the reasons for this:

"It has been noticed that some Indian companies are raising funds under the FDI route through issue of hybrid instruments such as optionally convertible/ partially convertible debentures which are intrinsically debt-like instruments. Routing of debt flows through the FDI route circumvents the framework in place for regulating debt flows into the country. It is clarified that henceforth, only instruments which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000."

After this policy change, Indian companies have to reconsider this factor while designing hybrid instruments and this regulatory consideration makes it clear that the companies will have to issue compulsorily convertible debentures (CCD) to foreign investors if they are looking to taking advantage of the FDI sectoral caps. Funds raised through any other route would then be included in external commercial borrowing, which is subject to a company-specific ceiling of $750 million.[25] On the other hand, treating CCDs as equity would mean that such investment would have to comply with sectoral FDI limits.

Thus, these regulatory considerations play a major role when hybrid instruments are designed. Most of the instruments in recent times has been done taking regulatory considerations as determinants. However, one cannot ignore financial metrics which play an important role in determining the ease of company to future access to capital. Thus, a company might be tempted to go for a hybrid instrument having debt character to overcome the regulatory barriers of FDI, but it cannot ignore its impact on the debt – equity ratio, which will affect its power to raise capital in future and too much burden on its books will result in loss of investor confidence.

END REMARKS

The legal distinction between equity and debt can be meaningless and the results of that categorisation misleading. Hybrid instruments are blurring that distinction and providing more flexibility to corporations. The capacity of hybrids to replicate characteristics of equity or debt, depending on the situation, make these great securities tools for achieving the ideal capital structure. The flexibility accorded by these instruments provides opportunities to companies to raise capital at desired costs.

Another issue which arises while dealing with hybrid instruments is determining the status of the hybrid instrument holder. Whether the hybrid instrument holder is considered as a creditor or a shareholder? The discussion on this issue from the perspective of various jurisdictions with the help of relevant articles, judgments, examples, etc. For example, redeemable shares possess features of debt in having no management right, but since the "interest" payments are dependent upon the performance of the company, an equity feature, these instruments have been held to be in the category of stocks. The determination of the character cannot be done quantitatively. Also, the presence of any single feature cannot be regarded as the determinant either.

An important factor which is off-late being used to determine the character of the hybrid instrument is the intention. Consider this, a company needs to raise capital, and it employs a hybrid instrument to do so. On evaluation, if it is found that the rate of return provided in the instrument is much greater than the interest rate on a loan of similar risk, then it would give a strong indication that the company intended to enter into an equity relationship and not a creditor relationship. The simple logic is that had the company intended on entering into a creditor relationship then why they would pay the extra return on the instrument.

Another approach which is adopted to address the ambiguity regarding their character in case of hybrid instruments is that of fixing that anything not having the certainty of acquiring equity character shall be considered as debt and vice versa. For example, in the case of convertible debentures, compulsorily convertible debentures shall be treated as equity for tax and regulatory purposes while optionally convertible debentures shall be considered as equity only after the conversion and before conversion as debt. In the case of the compulsorily convertible debenture, there is a certainty that even though the instrument is a debenture at present, but its status is compulsorily equity.

It will be difficult to come up with a fixed rule for designing a hybrid instrument owing to the great flexibility that it provides. Also, the environment of each company varies from the other. But if designed carefully, the contractual design structure of hybrid financial instruments provide an optimal way to fill the vacuum left by conventional instruments. It is, therefore, proposed that a hybrid instrument will be designed optimally when the three parameters, tax, corporate governance and future access to capital, are considered synergistically. There is scope for hybrid financial instruments to play a more important role outside the realm of just tax arbitrage, allowing market participants to realise the potential of governance rights fully. CS

24. RBI/2006-2007/434, A.P. (DIR Series) Circular No.73, dated 8th June, 2007.
25. Master Circular No. 12/ 2013-14, RBI/ 2013-14/ 12, dated 1st July, 2013.

SME IPOs: Growing Dimension of the Indian Capital Market

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SMEs have been acknowledged as the seed bed of growth more so in the case of emerging economies like India vying for a top spot in global landscape. With India headed for the goals of financial inclusion, innovation, entrepreneurship, self-reliance and sustainable development, these SMEs play a crucial role in fostering innovation and competitiveness. Traits like low requirements of capital, flexibility in operations, seed bed for talent and entrepreneurship, immense potential to provide employment, thrust to exports, nodal point of the 'Make in India' initiative, impetus to exports and thrust for import substitution make SMEs the heart of Indian economy and its aspirations. As per the estimates of the Ministry of Micro, Small and Medium Enterprises the SMEs which in number, stand second to China provide employment to 40% of India's workforce and contribute 45% to India's output in manufacturing sector. The SME though have been the backbone of the growth and development story since their very inception but the dynamism and stifling competition of today's times have made them an indispensable component of emerging economies of the clout of India.

SMEs have struggled incessantly as the traditional financing modes have not been able to satisfy their capital requirements. Capital markets opened new avenues for these growing SMEs through IPOs and separate exchanges for listing of securities. An attempt is made to study these alternative listing platforms in India and understanding the profile of BSE listed SME IPOs.

Table 1: Contribution of SMEs to Indian Growth Story

Dimension	Contribution of SMEs
Contribution to GDP	17
Share of industrial output	45
Share of exports	40
Total employment	69 million
Job creation every year	1.3 million every year

Source: Ministry of Micro, Small and Medium Enterprises, GOI

The Indian growth story, hogging global limelight of late seems to be resting largely on the shoulders of these SMEs. It becomes pertinent to ensure the financial health and overall wellbeing of this growth stimulating sector to take India towards the fruition of its dreams.

SME's AND CAPITAL MARKETS

Finance remains a nodal factor in the sustenance, growth and profitability of enterprises (Clatworthy, 1998) specifically in case of smaller units which struggle due to their small size and limited asset base. The Indian SME Survey, 2014 identified unavailability of adequate and timely funds as the major hindrance in the growth of SMEs. The small size, stressed margins, restricted liquidity, lower asset base, higher default risk, low profitability restrict the borrowing capacity of small and medium enterprises which makes debt financing costly, bank loans restrictive, government credits inaccessible making borrowing an incessant challenge. To make things worse, the global meltdown of 2007-08 left the bankers and creditors more cautious in their lending policy and adopting stringent risk management practices. This resulted in further restricting the finance availability to these enterprises which definitely are more productive and quicker in responding to the markets in comparison to their larger counter parts (De and Nagaraj, 2014). The financing troubles turn into growth pangs which stifle the growth of these seedbeds of employment and talent. Amidst all these constraints, the answer emanates from the capital market. Kim (1999) suggests raising funds through IPOs as a remedy for the financial woes of small and medium enterprises. Reaching out to

SME Exchanges have been developing globally offering an alternative to main listing boards on national stock exchanges with conscious efforts being taken especially by emerging economies.

the public through a public issue helps a firm gain visibility, build reputation, enhance its capacity to borrow funds (Kim, 1999), contains the cost of capital (Ibbotson et al, 1988), provide linkages and relationships with external agencies (Ravasi & Marchisio, 2003) and of course helps fight the problems of traditional modes of financing.

Listed securities of these SMEs also help garner the advantages of liquidity and trading providing greater opportunities to the investors for unlocking their capital.

The regulatory constraints with respect to profitability, asset size, net worth and listing requirements make listing of SMEs on the main board a real challenge. Specialized stock exchanges or specific segments of the main stock exchanges have been set up for direct listing and trading of SMEs securities to enable their access to capital markets not just with procedural ease but also less cost. SME Exchanges have been developing globally offering an alternative to main listing boards on national stock exchanges with conscious efforts being taken especially by emerging economies. Several platforms around the world have been dedicated to these small enterprises as provided by the World Federation of Exchanges at the end of 2014 including: NASDAQ (US), the Alternate Investment Market (London), TSX Venture (Canada), HK GEM (Hong Kong), Mothers (Japan), Alternext (Europe) and AltX (South Africa), ChiNext (China) and KOSDAQ (Korea).

INDIAN SME EXCHANGES

The global initiatives inspired India, the hub of SMEs globally, to answer the need of a separate SME exchange. After being contemplated for long and moving through procedural hassles, the efforts succeeding with the launch of the BSE SME platform by BSE on March 12, 2012 and the SME platform 'Emerge' by NSE in September 2012. These platforms were launched after years of analysis of global SME markets primarily inspired by AIM, UK. The mistakes and unanswered needs of the entrepreneurs and investors which resulted in the failure of OTCEI and BSE IndoNext were kept in the backdrop as lessons. Simplified methods, ease of listing, simpler compliances, lower eligibility standards (vis-a-vis main boards), tax incentives, market making provisions, integration and provision of migration to main exchange are all planned to strengthen SMEs and facilitate larger financial resources.

The initial years did pose many challenges and the markets could not experience the volumes and numbers as thought of. As the entrepreneurs started to comprehend the advantages of ease, liquidity and cost, the volumes and numbers in these SME exchanges started to increase. The amount of money mobilized through these exchanges and the number of issues hitting the markets in the various years have been summarized in Table 2. The year 2016 has been a remarkable year in terms of SMEs listings and filing of offer documents. SME Capital Market has peaked Rs. 15000 Crore of market capitalization as per the estimates by Pantomath Research In terms of number of companies and returns they provided, Indian SME Capital Market has become the fastest growing globally.

Table 2: Resources Mobilized through SME Platforms

Year	No. of Issues	Amount Crores)
2012-13	24	239
2013-14	37	317
2014-15	39	278
2015-16	50	113
April 15 – December 15	32	278
April 16 – December 16	48	701

Source: Handbook of Statistics, 2016, SEBI

The numbers compiled by Pantomath Research reflect a record number of 66 companies got listed in calendar year 2016 as compared to 43 in the previous year. Rs. 539.77 crores have been raised by these SMEs through SME bourses which is a significant rise in comparison to previous years. The significant increase in SME fund raisings through IPOs, reduced costs, enhanced investor confidence, better governance have facilitated the speedy growth of these enterprises and greater confidence in the SME capital markets.

Table 3: Parameters for SME IPOs over the three years

PARAMETERS	2014	2015	2016
Companies filed Offer Document	49	56	90
No of Companies listed	41	43	66
Funds Raised (Rs. In Crores)	315	265	540
Companies Migrated	0	12	11

(Source: Pantomath Research)

The SME markets in India and the participation of investors has seen a big boom especially in 2016 and 2017 resulting from significant returns, appreciation of wealth and increasing investor confidence. A growing number of these enterprises have accessed the capital market to fulfill their financing needs raising an amount of approximately 540 crores through 66 new offers. The tempting returns, oversubscription of issues, positive market sentiment, all highlight the growing acceptance of these small issues by the markets, investors and regulators. SME Capital Market has peaked Rs. 15000 Crore of market capitalization. In terms of number of companies and returns they provided, Indian SME Capital Market has become the fastest growing globally. The encouraging returns (to the tune of 71% of CAGR for last three years) have been another reason for the SME investments catching up the attention of investors and entrepreneurs.

SME IPOs : BOARD CHARACTERISTICS

An IPO represents a critical transition point in the life cycle of a firm (Certo *et al.,* 2001) wherein its domain shifts from closed inside circle, i.e. privately-held to the wider general community, i.e. publicly held. Going public promises many other advantages which leverage the firm's visibility and reputation in the wider market. It provides the firm with additional strategic resources for sustainable growth and survival. The public offering era ushers in

distinctive changes in the structure and control patterns of the issuing firm (Handa, 2014). The unique situation of information asymmetry appended to a new issue, results in reluctance on part of investors to purchase shares due to uncertainty about firm's quality (Rock, 1986). Other than information asymmetry, another important trait of an IPO is it being subjected to intense scrutiny and vigil by the investing public and regulators. These problems can be lessened through signaling. These signals are expected to give positive indications to investing public and induce them to participate in the investing process.

The structures of the SME enterprises when they reach out to larger public through IPOs has been attempted to be studied with respect to their board structures and issuing characteristics. SME IPOs listed on the BSE SME platform since inception have been studied for their characteristics.

Table 4: Description of variables included in study

Board structure variables	
Board size	Total number of directors on board
Independent directors	Proportion of independent directors on board
Average age	Average of individual ages of all members of board
Board committees	Total number of committees constituted by IPO firm
Related board members	Number of directors on board who are related to each other
Average of other board positions	Average of number of board positions held by all directors in other firms
Director ownership	Percentage of shares held by all directors
Top 10 Owners	Total percentage of shares held by top 10 shareholders
Block Shareholders	Number of shareholders with shareholding more than 5%
Issue and firm Characteristics	
Raw return	Closing price on the first trading day on the secondary market minus offer price, divided by offer price
Issue size	Proceeds received from issuing new shares expressed in crores of rupees
IPO age	Number of years between date of incorporation and IPO issue date
Total assets	Book value of total assets as expressed in crores of rupees
Subscription ratio	Number of times the IPO has been subscribed: indicator of over or under subscription
Listing delay	Number of days between close of issue and listing on BSE
Issue price	Offer price of shares issued through IPO

The variables relating to board structures and issue characteristics have been analyzed for their behavior with respect to returns from the IPOs. The various variables involved in the study have been presented in Table 4. Broadly, the IPOs are studied for two type of characteristics namely: board related variables including board size, percentage of independent directors, number of board committees, related members on the board, other directorships held by the members of the board being the representative of board reputation and also ownership variables including directors' ownership, shares held by top ten owners and number of block shareholders.

The IPOs are first studied for their descriptive across these identified variables. The mean, median, mode, standard deviation and minimum and maximum value of these variables is studied to explore the basic characteristics of these variables.

Table 6: Descriptive characteristics of SME IPOs

Variable	N	Mean	Median	Mode	Std. Deviation	Minimum	Maximum
Raw Return	165	9.88	3.85	5.00[a]	27.11	-69.97	241.25
Board Size	165	5.39	5.00	6.00	1.30	3.00	9.00
Independent directors	165	49.61	50.00	50.00	7.81	0.00	75.00
Board age	165	44.02	43.73	47.00	7.37	26.75	72.33
Board Committee	165	3.05	3.00	3.00	0.44	2.00	5.00
Related Members	165	1.81	2.00	2.00	1.23	0.00	4.00
Other Directorships	165	1.83	1.20	0.00	2.84	0.00	31.75
Director Ownership	165	43.78	39.63	99.99	32.50	0.00	100.00
Top 10 ownership	165	89.32	99.28	100.00	16.49	38.14	100.00
Block Ownership	163.	4.04	4.00	4.00	2.23	0.00	13.00
Issue Size	165	11.74	5.45	2.00[a]	50.10	1.19	644.00
IPO Age	165	13.84	11.82	5.71[a]	7.67	0.90	34.12
Total assets	165	31.31	16.96	1.77[a]	38.60	0.08	246.09
Subscription ratio	165	1.76	1.28	1.15[a]	2.20	0.74	24.29
Listing delay	165	17.41	17.00	16[a]	3.67	10.00	32.00
Issue Price	165	32.18	20.00	10.00	32.68	10.00	220.00

a. Multiple modes exist. The smallest value is shown

A perusal of the descriptive characteristics reveals that the return of the IPOs without adjustment for the market movements is positive hovering around 9% though ranging between -70% to 241%. This high value of the return indicates the potential of these SMEs which lie at the core of India's growth story. The average board size for these small enterprises is approximately five members, though some have been managing their affairs with a mere board of three members. The proportion of independent members on the board is largely seen to be governed by the legal mandates though a case of a firm with no independent directors is also noticed. The boards of these SMEs on an average are governed by young members, average age of 44 years though members as young as 26 years also occupy a board position. The number of board committees to assist the members of the board is seen to vary within the values of 2 and 5 indicating a general trend of few committees seeing small size of these enterprises vis-à-vis their main board counterparts. The practice of board members to have their relatives and family members as fellow directors is pervasive in Indian boards and is prevalent in small enterprises as well. The number of related members stands at two on an average and is as high as four in some cases indicating a tendency of adopting boards as a network strategy and keeping decision making powers within the family control. Other directorships held by the board members which are assumed to measure the board reputation is also analyzed whereby it is observed that the highest value stands at a high of 31 while few of the board members have no other directorships. On an average the other directorships stands at approx. 2 indicating a trend among small companies to appoint directors with less of other obligations and focus on the affairs of the company itself. The control of the directors over the company through ownership of shares is also checked for which average director ownership is

seen to be 44% and in some cases as high as 100%. This is also attributed to the fact of founder controlled firms where the companies are run more by the philosophy and ideology of the major shareholders who are none else but the founders themselves who get themselves appointed to the board rooms as well. The ownership concentration patterns are also attempted to be studied through two variables being cumulative percentage of shares held by top ten owners and number of block holders in the firm owning more than 5% of the shares. The mean of 89% for top ten owners indicates a trend of ownership concentration in a few hands which is also vindicated by average 4 block holders in the SMEs. The numbers indicate and confirm the typical Indian set ups where ownership and control is dominated by a few people in corporate which are largely the promoters/founders and their family clans. This does put to question the effective governance in these firms but that remains a separate debate beyond the scope of this writing.

The issue characteristics of the firms coming up with the public issue are also studied with focus on issue size, issue price, listing delay, subscription ratio, age of the firm and total assets. The issue size of these firms is expected to be small justifying their presence on these alternate forms and that is reflected by the average issue size of 12 crores approximately with a large number of issues being around 2 crores, the mode value. It is notable that the highest value of issue size in the sample is as large as 644 crores which definitely indicates the potential of these “small” firms. SMEs exploring the option of raising funds through capital market are young firms with an average age of 14 years which seem to be hitting the stock exchanges to nurture their big dreams through the small platforms. Though the oldest firms to be raising funds through capital market is 34 years of age highlighting the range of firm age and how this platform suits the need of young as well as mature firms. The firms sound humble in terms of their asset base and when seen against the big firms hitting the main boards and reaching out to the public. The asset base of these firms varies between 74 lakhs to 245 crores with an average size of 31 crores and mode value of 1 crore. The number of times issue is subscribed, as measured by the subscription ratio reflects the response of the investors to the new issue and as the numbers show the average stands at 1.75 indicating the acceptability of these issues among the investing public and a value as high as 24 indicates the huge fad these SME IPOs are tending to be. The average listing delay stands at 17 days highlighting the time taken to get listed on the SME exchange and providing a platform for secondary trade. The listing delay is limited to a maximum of 32 days which highlights the preparedness of firms for transparency and liquidity to the issued securities. The average issue price of 32 indicates the tendency of the firms to issue securities at a premium which also reflects the buoyancy of the markets and acceptability to the issues of the investors.

THE ROAD AHEAD

The facts and the numbers culled from the issuing firms and SME platforms indicate the increasing number of SMEs exploring the capital market option. The option in itself offers many advantages like greater access to a larger pool of resources, broadening the investor base, more visibility, ease and convenience, inexpensive route, option to migrate to main platform, less stringent regulatory norms, and prominence of its kind. Amidst these the SMEs have successfully pulled off as is offered by the evidence from issue size, subscription ratio, returns and overall participation of investors and third parties in the IPO process. In this successful pursuit of garnering resources the board structures which represent the governance preparedness of the small enterprises has a role to play. This is a preliminary look at the numbers and further analysis can provide meaningful insight of the association between returns and board variables which contribute the corporate governance structures of the firms. This becomes important in the light of rekindled aspirations to strengthen the corporate governance mechanisms to achieve the growth objectives. CS

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ARTICLE

Capital Market of New India: The Reform Agenda for Inclusive Growth

Emerging Financial Products – Harnessing Opportunities

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CAPITAL MARKET

Introduction: In the last two decades, studies on the capital market have received considerable attention from contemporary finance and economics literature resulting from its role in the provision of long-term, non-debt financial capital which enables companies to avoid over-reliance on debt financing, thus improving corporate debt-to-equity ratio and also in the mobilization of resources for national growth. The capital market is viewed as a complex institution imbued with inherent mechanism through which long-term funds of the major sectors of the economy comprising households, firms, and government are mobilized, harnessed and made available to various sectors of the economy. For sustainable economic growth, funds must be effectively mobilized and allocated to enable businesses and the economies harness their human, material, and management resources for optimal output. Hence, the capital market is an economic institution, which promotes efficiency in capital formation and allocation.

> A Capital Market is a financial market in which long-term debt or equity-backed securities are bought and sold. It is defined as market in which money is provided for periods longer than a year. Capital markets channel the wealth of savers to those who can put it to long-term productive use, such as companies or governments making long-term investments.

The capital market contributes to economic growth through the specific services it performs either directly or indirectly. Notable among the functions of the capital market are mobilization of savings, creation of liquidity, risk diversification, improved dissemination and acquisition of information, and enhanced incentive for corporate control. Improving the efficiency and effectiveness of these functions, through prompt delivery of their services can augment the rate of economic growth.

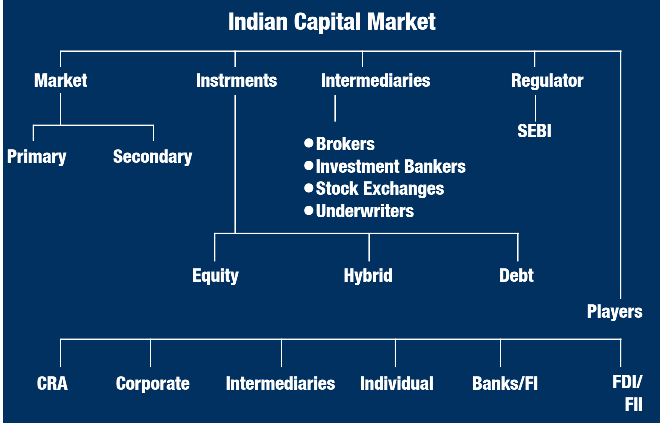
In recent times there has been a growing concern on the role of capital market in economic growth and thus the capital market has been the focus of economic policies and policy makers because of the perceived benefits it provides for the economy. The capital market provides the fulcrum for stock market activities and it is often cited as a barometer of business direction. An active capital market may be relied upon to measure changes in the general level of economic activities.

Deducing from the extensive studies on the theoretical expectations on the role of capital markets on economic growth which have formed the core of normative economics, the capital market is expected to contribute to economic growth through the transmission mechanisms of savings mobilization, creation of liquidity, risk diversification, improved dissemination and acquisition of information, provision of long-term, non-debt financial capital which enables companies to avoid over-reliance on debt financing, and enhanced incentive for corporate control amongst others.

Definition: Capital market is a market where buyers and sellers engage in trade of financial securities like bonds, stocks, etc. The buying/selling is undertaken by participants such as individuals and institutions. Modern capital markets are almost invariably hosted on computer-based electronic trading systems; most can be accessed

only by entities within the financial sector or the treasury departments of governments and corporations, but some can be accessed directly by the public. There are many thousands of such systems, most serving only small parts of the overall capital markets. Entities hosting the systems include stock exchanges, investment banks, and government departments.

Description: Capital markets help channelise surplus funds from savers to institutions which then invest them into productive use. Generally, this market trades mostly in long-term securities.



A capital market can be either a primary market or a secondary market. In ***primary markets***, new stock or bond issues are sold to investors, often via a mechanism known as underwriting. The main entities seeking to raise long-term funds on the primary capital markets are governments (which may be municipal, local or national) and business enterprises (companies). Governments issue only bonds, whereas companies often issue either equity or bonds. The main entities purchasing the bonds or stock include pension funds, hedge funds, sovereign wealth funds, and less commonly wealthy individuals and investment banks trading on their own behalf. In the ***secondary markets***, existing securities are sold and bought among investors or traders, usually on an exchange, over-the-counter, or elsewhere. The existence of secondary markets increases the willingness of investors in primary markets, as they know they are likely to be able to swiftly cash out their investments if the need arises.
A second important division falls between the stock markets (for equity securities, also known as shares, where investors acquire ownership of companies) and the bond markets (where investors become creditors).

EQUITY & DEBT:

ntroduction: Equity capital is based on the value of the business and its current assets, essentially selling the right to a particular asset, or portion of an asset, in return for capital. Debt capital is raised through the acquisition of new debt obligations. While the current value of a company and other pertinent financial information may be required as part of the application process, the funding is not provided in exchange for owning a portion of an asset. In Bombay Stock Exchange (BSE), which is the oldest stock exchange in the country, for equity there are 7832 companies listed as on date (July 2017). The BSE has a record of being the only with highest number of listed companies in the world. Out of it, 4331 Companies are Active, 1301 Companies are Suspended due to penal reason and 2207 Companies are delisted. For Debentures and Bonds, there are 15740 Companies listed out of which 7376 Companies are Active, 519 companies are Suspended due to penal reason and 7845 Companies are delisted.

Equity : No matter how many financial instruments one may pick, none of them can match the returns provided by equity related instruments such as Stocks and Mutual Funds. While investing in these instruments, make sure to pick products for the long term i.e at least 10 years or more and ensure that emotions are under control in this period.
This doesn’t mean one has to stick to the product even though it is not performing well. Review the products every year or switch to better products only is something has gone wrong fundamentally. Mutual funds also give an option of monthly SIP, where one can invest in a disciplined manner for retirement. Equity related products are also tax free after 1 year of investment.

Debt: In the recent past, the corporate debt market has seen a high growth of innovative asset-backed securities. The servicing of debt and related obligations for such instruments is backed by some sort of financial assets and/or credit support from a third party. Over the years greater innovation has been witnessed in the corporate bond issuances, like floating rate instruments, zero coupon bonds, convertible bonds, callable (put-able) bonds and step-redemption bonds. These innovative issues have provided a gamut of securities that caters to a wider segment of investors in terms of maintaining a desirable risk-return balance. Over the last five years, corporate issuers have shown a distinct preference for private placements over public issues. This has further cramped the liquidity in the market. The dominance of private placement in total issuances is attributable to a number of factors. Lengthy issuance procedure for public issues, in particular, the information disclosure requirements. Costs of a public issue are considerably higher than those for a private placement. The quantum of money raised through private placements is typically larger than those that can be garnered through a public issue. Also, a corporate can expect to raise debt from the market at finer rates than the prime-lending rate of banks and financial institutions only with an AAA rated paper. This limits the number of entities that would find it profitable to enter the market directly.

The Indian capital market - Growth with governance: Importance of the development of the corporate debt market. The economic advantages of having a viable private DCM can be grouped into three broad categories - (a) Diversification: It gives providers of capital access to a broader set of diversification opportunities. In India today, household wealth is parked in bank deposits, real estate and gold, with very limited stock ownership. More active insurance and pension markets, for example, would allow families to spread investment risks more broadly. In turn, these institutional investors would contribute to enhancing credit price disclosure as they allocate resources into interest-bearing securities. (b) Efficiency in managing cost of capital: Access to a functioning DCM, and the multiple financing options that come with it, endows borrowers with greater efficiency in managing the cost of capital. Historical and cross-sectional experience teaches that

problems in the banking sector can interrupt the flow of funds from savers to investors for a dangerously long period of time. Indeed, one of the lessons from the 1997 Asian financial crisis has been the importance of having non-bank funding channels open. In the wake of this crisis, a number of countries in the region, including Korea, Malaysia, Singapore and Hong Kong, have made progress in building their own corporate debt markets. (c) Financial stability: On-the-ground estimates indicate that the total stock of non-equity claims on India's corporate sector could be somewhere in the region of 10% of GDP. With listed securities worth just USD 21 billion, this means that roughly 80% of the market is in the form of private placements. These liabilities are negotiated and priced on the principles of relationship lending, issued with virtually no public disclosure, and are typically held to maturity by banks. This brings to a third set of reasons why developing a debt capital market is in India's interest. The current system of financing has already, and will increasingly, become less adequate for an economy as large and as ambitious as India's. Spreading credit risk from banks balance sheets more broadly through the financial system would lower the risks to financial stability. And a deeper, more responsive interest rate market would allow the central bank greater degrees of freedom in the conduct of monetary policy. This will be particularly important as India gradually opens up its capital markets to the rest of the world.

Debt vs. Equity: Debt is one of the two main ways companies can raise capital in the capital markets. Companies like to issue debt because of the tax advantages. Interest payments are tax-deductible. Debt also allows a company or business to retain ownership, unlike equity. Additionally, in times of low interest rates, debt is abundant and easy to access.

Equity is more expensive than debt, especially when interest rates are low. However, unlike debt, equity does not need to be paid back if earnings decline. On the other hand, equity represents a claim on the future earnings of the company as a part owner.

FINANCIAL SECTOR AND ITS PRODUCTS

Introduction: India has a diversified financial sector undergoing rapid expansion, both in terms of strong growth of existing financial services firms and new entities entering the market. The sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities. The banking regulator has allowed new entities such as payments banks to be created recently thereby adding to the types of entities operating in the sector. However, the financial sector in India is predominantly a banking sector with commercial banks accounting for more than 64 per cent of the total assets held by the financial system.

Financial products refer to instruments that help one to save, invest, get insurance or get a mortgage. These are issued by various banks, financial institutions, stock brokerages, insurance providers, credit card agencies and government sponsored entities. Financial products are categorised in terms of their type or underlying asset class, volatility, risk and return.

The Government and Reserve Bank of India (RBI) have taken various measures to facilitate easy access to finance for Micro, Small and Medium Enterprises (MSMEs). These measures include launching Credit Guarantee Fund Scheme for Micro and Small Enterprises, issuing guideline to banks regarding collateral requirements and setting up a Micro Units Development and Refinance Agency (MUDRA).

The Government of India has introduced several reforms to liberalise, regulate and enhance this industry. The Government and Reserve Bank of India (RBI) have taken various measures to facilitate easy access to finance for Micro, Small and Medium Enterprises (MSMEs). These measures include launching Credit Guarantee Fund Scheme for Micro and Small Enterprises, issuing guideline to banks regarding collateral requirements and setting up a Micro Units Development and Refinance Agency (MUDRA). With a combined push by both government and private sector, India is undoubtedly one of the world's most vibrant capital markets.

NEW INDIA's Government Initiatives

- In the Union Budget 2017-18, the Government of India has announced a few key reforms like abolishment of Foreign Investment Promotion Board in 2017-18, Introduce bill for curbing illicit deposit schemes, Establish a Computer Emergency Response Team for financial sector (CERT-Fin) and set aside Rs 10,000 crore (US$ 1.5 billion) towards recapitalisation of banks.
- SEBI plans to tighten the norms governing various market participants in order to strengthen scrutiny, improve transparency and mitigate liquidity risks from algorithmic trading.
- SEBI has relaxed norms for registered foreign portfolio investors (FPIs) in India, allowing them to operate through the International Financial Services Centre (IFSC) without undergoing any additional documentation or prior approval process.
- The RBI has introduced trading in interest rate options (IRO), effective from January 31, 2017, which will provide another avenue to market participants to hedge and speculate on interest rate risk.
- SEBI plans to allow investors to make mutual funds transactions worth up to Rs 50,000 (US$ 750) a month through digital wallets, as part of its efforts to digitise the distribution processes for all financial products. It also plans to allow immediate credit to customer's bank accounts on liquid mutual funds redemption to attract retail customers as well as boost inflows.
- Government has launched a free Doordarshan DTH channel called DigiShala, which will help people understand the use of unified payments interface (UPI), USSD, aadhaar-enabled payments system, electronic wallets, debit and credit cards, thereby promoting various modes of digital payments.

Municipal bonds in India have tax-free status if they conform to certain rules and their interest rates will be market-linked. Both pubic issue and private issue can be adopted for municipal bonds. SEBI allowed urban local bodies to raise money through the issue of revenue bonds as well. Municipal bonds where the funds raised are kept for one project are termed revenue bonds. Servicing of these bonds can be made from revenue accrued from the project.

- The Government has relaxed norms for small merchants with a turnover of up to Rs 2 crore (US$ 300,000), allowing them to pay 6 per cent of deemed profit in tax instead of 8 per cent of total turnover or gross receipts received through banking channels or digital means for FY 2016-17, in a bid to encourage cashless transactions in the country.
- The Prime Minister of India has launched the Micro Unit Development and Refinance Agency (MUDRA) to fund and promote Microfinance Institutions (MFIs), which would in turn provide loans to small and vulnerable sections of the business community. The lending target has been fixed at Rs 244,000 crore (US$ 36.46 billion) for 2017-18.
- Government's 'Jan Dhan' initiative for financial inclusion is gaining momentum. Under Pradhan Mantri Jan Dhan Yojna (PMJDY), 217 million accounts have been opened and 174.6 million RuPay debit cards have been issued. Government aims to extend insurance, pension and credit facilities to those excluded from these benefits under the Pradhan Mantri Jan Dhan Yojana (PMJDY).
- Government has allowed 100 per cent Foreign Direct Investment (FDI) in asset reconstruction companies (ARC) under automatic route, which will help to tackle the issue of declining asset quality of banks.

EMERGING FINANCIAL PRODUCTS – HARNESSING OPPORTUNITIES (MUNICIPAL BONDS, REITs, INVITs, ETC):

'MUNICIPAL BOND'

***Definition*:** A municipal bond is a debt security issued by a state or municipality to finance its capital expenditures, including the construction of highways, bridges or schools. Municipal bonds are exempt from taxes and from most state and local taxes, making them especially attractive to people in high income tax brackets.

Types of Municipal Bonds

Municipal bonds are generally issued as one of three types of debt obligation:

- **General Obligation (GO) Bonds** repay based on the "full faith and credit of the issuer" and are considered the most secure type of bond, carrying the lowest interest rate.

- **Revenue Bonds** repay from a specified future stream of income, such as a utility or payments from customers or tenants.
- **Assessment Bonds** obligate repayment from property tax assessment within the municipality.

Tax status of Municipal Bonds

Municipal bonds in India have tax-free status if they conform to certain rules and their interest rates will be market-linked. Both pubic issue and private issue can be adopted for municipal bonds. SEBI allowed urban local bodies to raise money through the issue of revenue bonds as well. Municipal bonds where the funds raised are kept for one project are termed revenue bonds. Servicing of these bonds can be made from revenue accrued from the project.

Pros & Cons to Municipal Bond Investing

An examination of the pros and cons relative to financial situation and goals will help determine whether investing in municipal bonds is likely to be profitable or not.

Advantages:

1. Free from Central Taxes.
2. Free from State and Local Taxes.
3. Tax Advantaged Compound Growth and/or Income.
4. Lower Volatility Than Stocks (Fixed Income Assets).
5. High Level of Liquidity.

Disadvantages:

1. Bond Yields May Not Beat Inflation.
2. Opportunity Cost.
3. Interest Rate Risk.
4. Risk of Default and Loss of Capital.

How to Invest in Municipal Bonds?

Generally speaking, there are two ways to invest in municipal bonds: directly or through a municipal bond fund. Investors can purchase bonds directly from a municipality through their bank or broker. This method offers investors the comfort of knowing precisely what bonds they own within their portfolio, such as general obligation, revenue, or assessment bonds, as well as the exact term and yield offered by the investment. The second way to invest in municipal bonds is to purchase shares in a municipal bond fund. This method offers instant diversification across hundreds of municipal bonds, which can reduce risk for investors. Another significant advantage is the increased liquidity available via bond funds. Fund shares can be sold at any time, so investors will have no problem unloading their bonds for any reason.

REAL ESTATE INVESTMENT TRUST - REIT

Definition: A REIT is a type of security that invests in real estate through property or mortgages and often trades on major exchanges like a stock. REITs provide investors with an extremely liquid stake in real estate. They receive special tax considerations and typically offer high dividend yields.

Description : REITs, an investment vehicle for real estate that is comparable to a mutual fund, allowing both small and large investors to acquire ownership in real estate ventures, own and in some cases operate commercial properties such as apartment complexes, hospitals, office buildings, timber land, warehouses, hotels and shopping malls.

All REITs must have at least 100 shareholders, no five of whom can hold more than 50% of shares between them. At least 75% of a REIT's assets must be invested in real estate, cash or U.S. Treasuries; 75% of gross income must be derived from real estate.

REITs are required by law to maintain dividend payout ratios of at least 90%, making them a favorite for income-seeking investors. REITs can deduct these dividends and avoid most or all tax liabilities, though investors still pay income tax on the payouts they receive. Many REITs have dividend reinvestment plans (DRIPs), allowing returns to compound over time.

As of August 2014, India approved creation of real estate investment trusts in the country. Indian REITs (country specific/generic version I-REITs) will help individual investors enjoy the benefits of owning an interest in the securitised real estate market. The greatest benefit will be that of fast and easy liquidation of investments in the real estate market unlike the traditional way of disposing of real estate. The Government and Securities and Exchange Board of India through various notifications is in the process of making it easier to invest in real estate in India directly and indirectly through foreign direct investment, through listed real estate companies and mutual funds.

A REIT will need to be registered via an IPO or initial public offering. REIT units, as such, will have to get listed with exchanges and consequently traded as securities. The SEBI board has kept the minimum asset sizes to be invested in at Rs 500 crore. However, the minimum issue size would have to be less than Rs 250 crore. As with stocks, the investors here would be able to buy the units from either primary and/ or the secondary markets.

How does a REIT work?

REIT is a process to generate funds from a lot of investors to directly invest in profitable real estate properties like offices, residential units, hotels, shopping centers, warehouses and more. All trusts with REIT will be listed with stock exchanges as they would be structured like trusts. Consequently, REIT assets will be held with independent trustees for unit holders/ investors.

Role of the trustees: Trustees with REIT have defined duties which typically involve ensuring compliance and adherence to all applicable laws that protect the rights of the investors.

The objective of REITs: A REIT's objective is to provide the investors with dividends that are generated from the capital gains accruing from the sale of the commercial assets. The trust distributes 90% of the income among its investors via dividends. Apart from minimum entry level, a REIT is supposed to provide diversified and safe investment opportunities with reduced risks and under a professional management to ensure the maximum return on investments.

***The advantages with REITs include*:**

- *Income dividends*
- *Transparency*
- *Diversification*
- *Lower risk*

The REIT concept has been in the news for some time now. However, the real estate regulations rolled out so far have not quite helped bring them to Ground Zero in India as yet. REITs' exemption from tax on the distribution of dividends would make it much more attractive for

investors. According to a recent report by Cushman & Wakefield, commercial properties in India that are 'REITable' investment opportunities are between $43 billion and $54 billion across the top cities.

To qualify as a REIT a company must:

- Invest at least 75 percent of its total assets in real estate
- Derive at least 75 percent of its gross income from rents from real property, interest on mortgages financing real property or from sales of real estate
- Pay at least 90 percent of its taxable income in the form of shareholder dividends each year
- Be an entity that is taxable as a corporation
- Be managed by a board of directors or trustees
- Have a minimum of 100 shareholders
- Have no more than 50 percent of its shares held by five or fewer individuals

INFRASTRUCTURE INVESTMENT TRUSTS (InvITs)

Definition: An Infrastructure Investment Trust (InvITs) is like a mutual fund, which enables direct investment of small amounts of money from possible individual/institutional investors in infrastructure to earn a small portion of the income as return. InvITs work like mutual funds or real estate investment trusts (REITs) in features. InvITs can be treated as the modified version of REITs designed to suit the specific circumstances of the infrastructure sector.

***Description*:** SEBI notified the SEBI (Infrastructure Investment Trusts) Regulations, 2014 on September 26, 2014, providing for registration and regulation of InvITs in India. The objective of InvITs is to facilitate investment in the infrastructure sector.

InvITS are like mutual funds in structure. InvITs can be established as a trust and registered with Sebi. An InvIT consists of four elements: 1) Trustee, 2) Sponsor(s), 3) Investment Manager and 4) Project Manager.

The trustee, who inspects the performance of an InvIT is certified by SEBI and he cannot be an associate of the sponsor or manager.

'Sponsors' are people who promote and refer to any organisation or a corporate entity with a capital of Rs 100 crore, which establishes the InvIT and is designated as such at the time of the application made to SEBI, and in case of PPP projects, base developer.

Promoters/sponsor(s), jointly, have to hold a minimum of 25 per cent for three years (at least) in the InvIT, excluding the situations where an administrative requirement or concession agreement needs the sponsor to hold some minimum percent in the special purpose vehicle. In these cases, the total value of the sponsor holding in the primary special purpose vehicle and in the InvIT should not be less than 25 per cent of the value of units of InvIT on post-issue basis.
Investment manager is an entity or limited liability partnership (LLP) or organisation that supervises assets and investments of the InvIT and guarantees activities of the InvIT. Project manager refers to the person who acts as the project manager and whose duty is to attain the execution of the project and in case of PPP projects. It indicates that the entity is responsible for such execution and accomplishment of project landmark with respect to the agreement or other relevant project document.

Features: InvITs have to ensure that they distribute 90% of their net cash flows to the unit investors. There is a leverage cap of 49% on the net asset value. There is also a cap on exposure to under-construction assets (for publicly placed InvITs). The sponsor of the InvIT is responsible for setting up the InvIT and appointing the trustee. The sponsor shall hold minimum 15% of the units issued by the InvIT with a lock-in period of three years from the date of issuance of units. The InvIT regulations also require companies to maintain certain investment ratios, including 80 percent of investments in completed and revenue-generating assets.

InvITs that have been filed so far have specified minimum investment limits of Rs 10 lakh per investor.

When are distributions given out?
InvITs distribute regular dividends. They must be declared and distributed not less than once in every six months.

***Global experience*:** Worldwide InvITs are positioned as high-dividend paying investments suitable for investors who are especially looking for long-term, stable cash flows with moderate capital appreciation.

Taxation: Investors of InvITs can draw comfort from a favorable tax-regime. Dividend income is tax exempt and no capital gains are levied if units are held for over 3 years and sold through the bourses. There is a small withholding tax for interest income to NRI unit holders. Further, there is the pass-through structure of InvITs mandating distribution of a minimum 90% of net-distributable cash and nil dividend distribution tax.

DISTRIBUTION POLICY

Distribution policy	• **At least 90% of distributable cash flow of the SPV shall be distributed to the InvIT** in proportion to its holding in the SPV. • **At least 90% of distributable cash flow of the InvIT shall be distributed to the unit holders.** • Dividend declared to be paid within 15 days; distributions to the unit holders to be made on a half yearly basis.

Leveraging	• Borrowings and deferred payments not to be more than 49% of value of InvIT assets (excluding any borrowings made by the InvIT to the SPVs).
	• Borrowings and deferred payments more than 25% of the value of assets are subject to:
	  ▪ Credit rating;
	  ▪ Approvals of unit holders where the votes cast in favor should be more than the votes cast against the resolution.

Delisting	• If public float is less than 25% of total outstanding units. • Number of unit holders (other than sponsor) is less than 20 (each holding not more than 25% of units of InvIT). • Where no projects / assets are remaining under the InvIT for more than 6 months, and where there is no proposal to invest in projects in future.

The units gets listed on stock exchanges to provide liquidity to unit holders. The InvIT can also fund future development and acquisitions through the issuance of additional units.

While this fund-raising tool can help infra developers deleverage, experts noted that it may also reduce funding pressure on the banking system.

Advantages of InvITs : Given the challenging phase of infrastructure in the country today, InvITs are proposed to provide a suitable structure for financing/refinancing of infrastructure projects in the country.

InvITs, as an investment vehicle, may aid to:

- providing wider and long-term re-finance for existing infrastructure projects.
- freeing up of current developer's capital for reinvestment into new infrastructure projects.
- refinancing/takeout of existing high cost debt with long-term low-cost capital and help banks free up/reduce loan exposure, and thereby help them create headroom for new funding requirements.

CONCLUSION

Variety of financial products are available in Capital Market in India. However, the reach of these products are limited and features of many of the products are very basic in nature. Further development and innovation in these products would be faster if they are accessed by all class of investors in urban as well as rural areas. The thrust lies mainly on the distribution of financial products to deepen the market for such products and improvements in the products design itself.

The responsibility of ensuring these improvements vest with all the stakeholders in the financial service industry.

REIT & InvIT is a structured business trust model facilitating entrepreneurs and corporate to monetise their capital locked in assets through issue of units to investors at large. Just like a mutual fund scheme, investors can own units in a REITs and the all income is shared among the investors. Units of a REIT are traded on exchanges and provide an investor with an option to quickly exit. Thus, Capital Market of New India is having the reform agenda for inclusive growth in the emerging financial products which is harnessing opportunity in Municipal Bonds, REIT's, InvIT's etc.

RECOMMENDATIONS

In line with issues raised in the policy implications, the recommendation is that the relevant regulatory agencies in the capital market should focus on enhancing the efficiency and transparency of the market in order to improve investor's confidence. Also, there is need for effective and favourable macroeconomic environment to facilitate the causality from stock market to economic growth. It must be understood that growing economies with significant and consistent impact on living standards of the people are a product of effective social, economic and political institutions and this is a major setback in the Indian environment. Thus, there is the need to ensure that the channels of capital market induced growth are built around effective systems and that the policy institutions are actively involved in making systemic checks and appropriate policy innovations to ensure capital market led economic growth. CS

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ARTICLE

Alpha, Beta and XBRL: Some Observations from Indian Capital Market

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Beta[1] is the well-known risk coefficient in the capital asset pricing model (CAPM) for pricing stocks and other assets by William Sharpe, John Lintner and Jack Treynor. Investors use Beta along with other financial performance indicators like EPS, earning growth rate, ROIC, Debt-to-profit, P-E ratios while investing in the stock market.

The article is an effort to show the impact of XBRL on the alpha and beta of the Indian capital market. It examines the change in alpha and beta over the years. Alpha and beta are the popular measures of the return and risk. The paper shows very clearly the inverse relationship between the risk and return of stock in the capital market. The article says that the market has not yet responded to the introduction of XBRL and urges the professional bodies and academic institutes to create the necessary awareness about XBRL among the stakeholders of the capital market.

BETA: A MEASURE OF RISK

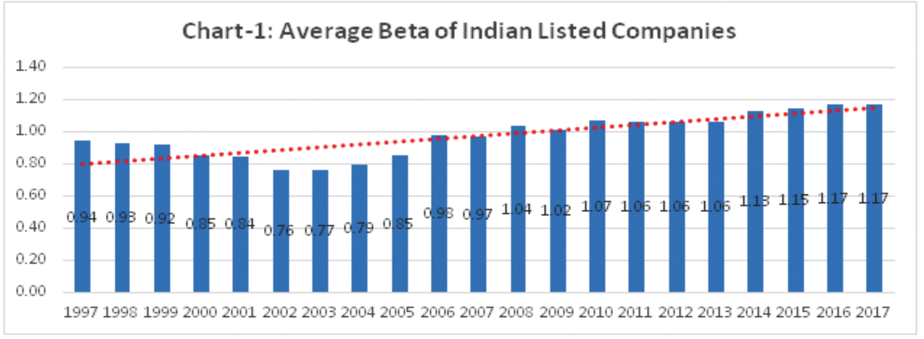
Beta is a measure of individual stock risk relative to the overall stock market risk. The risk is of two types: Systematic Risk (SR)and Unsystematic Risk (UR). SR is inherent to the entire market and diversification cannot eliminate this risk. On the other hand, UR is specific to a company and it can be reduced(managed) through diversification. Beta reflects the SR of a stock. The standard procedure[2] for estimating betas is to regress stock returns (Rj) against market returns (Rm).

Rj = **a** + **b** Rm , *where a is the intercept and b is the slope of the regression.*

The slope of the regression corresponds to the beta of the stock, and measures the riskiness of the stock.

- If Beta =1: The company is said to have the same risk as the market
- If Beta >1: The company is more risky than the market
- If Beta < 1: The company is less risky than the market
- If Beta =0: The company risk has no correlation with the market
- A negative beta[3] means an investment that moves in the opposite direction from the stock market. When the market rises, then a negative-beta investment generally falls.

Chart 1 shows the average beta of the companies listed on the National Stock Exchange (NSE) of India. Average beta increased from 0.94 to 1.17. The increase in the beta is the reflection of market become riskier over the years.



[1] http://www.benefitscanada.com/wp-content/uploads/2008/11/beta.pdf
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To understand the characteristics of beta, it is necessary to drill down further to the company level. Table-1 shows the summary of beta of Indian companies as a whole, beta of select indices and a set of individual companies.

Table-1: Beta as on 31 March 2017

NSE listed Companies			Select Indices				Select companies	
2017			Nifty It	0.43	Nifty Auto	1.02	Wipro Ltd.	0.37
Beta	Number	%	Nifty Pharma	0.54	Nifty Alpha 50	1.05	Tata Consultancy Services Ltd.	0.38
<1	559	37%	Nifty Fmcg	0.6	Nifty C P S E	1.05	Infosys Ltd.	0.39
>1	960	63%	Nifty Aditya Birla Grou	0.61	Nifty PSE	1.2	H D F C Bank Ltd.	0.82
			Nifty Mahindra Group I	0.61	Nifty Bank	1.26	Reliance Industries Ltd.	0.96
			Nifty Tata Group Index	0.61	Nifty Infrastructure	1.32	Tata Steel Ltd.	1.47
			Nifty Media	0.9	Nifty High Beta 50	1.73	State Bank Of India	1.65
			Nifty 50	0.94	Nifty Realty	1.88	Steel Authority Of India Ltd.	1.74

Source: Prowess, CMIE

One can see that only 37% of the actively traded companies (on NSE) are less risky. However to make the beta more relevant one can see industry wise beta too. NSE has several indices based on nature of the industry, size and expected returns. Following table shows that Pharma and IT are the least risky companies. One can also see that Beta of the well-known industry houses is also less than 1. One should also see Beta of specific company while finalizing the investment decision. Sometimes it may be higher than (riskier) than the industry: Beta of SBI is higher than that of the industry index. Whereas the beta of all the three IT companies (Wipro, Infosys, and TCS) is less than the beta of the industry index. Chart-2 shows the movement of beta and market capitalization of Sensex companies over the last ten years. Despite the market becoming riskier over the years the market capitalization increased during the last decade. The increase in the market capitalization is due to increase in the price over the years.

A risk-averse investor may like to look for companies which have beta 1 or very close to 1. As shown in the Table-1 most blue chip companies (Wipro, TCS, Infosys, HDFC Bank etc) have beta close to 1 or lower than 1. And because of the low beta these companies are considered as safe bets in a volatile market. Both SBI and HDFC belong to the same industry but SBI is considered to more riskier than HDFC as reflected by their respective beta value. The high beta of SBI may be attributed to the high non performing assets (NPA). SBI's NPA as on 30 June 2016 was 7.8% of total advances whereas HDFC bank had 1.07% of the advance as NPA on that date[4].

ALPHA: A MEASURE OF RETURN

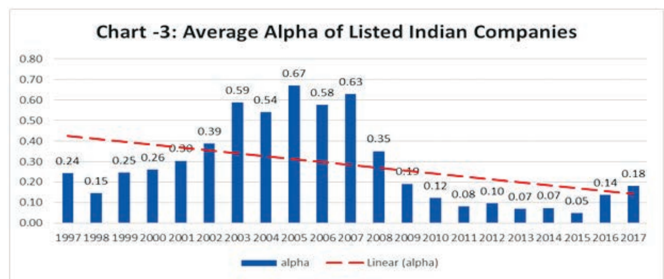
Alpha is used to measure performance on a risk adjusted basis. Alpha[5] is the difference between the actual returns earned on a traded investment (stock, bond, real asset) and the return one would have expected to make on that investment, given its risk.

Alpha = Actual Return - Expected return given risk

> Both alpha and beta are backwards-looking risk ratios. All calculations are made using data that happened in the past. One should remember that past performance is no guarantee of future results.While they cannot always accurately predict future results, alpha and beta can help to differentiate between relatively good and relatively poor investments over a given period of time.

- If alpha = zero means the investment has exactly earned a return adequate for the volatility assumed.
- If alpha > zero means the investment has earned a return that has more than compensated for the volatility risk taken.
- If alpha < than zero means the investment has earned a return that has not compensated for the volatility risk assumed.

Alpha enables us to understand if an investor is being compensated for the volatility risk taken. The return on investment might be better than a benchmark but still not compensate for the assumption of the volatility risk.



It can be seen from the chart-3 that the average alpha of the Indian companies listed on the NSE has decreased during the period 1997-2017, though during the last three years it has increased from 0.05 to 0.18. The increase may be attributed to the positive market environment/sentiments due to several important steps taken by the government of India. Table-2 shows the average alpha of all companies, companies forming a part of the select indices of NSE, and some individual companies.

Table -2: Alpha as on 31 March 2017

Alpha of NSE listed Companies			Select Indices				Select companies	
2017			Nifty Realty	-0.45	Nifty C P S E	0.11	Hindustan Unilever Ltd.	0.27
Alpha	Number	%	Nifty Infrastructure	-0.24	Nifty It	0.11	Tata Consultancy Services Ltd.	0.27
0	9	1%	Nifty Pse	-0.17	Nifty Fmcg	0.14	H D F C Bank Ltd.	0.21
<1	480	31%	Nifty High Beta 50	-0.14	Nifty Media	0.15	I T C Ltd.	0.16
>1	1040	68%	Nifty 50	-0.03	Nifty Pharma	0.16	Infosys Ltd.	0.13
			Nifty Bank	-0.02	Nifty Aditya Birla Group Index	0.17	Tata Motors Ltd.	-0.03
			Nifty Auto	0.08	Nifty Mahindra Group Index	0.17	Tata Steel Ltd.	-0.22
			Nifty Alpha 50	0.11	Nifty Tata Group Index	0.17	Steel Authority Of India Ltd.	-0.47

Source: Prowess, CMIE

It can be seen from the Table-3 that 68% of the companies listed on NSE have alph more than 1. It conveys an important message that the investors in these companies earn return more than the risk of these companies.

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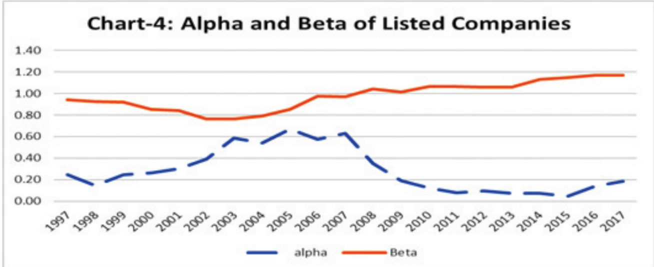
4 http://www.thehindu.com/data/Details-of-NPA-figures-of-public-private-sector-banks/article16670548.ece

5 http://pages.stern.nyu.edu/~adamodar/New_Home_Page/definitions.html

BETA AND ALPHA: INVERSE RELATIONSHIP

Investors can use both alpha and beta to judge an individual stock's performance. Investors would most likely prefer a high alpha and a low beta. But other investors might like the higher beta, trying to cash in on the stock volatility in price and shares sold.



It is a commonly accepted principle that the risks and return are inversely related or the correlation between Beta and Alpha be negative. The negative correlation between alpha and beta can be seen for the Indian companies in the following table (all listed companies taken together or even if we take the indices or a particular company):

Correlation between Alpha and Beta	
Average for 1998 to 2017	-0.67
Selected Companies (1998-2017)	
HUL	-0.049
Tata Motors	-0.113
ITC	0.526
SAIL	-0.714
Average of the companies forming part of Selected Indices for 2017	-0.86

Both alpha and beta are backwards-looking risk ratios. All calculations are made using data that happened in the past. One should remember that past performance is no guarantee of future results.While they cannot always accurately predict future results, alpha and beta can help to differentiate between relatively good and relatively poor investments over a given period of time.

XBRL: REPORTING LANGUAGE

XBRL is eXtensible Business Reporting Language and is basically a reporting format. This is the new structured format in which corporate entities file their returns with the Ministry of Corporate Affairs(MCA). XBRL is a derivative of XML (eXtensible Mark-Up Language) which is used to express (FSB) Financial Business Reporting content.

XBRL is the open international standard for digital business reporting, managed by a global not for profit consortium, XBRL International. XBRL is used around the world, in more than 50 countries.

It provides an internationally accepted, standardised electronic platform for comparing, analysing and reviewing business data and financial performance of companies. The format assists to access financial and non-financial information like supplier data, customer application forms, project data, employee information, regulatory submissions, and Management Information System on the company.

XBRL is supported by a large number of Common Off The Shelf software packages and by a large number of service providers, and is *freely licensed* open technology, developed

and supported by a *global, not-for-profit* consortium.

XBRL IN INDIA

XBRL India[6] is a company registered under section 25 of companies Act, 1956, incorporated for managing the affairs of Indian Jurisdiction of International inc.

Its main objective is to promote and encourage the adoption of XBRL in India as the standards for electronic business reporting in India.

XBRL India is working closely with regulators, stock exchanges and software companies for promotion of XBRL as a standard Business Reporting Language. The Institute of Chartered Accounts of India (ICAI), the standards setting body has developed taxonomy for commercial and Industrial companies as per the provisions of relevant schedules of the Companies Act(1956 and now 2013).

The responsibilities of forming XBRL national jurisdiction and implementation of the standards for financial reporting in India have been entrusted to the Institute of Chartered Accountants of India (ICAI). The RBI is responsible for implementing the XBRL standard for banks reporting.

The Ministry of Corporate Affairs[7] mandated that companies falling in the following categories will have to file their Balance Sheet and Profit & Loss Account under section 220 of the Companies Act, 1956 using the Extensible Business Reporting Language (XBRL) taxonomy for financial year ending on or after 31.03.2011:

1. all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
2. all companies having paid up capital of Rupees five crore and above; or
3. all companies having turnover of Rupees one hundred crore and above; or

However, banking companies, Power companies, Non Banking Financial Companies (NBFC) and Insurance companies are exempted from XBRL filing for FY 2010-11.

BSE has made an official announcement of adoption of XBRL based reporting for online filing of shareholding patterns

6 http://www.mca.gov.in/XBRL/
7 http://www.mca.gov.in/XBRL/FY2010.html

and has launched a facility of XBRL based reporting for Shareholding Pattern w.e.f June 12, 2015. Clause 35 of the Equity Listing Agreement (Clause 37 of the SME Listing Agreement) has mandated that all the companies listed on BSE file their Shareholding Pattern (SHP) for every financial quarter with the Stock Exchange, as per the format prescribed by Securities and Exchange Board of India (SEBI).

As a part of regulatory compliances, BSE collects data/ disclosures in specified formats from its listed companies. With a view to making reporting more accurate and more efficient, BSE has moved towards the XBRL based reporting. Keeping in line with continuous improvement, BSE has made it mandatory for filing of Corporate Governance report and Shareholding Pattern in XBRL mode from March 2016[8].

BENEFITS OF XBRL[9]

XBRL doesn't change the accounting standards or methods used for financial and business reporting, but it puts reported information into an instantly reusable computer- readable format. Computer applications will automatically find comprehensive, granular data the instant it is posted online and flow it into analytical models for deep, automated analysis. XBRL is predicted to have a profound impact on any person or organization that creates or uses business information.

XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and manipulate XBRL information.

DATA COLLECTION AND REPORTING

By using XBRL, companies and other producers of financial data and business reports can automate the processes of data collection.. A company finance division, for example, could quickly and reliably generate internal management reports, financial statements for publication, tax and other regulatory filings, as well as credit reports for lenders.

DATA CONSUMPTION AND ANALYSIS

Users of data which is received electronically in XBRL can automate its handling, cutting out time-consuming and costly collation and re-entry of information. Software can also immediately validate the data, highlighting errors and gaps which can immediately be addressed. It can also help in analysing, selecting, and processing the data for re-use. Human effort can switch to higher, more value-added aspects of analysis, review, reporting and decision-making. In this way, investment analysts can save effort, greatly simplify the selection and comparison of data, and deepen their company analysis. Lenders can save costs and speed up their dealings with borrowers. Regulators and government departments can assemble, validate and review data much more efficiently and usefully than they have hitherto been able to do.

ALPHA, BETA AND XBRL

Will the quality of the financial statement have any impact of numbers such as alpha and beta. As mentioned in the first section XBRL is expected to improve the quality of financial reports though it does not affect the measurement of any financial number.

Research[10] have shown that if the quality of reporting improve the perceived risk involved reduces and the possibilities of earnings of management will reduce. Therefore we can assume that the Beta which is the reflection of the risk of the stock will reduce with the introduction of XBRL. In other words the Average Beta after the introduction of XBRL should be less and the difference should be significant. This can be tested through T Test and P values[11].

Since as per the MCA circular all listed companies were required to use XBRL for the year ending 31 March 2011, in the following section we will compare the mean of Beta for the year ending 2010 with the mean of the Beta for the year ending 2011 and check the significance of the difference in the mean. If the P value will be less than 0.05 the difference will be considered significant.

T Test Results

	Beta(2010)	Beta(2011)	Alpha 2010	Alpha 2011
Mean	0.77	0.79	0.11	0.05
Variance	0.29	0.28	0.32	0.27
Pearson Correlation	0.94		0.82	
Hypothesized Mean Difference	0		0.00	
P(T<=t) one-tail	0.00	significant as <0.05	0.00	significant as <0.05
P(T<=t) two-tail	0.00	significant as <0.05	0.00	significant as <0.05

It can be seen from the above table that the difference in the mean in two time periods is significant. It was expected that the mean of the Beta will reduce due to the introduction of XBRL. But the Beta continue to rise. The test shows that the market has not yet absorbed the impact of XBRL.

Therefore, the onus is on the regulators, professionals, and the professional academic institutes to undertake more awareness programmes for different stakeholders of the capital market. CS

[8] http://www.bseindia.com/corporates/Displaydata.aspx?Id=c7df9254-03e9-4dce-9a58-d311331810bf&Page=cir

[9] http://www.mca.gov.in/XBRL/Benefits_of_XBRL.html

A large p-value (> 0.05) indicates weak evidence against the null hypothesis, so you fail to reject the null hypothesis.

[10] There are several papers on this topic. One of such papers is http://www.sciencedirect.com/science/article/pii/S0148296310000251

[11] More on Ts and Ps of statistics please refer to http://blog.minitab.com/blog/statistics-and-quality-data-analysis/what-are-t-values-and-p-values-in-statistics. A small p-value (typically ≤ 0.05) indicates strong evidence against the null hypothesis, so you reject the null hypothesis.

ARTICLE

Taxation of Shares and Securities

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The daily turnover on the BSE and the NSE averages about 6 lakh crore. In April 2017, with the Sensex climbing past 30,000, India's market capitalisation inched to the $2-trillion mark. Only eight other countries have a higher m-cap. The benchmark Sensex on the BSE exchange has gained 20 per cent in dollar terms so far in 2017, making it the best-performing index among global peers.

This article provides a brief overview of various capital market instruments and their importance for the exchequer. The existing tax provisions have been explained along with examples and the relevant moot points for professionals dealing with Capital Markets.

Off-late, many new securities, with different features have been introduced and listed on the bourses, such as Convertible Warrants, Shares with Differential Voting Rights, Exchange Traded Funds etc.

Thus, with crores of rupees being earned and lost every single day and with the advent of more and more complex products and schemes, taxation has become a very important aspect. As per the statistics released by the Income Tax Department for the Assessment Year 2014-15, the total reported Long Term Capital Gains was a whopping 64,521 crore and the Short Term gains stood at 20,971 crore. Thus, the taxation area has become very important for the authorities as well.

It is therefore pertinent to discuss in detail the taxation aspects of various instruments: This article covers the taxation of the following instruments:

- Equity Shares
- Preference Shares and Debt Securities
- Hybrid Instruments such as Warrants etc
- Portfolio Management Schemes
- Bonds
- Mutual Fund Schemes
- Stock and Index - Futures and Options
- Currency Futures
- Unit Linked Insurance Plans

CAPITAL GAINS

Capital Gains is charged under section 45, which is the charging section of the Income Tax Act, 1961. The Act divides the taxation into Short Term Capital Gains & Long Term Capital Gains u/s 2(42A) & 2(29A).

Proviso to section 2(42A) till now said that in case of shares, listed securities, Mutual Funds and ZCBs, the period of holding is 12 Months for them to qualify as Long Term Capital Assets. However, Finance Act, 2014, added a second proviso, to say that in case of unlisted shares and Mutual Fund units (other than equity oriented), the period of holding will be 36 months.

Period of Holding will be 12 Months in the following cases for them to qualify as Long Term Capital Assets:

Security	Listed/Unlisted
Equity Shares	Listed
Other Securities	Listed
Units of UTI	Listed or Unlisted
Units of Equity Oriented Mutual Fund	Listed or Unlisted
Zero Coupon Bonds	Listed or Unlisted

The bifurcation between Short Term and Long Term Capital Assets is to be done on the basis of First-In First Out Method and is to be applied to each Demat account separately and not to all the accounts of an assessee put together.

In case of unlisted shares, if held for more than 24 months, the said shares will be classified as Long Term Capital Asset. In every other case, the said period shall be 36 months.

Capital Gains is computed as follows:

Sale Consideration (less incidental charges)	XXX
Less: Cost of Acquisition (Indexed incase of LT)	(XXX)
Capital Gain	XXX

Sale consideration will be the actual sale consideration received by the assessee. The deeming provision of Section 50C does not apply to shares. Thus, even in case of listed securities, though there is a market price readily available and still the shares are transferred at a lower value, that value will be the Sale consideration.

The proviso 5 to section 48, does not allow Securities Transaction Tax paid, as a deduction while calculating capital gains. This is allowed as a deduction only if the income is taxed under the head Business and Profession.

A question now arises as to what is Cost of Acquisition?

Cost of Acquisition will be the actual cost of acquisition of the securities.

According to Section 49 of the Act, in case of acquisition by gift/will or inheritance; partition of HUF; distribution of assets by a company in liquidation, the Cost of Acquisition will be that of the previous owner from whom the assessee has acquired the shares.

In case of shares of the amalgamated company being acquired by the assessee as a result of amalgamation, the cost of acquisition will be the cost of the shares held in the original company.

For instance, Mr. A holds 100 shares at a cost of Rs. 20 each in XYZ Ltd, which is taken over by PQR Ltd. Now, PQR gives 1 share for every 10 shares held in XYZ. Thus, Mr. A receives 10 shares of PQR. The cost of these will be Rs. 200 per share which is Rs.2000/10 shares).

Where the shares come to the assessee on conversion of preference shares/debentures etc. the cost of the shares will be that of the debentures etc originally held by him, plus any lump sum payment made by him.

A moot question remains whether the interest paid for acquisition of shares will be an allowable deduction. The general principal here is that any interest paid on the amount borrowed for earning tax free income is not allowed as a deduction. However, there have been arguments that the Dividend Distribution Tax, even though paid by the company, is ultimately an economic burden of the assessee and thus should not be treated as an exempt income. However, there is no legislative answer to this question.

The other important points that need consideration while computing Capital Gains tax are:

- In case the securities are received by the assessee under the gift/will/inheritance, the period of holding of the previous owner should also be considered while computing the period of holding.
- The bifurcation between Short Term and Long Term Capital Assets is to be done on the basis of First-In First Out Method and is to be applied to each Demat account separately and not to all the accounts of an assessee put together.

A question here arises: What happens to the shares under lien for Loan against Shares?

Say Mr. A purchased 100 shares of ABC Ltd. at Rs. 700 on 01/06/2014 and another 50 at Rs. 730 on 05/06/2014. After which, he pledged these shares and took a loan against them. While the loan continued, he purchased another 300 shares at Rs. 800. After 3 months, he sells 150 shares.

What will be the Cost of Acquisition?

In this case, since Mr. A will be in a position to chow a clear demarcation between the frozen shares and the free ones, the cost of acquisition can be taken to be Rs. 800.

Rights Issue

It is pertinent to remember that even the right to acquire the shares in case of rights issue, is a capital asset and the right, if renounced, and gives rise to Capital Gains Tax.

Buy Back of Shares

The taxation of buy back of shares is governed by section 10(34A), which reads as:

(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in section 115QA

Thus, the whole of the buyback proceeds are exempt and not liable to tax, since the company will have to pay a tax similar to Dividend Distribution Tax at 20%.

This however applies only to unlisted shares. The gains on listed shares continue to be charged as per the normal provisions.

Employees' Stock Option Scheme

ESOPs have emerged as one of the most effective ways of retaining employees. Apart from making them gain handsomely, ESOPs help employees to create wealth for a longer term. The ESOPs are given to the employee at a pre-determined price, called the exercise price. At the time of exercising of the option, the employee has to pay tax on the difference between the exercise price and the Fair Market Value (FMV) on the day of exercise. This gain is to be treated as a perquisite and taxed under the head - income from salary.

The employee may then decide to either hold or sell the shares. The gains will be taxed under the normal provisions depending on whether the shares are listed or not and the period of holding.

The Capital Gains will be calculated, assuming the Fair Market Value on the exercise date to be the Cost of Acquisition. For instance, Exercise Price: Rs. 635 FMV is Rs. 1,350. Perquisite Tax at slab rates on Rs. 715. The shares are sold within 1 year at Rs. 2,000. Short Term Capital Gains on Rs. 650.

Taxation of different types of incomes

NATURE	TAX RATE
LONG TERM CAPITAL GAINS	
Equity Shares/Units of Equity Oriented MF and STT is paid on sale	Exempt u/s 10(38)
Listed Securities/Units of MF/ZCB	20% u/s 112(1) with indexation or 10% under proviso to 112(1), if indexation is not taken – which-ever is beneficial
All others	20% u/s 112(1)
SHORT TERM CAPITAL GAINS	
Equity Shares/Units of Equity Oriented MF and STT is paid on sale	15% U/S 111a
All others	Normal Slab Rates
DIVIDEND INCOME	
Dividend from Indian Company	Exempt u/s 10(34). Read foot note. Section 115BBDA
Other Dividends	Taxable as Income from Other Sources
INCOME FROM OTHER SOURCES – RECEIPT OF SHARES FOR LOWER CONSIDERATION	
Securities received at a consideration lower than FMV	Income from Other Sources

The Finance Act 2016 introduced a new section 115BBDA, under which, if the total income from dividend from a domestic company exceeds Rs. 10 Lakh, then the assessee is required to pay a tax at a flat rate of 10% on the amount that exceeds Rs. 10 Lakh. For instance, Mr. A's total dividend income is Rs. 23 Lakh, he will need to pay tax at the rate of 10% on Rs. 13 Lakh (23 Lakh minus 10 Lakh).

Bonus Stripping – a tax planning tool

Section 94 covers Dividend Stripping and Bonus Stripping

How does Dividend Stripping Work: Mr. A buys 1000 shares of ABC Ltd. at Rs. 700 per share, on 29 May 2014, being aware that he is set to receive a dividend of Rs. 14 per share. He holds the shares till the record date, post which the price falls to Rs. 686 per share. He sells off the shares at Rs. 686, thus booking a Short Term loss of Rs. 14,000. Moreover, the dividend income is fully exempt. Thus, he is in a win-win situation

The plug was pulled on these transactions by inserting section 94(7) which says that if a person buys "shares/securities/units" within 3 months prior to the Record date and sells them within 3 months post the record date (9 months if units) then, the Short Term Capital Loss to the extent of the dividend will be

The Income Tax Act has clarified that the income from futures and options will not be considered as a speculative income. A moot point is that these being hedge instruments should they be taxed under the head income from business and profession or income from other sources.

ignored.
Thus, the Short Term Capital Loss will not be allowed to be carried forward.
Bonus stripping works in a similar manner, wherein the investor buys shares and waits till the record date, when the price falls down to say half (in case of 1:1 bonus). Post which, he sells the shares which he holds and books a Short Term Capital Loss.
Section 94(8) is similar to section 94(7) but the word used by 94(8) is only "UNITS" and not "shares/securities/units". Thus, it restricts itself to MF only and not to equity shares.

Whether the income will be taxed under the head Capital Gains or under Business and Profession?
This is a 'never say die' issue and has been a moot point in various cases. In CIT (Central), Calcutta Vs Associated Industrial Development Company (P) Ltd (82 ITR 586) it was held that the taxability depends on the bifurcation maintained by the assessee.

The Authority for Advance Rulings (AAR) (288 ITR 641), referring to the decisions of the Supreme Court in several cases, has culled out the following principles:-

"(i) Where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;

(ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;

(iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt".

PREFERENCE SHARES & DEBT INSTRUMENTS

Preference Shares –

The income is in the form of dividend and as such is exempt from being taxed under Section 10(34) of the Income Tax Act, 1961.
Capital Gains is taxed as per normal provisions depending on whether or not they are listed.

If the shares are unlisted and bought back by the issuing

company then, the buyback amount is fully exempt u/s 10(34A) since they are shares.
Debt Instruments - The income is in the form of interest and as such is taxed under the head Income from Other sources. Capital Gains is taxed, as per normal provisions depending on whether or not they are listed.

If the said instruments are bought back by the issuing company, the buyback amount will taxable as capital gains.

If any of the above are convertible, cost of the equity shares will be the cost of the Preference shares/ Debentures plus lump sum payment if any.

HYBRID INSTRUMENTS – WARRANTS ETC

The income received in the form of interest will be taxed as Income from Other Sources. Capital Gains is taxed, as per normal provisions depending on whether or not they are listed.

If the instruments are convertible to shares, the cost of the equity shares will be the cost of the equity share and plus any lump sum payment if any made on the conversion.

CURRENCY FUTURES

The currency futures are traded on the stock exchanges. These however cannot be settled by delivery and need to be settled in cash only. The income from the currency futures will be taxed, under Section 44AD of the Income Tax Act, 1961, if the total turnover is less than Rs. 1 crore. The provisions of Section 44AD will be more elaborately discussed in the latter parts of this article.

PORTFOLIO MANAGEMENT SCHEMES

These schemes are similar to Mutual Funds except that in case of a Mutual Fund, one owns the units of the Fund, which in turn owns the securities. In case of a PMS, one owns the individual securities.
These schemes are of 3 broad types:
Discretionary: In this type, the fund manager directly trades and the investor gives the discretion to the fund manager to decide on the trades.
Non Discretionary: In this type, the fund manager takes an explicit consent from the investor before trading on behalf of the investor
Advisory: In this type, the fund manager only acts as an advisor to the investor and does not trade on behalf of the investor.

Type of Security giving rise to Income	Nature of Income	Taxability
Shares	Dividend Income	Exempt
Shares	Capital Gains	Taxable as Short Term/Long Term
Fixed Income/Debt Instruments	Interest	Income from Other Sources
Fixed Income/Debt Instruments	Capital Gains	Taxable as Short Term/Long Term
Structured Products	Interest	Income from Other Sources
Structured Products	Capital Gains	Taxable as Short Term/Long Term

BONDS

The income in the form of interest is taxable as Income from Other Sources, whereas the income from capital gains is taxed as Short Term/Long Term depending on period of holding.

In case of Deep Discount Bonds, the difference between the issue price and maturity value is taxed as capital gains. Thus, these turn out to be tax efficient if held for more than 1 year.

In case of Inflation Indexed Bonds, usually, the rate of interest is the Consumer Price Index plus a fixed spread. The Interest amount is chargeable as Income from Other Sources. Usually, there are no Capital Gains, since the Maturity is at Face Value.

FUTURES AND OPTIONS

The Income Tax Act has clarified that the income from futures and options will not be considered as a speculative income. A moot point is that these being hedge instruments should they be taxed under the head income from business and profession or income from other sources.

Usually, these are taxed under the head income from business and profession given the magnitude of the transactions and the amounts involved.

As far as the taxation of the income is concerned, a

comparatively less known, but a major tax planning tool is available under Section 44AD of the Income Tax Act.

Under the said section, only 8% of the turnover is taken as taxable income and tax to be paid on the same. Turnover is the aggregate of the positive and negative differences. For options, the premium received is also a part of turnover.

Purchase	Sale	Profit/Loss
100,000	210,000	110,000
250,000	100,000	(150,000)
195,000	200,000	5,000
350,000	550,000	200,000
	Net Profit	165,000
	Turnover (for 44AD)	465,000
	Taxable Income (44AD)	37,200
	Tax on Above (Presumptive Basis)	11,495
	Tax on Above (Normal)	50,985
	Saving	39,490
	Net Profit	165,000

Computation under the presumptive scheme is mandatory and not optional as against the general presumption. If the income declared is less than the said 8% of the turnover, the assessee will be required to maintain books of accounts under Section 44AA of the Act get the accounts audited under Section 44AB of the Act. Thus, if the assessee carries forward a loss, the books will need to be audited.

Loss Scenario – Comparison between 44AD and normal provisions

Loss but paying tax on Presumptive Basis		
Purchase	**Sale**	**Profit/Loss**
100,000	210,000	110,000
250,000	100,000	(150,000)
195,000	200,000	5,000
350,000	100,000	(250,000)
	Net Profit/Loss	(285,000)
	Turnover (for 44AD)	515,000
	Taxable Income (44AD)	41,200
	Tax on Above (Presumptive Basis)	12,731

Loss but paying seeking carry forward of the Loss		
Purchase	**Sale**	**Profit/Loss**
100,000	210,000	110,000
250,000	100,000	(150,000)
195,000	200,000	5,000
350,000	100,000	(250,000)
	Net Loss to be carried forward	(285,000)
	Comparison	
	Tax on presumptive Basis	12,731
	Assumed Tax Audit Fees (net of Tax savings)	15,000

MUTUAL FUNDS

There are three broad types of schemes viz. Dividend Pay Out; Dividend Re-investment and Growth.
In case of Dividend scheme: the proceeds are paid out in form of dividends to the investor. Thus, there are two possible forms of incomes – Dividend and Capital Gains. Dividend is exempt in the hands of the investor and the Capital Gains are taxed under the normal provisions which have been discussed above.
In case of Dividend Re-investment option: the dividend proceeds re-invested in the same scheme. Thus, there are two possible forms of incomes – Dividend and Capital Gains. Dividend is exempt in the hands of the investor and the Capital Gains is taxed under the normal provisions which have been discussed above.
In case of Growth option: there is no dividend declared and nor are any proceeds paid out. The value of the units, which is the NAV, changes. Thus there is only one kind of income: Capital Gains, which is taxed under the normal provisions which have been discussed above.

EXCHANGE TRADED FUNDS (ETFs)

This was a novel concept, whereby the units of funds with a concentrated asset base are listed. For instance, Gold ETFs. The following table gives a bird's eye view of the taxation aspects:

Nature of Tax	Gold ETF	Index ETF	International ETF	Sector Specific ETF
Wealth Tax	Nil	Nil	Nil	Nil
Short Term Capital Gains Tax	As per the Income Tax Slab	15%	As per the Income Tax Slab	15%
Long Term capital Gains Tax	10% without indexation or 20% with indexation	Nil	10% without indexation or 20% with indexation	Nil
Securities Transaction Tax (STT)	Nil	0.125%	Nil	0.125%

SET OFF AND CARRY FORWARD OF LOSSES

The principles are as under:

Set off of Losses

Long Term Capital loss cannot be set off against Short Term Capital Loss. Short Term Capital loss can be set off against Long Term Capital Gains as well. However, no capital loss can be set off against any non capital incomes. Speculative loss cannot be set off against non speculative incomes. Business Loss cannot be set off against salary income.

Carry Forward of Losses

In order to carry forward the losses, the Return of Income should be filed before due date under Section 139(1) of the Income Tax Act, 1961. The losses are allowed to be carried forward for 8 subsequent years. Speculation loss can be carried forward for 4 subsequent years.
The carry forward is not allowed if there is a change in the share holding pattern of a closely held company. i.e. for the loss to be allowed, those holding 51% shares in the year when the loss arose, should hold at least 51% in the year of set off as well.

UNIT LINKED INSURANCE PLANS

These Considered as Life Insurance Policies and hence eligible for deduction under section 80C of Rs. 1.50 Lakh subject to the limit of the premium being 20% of the sum insured.

The payout on the policy can be received in two ways:

- On death (by the nominee) – Completely tax exempt.
- On maturity (by the insured) – Considered as payout from a policy under 10(10D). and as such, becomes tax free. CS

ARTICLE

Green Bonds – A game changer in raising finance for Green Projects

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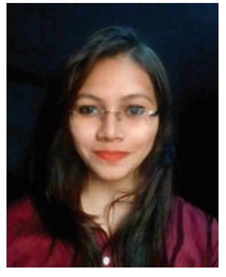

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A bond is a debt instrument with which an entity raises money from investors. The issuer of a green bond publicly states that capital is being raised to fund 'green' projects, which typically include those relating to renewable energy, emission reductions and so on. Green bonds are like any other debt instrument but the funds raised from such bond sale are used exclusively for renewable energy projects. Green bonds are bond issues

> A "green bond" is differentiated from a regular bond by its label, which signifies a commitment to exclusively use the funds raised to finance or re-finance "green" projects, assets or business activities. In a world where there is ever-increasing awareness on climate concerns, the Green Bond is a tool that raises industry engagement by encouraging investments in sustainable projects.

whereby the proceeds are ring-fenced and exclusively applied to finance or re-finance in part or in full new and/or existing projects that will promote progress on environmentally sustainable activities. There is no common definition of "green" bonds and market practice has been for issuers to choose their own definition. The general idea is that the proceeds from the issue of these types of debt instruments will be used either to fund projects which have a discernible, positive environmental impact, often in the renewable energy sector, or be used to invest in generally ethically sound business lines or assets, such as green residential mortgages or low-emission vehicles.

A "green bond" is differentiated from a regular bond by its label, which signifies a commitment to exclusively use the funds raised to finance or re-finance "green" projects, assets or business activities. In a world where there is ever-increasing awareness on climate concerns, the Green Bond is a tool that raises industry engagement by encouraging investments in sustainable projects, processes and technologies with a transparency that allows investors to understand the challenges and thus diversify risk. At the same time, the Green Bond provides issuers with an opportunity to have a closer dialogue with investors and adapt issuance.

FINANCIAL CHARACTERISTICS OF GREEN BONDS

Like any other bond, a green bond is a fixed-income financial instrument for raising capital from investors through the debt capital market. Typically, the bond issuer raises a fixed amount of capital from investors over a set period of time (the "maturity"), repaying the capital (the "principal") when the bond matures and paying an agreed amount of interest ("coupons") along the way. A green bond is differentiated from a regular bond by being "labelled", i.e. designated as "green" by the issuer or another entity, whereby a commitment is made to use the proceeds of green bonds (i.e. the principal) in a transparent manner, and exclusively to finance or refinance "green" projects, assets or business activities with an environmental benefit.

TYPES OF GREEN BONDS

The green credentials of green bonds can be broadly structured and categorized as follows:

Green use of proceeds bond

This is a standard recourse-to-the-issuer debt obligation for which the proceeds shall be held in a sub-portfolio or otherwise tracked by the issuer and attested to by a formal internal process that will be linked to the issuer's lending and investment operations for projects.

Green use of proceeds revenue bond

This is a non-recourse-to-the-issuer debt obligation in which the credit exposure in the bond is to the pledged cash flows of the revenue streams, fees, taxes, etc., and the use of proceeds of the bond goes to related or unrelated green projects. Notably, the underlying

collateral need not always be “green” as demonstrated by the green bonds issued by Toyota in March 2014. The structure involved the securitization of auto loans to collateralize its green bonds, the issuance proceeds of which were allocated to fund the development of environmentally-friendly automobiles.

Green project bond
This is a project bond for a single or multiple green project(s) for which the investor has direct exposure to the risk of the project(s) with or without potential recourse to the issuer.

Green securitized bond
This is a bond collateralized by one or more specific projects, including but not limited to covered bonds, asset-backed securities and other structures. The first source of repayment is generally the cash flows of the assets securing the bonds.

The specific structure for a green bond can be determined based on the circumstances of the issuer and the applicable green projects.

COMMON GREEN PROJECT CATEGORIES

Common Green Project Categories			
Energy	**Buildings**	**Industry**	**Transport**
Solar	Energy Efficiency	Energy Efficient Products	Rail
Wind	Smart Lighting	Cogeneration	Transport Logistics
Energy Storage	LEED (Leadership in Energy and Environmental Design) Buildings	Waste Heat Recovery	Electric vehicle loans
Information Technology	**Waste and Pollution**	**Agriculture and Forestry**	**Adaptation**
Smart Grid	Waste to Energy	Agriculture Efficiency	Resilience infrastructure
Technology Substitution	Greenhouse gas capture	Reforestation	Flood Protection
Broadband	Recycling	Carbon Sequestration	Desalination

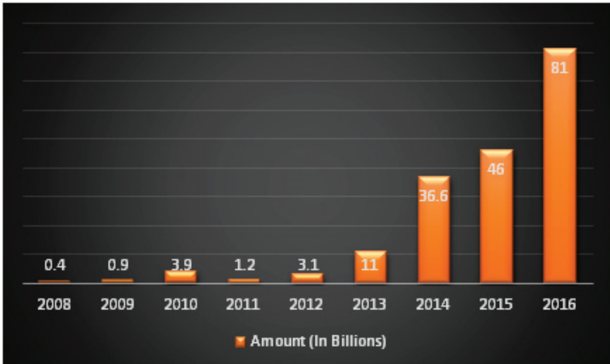
Charts herein are for illustrative purposes and are not indicative of future results; current data may differ from data quoted.

EMERGENCE OF GREEN BONDS

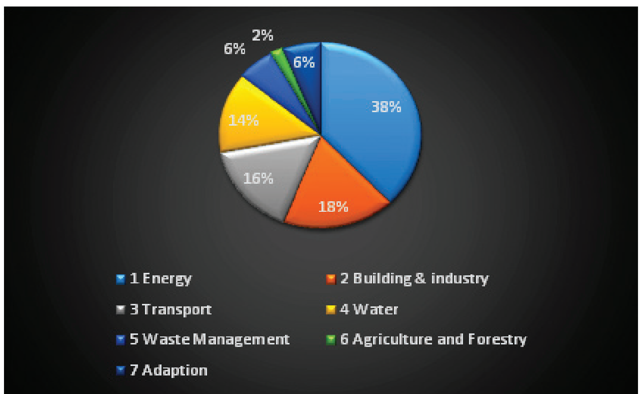
The first green bond was issued in 2007 and was initially1characterized as a niche product pioneered by a handful of development banks. The “Climate Awareness Bond” was issued by the European Investment Bank (EIB) in 2007, followed by the World Bank issuing a “Green Bond” in 2008. Between 2007 and 2012, governments began to join international organizations and issue their own green bonds.

Funds raised through Green Bonds globally

Funds raised through Green Bonds in 2016



Use of funds raised through green bonds



BENEFITS OF GREEN BONDS

‘Green bonds’ are an attractive mechanism for organizations to raise capital for sustainable projects. These bonds can be raised by not only financial institutions, but also by any private sector or public sector organization. The global green bond market is growing rapidly which is a result of the interest from a varied debt investors.

BENEFITS TO ISSUERS

- Helping issuers to articulate and communicate the sustainability strategy.
- Improving relationships with debt providers and broadening the ‘investor base’.
- Creating internal synergies between financial and sustainability departments.
- Improving diversification of bond issuer investor base, potentially reducing exposure to bond demand fluctuations.
- Reputational benefits (e.g. marketing can highlight issuer’s green credentials and support for green investment).
- Tracking of proceeds use and reporting leads to improved internal governance structures and communication.

BENEFITS TO INVESTORS

- Helping investors to develop better-informed investment strategies through improved risk assessment in an otherwise opaque fixed income market through use of proceeds reporting.
- Facilitating the smooth implementation of long-term climate strategies.
- Helping responsible investors broaden their restricted investment portfolios.

BENEFITS TO POLICYMAKERS

Indirectly supporting the implementation of sustainable development strategies by better matching of green issuers and investor

CHALLENGES IN ISSUANCE OF GREEN BONDS

- **Use of proceeds:** the issuers need to define and disclose their criteria for what is considered ‘green’ i.e. what projects, assets or activities will be considered ‘eligible’ and what funds will be spent on.
- **Project evaluation and selection:** what process will be used to apply ‘green’ criteria to select specific projects or activities.
- **Management of proceeds:** what processes and controls are in place to ensure funds are used only for the specified

‘green’ projects.

- **Reporting:** how projects will be evaluated and progress reported against both environmental and financing criteria.

BARRIERS TO GREEN BOND MARKET GROWTH MAY INCLUDE:

- Lack of a pipeline of infrastructure projects corresponding to a long-term governmental commitment to sustainable development;
- Lack of commonly accepted green definitions;
- Investors with limited capacity to analyze green investments;
- Scale and mismatch among projects, bonds and institutional investors;
- A lack of suitable aggregation mechanisms; non standardized projects and cash flow instability;
- Low credit ratings for potential green bond issuers and green projects, especially in emerging economies.

THE RISK OF ‘GREEN WASHING’

The lack of standard definitions of what makes a bond ‘green’ has led to uncertainty over whether all green bonds really are ‘green’. Issuers face reputational risk and potential accusations of ‘green wash’. Green washing occurs when a bond’s proceeds are used to fund projects with little or no positive environmental impact. To prevent the risk of green washing, companies are advised to be guided by the two sets of currently available standards which define and regulate green bonds (1) **The Green Bond Principles (GBP)** are voluntary guidelines issued by the International Capital Market Association which states the procedure for certifying a green bond, which have been adopted by 50 large issuers, underwriters and investors. They set disclosure criteria and where the money can go. An external consultant can provide a second opinion on the bond structure and on the projects financed (2) **The Climate Bond Standards** have been put forward by the Climate Bond Standards Board, an organization of funds that have among them around $35 trillion.

At present, market practice has been not to include covenants or events of default in green bond documentation which would penalize an issuer for failing to apply the proceeds of its bond issue towards the specified green use, so documentation has not given investors much comfort that issuers will abide by their stated principles. However, the big four audit firms and external, independent consultants or assessors are often engaged to provide opinions certifying that certain bonds meet the GBP.

> In a world where there is ever-increasing awareness on climate concerns, the Green Bond is a tool that raises industry engagement by encouraging investments in sustainable projects, processes and technologies with a transparency that allows investors to understand the challenges and thus diversify risk. At the same time, the Green Bond provides issuers with an opportunity to have a closer dialogue with investors and adapt issuance.

One of the slightly more complicated challenges is ‘do investors really care?’ Having made the initial investment in a green bond, how many investors track the bonds’ performance against its ‘green credentials’? The ability of the investor(particularly in the debt market) to engage in any great detail is limited – not only in terms of the time they can afford to interrogate the sustainability performance of the assets, but also in terms of their sustainability knowledge.

GREENING INDIA’S FINANCIAL MARKET

The Government of India has embarked on an ambitious target of building 175 gigawatts of renewable energy capacity by year 2022, from just over 30 gigawatts now. This ambitious target needs ambitious investments. It is estimated that this leap towards renewable energy will require funding of US$200 billion. Assuming a debt-equity ratio of 3:1, the sector will require close to US$150 billion by way of debt. Some studies indicate that paucity of funds for the sector and the consequent higher interest rates in India drive up the cost of RE by 24 – 32% in the country as compared to costs in US and Europe. Similarly, the overall size of the EE market in India is estimated to be around US$ 11 billion. Green bond funding is crucial for India to achieve its green goals. Green bonds are becoming an increasingly attractive mechanism for both private and public sector organizations to raise capital for projects, assets or other activities that benefit the economy, environment and society. With the Indian government and private sector increasingly focusing on renewable energy projects, the demand for such funds is expected to rise over time.

Currently, most renewable projects are financed by bank commercial loans at 11-12 per cent interest per annum. The Indian banking sector is currently going through a balance sheet adjustment; banks are unlikely to be able to expand their balance sheets to be able to finance the additional requirements of the renewable sector. Green bonds may be able to fill this gap.

Current funding mechanisms for RE and EE projects include equity, government subsidy/incentive schemes, specific funds set up by government agencies or donors, trade credit, and commercial finance. However, there are some critical factors inhibiting the flow of credit from financial institutions. There is a limited understanding of the different kinds of risks affecting RE and EE projects. Loans in this sector often have to be custom designed, owing to considerable differences in business models and heterogeneity in project design. This increases the transaction

ARTICLE

In January 2016, Securities Exchange Board of India (SEBI) rolled out a path breaking concept paper defining the guidelines for issuance and listing of Green Bonds, as increasing number of financial and banking institutions in India have shown interest in launching green bonds to mobilise resources to support wide range of projects related to renewable energy and climate change adaptation and mitigation.

costs for financial institutions. Further, there is the issue of asset-liability mismatch for commercial banks, since RE and EE projects typically have longer gestation periods.

In this context, green bonds can expand the pool of available investors and therefore help in bringing down the cost of funds. A green bond, like any other bond, is a fixed-income financial instrument for raising capital through the debt capital market. The key difference between a "green" bond and a regular bond is that the issuer publicly states that it is raising capital to fund projects, assets or business activities with environmental benefits, such as RE, EE or electric mobility projects. Thus, these bonds appeal to regular investors as well as other investors such as bilateral or multilateral agencies, other institutional agencies, high net worth individual (HNI) investors etc. who focus on use of proceeds and their friendliness to the environment, in addition to the yield offered. Green bonds, therefore, have considerable potential to provide large quantum of long-term debt capital for RE and EE projects.

GREEN BONDS ISSUED IN INDIA

- In 2015, YES Bank, India's Private Sector Bank has successfully issued India's *first* ever *green infrastructure bonds* raising an amount of INR 1,000 crores. The amount raised is being used by YES Bank to finance green infrastructure projects in renewable energy including solar power, wind power, biomass, and small hydropower projects.
- Another leading banking institution, the Exim Bank of India, in March 2015, issued a five-year $500 million green bond, which is India's first dollar-denominated green bond to fund eligible green projects in countries including Bangladesh and Sri Lanka.
- Axis Bank has launched India's first internationally-listed and certified green bond and raised $500 million to finance climate change projects and solutions around the world. The bond certified by the Climate Bonds Standards Board (CBSB) has been listed in London Stock Exchange (LSE). The Axis Bank will utilise the bond proceeds to promote green energy in urban and rural areas, transportation and what is called 'green-blue infrastructure' projects in India and abroad.
- IDBI Bank raised $350 million in BBB-rated 5-year green bonds for renewable energy projects in November 2015.
- In January 2016, IREDA issued a tax-free Rs.10 billion green bond.
- CLP Wind Farms, the largest wind power developer in India with 1,000 MW of wind energy assets in the pipeline across 6 states, became the first Indian corporate (non-bank) issuer of green bonds in September 2015. CLP Wind Farms raised Rs.6 billion.

- Re New Power Ventures, a leading Indian clean energy company, issued the second corporate green bond in the country in September 2015.The proceeds of the Rs.4.51 billion green bond is intended to refinance bank loans for the company's 85 megawatts (MW) wind power plant in Maharashtra.
- Hero Future Energies, the green energy arm of the Hero Group, one of India's leading industrial conglomerates, issued the country's first certified climate bond in February 2016. Hero Future Energies raised Rs.3 billion ($44 million) by issuing nonconvertible debentures – certified by the Climate Bonds Standard – to finance the development of wind energy projects in the states of Madhya Pradesh, Telangana, and Andhra Pradesh.
- India's state-owned energy major NTPC has become first Indian corporate to raise $300 million through Green Masala Bond listed at the London Stock Exchange (LSE) as part of its efforts to promote renewable energy projects in the country. The first Masala bond by an Indian quasi-sovereign issuer, represents another historic event for Indian finance.
- Motherson Sumi and Greenco Investment company have also raised funds through green instruments.

SEBI CONCEPT PAPER ON ISSUANCE OF GREEN BONDS

In January 2016, Securities Exchange Board of India (SEBI) rolled out a path breaking concept paper defining the guidelines for issuance and listing of Green Bonds, as increasing number of financial and banking institutions in India have shown interest in launching green bonds to mobilise resources to support wide range of projects related to renewable energy and climate change adaptation and mitigation.

Issuance of Green Bonds in India does not require any amendment to the existing SEBI Regulations for issuance of corporate bonds, SEBI (Issue and Listing of Debt Securities) Regulations, 2008

(hereinafter “ILDS Regulations”). The issue, listing and disclosure requirements as prescribed under ILDS Regulations will continue to be applicable, like any regular corporate bond issuance.

However, for designating an issue of corporate bonds as green bonds, in addition to the compliance with the requirements under ILDS Regulations, an issuer shall have to disclose in the offer document following additional information about the green bonds, which have been based upon the Green Bond Principles, 2015:

(A) Use of proceeds: Issuer shall define and disclose in their offer document, the criteria for identification as ‘green’ i.e. what projects, assets or activities will be considered ‘eligible for financing’ and quantum of funds to be spent on the projects/ assets/activities. For assigning the status of the bonds as Green, the broad categories of areas where such monies may be invested may be one or more of the following:

- Renewable and sustainable energy (wind, solar etc.)
- Clean transportation (mass transportation)
- Sustainable water management (clean and/or drinking water, water recycling etc)
- Climate change adaptation
- Energy efficiency (efficient and green buildings)
- Sustainable waste management (recycling, waste to energy etc.)
- Sustainable land use (including sustainable forestry and agriculture, afforestation etc.)
- Biodiversity conservation

However, it is to be noted that this is an indicative list and may include other categories as specified by Board. Further, an issuer, if proposes to utilize a proportion of the proceeds of the issue of Green Bonds, towards refinancing of existing green assets, it shall be clearly provided in the offer document and wherever possible, shall also provide the details of the portfolio/assets/ projects which are identified for such refinancing.

(B) Project evaluation and selection: The issuer of a Green Bond shall provide the details of decision-making process, it will/ has followed for determining the eligibility of projects for using Green Bond proceeds. An indicative guideline of the details to be provided is as under:

- Process followed/ to be followed for determining how the project(s) fit within the eligible Green Projects categories;
- The criteria, making the projects eligible for using the Green Bond proceeds; and
- Environmental sustainability objectives.

(C) Management of proceeds: The proceeds of Green Bonds shall be credited to an escrow account, and shall be utilized only for the stated purpose, as in the offer document. The use of proceeds shall be tracked as per an approved internal policy of issuer and such policy shall be disclosed in the offer document/ placement memorandum. The utilization of the proceeds may also be verified/supplemented by the report of an external auditor, or other third party, to verify the internal tracking method and the allocation of funds towards the projects, from the Green Bond proceeds.

(D) Reporting: In addition to reporting on the use of proceeds issuers shall also provide, at least on an annual basis, a list of projects to which Green Bond proceeds have been allocated. This may also include the details of the expected environmental impact of such projects.

The environmental impact report may provide for qualitative performance indicators and, where possible, quantitative performance measures of the expected environmental sustainability impact of the specific project. However, where confidentiality agreements or competition issues limit the amount of detail that can be made available, information can be presented in generic terms.

In this context, the Reserve Bank of India has also introduced a number of measures in August 2016 to develop the corporate bond market in India:

a) It raised the ceiling limit for partial credit enhancement to 50% of issue size from the earlier limit of 20%
b) It allowed banks to issue rupee denominated bonds overseas under the extant framework of incentivizing issuance of long-term bonds by banks for financing infrastructure and affordable housing
c) In order to encourage activity in the corporate bond market, the RBI allowed brokers to participate in corporate bond repo market
d) To facilitate direct trading in corporate bonds, RBI in consultation with SEBI, decided to allow foreign portfolio investments (FPIs) to transact in corporate bonds directly without involving brokers.

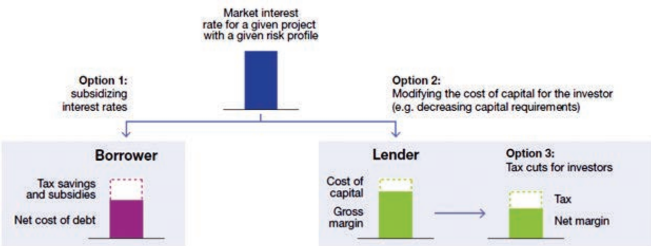
ENHANCING THE POTENTIAL BENEFITS OF GREEN BONDS

There is a potential contradiction between scaling-up the green bond market and ensuring that green bonds provide tangible financial benefits for issuers to develop new and additional projects with demonstrable environmental benefits .So far, green bonds have not directly stimulated green investments by lowering

the cost of capital. However, growing 'committed' demand for green bonds could hypothetically result in better borrowing conditions in the future. The cost of capital can be decreased by bringing smaller projects to the bond market through asset aggregation, notably securitization. This process can be accompanied by credit enhancement strategies, for example, guarantees provided by international financial institutions. Public support schemes could reduce the cost of capital through green bonds, but have to be weighed against other climate policies.

While all of these measures are geared towards adding depth to the bond market in general, their effect will also rub off on individual segments of the market such as green bonds. In order to provide a further boost to green bonds, there is a need for validation of "green" projects. A strong standards and certification process that clearly establishes green credentials can mitigate the risk of green washing—the superficial or insincere display of concern for the environment. Similarly, initiatives geared towards developing credit enhancement products such as loan loss reserves and credit guarantees will go a long way in supporting the market in initial stages and diversifying the issuer base

POLICY OPTIONS TO DECREASE THE NET COST OF CAPITAL FOR THE BORROWER OF A GIVEN PROJECT WITH A GIVEN RISK PROFILE



Note: Borrower's objective is to minimize its net cost of capital while lender's objective is to maximize his net margin. Options 2 and 3 will tend to decrease the market interest rate (with the condition that the difference does not only increase the net margin of the lender) while option 1 does not modify the market interest rate.

Green bonds are an attractive mechanism for organizations to raise capital for sustainable projects. These bonds can be raised by not only financial institutions, but also by any private sector or public sector organizations.HONG KONG Indian companies are beginning to embrace green finance to fund environmentally friendly projects, as they heed calls from Prime Minister Narendra Modi to boost renewable energy in one of the world's worst polluting nations and tap rising investor demand.

A healthy capital market will be critical to achieving India's ambitious climate mitigation targets, and green bonds can act as an effective instrument in channelizing the much-needed private capital.

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The Indian Capital Debt Market: Lack of It

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The size of the Bond Markets in the United States of America and the Chinese in absolute terms are respectively 20 times and 5 times the size of the Indian Bond Market. The Indian Corporate Bond Market is underpenetrated as compared to most Developed and Emerging economies. From the information provided in this article, it may be observed that the outstanding Indian Corporate Debt to the Country's Gross Domestic Product (GDP) stood at only 23% as at 31st March, 2017. This is far lower than the corresponding numbers of the Developed economies, for eg. USA has a Corporate Debt to GDP ratio of 123%, South Korea (77%), Malaysia (44%) and Singapore (32%).

> The absence of a strong and established Bond market in India reduces the flexibility of corporate borrowers to align their Capital Structuring with investments and future earnings, ending up incurring higher Cost of Capital (CoC). Higher CoC results in lower 'Net Present Value' and thereby affecting their Equity and Firm Valuation.

It therefore, is clear that our Debt Market is far below the International levels due to non-availability of (a) options in Debt instruments, (b) multi term instruments and (c) at attractive terms, in the Capital Debt Market. McKinsey in their recent study rightly pointed out that taking advantage of this potential and addressing these issues depends on policymakers' ability to build vibrant Capital Markets. It is further stated it in the study that the policymakers require both the tools for a detailed diagnosis and a change management approach to carry out the necessary changes. This article provides few suggestions to develop the underdeveloped Debt Market in the Country.

Capital Markets include the Stock Markets, Commodities Exchanges, Bond Market, Derivatives Market and just about any physical or virtual service or intermediary where Debt, Equity and Derivatives Securities can be bought and/or sold. Their primary purpose is to raise funds and channel investors' money to areas where there is a deficit or need for investment. They play a vital role as intermediaries between Governments, Issuers of Capital (Both Equity and Debt) and Investors.

The Capital Markets can be broken down into Primary Market and Secondary Market. In the Primary Market (both Debt and Equity), Governments, Companies, or Public Sector Organisations can obtain funding from Investors through the sale of their new Stocks or Bonds as a part of their Capital Structuring as the Means of Financing to meet their Cost of Capital of setting up of a New Project or even Expansion or Modernisation or Diversification Projects. In the Secondary Market, the listed Stocks and Bonds are bought and sold. It provides investors an avenue to exit at any given point of time. The required liquidity is provided in the Secondary Market.

FUNCTIONS OF A CAPITAL MARKET

The Capital Market in an economy is meant to mobilize long term funds from the surplus economic units to cater to the needs of deficit units towards effective and efficient allocation of resources for the optimal benefit of the economy through specially designed instruments called Securities or financial assets. Investors may be Individuals (called Retail Investors) or Financial Institutions such as Banks, Mutual Funds and Pension Funds. Over the Counter (OTC) trading and Alternative Trading Systems (ATS) also play their role in the Capital Markets.

The Indian Capital Market Scenario can be summarised as below:

INDIAN CAPITAL MARKET SCENARIO **CAPITAL MARKETS (LONG TERM SECURITIES)** PRIMARY MARKET and SECONDARY MARKET

The study conducted by Mckinsey shows that a deeper Capital Markets in emerging Asia could free an estimated US $ 800 Billion in funding annually for mid to large sized Corporations and for development of infrastructure. This additional funding can help accelerate economic growth to lift millions from poverty. But due to absence of access to predictable Capital Market the investors lack the financial instruments to deploy long-term savings.

Equity Market	Debt Market	Derivatives Market
Wholesale Market and Retail Market		

MARKET CAPITALISATION OF BSE LISTED COMPANIES

Market Capitalization of BSE Listed Companies is about Rs 132.05 Lac Crore (INR 132 Trillion) as on July 25, 2017.

Market Capitalisation of Top 10 Listed Companies is as under:

(in INR Trillions)

S. No.	Security Name	Market Capitalisation
1	Reliance Industries Ltd	5.21
2	TCS	4.92
3	HDFC Bank	4.48
4	ITC	3.54
5	HDFC	2.60
6	SBI	2.56
7	HINDUSTAN UNILEVER	2.49
8	INFOSIS	2.28
9	MARUTHI SUZUKI	2.27
10	ONGC	2.10
	Total	**32.45**

It shows that the top 10 Companies contribute almost 25% of the Market Capitalisation.

DERIVATIVES (F&O) MARKET:

- In fiscal 2016-17, the total turnover in Equity Cash Market stood at about Rs 60.5 lakh crore, whereas the same for Equity Derivatives was approximately Rs 944 lakh crore. While the Equity Cash Market has grown at a Compounded Annual Growth Rate (CAGR) of 11 % since 2004-05, the same for Equity Derivatives is over 35 % CAGR.

The point being highlighted in this article in the subsequent portions is whether the 'Debt Capital Market' in India is getting its due share as much as the Equity Capital Market.

DEEPER CAPITAL MARKETS IS THE NEED OF THE HOUR

The study conducted by Mckinsey shows that a deeper Capital Markets in emerging Asia could free an estimated US $ 800 Billion in funding annually for mid to large sized Corporations and for development of infrastructure. This additional funding can help accelerate economic growth to lift millions from poverty. But due to absence of access to predictable Capital Market the investors lack the financial instruments to deploy long-term savings. For example, the absence of a long-dated Bond market reduces the flexibility of corporate borrowers to align funding structure with assets and future earnings ending up paying higher cost on borrowings. This makes it harder to raise funds for new ventures and to grow or innovate and this stifles economic growth. ('Deepening capital markets in emerging economies' - Banking & Finance, April 2017, McKinsey & Company).

UNDERSTANDING DEBT CAPITAL MARKET:

Market Segments	Issuers	Instruments	Investors
Sovereign Issuer	Central Government State Government	GOI dated Securities, Treasury Bills, State Government Securities, Index Bonds, Zero Coupon Bonds	RBI, Development Financial Institutions
Public Sector	Government Agencies State Govt Bodies	Government Bonds, Debentures	Banks, Pensions Funds Foreign Institutional Investors, Corporates, Individuals
	Public Sector Undertakings	Public Sector Undertaking Bonds, Debentures Commercial Papers	
	Commercial Banks Development Financial Institutions	Certificate of Deposits Debentures Bonds	
Private Sector	Corporates	Bonds, Debentures, Commercial Papers	Provident Funds, Insurance Companies, Trusts, Mutual Funds
	Private Sector Banks	Bonds, Debentures, Commercial Paper, Certificate of Deposits	

Simply Put:

- A Bond (or) Debt instrument can be defined as a loan instrument in which an Investor is the Lender.
- The Issuer of the Debt pays the Investor:
  - Interest (Coupon Rate) at a pre-determined rate
  - for the agreed period
  - In return for the amount invested.

The largest segment of the Indian Debt market consists of the Government Securities with daily trading volume in excess of Rs. 2000 Crores, with instrument tenors ranging from Short dated Treasury Bills to Long dated Securities extending up to 30 years. Non-Government entities like Banks, Financial Institutions, Insurance Companies, Mutual Funds, Primary Dealers, Corporate entities are other players in Debt Market with Short Term, Medium Term and Long Term securities. YTM (Yield to Maturity) is the essential aspect of Debt Market.

SIZE OF INDIAN DEBT CAPITAL MARKET:

S. No.	Bond/Security Type	Amount (in Rs Cr)	Percentage
1	Government Securities (G-Sec)	46,52,880	45.0
2	Special Securities	1,98,704	1.9
3	Floating Rate Bonds (FRBs)	61,232	0.6

4	Treasury Bills (T-Bills)	3,34,802	3.3
5	State Development Loans (SDLs)	20,90,052	20.2
6	UDAY Bonds	2,08,055	2.0
7	Commercial Papers (CPs)	3,97,970	3.8
8	Certificate of Deposits (CDs)	1,55,740	1.5
9	Corporate Bonds	22,50,000	21.7
	Total	**1,03,49,435**	**100.0**

***Source**: CCIL, RBI, SEBI.*

The size of the Indian Debt Capital Market is estimated to be Rs. 103.49 lakh crore as at 31st March 2017. This only includes Capital Market Debt. The borrowings from Banking and other forms of loan are outside the purview of this.

- The Capital Market Debt is Comprising of:
  - Government Securities Market at Rs. 75.45 lakh crore (73%); and
  - Corporate Securities Market at Rs.28.04 lakh crore (27%).

From the data provided above on the size of both the Equity Capital Market and the Debt Capital Market of India, it is clear that the Capital Market Debt is about Rs 103 Trillion while the Capital Market Equity Capitalisation is about Rs 132 Trillion, thereby Debt Market constituting only 78% while the contrary is the case in most of the Developed economies.

COMPETITIVENESS OF COST OF CAPITAL

Developed economies like Germany, Japan, the United States, and the United Kingdom are Countries where the Cost of Capital is affordable with Cost of Equity of less than 10 percent compared with between 10 and 20 percent in most emerging economies in Asia. The Cost of Debt in most of the Emerging economies is also relatively higher than that of the developed economies.

	Real Cost of Equity 2015	**Real Cost of Debt 2015 (Yield To Maturity of safest Corporate Bond)**
Cost of Equity <8% **Cost of Debt <1%**	Japan, Chile, Malaysia	Brazil, Chile, Japan, Russia, Germany, UK, France
Cost of Equity <10% **Cost of Debt <2%**	Germany, China, Indonesia, Singapore, UK, US, France, Australia	South Korea, US, China, Australia
Cost of Equity <10% **Cost of Debt <3%**	South Africa, Thailand, Brazil, South Korea, Russia	Philippines, India, Malaysia, Singapore, Thailand
Cost of Equity <14% **Cost of Debt <4%**		Indonesia
Cost of Equity >14% **Cost of Debt >4%**	India, Philippines, Pakistan, Vietnam	South Africa, Pakistan, Vietnam

Source: Thomson Eikon, World Bank

GOVERNMENT SECURITIES VS. CORPORATE SECURITIES

The Indian Government Securities Market is 2.7 times the Corporate Securities Market while in Developed Economies; the value of Corporate Securities exceeds that of the Government Securities. Total outstanding State Government Securities (including UDAY bonds) equals long term Capital Market borrowings of Corporate.

EQUITY CAPITAL MARKET VS. DEBT CAPITAL MARKET

The value of all outstanding Debt Capital Market securities is lower (about 86%) than the Market Capitalisation of all listed stocks in India as at 31st March 2017 which is further reduced to 78% as of 25th July '17. This implies that the Indian Equity Market is much larger than the Debt Capital Market. In developed economies, the size of the Bond Market is much larger than the Equity Market.

BANK CREDIT VS. CORPORATE DEBT CAPITAL MARKET

- Total bank credit to Corporate stood at Rs. 63 lakh crore as at 31st March 2017.
- This implies that Corporate borrow 2.8 times more from Banking Sector as compared to their funds raised from the Capital Markets.
- If we add to this number, the amount borrowed from Non Banking Finance Companies (NBFCs) and other financial institutions, the size of non-Capital Market borrowing will be substantially higher.
- This over reliance on Banking Sector and NBFCs has not only reduced the due share of Corporate Bond Market in India but as well the reason for increasing stress on Banking Sector.
- In other developed economies corporate Bond market is larger compared to conventional financing by Banking sector.

FACTORS THAT ARE PROPELLING THE GROWTH OF THE MARKET

- **Introduction of new instruments:** As stated in the note, what is lacking in India is non availability of different types and tenure of instruments to cater to the all the segments of investors.
- **Increased liquidity:** This is also lacking in Indian Debt Market as the Secondary Debt Market is as good as non-existing due to reasons as stated above.
- **Interest rates:** In any Debt Market, the Coupon Rate plays a crucial role to provide the return to investors during volatility in interest rates. As the Secondary Market is not very effective, the changes in interest rates do not play the required catalyst for the Debt market in India.
- **Tax Concessions:** The Indian Debt in the Secondary Market is not enjoying Tax advantages as compared to the concessions enjoyed by the Equity Secondary Market. Details provided separately.
- **Lack of awareness:** The Indian households do not have adequate information and knowledge about the Bond Market, Yield to Maturity etc resulting in their substantial savings made in non financial assets.

UNDERSTANDING BOND MARKET

- At the most basic level, a Bond is a loan. Bonds are issued and sold to the public to raise Capital.
- Just as people obtain a loan from the Banks, Governments (both Central and State) and Companies borrow money from citizens in the form of Bonds.
- The Bond Market in India, more particularly after economic liberalization has been transformed completely.
- The opening up of the financial market at present has influenced several foreign investors holding up to 30% of the financial in form of fixed income to invest in the Bond Market in India. But, as stated earlier the Indian investors need to be

> Developed economies like Germany, Japan, the United States, and the United Kingdom are Countries where the Cost of Capital is affordable with Cost of Equity of less than 10 percent compared with between 10 and 20 percent in most emerging economies in Asia. The Cost of Debt in most of the Emerging economies is also relatively higher than that of the developed economies.

more educated on Bonds.

COUPON RATE VS REQUIRED YIELD VS PRICE

Basic property of a Bond is that the Price varies inversely with its Yield.

Let us understand this with an illustration as below:

- 10 Year Maturity Bond, Par Value Rs 1000, issued 3 years ago and residual maturity of 7 years.
- Coupon rate : 14% per annum
- A new Bond is issued with the Coupon Rate of 10% per annum as against the existing Bond's Coupon Rate of 14% per annum.
- What will happen to the Price of existing Bond in the Market?

When the existing Bond gives a better Yield, the demand for the existing Bond will increase as compared to the proposed Bond. Hence, the Price of existing Bond will be:

P = C*PVIFA r, n + M*PVIF r, n

= 140 * (PVIFA 10%, 7 years) + M* (PVIF 10%, 7 years)

= 140(4.868) +1000 (0.513) = Rs. **1194.52**

Where 'C' is Coupon Rate, 'PVIFA' is Present Value Interest Factor Annuity, 'M' is Maturity Value and 'PVIF' is Present Value Interest Factor.

Note: Discounting at 14%, the value is :

= 140(4.288) + 1000(0.40)

= 600+400 =1000.

BOND: PRICE YIELD RELATIONSHIP

INDIAN HOUSEHOLD SAVINGS

Savings and Economic growth are directly linked. The Indian Household Savings Landscape, India Policy Forum 2016, observed in their recent report that throughout the last decades, around half of annual Indian household savings were consistently allocated to non-financial assets. It is also stated in the study that most recently, the fraction of non-financial assets, particularly in terms of gold holdings, land and buildings (residential real estate), in annual savings has risen to 70 percent, further enhancing the concern about declining financial resources available for investment in the macro-economy. The reason cited in the study for this very low level of financial savings by Indian household sector is lack of policy environment that incentivizes new financial savings instruments resulting in physical savings such as gold and real estate.

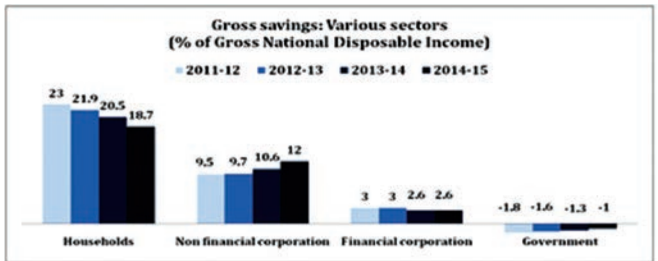

Figure 1: Comparison of gross savings in India by various sectors

Source: Reserve Bank of India

It may be noted from the RBI report that the household savings has also been declining consistently year after year, from 23% in 2011-12 to 18.7% in 2014-15 which is about 19% drop in savings in a 4 year period. The savings in financial assets out of this is around 7% only.

TAX IMPACT: EQUITY VS DEBT INSTRUMENTS

It may be noted from the few tax benefits provided to investors in Equity and Debt instruments that the Debt instruments have not been treated on par with Equity.

- **Equity/Equity MFs:**
  - **LTCG** (holding more than one year) is tax-free under section 10(38).
  - **STCG** shall be taxable @ 15% under section 111A of Income Tax Act.
  - **The dividend received** in hands of unit holder for an Equity/Equity mutual fund is completely tax free. The dividend is also tax free to the mutual fund house.
- **Debt MFs:**
  - **Short Term Capital Gain:** The gain arises due to redemption of debt mutual fund **within 3 year** (earlier 1 year) shall be added in the income of investor and tax will be charged at the rate according to the tax slab.
  - **Long term gain** arises from the sale/redemption of debt mutual funds shall be taxable at the flat rate of 20% (plus 3% cess) after claiming benefit of Indexation.
  - **The dividend income** received by a unit holder on his debt mutual fund is also tax free. But, the mutual fund company has to pay a Dividend Distribution Tax (DDT) before distributing this income to its investors.

CONCLUSION

The Indian Capital Debt Market needs immediate attention of the policy makers for inviting more investments in the Debt Market. Creating more awareness of Debt Market to investors, introducing Debt instruments of long term, medium term and short term, providing sound secondary market for Debt instruments, offering tax benefits to Debt instruments on par with Equity as both are Capital providers to economy are some of the steps needed to take Indian Debt Market on par with other emerging economies.

Alternative Investment Funds

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In today's dynamic world, the requirement of funds for businesses is also different. The traditional avenues are either unable to align or cater to the funding requirements of the new ventures. So the Alternative Investment Funds came on the horizon to provide non-traditional source of funding. These institutions are different from the traditional investment institutions like mutual funds, pension funds, insurance companies, etc.

Alternative Investment Funds (AIFs) are a relatively new concept for raising funds. In the current environment these funds are gaining popularity because of the fact that they cater to the requirements of the "Start up ", and "New Age " sectors, which are perceived to be either non - traditional or risky by the conventional funding sources. The present article describes the context of AIFs , their different categories, the Regulatory framework within which these funds operate , Various types of AIFs, the key requirements for setting up and listing of these funds on the stock exchanges and the tax implications.

WHAT ARE ALTERNATIVE INVESTMENT FUNDS

Alternative Investment Funds (AIFs) refer to any privately pooled investment fund - a trust , company , body corporate or an LLP (Limited Liability Partnership) which are not covered by any Regulation of RBI, SEBI, IRDA and PFRDA. AIFs are governed by SEBI (Alternative Investment Funds) Regulations 2012 . Regulation 2(1) (b) of the regulations defines AIFs as any privately pooled investment fund, (whether from Indian or foreign sources), in the form of a trust or a company or a body corporate or a Limited Liability Partnership (LLP).Such funds are an alternative to traditional sources of investment and tend to provide long-term, cost-effective funding source for start-ups, small & medium businesses and infrastructure. These are tailor made investment arrangements like Private Equities that aim to utilize investment opportunities.

Most of these AIFs get their sourcing from High Net Worth Investors (HNIs) who believe in the theory of high risks are commensurate with high returns and vice versa.

The funds which fall under the AIF category include the following :

- Venture Capital Fund
- Private Equity Fund
- Debt Fund
- Private Investment in Public Equity Fund (PIPE)
- Real Estate Fund
- Infrastructure Equity Fund
- Social Venture Fund
- SME Fund
- Hedge Fund
- Strategy Fund

Usually , venture capital (VC) funds and private equity (PE) funds assist the management of an investee company in addition to providing capital. They also have a seat on the board of the investee company to mentor the management team, monitor the growth of the company and participate in strategic decision making processes.

AIFs do not include funds covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment Schemes) Regulations, 1999 or any other regulations to regulate fund management activities. Further, certain exemptions from registration are provided under the AIF Regulations to family trusts set up for the benefit of 'relatives' as defined under the Companies Act , employee welfare trusts or gratuity trusts set up for the benefit of employees,

`holding companies'.

STRUCTURE

AIFs may be established in various forms - trust, company, limited liability partnership etc. As per SEBI (Alternative Investment Funds) Regulations, 2012, an AIF can be established in the form of a trust or a company or a limited liability partnership or a body corporate.

CATEGORIES OF AIFs

There are three broad categories of AIFs, depending on the impact they have on the economy as well as the governing regulations. According to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, Alternative Investment Funds can be operated under the following categories :

Category	Features
Category I	➢ This category includes Social venture funds, Infrastructure funds, Venture Capital funds, SME funds etc. ➢ These AIF schemes shall be close ended and the tenure shall be determined at the time of application and shall be for minimum three years. ➢ They have specific investment restrictions ➢ These AIFs invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable. ➢ These funds can produce positive impact on the economy and usually attract concessions and incentives from the government ➢ These funds are not allowed to use leverage
Category II	➢ These include Private Equity funds, Debt funds , Fund of Funds, real estate funds, private equity funds (PE funds), funds for distressed assets, etc. ➢ These AIFs don't get any special incentives or concessions from the government or any other Regulator and can invest anywhere without raising any debt. ➢ These AIF schemes shall be close ended, the tenure shall be determined at the time of application and shall be for minimum three years. ➢ These funds shall not engage in leverage or borrowing other than to meet day-to-day operational requirements. ➢ They only provide operational requirements for day to day activities.
Category III	➢ These include Hedge funds, PIPE Funds etc. ➢ They operate to make short-term gains and come without any concessions. ➢ No specific incentives or concessions are given by the government or any other Regulator to these AIFs. ➢ These AIFs may be open ended or close ended. ➢ They employ diverse or complex trading strategies and do leverage including investment in listed or unlisted derivatives. ➢ Such funds go in for short term returns and undertake high stake investments as a result. ➢ Category III funds may also invest in Category I and II AIFs. ➢ These funds have no restrictions on asset allocation. Additionally, they can also use leverage and tend to provide significant flexibility to an asset manager.

Units of close ended Alternative Investment Fund may be listed on stock exchange subject to a minimum tradable lot of Rupees one

> AIFs do not include funds covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment Schemes) Regulations, 1999 or any other regulations to regulate fund management activities. Further, certain exemptions from registration are provided under the AIF Regulations to family trusts set up for the benefit of 'relatives' as defined under the Companies Act , employee welfare trusts or gratuity trusts set up for the benefit of employees, `holding companies'.

crore . Such listing shall be permitted only after final close of the fund or scheme. However, listing on stock Exchanges is purely voluntary.

Extension of the tenure of the close ended AIF may be permitted up to two years subject to approval of two-thirds of the unit holders by value of their investment in the Alternative Investment Fund. In the absence of consent of unit holders, the Alternative Investment Fund shall fully liquidate within one year following expiration of the fund tenure or extended tenure.

SOME IMPORTANT FORMS OF AIFs

Private Equity Fund: This AIF primarily deals with equity-linked instruments or partnership interests of investee companies.

SME Fund: SME or Small and Medium Enterprise Fund are those AIFs where investments are done in unlisted (or to be listed on SME Exchange)securities of investee SME companies.

Social Venture Funds: AIFs which invest in securities of social ventures satisfying the performance norms as laid down by the funds are called Social Venture funds. A social venture includes general social welfare or solving some social problems, providing social benefits etc. These include charitable institutions, societies, trusts, companies , micro finance institutions etc.

Venture Capital Funds: These AIFs invest in securities of start-ups usually involved in making new products, services, technology, IPR etc.

Debt fund- Debt funds invest primarily in debt or debt securities of listed or unlisted investee companies .

Fund of Funds- Fund of Funds is an AIF which invests in another AIF. It holds a portfolio of other investment funds rather than investing directly in stocks, bonds or other securities.

Angel Fund- Angel fund is a sub-category of Venture Capital Fund that raises funds from angel investors and invests in accordance with the provisions of Chapter III-A of AIF Regulations. It can only raise funds by way of issue of units to angel investors. "Angel investor" means any person who proposes to invest in an angel fund and satisfies one of the following conditions:

(a) an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who:
   (i) has early stage investment experience, or
   (ii) has experience as a serial entrepreneur, or
   (iii) is a senior management professional with at least ten

years of experience;

'Early stage investment experience' means prior experience in investing in start-up or emerging or early-stage ventures

'Serial entrepreneur' means a person who has promoted or co-promoted more than one start-up venture

(b) a body corporate with a net worth of at least ten crore rupees; or

(c) an AIF registered under these regulations or a Venture Capital Fund registered under the SEBI (Venture Capital Funds) Regulations, 1996.

WHO CAN INVEST IN AIFs

Investment into the Alternative Investment Funds is open to both Indian and foreign investors. The government has done away with the categorization of foreign portfolio investors (FPI) and foreign direct investments (FDI) for AIF purposes, making it much easier for foreign investors to invest in AIFs.

Most AIFs raise capital from high net worth investors (HNIs) with a view to investing in accordance with a defined investment policy for the benefit of those investors.

The AIFs usually have a high limit of minimum investment - Rupees One Crores . The total amount which is to be committed by investors in the investee company or trust by written contract or agreement should be a minimum of INR 20 Crores. The fund manager should also contribute 2.5% or at least INR 5 Crores in the initial capital investment. There should not be more than 1,000 investors at any point in time.

Angel funds can accept, up to a maximum period of 3 years, an investment of not less than Rs 25 lakh from an angel investor. In case of an angel fund, no scheme shall have more than forty-nine angel investors.

REGULATORY FRAMEWORK

Securities and Exchange Board of India (SEBI) regulates AIFs. AIFs must be registered with SEBI. SEBI rules apply to all AIFs, including those operating as private equity funds, real estate funds and hedge funds. SEBI had notified the guidelines for AIFs established or incorporated in India for pooling in of capital from Indian and foreign investors for investing as per a pre-decided policy.

In 2014, SEBI allowed promoters of listed companies to offload 10 per cent of equity to AIFs such as such as SME Funds, Infrastructure Funds, PE funds and Venture Capital Funds registered with the market regulator to attain minimum 25 per cent public holding.

From November 2015, the Reserve Bank of India (RBI) has notified the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2015 and the Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment) Regulations, 2015 which allows foreign investment in AIFs.

SETTING UP AIF : KEY POINTS

AIFs can be set up in accordance with the SEBI , exchange control and Income tax regulations . The AIF needs to define an investment objective or criteria . Further , AIF can be established in the form of a Trust or a company or a Limited Liability Partnership or a body corporate. The most preferred form of setting up an AIF is the trust because it is an easy, simple and flexible structure in terms of incorporation, management, governance involving minimal statutory disclosure requirements.

Depending upon the investment objective, the AIFs should be registered under one of the three categories - I,II or III , as described above.

Then the structure of AIF needs to be set up. This would depend upon the nature of investors i.e. resident, non residents, institutional, individuals etc.. RBI allows persons resident outside India to invest in AIFs directly under the automatic route. In case the sponsor and/or the investment manager are Indian "owned and controlled" downstream investment by an AIF will not be treated as foreign investment. AIF Regulations prescribe a minimum ticket size of 1 Crore for investors.

AIFs raise their funds through "private placement" i.e. funding is done through the private offering to a restricted group of potential investors. No fund can have more than a thousand investors. The total body of investment should be at least Rs. 20 crores. AIF has a manager or promoter , who must have an interest in the initial body of investment of the fund of at least 2.5%. AIF is not permitted to invest more than 25% of their total funds in one company for Category I and II and 10% for Category III.

Placement Memorandum : AIF raises funds only through private placement by issue of information memorandum or placement memorandum to the investors. This document shall specify , among other things:

- All material information about the AIF and the Manager, Background of key investment team of the Manager.
- Information about targeted investors, fees and all other expenses proposed to be charged by way of an annexure, tenure of the Alternative Investment Fund , conditions of redemption, investment strategy, risk management tools and parameters employed, key service providers, Sponsor, manager , details of trustees etc., and its investment methodology.

AIF need to file placement memorandum 30 days prior to launch of any scheme along with fees . AIFs are prohibited by its memorandum and articles of association/ trust deed/ partnership deed from making an invitation or solicitation to the public to subscribe to its securities.

DOCUMENTATION FOR LISTING ON STOCK EXCHANGES

Documents to be submitted to the Stock Exchange for seeking In-principle approval for listing units of AIF scheme include the following:

- Draft Information / Placement memorandum

- Investment Management Agreement
- Certification of registration of Alternative Investment Fund issued by SEBI
- Custodian Agreement
- R & T Agreement
- Trust Deed
- Memorandum & Articles of Association of the issuer
- Resolution passed by trustee in case of AIF is established as trust or Board of directors in case AIF is established as Company or by partners in case AIF is established as a Limited Liability partnership at their meeting approving listing of units of close ended AIF
- An undertaking from the CEO/ compliance officer that AIF is in compliance with Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 and all the other applicable laws.

DOCUMENTS TO BE SUBMITTED FOR LISTING OF UNITS OF AIF

- Application for listing of units of Scheme.
- Details of the applicant and Issue Details.
- Certified True Copy of comments received from SEBI on the / placement Memorandum / Scheme Information Document
- Certified true copy of the Final Placement Memorandum / Scheme Information Document
- Unitholding pattern of Unitholders of the Scheme
- Confirmation from the CEO / Compliance officer regarding allotment of units and the actual no. of units allotted.
- Statement of Collection details.
- Listing Agreement as per SEBI LODR Regulations
- Confirmation from CEO / Compliance officer regarding compliance with the provisions of SEBI (Alternative Investment Funds) Regulations, 2012 including subsequent amendments thereof and SEBI circulars issued in this respect.
- Confirmation from NSDL and CDSL (ISIN activation)
- Confirmation from RTA on the final number of units to be allotted with NSDL, to be allotted with CDSL and to be issued under physical form.
- Undertaking from the RTA on the units considered under switches that they have debited the units from the respective schemes and credited the applicable units in this scheme
- Confirmation from RTA regarding dispatch of Certificates / Account statement/refund order.
- Annual listing fees

TAXATION OF AIFs

As per the Income Tax Act'1961, an investment fund established in India and registered with the Securities and Exchange Board of India as a Category I or a Category II Alternative Investment Fund (AIF) is accorded tax pass through i.e. any income accruing or arising to, or received by, a unit-holder of Category I and Category II shall be chargeable to income-tax in the hands of unit holder in the same manner as if it were the income accruing or arising to, or received by such unit holder, had the investments made by the investment fund been made directly by the unit holder. The tax pass through status has not been accorded to Category III AIFs. "Tax pass status" means that income accruing from such funds is taxed at the investor and not the fund level. This becomes especially relevant when the income might be liable to tax at the fund level but might be tax free at an individual investor level.

However, where the income of the investment fund is characterized as income under the head "Profits and gains of business or profes-

"Tax pass status" means that income accruing from such funds is taxed at the investor and not the fund level. This becomes especially relevant when the income might be liable to tax at the fund level but might be tax free at an individual investor level.

sion", the investment fund would be taxable in respect of such income at the maximum marginal rate of tax.

The Central Board of Direct Taxes (CBDT) had issued an instruction dated 02 May, 2016 providing that income from transfer of unlisted shares, would be considered under the head "capital gains", irrespective of the period of holding. The following exceptions were specified for the Assessing Officer to take an appropriate view on the characterisation of income, if:

1. the genuineness of transactions in unlisted shares itself is questionable; or
2. the transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or
3. the transfer of unlisted shares is made along with the control and management of underlying business

Later , CBDT has noted that SEBI registered Category I and II AIFs invest in unlisted shares of ventures, many of which are new set ups or start ups, and thus, some form of control and management of the underlying business may be required to be exercised by such AIFs to safeguard the interest of investors . CBDT has clarified that the exception relating to transfer of unlisted shares along with the control and management of the underlying business , would not be applicable to SEBI registered Category I and II AIF . Accordingly, gains earned by the Category I and II AIFs on transfer of unlisted shares, even where the transfer is made along with the control and management of the underlying business would be characterised as capital gains.

Category I and II AIFs are exempt from payment of income tax on any income earned by them other than business income. The investors in these Funds are tax exempt on business income earned by such funds and are subject to pass-through taxation on interest, dividends and capital gains earned by them, on an accrual basis.

The Category III AIF has not been accorded a pass through status, which means that income from such funds will be taxed at the investment fund level and the tax obligation will not pass through to the unit- holders. In cases where the income of the fund is characterized as income under the head "Profits or gains from business or profession", the AIF would be taxed in respect to such income at the maximum marginal rate of tax.

CONCLUSION

AIFs are a vital source of risk capital and significantly contribute to nurturing investment activity across many nascent and sunrise sectors which further promotes employment and growth. The tax laws provides a specific tax code for mutual funds, securitisation trusts ,real estate investment trusts and infrastructure investment trusts. This sector too, now requires a specific tax code consistent with global practices. CS

Supreme Court affirms Capital Market Regulator SEBI's action against Non-Compliant Stock Brokers and Intermediaries

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In a significant decision by the Hon'ble Supreme Court of India in SEBI vs. Kishore R Ajmera (2016-SCC-368), the Hon'ble Apex Court had the occasion to make crucial observations on the role of the market watchdog, the Securities and Exchange Board of India ('SEBI') in regulating the stock market and prevent any instances of fraud or unfair trade practices adopted by individuals and companies alike in manipulating the stock prices using ingenuous and often pre-planned tactics in defrauding the public shareholders.

The Supreme Court has in some important judgments, highlighted in the attached article, affirmed the powers of SEBI to regulate the capital market and to prevent fraudulent and manipulative practices and thereby vindicated the role of SEBI. The Supreme Court judgments analysed in the article scores the important message to the stock-brokers and other intermediaries that any clever device used by them to circuitously bypass the clear-cut mandate of the stock market regulations cannot be allowed to go scot-free and thus, they will have to comply with regulatory measures for a healthy capital market.

The Supreme Court has in the aforesaid ***Ajmera*** judgment, observed that the SEBI Act and the Regulations framed thereunder are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.

Before venturing into the stance taken by the Courts in the various judgments that would be discussed further on, it is pertinent to note that SEBI had enacted inter alia, the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (in short, 'the PF&UTP Regulations') to prevent fraudulent dealings in the securities market and Regulation 4, more specifically Sub-Regulation (2)(a) and (e) thereof stipulate as under:-

> "**4. Prohibition of manipulative, fraudulent and unfair trade practices.**
>
> (1) Without prejudice to the provisions of relation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities;
>
> (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice, if it involves fraud and may include all or any of the following, namely:-
>
> (a) indulging in an act which creates false or misleading appearance of trading in the securities market;
>
> …(e) any act or omission amounting to manipulation of the price of a security."

Further, with regard to penalty for fraudulent and unfair trade practices, Section 15HA of the SEBI Act, 1992 prescribes that "*if any person indulge in fraudulent and unfair trade practice relating to securities, he shall be liable to a penalty to twenty five crore rupees or*

three times the amount of profits made out of such practices, whichever is higher."

It has been witnessed that stock market manipulation by companies, stock brokers, sub-brokers and intermediaries is rampant and it has also been observed that persons engaging in such manipulative and fraudulent practices often adopt circuitous ways and means to hoodwink the investors, dodge the market regulators and thereby gain, albeit, illegally, substantial income for themselves. In this regard, in its judgement of ***SEBI –vs- Pan Asia Advisors Limited*** (2015-59-Taxmann.com-80-SC), the Hon'ble Supreme Court of India has analysed the powers vested with the SEBI under section 11(1) of the SEBI Act, 1992 whereby a duty has been cast upon SEBI to protect the interest of investors. Further, section 12A of the SEBI Act, 1992, inter-alia, clearly prohibits manipulation of the stock market and employment of deceptive devices or scheme or artifice to defraud in connection with any issue or dealing in securities. The Supreme Court in the aforesaid ***Pan Asia*** case has thus held that the SEBI is fully empowered to pass appropriate orders to protect the interest of investors in securities and securities market, and such orders can be passed by means of interim measure or final order, as against all those entities, including intermediaries, stock brokers etc. specified in Section 12(A)(a), (b) and (c) of SEBI Act, as well as, against any person.

In the aforesaid ***Pan Asia*** judgement, the Hon'ble Supreme Court also noted the provisions of SEBI PF&UTP Regulations, 2003, which prohibit fraudulent transactions in securities and held that the act of "fraud" has been elaborately defined to include any kind of activity which would work against the interest of investors in securities. The Hon'ble Supreme Court further held that a conspectus reference to Section 12A(a), (b) and (c) of the SEBI Act, read with Regulation 2(1)(b) and (c), as well as Section 2(h)(ii) of the Securities Contracts Regulations Act, 1956 (SCRA) "sufficiently disclose that it would cover any act which will have relevance in protecting the interest of investors in securities and security market with any person, however, remotely the same are connected with such securities, in the event of such an act working against the interest of the investors in securities and securities market by way of fraud which has been elaborately defined under Regulation 2(i)(c) of the PF&UPT Regulations, 2003".

The main issue for adjudication in the aforesaid *Pan Asia* decision was whether the SEBI had jurisdiction over intermediaries/agencies involved in issue of Global Depository Receipts (GDRs) in countries abroad. In the said case, the Supreme Court went behind the circuitous methods adopted by the issuing company and the Court also observed that the allegations levelled against the issuing company, in connivance with market intermediaries, are that a make-believe affair was orchestrated, as though a genuine creation of Global Depository Receipts (GDRs) and its investment by the foreign investors on the very date when the GDRs were issued and thereby the global performance of the issuing company in the local Indian market of the issuing company had a boost in the commercial sector, which lured local investors to develop their keen interest to make the investment on a higher share value by virtue of the investment made by the foreign investors. In this process, the issuing company allegedly itself provided every scope for the foreign investment to be financed, and in reality though, ultimate investment was made by the Indian investors. The Supreme Court therefore held that in that scenario, it squarely fell within the ambit of the regulatory powers vested with SEBI under section 11(1) of the SEBI Act, 1992 and as such, under section 11(2)(b), the SEBI is empowered to regulate such other intermediaries who may be associated with security markets in any manner. The Supreme Court also held that the definition of the term "securities" under section 2(h) of the SCRA, 1956 was exhaustive and would include GDRs within its ambit.

Apart from the provisions of the SEBI Act and the SEBI PF&UTP Regulations, 2003, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short, 'the Takeover Code') is another legislation that seeks to regulate the acquisition and sale of shares of listed companies and inter-alia, makes it mandatory for an acquirer to make an open offer to purchase shares of public shareholders in case the acquisition meets the thresholds prescribed in the Code.

In another significant judgment dated 13th July 2017, the Hon'ble Supreme Court of India in *Laurel Energetics Pvt. Ltd. Vs. Securities and Exchange Board of India* (Civil Appeal No.5675 of 2017) has affirmed the action taken by the market regulator SEBI against promoters of M/s India Bulls Real Estate Limited (IBREL) who had not complied with the open offer obligations contained in the SEBI Takeover Code. The factual background of the case was that in 2011 IBREL had demerged its power business by forming another company, namely, M/s Rattan India Infrastructure Ltd. (the Target Company). Thereafter, on 19th July 2012 an information memorandum was filed by the said company pursuant to the listing agreement, and its shares were listed on the Bombay Stock Exchange and National Stock Exchange on the 20th July 2012. Subsequently, the appellant (which was an entity owned by the promoter of IBREL) acquired 18% of the Target Company's equity @Rs.6.30/- per share.

The main issue arose when in October 2015, a few entities acting in concert with each other, made an open offer for acquiring the shares of the Target Company from the existing shareholders @Rs.3.20/- per share. SEBI, vide its letters in October 2015 held that the general exemptions contained in Regulation 10 of the Takeover Code would not apply to the acquisitions made by the so-called promoters in 2014 and directed the Appellant to revise the offer price from Rs.3.20/- per share to Rs.6.30/- per share and pay additional interest @10% per annum from the date of acquisitions made in violation of the Code to the date of actual payment of consideration to the

existing shareholders whose shares are accepted for purchase as per the revised open offer by the appellants, minus dividend paid.

The relevant Regulation of the Takeover Code that contains general exemptions from making the mandatory open offer obligations reads as below:

> "10.(1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfilment of the conditions stipulated therefor,-
>
> (a) acquisition pursuant to inter se transfer of shares amongst qualifying persons being,-
>
> (i) immediate relatives;
>
> (ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;"

In the aforesaid *Laurel Energetics* case, the appellants approached SEBI's appellate Tribunal 'SAT', which dismissed the appeal and the matter came before the Hon'ble Supreme Court which vide its judgement dismissed the appeal and went into the interpretation of the relevant provisions of the Takeover Code. The main contention of the appellants before the Supreme Court was that the object of Regulation 10, which finds emphasis in the Achyutan Committee Report of 2010 as well as the Bhagwati Committee Report, is that the said Regulation was never intended to penalize the persons who were in actual control of an entity consistently. However, the Supreme Court after analysing Regulation 10 of the Takeover Code opined that Regulation 10(1)(a)(ii) clearly states that in order to be eligible for exemption from making an open offer inter-se transfers of shares amongst persons named as promoters in the shareholding pattern by the target company in terms of its listing agreement has to be for not less than 3 years prior to the proposed acquisition. Since the information memorandum was filed by the Target Company in the present case in 2012 and the acquisitions were made in 2014, three years had clearly not passed, and hence, the exemption contained in Regulation 10 would not apply to the said acquisitions.

On the issue of interpretation of a statute/regulation, the Hon'ble Apex Court while dismissing the appeal, held that:

"In the factual scenario before us, having regard to the aforesaid judgment, it is not possible to construe the regulation in the light of its object, when the words used are clear. This statement of the law is of course with the well known caveat that the object of a provision can certainly be used as an extrinsic aid to the interpretation of statutes and subordinate legislation where there is ambiguity in the words used… We find the literal language of the regulation clear and beyond any doubt."

The context of creation of artificial volumes in an illiquid scrip and trading resulting in unnatural inflation of the price of such scrip arose in another important judgement that was delivered by the Hon'ble Supreme Court of India on 23rd February 2016 in *re: SEBI –vs- Kishore R Ajmera* (supra), wherein the Supreme Court also took up the appeals involving other brokers. However, for the purposes of this article the Hon'ble Apex Court's observations against one broker, i.e., Kishore R Ajmera has been elaborated here.

In the said *Ajmera* case (supra), on the basis of creation of unnatural inflation in the prices of certain scrips, the SEBI conducted enquiry under the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and other provisions of the SEBI Act, 1992 and imposed penalties against the concerned brokers/sub-brokers.

The main question of law that arose for deliberation by the Hon'ble Apex Court was: 'What is the degree of proof required to hold brokers/sub-brokers liable for fraudulent or manipulative practices under the SEBI (Prevention of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations or to hold them liable for violations of the 'Code of Conduct' contained in the Schedule of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992?'

In this context, the Hon'ble Apex Court observed that often, the dilemma faced by the market regulator and the Courts in such cases of fraud and stock market manipulation was that no direct substantial evidence was forthcoming against those persons who engaged in manipulative malpractices in the capital market. Addressing this issue in the aforesaid *Ajmera* case, the Supreme Court has in para 22, further held that:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/ charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

Some important observations were made by the Supreme Court in the aforesaid *Ajmera* decision (supra) wherein while applying the aforesaid test to the facts of the case, the Supreme Court further noted that admittedly there was no direct evidence forthcoming in the present case. The first relevant fact that had to be taken note of was that the scrips in which trading had been done were of illiquid scrips. Illiquid scrips are those scripts that are not listed on the Stock Exchange. The Hon'ble Apex Court observed that therefore, the said scrips were not a matter of everyday buy and sell transactions. However, the Court also noted that while it is correct that trading in such illiquid scrips is per se not impermissible, yet, voluminous trading over a period of time in such scrips is a fact that should attract the attention of a vigilant trader engaged/engaging in such trades. The above stand was fortified by the note of caution issued by the Bombay Stock Exchange in the form of a notice/memorandum alerting its members with regard to the necessity of exercising care and caution in case of high volume of trading in illiquid scrips, as already noted.

The Supreme Court also observed that while proximity of time between the buy and sell orders may not be conclusive in an

isolated case, such an event in a situation where there is a huge volume of trading can reasonably point to some kind of a fraudulent/manipulative exercise with prior meeting of minds. Such meeting of minds, so as to attract the liability of the broker/ sub-broker may be between the broker/sub-broker and the Client or it could be between the two brokers/sub-brokers engaged in the buy and sell transactions. When over a period of time such transactions had been made between the same set of brokers or a group of brokers, a conclusion can be reasonably reached that there is a concerted effort on the part of the concerned brokers to indulge in synchronized trades, the consequences of which is large volumes of fictitious trading resulting in the unnatural rise in hiking the price/volume of the scrip(s).

In this context it is relevant to note that privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

Though, the Supreme Court agreed with the view that the screen based trading system keeps the identity of the parties anonymous, but, it however opined that it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere and that direct proof of such meeting of minds elsewhere would rarely be forthcoming and hence the test would be preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. The conclusion has to be gathered from various circumstances like that of volume of trade effected, the period of persistence in trading in the particular scrip, the particulars of buy and sell orders and the volume thereof and the proximity of time between the two and such other relevant factors. However, with regard to prosecution under section 24 of the SEBI Act, the Supreme Court held that it has to be on the basis of proof beyond reasonable doubt.

In *Ram Narayan Popli v. Central Bureau of Investigation* (2003-3-SCC-641), while dealing with the element of "conspiracy" in the Harshad Mehta scam, the three-Judge Bench of the Hon'ble Supreme Court of India had the occasion to state that the elements of a criminal conspiracy can be stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. It has been further opined that the essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. No overt act need be done in furtherance of the conspiracy, and that the object of the combination need

not be accomplished, in order to constitute an indictable offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means.

Furthermore, in the aforesaid *Ram Narayan Popli* (supra) case it has been highlighted by the Hon'ble Apex Court that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

CONCLUSION

The observations of the Supreme Court of India in the concluding paragraphs of the aforesaid *Ram Narayan Popli* (supra) case is appropriate in the context of this article and reads as under:

"The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage; done to the national economy and national interest, as was aptly stated in State of Gujarat v. Mohanlal Jitamalji Porwal and Anr., (AIR-1987-SC-1321) Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure. These cases are nothing but private gain at the cost of public, and lead to economic disaster."

State of Bond Markets in India

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BACKGROUND

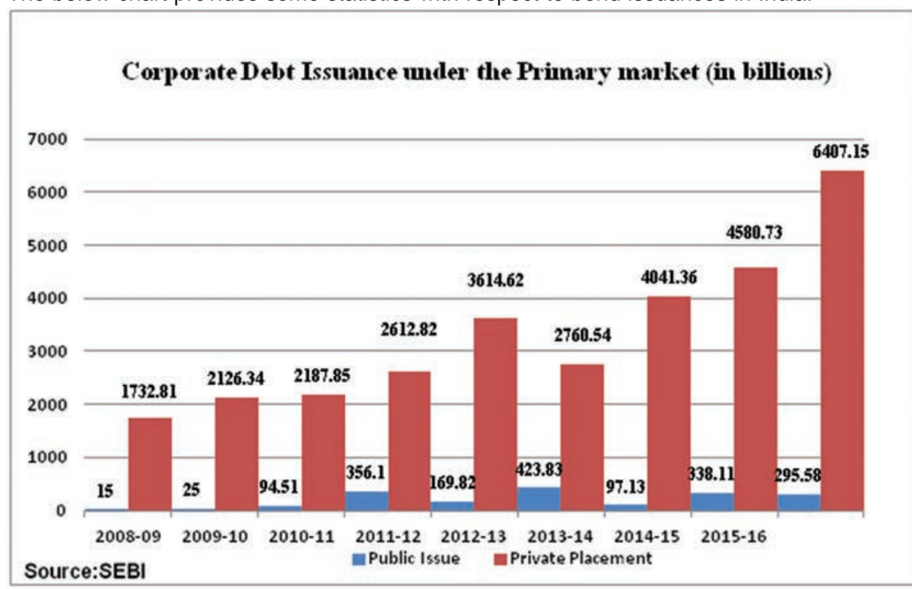
A well-developed capital market consists of both the equity market and the bond market. Globally, bond market is much more popular than the equity market, but in India situation is totally reversed, i.e. equity market is more vibrant and more developed than the bond market, especially the corporate bond market remains underdeveloped. This is due to dominance of the government securities in the bond market and dependency of corporates on banks and financial institutions loan for their debt funding necessities.

In the recent years Indian corporate bond market has experienced development both in number and volume. However, when compared with Indian government bond market, it has still a long way to go. Globally bond financing is more popular than bank financing, but in India situation is totally reverse. This article examines the current status, issues and challenges faced by the Indian bond market and recent policy initiatives taken by the regulators to put impetus in the growth of the Indian bond market.

Further, issuer profile in India is concentrated among a few categories of market participants dominated by financial sector firms including banks, non-banking financial companies (NBFCs), financial institutions, housing finance companies (HFCs) and primary dealers (PDs) while there is hardly any issuance by non-banking non-financial companies (NBNFCs). This is due to the fact that the way legislation is framed it is much easier for NBNFCs to opt for a loan rather than bonds.

Globally, bonds are mostly unsecured but in India bonds must be secured, as unsecured bonds (unless they are not listed) tantamount to public deposits and under the existing framework, it is difficult and impractical for most issuers to raise money through public deposits. The reason is obvious - if the company has security to offer, they will rather opt for a loan, which is much simpler. When entities exhaust their assets to secure, they opt for the bond issuance.

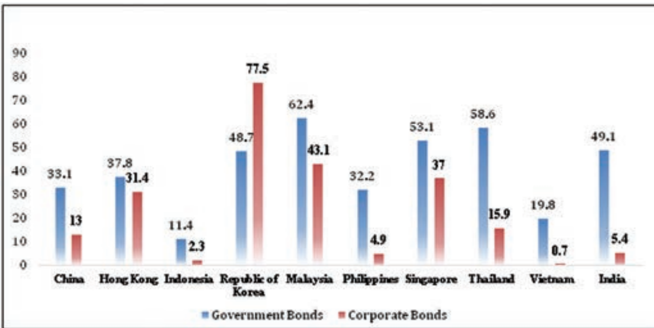
As discussed aforesaid, the penetration rate of bond market in Indian economy is very low. The below chart provides some statistics with respect to bond issuances in India:



As per the latest data available with SEBI[1], no. of issues which were at 1414 as at end March,

2008 increased to 3391 by end March, 2017.During the same period, the amount raised increased from 2282.36 billion to 6702.73 billion. The public issuances which were 94.51 billion in 2010-11 increased to 338.11 billion in 2016-17. The private placements were 2187.85 billion in 2010-11, 2612.82 billion in 2011-12 and increased to 6407.15 billion in the year 2016-17.

Though the above figures indicate a healthy growth in number and volume of corporate bond market activity, but in comparison with the government bond market, the Indian corporate bond market is dwarfed. Following graph shows a comparative position of the government bonds and corporate bonds issued as of March 2013[2] as a proportion of GDP among the major Asian countries.



Source: Reserve Bank of India[3]

BENEFITS OF A ROBUST BOND MARKET

A developed corporate bond market serves the needs of an emerging economy in multiple ways:

i. It supplements the existing banking system in providing the required funding to enterprises and while doing so reduces the vulnerability of the financial system to external shocks by ensuring diversification of funding sources in the economy. Previous financial crises have shown that systemic problems in the banking sector can interrupt the flow of funds from savers to investors for a significantly long period of time.

ii. It enables better pricing of credit risk, dynamic allocation of capital, realistic pricing of government debt and reduction of currency mismatches in the financial system.

iii. It provides investment options for institutions such as insurance companies and pension funds which seek high quality long term assets to match their long term liabilities.

iv. It fosters the development of credit derivative products, thereby allowing efficient credit risk transmission.

v. Bond financing lowers funding cost for high quality borrowers as intermediation costs are lower for bond financing than for bank financing.

vi. A well-developed bond market introduces a healthy competition with the banking sector in providing corporate financing.

vii. Bond market helps in spreading the risk among ultimate savers rather than get concentrated in the intermediaries.

REGULATORY FRAMEWORK

The bond market and investments in bond markets in India are regulated by multiple regulators. The principal regulator which oversees the function of the securities markets is the Securities and Exchange Board of India (SEBI). SEBI lays down the regulations of issue and listing of securities in domestic stock exchanges.

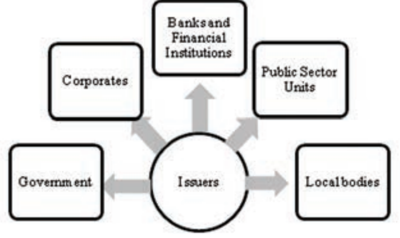
The issuances by corporates in India are regulated by the Ministry of Corporate Affairs (MCA) through the Companies Act, 2013. If a corporate intends to issue a security in India, it will have to adhere to the provisions laid down under the Companies Act, 2013 and its allied rules.

In addition to the above, where the issuer is a banking company or a non-banking financial company, directions of the Reserve Bank of India (RBI) have to be complied with.

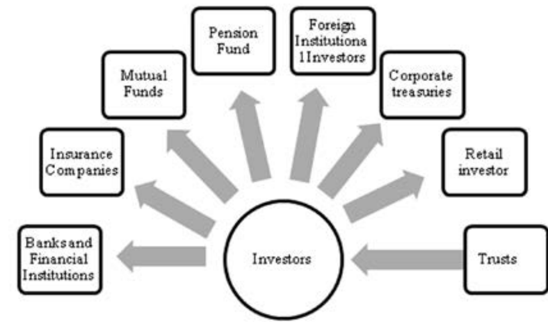
Similarly, there are other sectoral regulators like Insurance Regulatory Developmental Authority, National Housing Bank, Pension Fund Regulatory & Development Authority etc. which keep a tab on the issuance of securities by the corporates who they regulate.Also, where foreign investors invest in bonds, FDI and ECB norms are also applicable.

MAJOR ISSUERS AND INVESTORS IN BOND MARKET

Issuers base in Bond Market



Investors Base in the Bond Market:



CURRENT ISSUES AND CHALLENGES IN INDIAN BOND MARKET

Various efforts have been taken by regulatory authorities over the time to boost the market. In the Union Budget 2005-06 it was announced to formulate a High level Expert Committee on Corporate Bonds and Securitization to which Finance minister has formulated R.H. Patil Committee to formulate a road map for development of the market. However, still there are certain factors[4] that impede the growth of corporate bond market and need to be tackled to facilitate improvement and growth of this segment such as:

i. **Low investor base:** The investor base in the corporate bond market is confined to banks, insurance companies, mutual funds, pension funds and primary dealers. Retail participation remains low due to absence of knowledge and understanding of bonds as an asset class.

[1] http://www.sebi.gov.in/statistics/corporate-bonds.html
[2] https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=950
[3] https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=950
[4] https://rbi.org.in/scripts/BS_SpeechesView.aspx?Id=950

> Globally, bonds are mostly unsecured but in India bonds must be secured, as unsecured bonds (unless they are not listed) tantamount to public deposits and under the existing framework, it is difficult and impractical for most issuers to raise money through public deposits. The reason is obvious - if the company has security to offer, they will rather opt for a loan, which is much simpler. When entities exhaust their assets to secure, they opt for the bond issuance.

ii. **Preference of government bonds**: The huge supply of government papers in the country is one of the major impediments to the growth of the corporate bond market. To meet the target of the fiscal deficit, every year government issues bonds in huge quantity which ultimately impede the growth of corporate bond market.

iii. **Limited instruments and products:** There is need for a wide array of instruments and products to be available in the market that would meet the diverse needs of its participants. There is lack of innovative instruments in the Indian context which in turn inhibits development of the bond market. Credit Default Swaps ('CDS') and Interest Rate Futures (IRFs) are some of the instruments that have come in of late and it is expected that these will grow.

iv. **Market Infrastructure:** Absence of infrastructure facilities such as screen based automated order matching, central clearing and settlement, negotiated dealing system, etc. also affect **corporate** bond market trading.

v. **Ease of issuances:** Bond issuance is viewed as being costly and cumbersome compared with bank lending. For making **attractive** to the issuers, the ease and cost of issuance have to improve. The listing and disclosure requirements and procedures have to be simple and less complicated. The size, scale and tenure of issues must improve and need to be made more attractive by encouraging public offers instead of the current preference for private placements.

vi. **Lack of market makers:** The growth and development of any market is dependent on market makers who can provide both buy and sell quotes. Although prevalent in the government bond market, they are lacking in the corporate bond segment.

vii. **Tight liquidity or trading in the secondary market:** Absence of a liquid corporate bond market acts as a deterrent to **investor** participation.

viii. Tax deductibility and stamp **duty** issues.

ix. Bond ratings also deter the **growth** which cannot be totally done away with.

RECENT POLICY INITIATIVES

Some of the recent initiatives by the Government of India, RBI, SEBI and other regulatory authorities in the direction of developing the corporate bond market are as follows:

i. **Power of enforcement of security interest by debenture trustees under the SARFAESI Act, 2002**: The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI Act) allows the banks and financial institutions to enforce security interests created on their favor for securing a debt when the borrower fails to repay the amount. The SARFAESI Act was amended recently in 2016[5] to allow even debenture trustees to enforce security interests created in favor of debenture holders in case of secured bonds.

ii. **Protection under the Insolvency and Bankruptcy Code, 2016**: The Insolvency and Bankruptcy Code, 2016 (IBC) provide for the priority of claims of the creditors where a corporate goes into liquidation. Under the IBC, if the bond holder is a secured bond holder, it will get priority over other classes of creditors of the company at the time of realization.

iii. **Capping the limit of ISIN w.r.t issue of debt securities**: SEBI recently vide notification dated June 30, 2017 has put a limit on the maximum no. of ISINs that shall be allowed to the Company in any financial year in respect of private placement of debt securities. This step will encourage Companies to re-issue existing bonds under the same ISIN code which will further facilitate the liquidity and growth in the secondary bond market.

iv. **Price discovery through electronic mechanism:** For effective way of price discovery, reduction of time involvement and transparency, issuance of debt securities in excess of 500 crore by way of private placement will have to be done through electronic book mechanism.

v. **Unsecured bonds**: MCA has allowed Companies to issue unsecured Non Convertible debentures provided they are listed. Also, RBI has also allowed to issue unsecured bonds by way of private placement with a minimum subscription of 1 Crore and above.

vi. **Investment by Foreign Portfolio Investors (FPIs):** FPIs are allowed to invest in unlisted bonds issued by Indian Companies. Also, they are allowed to transact without brokers.

vii. **Investment by Mutual funds:** The bar on Companies to receive money from Mutual Funds, Alternative Investment Funds, Infrastructure Investment Trusts and Domestic Venture Capital Funds has been removed. Therefore, such funds can now freely invest in corporate bonds.

viii. **Debenture Trustee:** The regulatory regime for debenture trustees in India were amended to align the conditions for eligibility, duties and obligations of debenture trustees in line with the requirements under Companies Act, 2013.

ix. **Repo in corporate bond:** Repos in corporate bonds had been allowed to regulated and other RBI permitted entities in the year 2010 and in regard to this, the norms were also relaxed to a great extent.

x. **Credit Default Swaps (CDS) on corporate bonds:** CDS on corporate bonds has been permitted to facilitate hedging of credit risk associated with holding corporate bonds. Short term instruments like CPs, CDs & NCDs and unlisted but rated corporate bonds have also been permitted as eligible reference obligations.

xi. **Trade reporting platform:** To ensure transparency, reporting platforms for over the counter trades in corporate bonds has been set up.

xii. **Introduction of Rupee linked offshore bonds by International Finance Corporation (IFC):** With a view to attract foreign inflows into India and to improve the status of

[5] http://financialservices.gov.in/Banking/LAWS.pdf

Indian market, International Finance Corporation was permitted to float a rupee linked bond overseas amounting to USD 1 billion.

SNAPSHOT ON INNOVATIVE INSTRUMENTS IN THE BOND MARKET

Municipal Bonds

Municipal Bonds are debt securities issued by state, municipality or country to finance its capital expenditures. The term 'municipal bond' is commonly used in the United States, which has the largest market of such trade-able securities in the world. Globally, these bonds are also recognized as muni bond. The first recorded municipal bond was issued by the City of New York in 1812, which was general obligation bond of the municipal body. In India, the concept was discussed for first time in 1995; thereafter in 1997 Ahmedabad Municipal Corporation raised Rs. 100 crores, by issuing municipal bonds, which was used to finance water and sewerage projects.

Structure of the Bonds

Typically the municipal bonds are in the nature of debt obligations for the issuers. These are issued for a pre-determined period with a pre-determined coupon rate and require credit rating. The income generated from these instruments are either taxable or are exempted in the hands of the subscriber, subject to tax provisions specific to the country.

Regulations in India

The Model Municipal Laws issued by the Ministry of Urban Developments and Poverty Alleviation, which was introduced in the year 2003 in order to guide the urban local bodies to structure their law properly, deals with municipal bonds in the paragraphs 122 to 127. The highlights drawn from the same have been discussed below:

1. The municipal bodies can issue bonds to raise funds for the development of the urban infrastructure.
2. The bonds issued by municipal bodies are tax-free in nature, i.e. the income earned from such bonds will be exempt from income tax in the hands of the subscriber.
3. Credit Rating – The municipal bodies will have to get the bonds rated by a recognized credit rating agency before offering the same for subscription.
4. Security – The municipalities are required to pledge its movable and immovable assets including lands, buildings and tax revenues as a security for issuing bonds.
5. End Use of the issue proceeds – The issue proceeds are to be for the purpose of capital investments to develop urban infrastructure like – water-supply, sewerage, drainage, solid waste management, markets, roads, bridges and urban transport. The same can be utilized for the purpose of repayment of loans raised through bonds or otherwise for development of the urban infrastructure.

MASALA BONDS (RUPEE DENOMINATED BONDS)

Masala bonds are Indian rupee denominated bonds issued to offshore investors settled in dollars and, therefore, the currency risk resides with investors.

IFC has issued a 10-year, 10 billion Indian rupee bonds in November 2014 to increase foreign investment in India and mobilize international capital markets to support infrastructure development in the country. These bonds were offered and settled in US dollars to raise Indian rupees from international investors for infrastructure development in India. "Masala bonds" marked the first rupee bonds listed on the London Stock Exchange.

RBI vide notification[6] dated September 29, 2015 came up with final guidelines for issuance of rupee denominated bonds by Indian companies to overseas investors. As per the guidelines the bonds shall be of minimum maturity of 5 years and can be secured or unsecured, or listed or unlisted, rated or unrated.

GREEN BONDS

Green Bonds, as a concept is fairly new in India. These are like any other bonds, except that the funds raised through these are ear-marked for projects which are linked to protection of environment. Climate Bonds or Green Bonds were issued for the first time in India by Yes Bank in February 2015; the size of the issue was Rs. 1000 crore with a tenure of 10 years and the proceeds of the issues were earmarked for the utilisation towards funding of renewable energy projects like solar, wind or biomass. In quick succession, there were several other issuances of Green Bonds in the country by Export Import Bank of India, CLP Wind Farms, ReNew Power Ventures, IDBI Bank in the same year itself.

The increasing popularity of Green Bonds in India inspired the capital market regulator, Securities and Exchange Board of India to create a more enabling environment for Green Bonds in the country and it came out with a set of regulations to govern these instruments in 2016[7].

Green Bonds in India is doing pretty well and in the very first year, the Indian market reported an overall volume of USD 1.1 billion[8] and in the very next year, 2016, with a volume of USD 2.7 billion, the country was ranked 7th in terms of issuance of Green Bonds.

CONCLUSION

A vibrant corporate bond market is undoubtedly a very essential segment of the financial market since it not only support the banking system in meeting the long term funding of the corporates but also a reliable source of finance in situations when the equity market is unstable.

Though the Indian bond market is dominated by the government bonds, but there is necessity to put impetus to corporate bond market by adequate changes in regulations, allowing some tax benefits, liberalizing its financial market and making the bond market more liquid. However, development of the market is not a one-off affair,there are issues that need continued coordination and cooperation between the market participants and the regulators to develop India's bond market as truly global bond market.

6 https://rbi.org.in/scripts/NotificationUser.aspx?Id=10049&Mode=0
7 http://www.sebi.gov.in/sebi_data/attachdocs/1449143298693.pdf
8 http://www.energeticaindia.net/download.php?seccion=articles&archivo=y0Ki63jtOdwGAkjPFOU5NnEwwdyN9mLIJGszOLlVLK5 bQIwQC0Pp.pdf

Importance of Ratings in Capital Markets

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The Article throws light on basic concepts and understanding of ratings in capital markets, its importance, process of ratings, different rating agencies in India, their regulatory framework, categories/methodologies of ratings, rating process and how ratings are graded.

CAPITAL MARKET

Meaning of capital Market:
Capital Market is a market where financial instruments viz. bonds, stock, mutual funds are traded. Capital market is a financial market where buyers and sellers are engaged in trading of financial instruments. The selling is generally done by Government companies / agencies and Companies to raise the funds from public. The buying is generally done by financial institutions, foreign investors, retail investors and public at large. Capital market helps the sellers to raise the money from public and then invest them in different areas like infrastructure, healthcare, technology, public projects, education and thus contributes to economic growth by creating jobs, infrastructure . The buyers in turn get a better return on their investment.

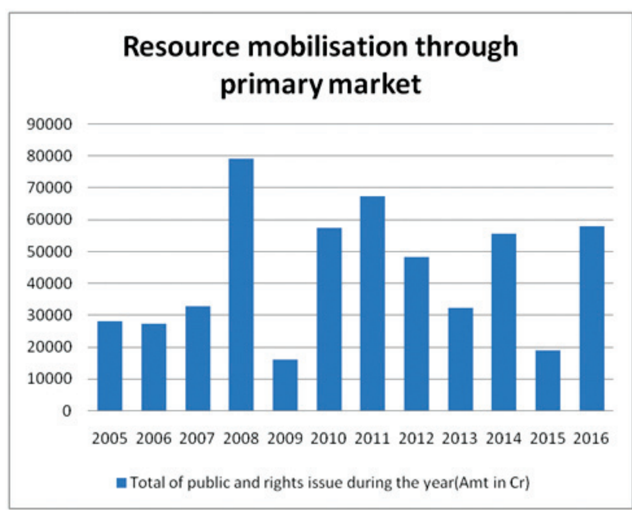
DEFINITION OF CAPITAL MARKET

As per Financial Times ft.com/Lexicon, Capital markets are the markets where securities such as shares and bonds are issued to raise medium to long-term financing, and where the securities are traded.

According to Wall Street Words: An A to Z Guide to Investment Terms for Today's Investor by David L. Scott ,
The market for longterm funds where securities such as common stock, preferred stock, and bonds are traded. Boththe primary market for new issues and the secondary market for existing securities are part of the capital market.

INDIAN CAPITAL MARKETS

The Indian Capital Market works on two markets namely Primary market and Secondary market. Primary market as the name suggest it's the market where a financial instrument/ security is first time offered to public in the form of IPO(Initial Public Offer). Secondary market is the market where the existing securities are traded. The Indian capital market started growing post liberalization period and India is poised as one of the fast growing market economy. Rising level of investment, individual investment, improved productivity are the engines driving growth. The strong institutional and macroeconomic policy framework in India is further complemented



Source: Handbooks on statistics from www.sebi.gov.in.

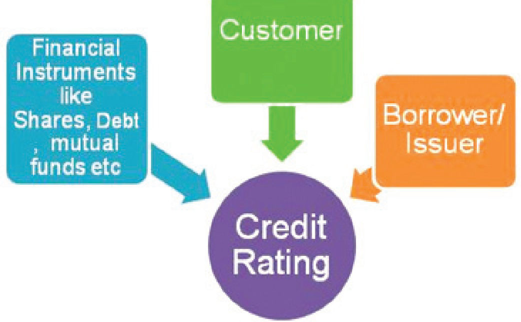
by the gains from trade and global financial integration. Over the years, the Indian capital market as experienced a significant structural transformation in that it now compares well with those in developed markets. The regulatory authority and framework for Capital market has been vested with Securities and Exchange Board of India (SEBI).To understand in a better way, below chart explains the resource mobilization through primary market from public and rights issue over a period of time.

RATINGS

Concept

One of the important aspects of Capital market is ratings. Before any financial instrument is issued in primary market and thereafter at periodic intervals in secondary market, it is necessary to get the credit rating completed from rating agencies. Credit Rating is a process under which rating agencies collects information on financial, operational, history, management and likewise of the company and based on its analysis in terms of ability to repay, high yield, risk, rate the financial instrument to be issued or already issued. In other words, Credit Rating is a process whereby a person's financial ability is assessed by taking into account different financial parameters. Based on the evaluation and score, a specified ranking is given. Credit ratings are the opinions expressed on alphanumeric scale on the relative ability and willingness of a issuer to meet financial commitments. Credit rating is more relevant for debt securities but it is also used for other purposes.

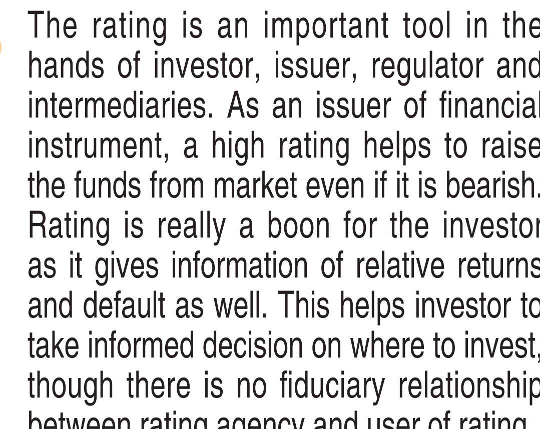
As per Economic Times, "Credit rating is an analysis of the credit risks associated with a financial instrument or a financial entity. It is a rating given to a particular entity based on the credentials and the extent to which the financial statements of the entity are sound, in terms of borrowing and lending that has been done in the past."



Importance

The rating is an important tool in the hands of investor, issuer, regulator and intermediaries. As an issuer of financial instrument, a high rating helps to raise the funds from market even if it is bearish. Rating is really a boon for the investor as it gives information of relative returns and default as well. This helps investor to take informed decision on where to invest, though there is no fiduciary relationship between rating agency and user of rating. Credit rating is done by skilled, experts and it is properly researched and analyzed opinion. The cost of this is also low. Many large investors shuffle their investments in secondary market based on ratings given by rating agencies.

The regulator Securities and Exchange Board of India (SEBI) checked the ratings given to issuer. As some of the instruments require minimum rating before they are offered to public. SEBI can



keep an eye on securities which have been poorly rated. Intermediaries like mutual funds, brokers, merchant bankers uses the ratings to diversity the exposures by way of asset securitization.

CREDIT RATING AGENCIES IN INDIA

A credit rating agency (CRA) is a company which analyses the credit worthiness of a company. It collects varied qualitative and quantitative information about the company, and based on expertise of its professional, independent analyst gives an opinion about whether the company will be able to pay its debts in future based on its present position in alphanumeric manner. At the global level, there are three major credit rating agencies namely Standard & Poor's (S&P), Moody's Investors Service and Fitch Ratings. In India, credit rating agencies have evolved with the period of time. The major credit rating agencies in India are:

⇒ **CRISIL:** Credit Rating Information Services of India Limited is the largest credit rating agency in India established in the year 1987. It has customer base from micro, small, medium enterprises to big corporate, financial institutions.

⇒ **CARE:** Credit Analysis and Research Limited incorporated in the year 1993.

⇒ **ICRA:** Investment Information and Credit Rating Agency of India Limited) was set up in 1991 by leading financial/ investment institutions, commercial banks and financial services companies.

⇒ **SMERA:** Small and Medium Enterprises Rating Agency which primarily focuses on Indian MSME segment.

Other credit rating agencies include, India Ratings & Research Private Limited (Formerly Fitch), Brickwork Ratings India Private Limited.

REGULATORY FRAMEWORK- SEBI

A credit rating agency (CRA) can give independent, unbiased, proper and efficient functioning only if there is an appropriate institutional framework and supportive environment facilities. Sustained growth in functioning can only be accelerated by conducive framework. Securities & Exchange Board of India (SEBI) is the regulatory authority for CRA's in India. SEBI (Credit Rating Agencies) Regulations, 1999 and its amendment thereof outline the CRA's rules and regulations.

SEBI (CREDIT RATING AGENCIES) REGULATIONS, 1999

SEBI (Credit Rating Agencies) Regulations came into effect on 7th July 1999. This regulation envisages detailed regulations, rules and procedure in respect of CRA's. This was the first regulation in

this area. It defined the entry norms for becoming a CRA, the eligibility criteria, the procedure for its registration, certificate of registration including renewals. It also laid down different norms for CRA functioning, governing, and other general obligations including but not limited to agreement with client, monitoring of rating, rating criteria, rating process, internal manual for operations of CRA, internal audit, maintenance of books of accounts, auditors' report. Also, it put restriction on rating on certain securities issued by promoters and other persons. Finally, the powers of inspection and investigation were given to SEBI itself.

Code of Conduct for credit rating agencies: There are 12 different code of conduct to be followed by CRA's.

- High standards of integrity and fairness in all its dealings with clients
- Fulfil all obligations in ethical manner
- High standard of service, due diligence, proper care and exercise professional independence, unbiased ratings.
- Avoid potential conflict of interest with client and disclose the same
- Avoid unfair competition
- Not to make exaggerated statements about qualification, capability, or its achievement
- All professional dealings in prompt and efficient manner
- Not to divulge confidential information of client without making disclosure to concerned person of client
- Not to make any untrue statements or suppress any material fact to SEBI or public or stock exchanges
- Not to create false market; avoid passing of price sensitive information or any action unethical to investor
- Arm's length between rating activity and other activity and not to advice in security for which rating is being made
- Shall abide by all act, rules, regulations, provisions, circulars applicable to it.

RECENT DEVELOPMENTS

SEBI vide circular dated 01st November 2016, 30th June 2017 have put additional rules, responsibilities on CRA'nsS under SEBI (Credit Rating Agencies) Regulati. Gist of them is given below:

⇒ Operations manual / internal governing document shall include additional information about rating criteria, rating process, rating policies in a detailed manner. The same is required to be notified to all employees and also to be put on website. This includes any changes therein also.

⇒ Roles and responsibilities of Analyst of CRA'S have been widened which also include their timeliness of rating.

⇒ Standard format is prescribed for press release after rating is completed. The same is to be put up on website and also to stock exchanges(s) , if security is listed. Also, it shall include key financial indicators and ratios for the Issuer for the last and current financial year, in tabular form, as well as any other significant information relevant to the Issuer and its Sector.

⇒ CRA'S to define obligations, responsibilities, areas of conflict of interest of rating committee and to include the same in operations manual. The operations manual shall also include detailed program of eligibility of becoming a member of rating committee, functioning, evaluation, meeting, quorum and Chairperson.

⇒ The ambit of internal audit is widened. Additional norms of internal auditor like rotation after every 5years of period with cooling period of 2 years, eligibility of minimum three years of experience in financial sector is prescribed. Action of internal audit report is to be completed and submitted to SEBI within two months of date of receipt of internal audit report or within one month of board meeting in the prescribed format. There will be now half-yearly internal audit.

⇒ Disclosures in respect of rating not accepted by issuer, and in case of review have been explicitly spelled out.

⇒ Policy in respect of non-cooperation by issuer is required to be included in operations manual. Also, rating of such securities shall carry a prefix "Issuer did not co-operate; Based on best available information" in the same font size.

⇒ CRAs to develop efficient and responsive systems to keep track of all important changes relating to the client companies as required under clause 8 of Code of Conduct of SEBI (CRA) Regulations, 1999 by

- ❖ Monitoring of repayment schedules: CRAs to be proactive by early detection of fraud by keeping an eye on financial position of an issuer, stock exchange website, debenture trustee, suppression of information / non-cooperation by issuer.
- ❖ Material events like restructuring, quarterly/ annual financial results, share price, debt level, losses, de-licenses, if any, rating action taken by any other CRA.
- ❖ No default statement to be sought from issuer at the end of each month and is required to be submitted to CRA in the following month in the prescribed format.

⇒ Timelines have been prescribed for rating and dissemination of the same on website both at the initial and review level.

⇒ The content of rating agreement is widened to include timeliness for issue to provide the requisite information to CRA.

RATING CRITERIA

Basically, rating involves testing of timely service of debt and obligations of a particular product to be rated and seek clarifications from the issuer thereby give independent, professional unbiased rating. Credit rating involves serving to wide range of issuers:

- Manufacturing companies
- Financial Services
- Infrastructure sector companies
- Asset Securitization/ Structured Obligation
- Service companies

A credit rating agency (CRA) can give independent, unbiased, proper and efficient functioning only if there is an appropriate institutional framework and supportive environment facilities. Sustained growth in functioning can only be accelerated by conducive framework. Securities & Exchange Board of India (SEBI) is the regulatory authority for CRA's in India.

- Government Company/agencies
- Small and medium sector entities

Rating methodologies considers different factors which contribute on the future earnings of the issuer. Rating methodologies varies according to industry to industry. But, generally, following are key points for the same:

Industry Characteristic: This includes evaluation of overall industry behavior in which issuer operates like economic conditions, risk involved, entry and exit barrier, earning potential, business cycle, growth, its economic strength.

Competitive position of Issuer: This includes analysis of Company's sales, highest earning product, brand name, market value, price leadership, ability to sustain in market.

Operational efficiency: It involves evaluation of all operational issues including cost control, labor, administration, product raw material, technology.

Management Quality: This is one of the crucial evaluations as it involves financial results, strategic planning, operations, organization structure, commitment, credibility, consistency, overall quality of management.

Funding Policies of the Issuer: Debt to capital ratio, it's levels, working capital and their usages.

Accounting: Overall evaluation of accounting policies employed and the extent to which they are understated or overstated, analysis of auditors' report, financial statement, revenue recognition, depreciation, inventory, consolidation of companies, parent support, different financial ratios.

Visit to Plant: This helps to understand about the ongoing projects

Cash flow adequacy: This involves evaluation of inherent protective factors for cash inflow and reaction of the cash outflow in terms of changes in variables raw material, selling price.

Default recognition: This involves recognition of default and post –default curing period for each of instruments (Term loan, Working capital, Cash Credit, Commercial paper, Debentures/bonds, Buyers Credit, Packing Credit, Overdraft, Bank Guarantee).

- ➢ Financial Service Companies including Banks, financial institutions, Non-Banking Financial Companies performs the same function of cost plus margin for lending but they are different in terms of services, scale of operations, market products, and regulatory services. The financial service companies face three major types of risk in terms of Financial Risk, Operating Risk, and Management Risk. On the Other hand, rating methodology for Non-Banking Financial Services involves study of CAMELS model Capital Adequacy, Asset Quality, Management Earnings, Earnings, Liquidity, and Sensitivity to Market Risk.
- ➢ Infrastructure companies are in programs of road, telecommunication, power and such other infrastructure programs. Rating methodology in this case involves fundamental viability of the project being financed, strong analysis regulatory, political, legal environment, capital involved as infrastructure projects are capital intensive, contractual framework to mitigate the risk.
- ➢ Asset Securitization is a different method of raising money from public. The process of converting a loan or a receivable into a negotiable instrument is known as securitization. When this negotiable instrument is offered to public with an underlying asset is known as asset securitization. Rating methodology for this involves study and evaluation of potential impairment of losses in case of loss or default, underlying cost and quality of asset, risk appetite of issuer, collection procedure, pool of asset for selection, legal and tax structure, trustee to manage and control the asset. The possible credit loss and other deficiencies of the pool in terms of timing and quantum of cash flows are analyzed and the extent and nature of credit enhancement is then determined

RATING PROCESS

The following is the brief procedure of rating:

1. **Mandate from Issuer:** The rating process begins with mandate from issuer. Issuer to fill the request or mandate form and submit to the CRA with the details of product or instrument to be rated.
2. **Appointment of team of experts/analytical:** The next step is the CRA to appoint the team of experts/analytical to carry out the rating. CRA should oversee that there is no conflict of interest between the team and the issuer and have sectoral skill.
3. **To seek information:** In this process, issuer will be asked to provide relevant financial and non-financial information to the team of CRA. Financial information includes annual reports, prospectus, governmental reports, industry reports, discussions with industry/government. Statistical databases are also being developed to have comparables of major issuer categories.
4. **Meeting with Management:** This is the first-time, initial management meeting and is generally held at issuers place. The lead expert from CRA may give agenda before the meeting. At this level, CRA calls for following information:
   - ➢ History and background of the company.
   - ➢ Industry/sector trends
   - ➢ National political and regulatory environment
   - ➢ Management policies, experience, track record, and attitude toward risk-taking
   - ➢ Management structure
   - ➢ Basic operating and competitive position
   - ➢ Corporate strategy and competitive philosophy Debt structure, including structural subordination and priority of claim
   - ➢ Financial position and sources of liquidity, including: – cash flow, stability, and sources of liquidity – operating margin; and – a balance sheet analysis in terms of debt profile and maturity
5. **Analysis:** After the management meeting, CRA analyst, analyses the data and information received issuer. At this stage, CRA analyst may call for additional information also. Once analysis is completed, CRA analyst will recommend the rating to rating committee.
6. **Rating Committee:** The lead analyst will convene the

meeting with rating committee and present all the facts and circumstances of the case and recommended rating alongwith explanation the committee.

7. **Rating Results:** Once the rating committee finalizes the rating, the lead analyst to inform the rating results to the issuer. CRA to disseminate the rating results on the website and simultaneously to all the stock exchange where the security is listed. The issuer may appeal on the findings of CRA. In such case, CRA may review the case again and thereafter give its final result. Unless CRA has missed or overlooked some critical information the chances of rating being changed are rare.
8. **Monitoring:** The CRA's analyst maintain continuous contact with issuer even after rating to understand any new development or change and they also meet with issuer. This may have subsequent rating impact.

RATING SYMBOLS

Rating Symbols denotes the kind of rating given to any financial instrument. Generally, rating symbols are alphanumeric with prefix and suffix to it. CRA's were earlier using different symbols to denote rating for a particular instrument. This technique was causing bit confusion especially for the potential investor. Hence, SEBI in consultation with CRA and advisory committee came up with standardized rating symbols:

(a) Long term debt instruments (b) Short term debt instruments (c) Long term structured finance instruments (d) Short term structured finance instruments (e) Long term mutual fund schemes and (f) Short term mutual fund schemes.

(b)

*Rating Symbol	Long/Medium term debt instruments/ structured finance instruments/ mutual fund schemes
AAA	Instruments with this rating are considered to have the highest degree of safety regarding timely servicing of financial obligations / receipts of payments from investment. Such instruments carry lowest credit risk.
AA	Instruments with this rating are considered to have high degree of safety regarding timely servicing of financial obligations / receipts of payments from investment. Such instruments carry very low credit risk.
A	Instruments with this rating are considered to have adequate degree of safety regarding timely servicing of financial obligations / receipts of payments from investment. Such instruments carry low credit risk
BBB	Instruments with this rating are considered to have moderate degree of safety regarding timely servicing of financial obligations / receipts of payments from investment. Such instruments carry moderate credit risk.
BB	Instruments with this rating are considered to have moderate risk of default regarding timely servicing of financial obligations / receipts of payments from investments
B	Instruments with this rating are considered to have high risk of default regarding timely servicing of financial obligations / receipts of payments from investments
C	Instruments with this rating are considered to have very high risk of default regarding timely servicing of financial obligations / receipts of payments from investments
D	Instruments with this rating are in default or are expected to be in default soon

*Rating Symbol	Short term debt instruments/ structured finance instruments/ mutual fund schemes
A1	Instruments with this rating are considered to have very strong degree of safety regarding timely payment of financial obligations / receipts of payment from investments. Such instruments carry lowest credit risk
A2	Instruments with this rating are considered to have strong degree of safety regarding timely payment of financial obligations / receipts of payment from investments. Such instruments carry low credit risk.
A3	Instruments with this rating are considered to have moderate degree of safety regarding timely payment of financial obligations / receipts of payment from investments. Such instruments carry higher credit risk as compared to instruments rated in the two higher categories.
A4	Instruments with this rating are considered to have minimal degree of safety regarding timely payment of financial obligations / receipts of payment from investments. Such instruments carry very high credit risk and are susceptible to default.
D	Instruments with this rating are in default or expected to be in default on maturity.

*For structured finance obligation (SO) and for mutual fund schemes (mfs) shall be suffixed to rating symbols. Also, CRA's name shall be prefix to rating symbol for example CARE AAA. Modifiers (+)/(-) can be used in rating symbols.

CONCLUSION

Capital Markets is a vast area of study. In the growing economy such as India, Capital Market provides a bigger platform for the various companies and the financial institutions to satisfy their fund need. Interpreting Capital Market in its standalone state will not give a holistic view over the concept as it consists of various critical aspects. One of the critical aspects is Rating of Securities, Financial Instruments and ways and means to raise funds in the market.

Every company especially those targeting for the bigger business, aims to raise funds through primary or secondary market. In the era of open market, there are various avenues which can be surpassing to create fraudulent practices.

A rating to the financial instruments provides reasonable assurance to the general public or the investors to take a step forward and invest in subjected security. Every organization collaborates with the CRA to provide and establish credit worthiness in the market. On the other side of story, even organization seeks guidance from the agency if organization is evaluating an investment option. Rating agencies are expected to provide an independent, unbiased and objective view. That view or an opinion is critical aspect to drive a successful fund raising campaign. The rating is driven by the regulatory components and to manage the risks associated with it. Rating mechanism is an effective tool to ensure that the lender or lendee is creditworthy to float a debt in market which in turn helps economy to grow. CS

REFERENCE

www.sebi.gov.in; www.careratings.com;www.icsi.edu.

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- E- RETAILING GROWTH IN INDIA: A STUDY OF INFLUENCING FACTORS
- ICSI – CCGRT ANNOUNCES UNIQUE CRITICAL RESEARCH ANALYSIS OF INDIAN COMPANIES ACT, 2013

RESEARCH PAPER

E- Retailing Growth in India: A Study of Influencing Factors

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INTRODUCTION

E-Retailing is the subset of E-Commerce, whereas, E-Commerce is the sub-set of E-Marketing, which is the sub-set of E-Business. This explains that the E-Retailing is the powerful marketing technique and a direct distribution system, where the direct distribution system is an alternative method for distributing products to consumers, which differs from the traditional distribution process that uses the middlemen such as jobbers, wholesalers and retailers. In simple terms, the E-Retailing system is similar to the direct distribution system, as it uses websites to get the product orders and moves the goods and services from the manufacturers to the end consumers directly by eliminating the middlemen from the distribution process.

The business world is changing at an inimitable pace. Further, electronic retailing will set a new platform for the expansion of the business, as E-Retailing business has proved itself as part of the new economy and a preferred way to do business across the world. An effort has been made this paper to examine the growth of E-Retailing in India and identify some of the important influencing factors of E-Retailing growth in India. The study concludes that there would be a prospective growth of E-Retailing in India if more number of people brought under the fold of internet access and training programs are conducted to enable them to use electronic shopping.

Here, Electronic Retailing or E-tailing includes the sale of goods and services through the Internet, which may be Business-to-Business (B2B) and Business-to-Consumer (B2C) sales and online shopping web sites for retail sales direct to consumers. E-Retailing is also known as e- web-store, e-shop, e-store, Internet shop, web-shop, web-store, online store, online storefront, virtual store etc.

In India there are many online or E-Retailers provide a variety of merchandise to customers. Online retail players are classified into two types as, category focused players and multi-category focused. Category focused players provide particular merchandise with deep assortment, e.g. Myntra and Jabong (Apparels and Lifestyle products); Big basket and Local banyans (Grocery segment); Fabfurnish and Pepper fry (Furniture); CaratLane and Juvalia and You's (Jewelry); First cry and My baby cart (baby products). Whereas, Multi category players provide variety of merchandise with limited assortment, e.g. Flipkart, Amazon, Future bazaar, Snap deal, shop clues etc.

Successful E-Tailing requires a strong branding. Websites must be engaging easily maneuverable and regularly updated to meet consumers' changing demands. Products and services need to stand out from competitors' offerings and add value to consumers' lives. Specifically, a company's offerings must be competitively priced so consumers do not favor one business over another based on cost alone. Further, E-Tailors need strong distribution efficiency so that the consumers are not waiting long periods of time for the products or services they purchase. Transparency in business practices is also important, as consumers trust and stay loyal to a company, which makes them to continue buying from the business that increases revenue.

In the present marketing environment, E-Retailing has become more prominent as some of

the following **advantages** may be accrued to the customers due to E-Retailing over the traditional retailing:

i) **Convenience:** Online shops give the opportunity to customers to shop 24 x 7 and also reward them with a no pollution shopping.

ii) **Better Prices:** As the website portals promotes and markets the products, the company saves on the cost of the payment to the series of middlemen. This amount is saved may be used to pay discounts and other benefits to the customers of E-Retailing business.

iii) **Variety:** The customers may get the information of several brands and products from different sellers at one place and may shop from retailers in other part of the country or even the world without being limited by geographic area.

iv) **Send Gifts:** Online Shopping facilitates in sending gifts to relatives and friends wherever they stay.

v) **Easy Market Enquiry and Price Comparison:** Online shops make comparison and research of products and prices possible.

vi) **New Product Capabilities:** E-Commerce allows for new products to be created and existing products to be customized in innovative ways.

vii) **Time and Effort Savings:** Customers may save time and put less effort in shopping.

viii) **Easy transaction of payment:** The payment will be made through online.

ix) **Detail information of products:** Customers may get complete information of the products online.

After understanding the concept and advantages of E-Retailing, an attempt has been made to review the past studies related to the study to establish the relevance of the study and the same is presented chronologically in brief as follows:

REVIEW OF LITERATURE AND RELEVANCE OF THE STUDY

While studying the "Consumer Perception of Electronic Commerce", **Adéle Martins, Nico Martins and Martin Olivier (2001)**[1] concluded that as the lack of knowledge of security measures has an impact on consumers' perceptions, the issue of trust needs to be addressed. **Venkatesh and Balachadra (2004)**[2] stated that online environment accommodates so many opportunities for creating loyalty that even offline offerings can be effectively facilitated with supporting after sale services provided through the Web. **Malhotra and Singh (2007)**[3], in his research, found that I-banking adoption by the banks in India and suggested that India should act fast and decisively in order to use the growing electronic trade to its advantage.

Khan and Mahapatra (2009)[4] studied "Service quality evaluation in internet banking" and observed that customers are satisfied with the reliability of the services provided by the banks but are not very much satisfied with the dimension 'User friendliness'. **Mustafa I. Eid (2011)**[5] studied the 'Determinants of E-Commerce Customer Satisfaction, Trust, and Loyalty in Saudi Arabia' and found that in B2C E-Commerce customer loyalty in Saudi Arabia

1. Adéle Martins, Nico Martins and Martin S. Olivier (2001), "Consumer Perception of Electronic Commerce", African Computer Journal, 27, pp 27-33.

2. Venkatesh, J. and V. Balachadra (2004), "Planning Internet Marketing Strategy", Indian Journal of Marketing, Vol. XXXIV, No.10, pp 3-9.

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is strongly influenced by customer satisfaction but weakly influenced by customer trust.

Uma Sailaja (2003)[6], in her thesis entitled "Marketing aspects of E-Commerce", concluded that the biggest challenge for the seller was to change the attitude of shopper towards e-shopping. In another thesis, **Gnana Chandrika (2006)**[7] concluded that today E-Commerce as an alternative/additional mode is being accepted by many businesses. But the rate of adoption of E-Commerce is varying in different industries. A traditional industry like automotive industry in India is yet to adopt E-Commerce in a big way.

Mallikarjun Rao (2006)[8] studied "Factors affecting growth of E-Commerce in India" and concluded that there was a close association between online purchase and availability of information about the vendors, hence, suggested that more information will increase respondents comfort level for online trade. While analyzing the Trends in E-Commerce, **Rekha (2010)**[9] stated that e-buyers need to adopt to a safe mode of on-line payment and use alternative modes of payments such as, virtual credit cards that involve less risk in diversifying the information for payment.

In a study on "the effect of e-marketing on the marketing performance of medium and large financial service enterprises in Ethiopia", **Temesgen Belaneh Zerihum (2012)**[10] opined that e-marketing environment, as consumers' awareness and their behaviour, more specifically, the impact of digital marketing on consumers' behavior measured by select external and internal variable, has a positive significant impact on marketing effectiveness and efficiency as well as on marketing performance.

The above review may reveal that the most of the research meant for understanding the security measures of digital marketing and factors influencing the e-business focusing on the consumers' perceptions. But, specifically the studies were not conducted to analyze the E-Retailing growth in India and factors influencing for the same together.

Thus, this study aimed at filling the gap with the **objectives** as, i) to analyze the growth of E-Retailing in India and ii) to examine the influencing factors of E-Retailing growth in India, by restricting to B2C business model. The source of data is secondary in nature and collected from the past studies, whereas, the analysis is made with the help of simple growth rates (over the preceding year) and compound annual growth rates (CAGR = (End Value / Start Value) ^ [1/ (Periods-1)]-1).

E-RETAILING BUSINESS IN INDIA

The E-Retailing in India has witnessed a significant growth as shown in the following table-1, where, E-Retailing comprises of buying consumer items such as books, apparels and footwear, jewelers, mobiles, cameras, computers (desktops/laptops/net books/tablets), home & kitchen appliances, home furnishings, vouchers/coupons, flowers and toys, gifts online, holiday packages automobiles etc. This report includes only the online Digital Commerce players in the country who do not have any physical storefront.

Table-1: E-Retail Market Size in India from 2010 December to 2016 December

Year	2010	2011	2012	2013	2014	2015	2016
Sales (Cr, INR.)	2372	3842	6454	10004	24046	37689	59876
Simple Growth Rate % (over the Preceding Year)		62%	68%	55%	140%	57%	59%
CAGR %							71.27%

Source: Interne and Mobile Association of India (IAMAI)and Indian Market Research Bureau (IMRB)[11]

The above table reveals that online retail business has increased from INR 2372 crores to INR 59876 crores with the Compounded Annual Growth Rate (CAGR) of 71.27%. A close observation of simple growth rates computed on the basis of the preceding year reveals the growth rate percentage vary from 55% to 68%, barring 2014 year, during which a growth rate was 140%. This indicates that E-retail in India has performed extraordinarily in 2014 because of India's online retail business announced its arrival in 2014 and there was Flipkart's 'Big Billion Day Sale' followed by Google's 'three-day online shopping festival'. In all, there has a dramatic rise in number of unique visitors and merchants, and rapid growth in product categories on offer including holiday packages, motorcycles and even homes. This year noticed valuation of some of the larger players touched a billion dollar mark.

Further, The E- Retail segment is expected to reach around INR 94,964[12] crores by December 2017. Thus, it may be inferred that the India's online retail industry is growing at a swift pace over the study period.

In 2015 Union Bank of Switzerland (UBS)[13], based on internet penetration, per capita GDP and total retail market size in the country, projects a jump in the size of India's e-tail market by 10 times to range between $48 billion to $60 billion by 2020. Further, it is expected that the E-Retailers will become profitable by 2020 as operating costs [as a percentage of Gross Merchandise Value (GVM)] will fall by an estimated 400 basis points i.e. costs will come down as operating leverage increases. In simple terms, E-Retailers' per unit fixed cost will go down as volumes grow, resulting in higher profitability.

In 2015 Union Bank of Switzerland (UBS)[14] stated that, by 2020 discounts are expected to fall by an estimated 700-basis-point (as a percentage of GMV), which will be the other big reason for driving E-Retailers' profitability. Discounts will come down as growth moderates from current supernormal phase (to attract more consumers) to moderate growth phase (more users buying online for convenience, choice etc.). Further UBS observed that Assuming a 15 per cent cost of equity (shareholders' expected return), the implied valuation of E-Retailers would be in the range

[6] Uma Sailaja P (2003), "Marketing Aspects of E-Commerce". Thesis Submitted to the Department of Commerce, Osmania University.

[7] Gnana Chandrika K (2006), "E-Commerce in Indian Corporate Sector: A Case Study of Automotive Sector", Thesis Submitted to the Department of Management, Osmania University.

[8] C. Mallikarjun Rao (2006), "Factors Affecting Growth of E-Commerce in India", Thesis Submitted to the Department of Management, Osmania University. [9] Rekha P (2010), "Trends in E-Commerce–An Empirical study", Thesis Submitted to the Department of Commerce, Osmania University.

[10] Temesgen Belaneh Zerihum (2012), "The Effect of e-marketing on the Marketing Performance of Medium and Large Financial Service Enterprises in Ethiopia". Thesis Submitted to the Department of Management, Osmania University.

[11] http://www.iamai.in/sites/default/files/research/pdf/IAMAI%20Digital%20Commerce%20Report%202014_90.pdf,http://www.mxmindia.com/2016/06/e-commerce-to-touch-rs-2-1-trillion-by-dec-201 and http://www.mxmindia.com/2017/06/digital-commerce-to-reach-rs-220330-crore-by-dec-2017-iamai-imrb/

[12] Ibid

[13] http://www.ibtimes.co.in/flipkart-snapdeal-become-profitable-by-2020-says-ubs-630087

[14] http://www.business-standard.com/article/companies/is-india-in-an-e-commerce-bubble-115041600253_1.html

from $17 billion to $19 billion and not current $25 billion. But if E-Retailers can achieve higher growth and post a GMV of more than $50 billion by 2020, the rich valuations would be justified.

After understanding the growth of E-Retailing in India and its future prospects, an attempt has been made here to identify the factors, from the various studies, contributed for the significant growth in E-Retailing in India and the same presented as below:

INFLUENCING FACTORS OF E-RETAILING IN INDIA

The main key enablers of E-Commerce are Internet, Devices, Demographic factors and Payment Methods, Growing investment in logistics and Warehouses, Growth of mobile commerce etc. The same are presented in brief hereunder:

i) **Internet:** Internet is the key to the development of E-Retailing and has become pervasive in daily life. People have come to rely heavily on internet for activities ranging from accessing email and searching for information to keeping in touch with friends. India is the world second rank in usage of internet, whereas, China is on top of the list. Among the top 20 countries of internet usage, the growth rate of India is 34.4% in 2017 which is very high growth rate, which shows India's fast movement towards Digital Indi[15].

ii) **Devices:** Declining prices of devices of personal computers, tablets and smart phones and increasing disposable income make it affordable for the majority of people to buy these electronic gadgets. As a result the broadband subscribes 12.8 million of users in 2011 have gone up to 100 million broadband subscribers in 2014 and the same is expected to reach 150 million by 2020[16].

iii) **Payment Systems:** There are many efficient payment systems available to pay the money to E-Retailers online, where, the plastic money plays an important role. The growth in the on line payments may be attributed to the enhanced security measured through the introduction of One Time Password (OTP), which is one of the key aspects in multiple authentication layers, ensuring the high security for the various types of payment methods, such as, i) Cash on Delivery (CoD), ii) Debit Card, iii) Credit Card, iv) Net Banking, v) Mobile Payments, vi) Prepaid Cash Cards etc. In this context, IAMAI has conducted a survey during 2016, which revealed the usage of various payment modes as shown in the following table-2:

Table-2: Modes of Payment in 2016

Modes of Payment	Cash on delivery	Debit Card	Credit Card	Net Banking	Mobile Payments	Prepaid Cash Cards	others
% of preference	76	10	7	5	5	3	1
Ranking	I	II	III	IV	IV	VI	VII

Source: Internet and Mobile Association of India (IAMAI) [17].

The above table reveals that 76% of the Online Shoppers mostly prefer Cash on Delivery as a mode of payment, followed by payment through Debit Card (10%) and Credit Card (7%). The other modes of payment include Net Banking (5%), Mobile banking (5%) and Prepaid Cash Cards (3%) and others (1%). Thus, facility of the Cash on Delivery (CoD) provided to the consumers is one of the key growth drivers for the growth of online retail. However, here a point is to be considered that, the total of preferences is exceeded 100% as some of the consumers preferred more than one.

iv) **Demographic Factors:** Rising disposable income, rapid urbanization, need for convenience and choice, and access are acting as prime movers.

v) **Growing Investment in Logistics and Warehouses[18]:** With estimated investment of nearly $2 billion in logistics and warehouses by 2020, the reach of online retailers to deliver their products in remote locations is set to increase. In this context, **Bahl of KPMG** observed that there are many companies set to invest in specialized logistic services with a view to facilitating delivery of online retailers in coming years. This reveals that the focus is more on the E-Retailing facilities, which in turn promote a growth of E-Retailing in India.

vi) **Growth of Mobile Commerce[19]:** The growth of online in reaching the in non-metro cities is being driven by the rise in usage of mobile internet in the country. The Confederation of Indian Industry (CII) report estimates that the number of people accessing to the internet through mobile is set to reach 600 million by 2020.

CONCLUSION

The world is fast shrinking into a global village because of internet and the developed and fast developing countries have understood the power of internet, and have already started taking the benefits of E-Retailing. As India is witnessing a more mature growth among the users of internet, the growth in E-Retailing is expected to be very significant in future.

The current business environment in India has the potential to enhance the growth of the online retail in India. Some of the main key factors that may contribute to the growth of online retail in India are, Increase in the number of internet users and online buyers, due to the availability of speedy and secured internet, various innovative devices, demographic factors and payment Methods, growing investment in logistics and warehouses, Growth of mobile commerce etc. Further, the study concludes that there will be a prospective growth of Electronic retailing in India if more number of people brought under the fold of internet accessing and train them to use the sophisticated way of shopping. CS

15. http://www.internetworldstats.com/top20.htm
16. www.ey.com/Publication/vwLUAssets/.../EY_RE-BIRTH_OF_ECOMMERCE.pdf
17. https://yourstory.com/2016/06/e-commerce-iamai-211005cr-2016-study/
18. http://www.business-standard.com/article/companies/5-factors-that-will-drive-e-commerce-growth-115021201785_1.html
19. Ibid

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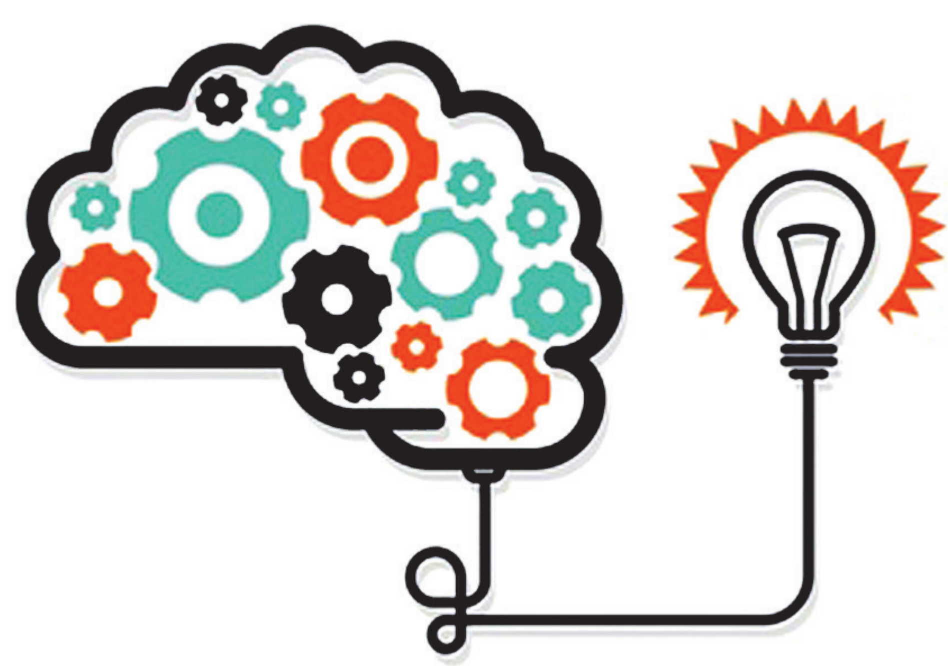
ANNOUNCES

Unique

Critical Research Analysis of Indian Companies Act, 2013



ICSI-CCGRT is pleased to announce unique Critical Research Analysis of Companies Act, 2013 with an objective of creating knowledge reserve among its Members, both in employment and practice, students pursuing Company Secretary and other professional courses, academicians, corporate professionals and other interested folk in order to make them as epitome of knowledge and useful to corporate world

The purpose of competition is to identify significant concepts and try to find out a comprehensive and definitive solutions. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

Prologue

Indian Company Law is a procedural law, emerging out with various critical issues in its implementation and operation. Since 01-04-2014, being the notification date for various sections, industry professionals, corporates are facing various critical issues which are of utmost importance in the field of law as well as in the execution. Further, the new Companies Act have provided robust base to Corporate Governance. As it can be observed from the corporate history, that there have been lot of financial fiascos which have taken place, and in turn have created the need for effective corporate governance. The new Companies Act has espoused the tenets of corporate governance, thereby, played a pivotal role in

protecting the interest of stakeholders. Embracing the concepts like, Independent Director, Woman Director, Secretarial Audit, Internal Audit, CSR, Class Action Suit, Related Party Transaction etc. all goes a long way in ensuring the best governance practices on the part of the management of corporate houses.

In light of this, it generates substantial interest to delve deep into the critical angles of Indian Companies Act, 2013. These critical research analyses help the members and others for identifying the gaps and also providing the solutions to the industry and regulators etc.

Objectives:

a) To comprehend the implications of critical aspects covered under Companies Act, 2013.

b) To analyze the different school of thoughts on the critical issues.

c) To find out probable solution based on National / International Practices, Principles, procedures and Judicial Pronouncements.

d) To understand the probable hurdles that are being witnessed by corporate houses in embracing the sections covered under Companies Act, 2013.

e) To draw a comparison with relevant international corporate laws while studying the critical aspects covered under the Chapters XI to XXIX.

Please submit your views through the below given links either all questions or any no. of questions or alternative by emails at ccgrt@icsi.edu & research.icsi@gmail.com

Coverage-

CHAPTER XVI- PREVENTION OF OPRESSION AND MISMANAGEMENT:

1. Under sub section (1) of 241, the power to complain is given to Member. Does this means only member of the company can make an application and none of the other people like preference shareholders and debenture holders etc do not have eligibility?

2. If preference shareholder is eligible then is it when the dividend is not paid and the preference shareholder obtains voting rights or by virtue of holding the preference shares itself will be eligible to make an application under this section to the Tribunal against oppression and mismanagement.

3. The wordings of clause (a) of sub section (1) of 241 "….being conducted in a manner prejudicial to public interest…". Does this gives implied scope to make an application by debenture holders or creditors etc since the word public interest is included in the section?

4. Sub section (2) of 241 provides that if the central government is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter. Does this mean that, it is giving a choice to the central government whether to make an application to the Tribunal under this section in case of prejudicial to public interest?

5. Section 242(2)(g) provides that the order of the tribunal may direct the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference. How an insolvency can be differentiated from Individual and company. Both can face insolvency situation. And in both cases the mentioned transactions can happen. In such scenario why the parameter of Individual has to be considered alone

6. Section 242(2)(j) provides that the order of the tribunal may also direct the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h). This power is exercised by the tribunal only when it has removed the managing director or manager of the company as per clause (h). At the same time this clause is not mentioning the situation when any other director is removed. What happens to other directors like Whole time directors, nominee directors, small shareholder director, women director?

CHAPTER XVIII-REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

1. What will be the treatment of property in case of strike off of Company by order of ROC u/s 248(1)?

2. Whether director will be disqualify under section 164(2) read with section 167 even after strike off of Company?
   - Strike off by order of the Court
   - Sut moto strike off

3. After strike off whether ROC can issue show cause notice for non-filing of annual forms?

4. Whether after strike off of companies, creditors can apply for IBC?

5. Whether Bank Account can be maintain after strike off of Companies?

6. Whether a third party can apply for restoration of Company after strike off?

7. What is the impact of limitation act on Restoration of strike off application?

8. What are the provisions of re allocation of name of a strike off company to a new Company?

HOW TO PRESENT THE SIGNIFICANT ASPECTS

Answers of the critical issues needs to be presented in the format appended below-

- S.NO.
- Issue (heads)
- Details of issue with justification
- Different School of Thoughts
- Interpretation issues
- Relevant Sections of Indian Companies Act, 2013 as well as Indian Companies Act, 1956.
- Relevant provisions of any other Indian Corporate Laws and international Corporate Laws.

RESEARCH PAPER / MANUSCRIPT GUIDELINES

- Original papers are invited from Company Secretaries in employment & practice, Chartered Accountants, Advocates, Academicians, merchant bankers, doyens from industry and interested folk.
- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- The text should be typed in MS-Word.
- The author/s' name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- The following should also accompany the manuscripts on separate sheets: (i) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI, if any, and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 16th of Sep, 2017 by 12 noon (IST).
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- There is no restriction on number of entries. One participant can submit more than one entries.

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3

LEGAL WORLD

- MADANLAL FAKIRCHAND DUDHEDIYA V. SHREE CHANGDEO SUGAR MILLS LTD [SC]
- LAUREL ENERGETICS PVT LTD V. SEBI [SC]
- C.SHANMUGAM & ANR V. RELIANCE JIO INFOCOMM LIMITED & ORS [CCI]
- SHRI RATHI STEEL (DAKSHIN) LTD V. GAIL (INDIA) LTD [CCI]
- GLAXO SMITHKLINE PHARMACEUTICAL LTD V. UNION OF INDIA [SC]
- NEWGEN SPECIALTY PLASTIC LTD V. INTEC CAPITAL LTD [DEL]
- KANCHAN UDYOG LTD V. UNITED SPIRITS LTD [SC]
- INTERNATIONAL TRACTORS LTD V. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX [DEL]
- HONDA SIEL CARS INDIA LTD V. COMMISSIONER OF INCOME TAX [SC]

Corporate Laws

LMJ 22:08:2017

MADANLAL FAKIRCHAND DUDHEDIYA v. SHREE CHANGDEO SUGAR MILLS LTD [SC]

Civil Appeal No. 64 of 1959

P.B.Gajendragadkar, A.K.Sarkar, K.N.Wanchoo, JJ. [Decided on 20/03/1962]

Equivalent citations: 1962 AIR SC 1543; 1962 SCR Supl (3) 973; (1962) 32 Comp Cas 604 (SC).

Companies Act, 1956- section 76- payment of commission- restriction/prohibition to pay commission - agreement to pay commission was entered into before the commencement of 1956 Act- whether the agreement is hit by the restriction/prohibition – Held, Yes. Whether commission paid out of profits hit by the restriction/ prohibition- Held, Yes.

Brief facts:

The principal question which arises in this appeal relates to the construction of section 76(1) and (2) of the Companies Act, 1956 (1 of 1956) (hereinafter called the Act) before the amendment of sub-section. (2) in 1960. That question arises in this way.

The appellant was one of the promoters of the respondent Company, which was incorporated in 1939 as a Private Limited Company and later converted into a Public Ltd Company in 1944. At the time of the original incorporation of the Company a Promoter's Agreement was arrived at whereby the Company agreed to pay a sum equal to 12.5% of its net profits to the four promoters (i.e. 3.125% each). In 1941, this agreement was modified and the said commission payable to the promoters was reduced to 6-1/4%. This payment of commission was authorised by article 3 of the articles of Association [AoA].

After the Act came into force on the 1st of April, 1956, the respondent company informed the appellant that as from the date of the commencement of the, Act, the agreement between the parties as to the payment of the promoters' commission had become illegal and void and it would not, therefore, pay any more, commission and sought to pass a resolution for deleting article 3 from its AoA.

The appellants filed a suit to restrain the company from passing any resolution deleting Article 3 of the AoA or from taking any action on the basis that the said agreement had become illegal and void. The trial Judge dismissed the suit and the High court also confirmed the same. Hence the present appeal before the Supreme Court.

Decision: Appeal dismissed by 2:1 majority.

Reason:

In construing section 76 (1) and (2), it would be necessary to bear in mind the relevant rules of construction. The first rule of construction which is elementary, is that the words used in the section must be given their plain grammatical meaning. Since we are dealing with two sub- sections of section 76, it is necessary that the said two sub - sections must be construed as a whole "each portion throwing light, if need be, on the rest." The two sub-sections must be read as parts of an integral whole and as being inter- dependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided.

The important part in section 76(1) with which we are directly concerned is the one that provides that the commission paid or agreed to be paid does not exceed the limit therein prescribed. One of the conditions which has to be satisfied in the matter of payment of commission to a person subscribing for any shares is that the said commission shall not exceed 5% of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less. It is significant that this provision seeks to place an absolute ceiling on the payment of commission and in doing so, it refers to the commission generally as such and does not refer to the commission paid either out of capital or out of profits, so that 76(1) read by itself unambiguously and clearly prescribes a ceiling on the payment of commission whatever may be the source from which the said commission may be paid. We have already seen that 76(1) cannot be treated merely as an enabling section. This position has been conceded by the appellant before us, and so there can be no doubt that the ceiling placed on the payment of commission is intended to act as a prohibition against the payment of any commission beyond the said ceiling. Since the payment of commission, which is referred to in this clause is commission payable either for the shares or for the debentures, it may be relevant to consider whether the commission here referred to can be commission only out of capital. Ordinarily, commission paid for debentures would be commission out of debenture money or profit though, of course it is conceivable that the commission on debenture may also be paid out of capital. But if commission on debentures can be paid out of profits. then it would not be unreasonable to assume that the said provision refers to commission payable not only out of capital but out of profits as well. The inclusion of debentures within the scope s. 76 suggests that the commission mentioned scope 76(1) (c) (i) would not, on a reasonable construction, be confined to a commission payable out of capital alone.

Clause (iii) of section 76 (1) (b) seems to suggest the same conclusion. Under this clause, the condition imposed is that the amount or rate per cent of the commission paid or agreed to be paid is in the case of shares or debentures not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission with the Registrar.

The prohibition imposed by section 76(1) is in general terms and it includes payments from any source or fund. The Legislature knew that payment of commission may be made by adopting several devices and what sub-section (2) intends to achieve is to prohibit the adoption of such devices by making it clear that whatever be the nature of the device adopted, if the object of the device is to pay commission, then it must conform to the limit prescribed by section 76(1). It is well-known that sometimes shares or debentures are allotted or capital money is applied in payment of commission. Similarly, under the garb of what may ostensibly be lawful payments, for instance, in respect of purchase money of any property acquired by the company or the contract price of 'any work to be executed for the company, commission may be paid; the purchase price of any property or the contract price of any work may be fixed so as to include something more than its real value the difference being intended to be paid as commission. It was in view of these devices which the Legislature knew were being adopted for the payment of commission that section 76(2) has been inserted in the form which it has taken.

In other words, in order to clarify the position in regard to the devices which may be adopted to defeat the limit imposed by section 76 (1), the Legislature has provided by section 76 (2) that these devices are also subject to section 76(1) and payments can be made under those garbs or devices, provided they do not exceed the limit prescribed by section 76(1). In our opinion, therefore, far from there being any conflict or repugnancy between section 76(1) and 76(2) they constitute one integrated provision, one of the objects of which is to impose a limit on the payment of commission either in respect of shares or in respect of debentures. The anxiety to save the profits of the company is as much in evidence in section 76(1) as it is in other sections to which we have already referred.

Therefore, in our opinion, the learned Judges of the High Court were right when they held that a claim for commission out of the profits of the company which the appellant seeks to make in the present suit is hit by is 76(1) and cannot be entertained.

That leaves one minor point-still to be considered. It was urged in the Courts below that the provisions of 76 cannot be invoked against the appellant because the agreement on which the appellant rests his claim was made prior to the 1st April, 1956 when the Act came into force. The contention appears to have been that in' invoking the provisions of section 76, respondent No. 1 was seeking to make the said provision retrospective which it is not. In our opinion, there is no substance in this argument. Section 9 of the Act is a clear answer to this contention. Under section 9(a) any agreement executed by the company cannot prevail if it is inconsistent with the provisions of the Act and under 9(b) the articles shall likewise not prevail if they are inconsistent with the provisions of the Act.

The result is, the appeal fails and is dismissed with costs.

LW 55:08:2017

LAUREL ENERGETICS PVT LTD v. SEBI [SC]

Civil Appeal No.5675 of 2017 with Civil Appeal No.5694 of 2017
R.F. Nariman & S.K. Kaul, JJ. [Decided on 13/07/2017]

SEBI Act, 1992 read with Regulation 10 of the SEBI Takeover Regulations, 2011 – shares of target company- interse transfer between promoters in July 2014 at Rs.6.20 per share - acquirer promoters of the target company are the promoters of parent company also- public announcement for open offer made in 2015 at Rs.3.20 per share- SEBI rejected the offer price and directed to increase it to Rs.6.20- whether corporate veil could be lifted to avail exemption under section 10 of the Regulations- Held, No.

Brief facts:

Indiabulls Real Estate Ltd ("IBREL"), a listed company, had two lines of business viz real estate and power generation. The target Company "Rattan India Infrastructure Ltd ["Rattan Company] is the WoS of IBREL. The Appellant ("Laurel") is the WoS of Nettle Construction Pvt. Ltd, which was wholly owned by one Rajiv Rattan. Appellant company and Rajiv Rattan have been listed as promoters of IBREL in the year 2009-10.

In 2011, IBREL demerged its power business to Rattan Company i.e. target company. The target company was listed in BSE and NSE in July 2012. The appellant acquired 18% of the equity share holding of the target company at a price of Rs.6.30 per share sometimes in July, 2014. It made certain other purchases with which we are not concerned, because the price paid for those acquisitions was less than Rs.6.30 per share.

On 20th October, 2015 Laurel and Arbutus Consultancy LLP along with various other entities, who were persons acting in concert, made a public announcement under Regulation 15(1) of the SEBI Substantial Acquisition of Shares and Takeover Regulations, 2011 when an open offer was made for acquisition of 35,93,90,094 equity shares of the Target Company from the equity shareholders of the Target Company at the price of Rs.3.20 per share.

SEBI observed, by an order, that the exemption provisions contained in Regulation 10 would not apply to the 2014 acquisition, as a result of which the price of Rs.3.20 per share was not accepted and the higher price of Rs.6.30 was stated to be an amount that would have to be paid to the equity shareholders of the Target Company.

From the aforesaid order, the Appellate Tribunal dismissed an appeal on 5th April, 2017, holding that Regulation 10 did not exempt the acquisitions of 2014, as a result of

which the price payable per share necessarily became Rs.6.30 instead of Rs.3.20 per share. The correctness of the aforesaid order is now before the Supreme Court.

Issue:

Whether the appellant could be considered as the promoter of the target company also being the promoter of the parent company so as to consider it as a promoter for more than 3 years in the target company also by lifting the corporate veil of the parent company and the target company?

Decision: Appeal dismissed.

Reason:

When we come to Regulation 10 itself, and we see some of the other clauses contained in the regulation, with which we are not directly concerned, the corporate veil is lifted in certain specified circumstances.

A reading of sub regulation (iii) would show that holding companies and their subsidiaries are treated as one group subject to control over such companies being exclusively held by the same persons. This shows that it has been statutorily recognized in sub regulation (iii) that in a given situation viz holding subsidiary relationship, the corporate veil would be lifted.

When we come to sub regulations (iv) and (v), it is clear that these two sub regulations follow the pattern contained in sub regulation (ii) in as much as when it comes to persons acting in concert, the period should be not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement. Also, when it comes to shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, the corporate veil is not lifted. The difference between sub regulations (ii), (iv) and (v) on the one hand, and sub regulation (iii) on the other, again shows us that it is impermissible for the court to lift the corporate veil, either partially or otherwise, in a manner that would distort the plain language of the regulation. Where the corporate veil is to be lifted, the regulation itself specifically so states.

In the factual scenario before us, it is not possible to construe the regulation in the light of its object, when the words used are clear. This statement of the law is of course with the well known caveat that the object of a provision can certainly be used as an extrinsic aid to the interpretation of statutes and subordinate legislation where there is ambiguity in the words used.

As has already been stated by us, we find the literal language of the regulation clear and beyond any doubt. The language of sub regulation (ii) becomes even clearer when it is contrasted with the language of sub regulation (iii), as has been held by us above.

Having gone through the appellate tribunal's judgment, we find that, for the reasons stated by us, we cannot fault its conclusion and accordingly the appeals stand dismissed.

Competition Laws

LW 56:08:2017

C.SHANMUGAM & ANR v. RELIANCE JIO INFOCOMM LIMITED & ORS [CCI]

Case No. 98 of 2016

D.K.Sikri, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta, G. P. Mittal. [Decided on 15/06/2017]

Competition Act, 2002- Section 4- abuse of dominance- new player in 4G spectrum internet services- introductory free service offer –whether triggers abuse of dominance provision- Held, No.

Brief facts:

The gravamen of the allegations of the Informant concerns free services provided by OP-1 since inception of its business i.e. from 5th September, 2016 under one offer or other. This has been alleged as contravention of the provisions of Section 4 of the Act.

OP-1 has hidden objectives of abusing its dominant position by use of its financial status. It has the mala fide intention of becoming a monopoly/non-competitive player in the telecom industry in India and to control and regulate the industry independently of the market forces.

OP-1 is stated to have been established as a venture of group industries of Reliance Industries Ltd., which launched its 4G internet services on 5th September, 2016 under the name and style of "Reliance Jio". OP-2 and OP-3 are public governing organisations who formulate and stipulate policies, guidelines and regulations for the well-functioning of telecom industry as well as grant licenses to telecom players. OP-4 is a telecom company, which is fully owned and operated by the Government of India and deals in providing various telecom services like landline telecom, mobile telecom, internet and broadband services, etc. The Informants have made OP-4 as one of the parties as it may assist the Commission in arriving at a logical conclusion regarding the conduct of OP-1 and its effects on the market.

Decision: Complaint dismissed.

Reason:

Coming to the assessment of dominant position, the Commission notes that after the opening up of telecommunication market to private players, this market has witnessed entry of a number

of players competing with each other resulting in decrease of tariffs and constant improvements in quality and variety of services. As per the TRAI press release dated 17th February, 2017, the wireless subscriber base of private telecommunication players at pan-India level constitutes 91.09% as against 8.91% held by public sector undertakings. The market is led by the Informant with a market share of 23.5% followed by Vodafone (18.1%), Idea (16.9%), BSNL (8.6%), Aircel (8%), RCOM (7.6%), OP-2 (6.4%), Telenor (4.83%), Tata (4.70), Sistema (0.52%), MTNL (0.32%) and Quadrant (0.27%). Further, in none of the 22 telecommunication circles, the Opposite Party has a market share higher than 7%. As may be seen, the market is characterised by the presence of several players ranging from established foreign telecom operators to prominent domestic business houses like TATA. Many of these players are comparable in terms of economic resources, technical capabilities and access to capital. Further, the market is characterised by the presence of several players resulting in sufficient choice to consumers who can shift from one service provider to another and that too with ease. This implies that dependence of consumers on any single telecom operator is not of any significant extent. Against this background, it is difficult to construe dominant position being possessed by OP-2 with 6.4% market share, which presupposes an ability to operate independently of the market forces to affect its consumers or competitors.

The Informant has alleged that OP-2 is dominant on account of its large spectrum holding in the most premier bands, which are compatible for offering 4G LTE services. It has been submitted that OP-2 holds 50 per cent of the spectrum in 2300 MHz band and 28 per cent of 1800 MHz band deployed for LTE network. Further, pursuant to the network and spectrum sharing arrangement with RCOM, OP-2 has access to 35 per cent of 800MHz band as well. On the other hand, the learned senior counsel for OP-2 contended that such estimation is biased as the Informant holds the maximum spectrum in 1800 MHz band, which is the most efficient band amongst others. In this regard, it is observed that the extant regulatory requirements of DoT appear to cap the overall and band-wise spectrum holding by telecom operators, which to a large extent takes care of undesirable concentration of spectrum in the hands of few operators.

During the preliminary conference, the learned senior counsel for the Informant argued that OP-2 has unfettered access to the funds of OP- 1, which is the largest private sector company in the country. The learned counsel for OP-2 referred to various portions of the recent Annual Report of the Informant to suggest that the Informant has also made huge investments in telecom market and is in a financially sound position. The Commission notes that financial strength is relevant but not the sole factor to determine dominant position of an enterprise. Considering comparable investments and financial strengths of competitors, the success of OP-2 in managing large scale investments does not suggest dominant position being enjoyed by OP-2. The Commission does not find it appropriate to hold OP- 2 dominant in a scenario where its customers constitute less than 7 per cent of the total subscriber base at pan-India level, various functions of telecom service providers are regulated and entrenched players have been in existence for more than a decade with sound business presence, comparable financial positon, technical capabilities and reputation. Even if one were to consider 4G LTE services as the relevant product market, OP-2 is not likely to hold dominant position in such market on account of the presence of the Informant, Vodafone, Idea, etc., who derive commercial and technical advantages due to their sustained and sound business presence in other telecom services. It needs to be appreciated that OP-2 is a new entrant, who has commenced its business recently i.e. from 5th September, 2016.

In the absence of any dominant position being enjoyed by OP-2 in the relevant market, the question of examining the alleged abuse does not arise. Notwithstanding this, the offers of OP-2 do not appear to raise any competition concern at this stage. All through the preliminary conference, the learned senior counsel for the Informant alleged that the impugned offers of OP-2 amount to below-cost pricing and has resulted in OP-2 gaining a huge subscriber base of around 72 million in a period of just 4 months. This, according to the Informant amounts to predatory pricing. However, the Informant has not demonstrated reduction of competition or elimination of any competitor nor has any intent to that effect is demonstrated. The Commission notes that providing free services cannot by itself raise competition concerns unless the same is offered by a dominant enterprise and shown to be tainted with an anti-competitive objective of excluding competition/ competitors, which does not seem to be the case in the instant matter as the relevant market is characterised by the presence of entrenched players with sustained business presence and financial strength. In a competitive market scenario, where there are already big players operating in the market, it would not be anti- competitive for an entrant to incentivise customers towards its own services by giving attractive offers and schemes. Such short-term business strategy of an entrant to penetrate the market and establish its identity cannot be considered to be anti-competitive in nature and as such cannot be a subject matter of investigation under the Act.

LW 57:08:2017

SHRI RATHI STEEL (DAKSHIN) LTD v. GAIL (INDIA) LTD [CCI]

Case No. 2 of 2017

D.K.Sikri, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta, G. P. Mittal. [Decided on 14/07/2017]

Competition Act, 2002- Section 4- abuse of dominance- premier gas supplier having 60% market share - imposition of take or pay liability –whether triggers abuse of dominance provision- Held, es.

Brief facts:

The Informant has alleged abuse of dominant position by the Opposite Party on account of incorporation of unfair terms and conditions in the GSA and for imposition of take or pay liability (hereinafter referred to as “ToP liability”) by it despite intimation to it by the Informant that due to regular increase in the prices of Re-gasified Liquefied Natural Gas (hereinafter referred to as ‘RLNG’), the Informant has been forced to reduce its daily contracted quantity.

Decision: Investigation ordered.

Reason:

As per the GSA, the Informant is required to take 90% of the contracted quantity every year failing which it will be obliged to pay for the quantities not taken. Such liability is termed as ToP liability. With experience from the earlier cases [Cases No. 16 to 20 of 2016], the Commission notes that the GSAs of the Opposite Party largely envisage such liability upon all customers located across different regions. All these GSAs examined by the Commission are long term contracts with a term of 20 years. This would mean that: (a) potential buyers have to estimate their demand for gas for the next two decades to procure gas from the Opposite Party; (b) a contracted buyer has limited flexibility of 10% and it has to pay Take or Pay charges if consumption of gas by it is less than 90% of the contracted quantity although the buyer could request for the unlifted quantity later as Make Good Gas; and (c) a buyer who is locked into a contract with the Opposite Party cannot terminate the contract if the price of gas becomes economically unviable for it or it wants to shift to other cheaper alternatives as breach of obligation under the GSA would trigger ToP liability.

It has already been noted by the Commission in its earlier order dated 3rd October, 2016 passed in Cases No. 16 to 20 of 2016 that take or pay liability has been imposed by the Opposite Party only from the year 2015 and there was no such imposition earlier. In the case of the Informant, the Opposite Party, vide letter dated 27th February, 2015, has demanded Rs. 6.39/- crores as ToP charges for the calendar year 2014 as against ToP liability of Rs.16.7 crores. In 2015, the Opposite Party issued another letter dated 31st August, 2015 to the Informant demanding Rs.10.3 crores as ToP charges for the period January 2015 to July 2015. This time, full charges were demanded from the Informant and strangely, the demand seems to have been raised for a part of the year and even before issuing the annual statement of settlement.

The conduct of Opposite Party in implementing such ToP liability from the year 2015 appears to be a modus to ensure de facto exclusivity of the contractual arrangement. This, besides prohibiting the buyers from shifting to alternatives or terminating the GSA in the event of closure of their business, also appears to create entry barriers for alternative suppliers to enter the market or build up a viable customer base. It is observed that while imposition of ToP liability as per contractual terms cannot per se be regarded as abuse of dominant position, the same being imposed in an exploitative manner without justification or to ensure de facto exclusivity thereby hurdling potential entries or expansion of competitors warrants investigation under the provisions of the Act prohibiting abuse of dominant position. The Commission is, hence, convinced that the facts presented in the instant information prima facie suggest contravention of Section 4(2) (a) and Section 4(2) (c) of the Act.

The Commission is already seized with the issue of unfair imposition of ToP liability by the Opposite Party in Cases No. 16 to 20 of 2016. In those cases, the Opposite Party's stand was that take or pay liability, as imposed on the customers, was only to neutralize the losses borne by the Opposite Party due to non off-take or under-drawal by the customers as per the respective GSAs, and was not to make any profits on account of take or pay deficiency. The same also formed basis of reduction in the take or pay claim by the Opposite Party. However, in the instant matter, full ToP liability has been imposed on the Informant for the calendar year 2015. In the earlier cases, the Opposite Party also contended that it faces ToP obligation under its contracts with certain upstream suppliers. In this regard, the Commission finds it relevant to inquire into: the different sources of gas procurement by the Opposite Party and the nature of arrangements with each supplier including price and ToP liability under each such arrangement; whether the gas supplied to the customers of the Opposite Party is supplied from a commingled stream, in which case, what is the basis for price determination/ revision from time to time; whether ToP liability was imposed on the Opposite Party by its upstream suppliers for the contract year 2015; whether the Opposite Party has suffered any loss on account of non off-take or under-drawl of gas by its contracted customers during the contract year 2015; what were the total ToP liabilities levied by the Opposite Party on all its customers located across India for the contract year 2015; whether the Opposite Party had adopted any discriminatory practice in imposition of ToP liability upon its customers located across India; whether the Opposite Party imposed full ToP liability only in cases where the concerned buyer contested the legality of the ToP claim or resorted to litigation/ arbitration proceedings; and the policy, if any, of the Opposite Party regarding imposition of different liability upon different class of customers. It would also be relevant to appreciate the rationale behind the Opposite Party committing ToP liability to its upstream suppliers for a long period i.e. whether the Opposite Party took into consideration the potential inclusions and exclusions in its customer base, fluctuations in prices, different modes of risk management etc. In view of the above, the Commission deems it fit to order an investigation in the present case.

General Laws

LW 58:08:2017

GLAXO SMITHKLINE PHARMACEUTICAL LTD v. UNION OF INDIA [SC]

Civil Appeal No.6178 of 2009

R. F Nariman & S.K.Kaul,JJ. [Decided on 18/07/2017]

Brief facts:

The appellant manufacturer claimed exemption as provided under paragraph 28 of the Drugs (Prices Control) Order, 1987, read with exemption notification dated 28th February, 1992. The respondent UOI refused to grant exemption on the

ground that the sale price of the drug manufactured by the appellant was higher than the controlled price. After crossing all the departmental and courts, the issue landed before the Supreme Court.

Decision: Appeal allowed.

Reason:

The appellant, has placed great emphasis on the fact that both paragraph 28 as well as the exemption order, read with the Central Government Guidelines of 14th February, 1989, lead to only one conclusion that it is "manufacture" and not sale that is relevant.

The sheet anchor of appellant's case is a judgment delivered by this Hon'ble Court in Union of India v. Ranbaxy Laboratories Ltd & Ors, (2008) 7 SCC 502 in which the self-same problem arose before this Court under pari materia provisions of the DPCO of 1995. This Court has unequivocally held in favour of the construction suggested by Shri Ganesh, namely that all manufacturers of exempted goods, up to the last date of exemption, would be entitled, at any subsequent point of time, to charge a price which is not controlled by the DPCO.

The Union of India, has tried to support the High Court's judgment, and has referred us to Guideline No. (viii) of the Central Government Guidelines, and paragraph 16(3) of the DPCO of 1987. According to UOI, a subsequent judgment of this Court in Glaxosmithkline Pharmaceuticals Ltd v. Union of India & Ors (2014) 2 SCC 753 has correctly distinguished the earlier judgment in Ranbaxy's case, and would therefore, squarely cover the present facts.

Having heard learned counsel for the parties, the point with which we are concerned is in a very narrow compass. If paragraph 28, which is set out hereinabove is perused, it is clear that the exemption relates to drug manufacturing units or classes of such units. The very exemption order which has also been set out by us (supra) again refers only to bulk drugs and formulations based thereupon which are "manufactured" by the company. Further, a reading of the guidelines of 1989 also makes it clear that the exemption only relates to manufacture and has no reference to sale whatsoever.

We are of the view that the matter is no longer res-integra. In Ranbaxy's case, the relevant exemption provision under the DPCO of 1995, referred to in paragraph 19 of the judgment, is almost a verbatim reproduction of the earlier exemption provision i.e. paragraph No.28 of the DPCO of 1987, with which we are directly concerned. Even the exemption notification mentioned in paragraph 20 of the aforesaid judgment, like the exemption notification in the present case, refers only to bulk drugs and formulations "manufactured" by the company.

Not to be deterred by the plain language of the aforesaid judgment, Shri Mukherjee referred us to a later judgment in the Glaxosmithkline case, referred to hereinabove. The issue in that case concerns a price notification issued under the later DPCO of 1995.

It can be seen that the issue that arose in the Glaxosmithkline case was completely different from the issue that arose in Ranbaxy's case and the present case. Ranbaxy's case and the present case are directly concerned only with an exemption notification, and not a notification for fixation of price. Also, what is relevant for an exemption notification is the manufacture of drugs, whereas what is relevant for a price fixation notification relates to sale and not manufacture. Obviously, therefore, the Glaxo- smithkline decision would have no relevance to the facts of the present case.

LW 59:08:2017

NEWGEN SPECIALTY PLASTIC LTD v. INTEC CAPITAL LTD [DEL]

FAO No. 292 of 2017

Valmiki J.Mehta, J. [Decided on 14/07/2017]

Arbitration and conciliation Act, 1996- section 37- ex parte award- liability to repay the loan proved by evidence- whether the award could be interfered-Held, No.

Brief facts:

The appellant/objector had obtained a loan of Rs.3 crores from the respondent for purchase of equipment for its business. Appellant also tendered a collateral security for a sum of Rs.90,00,000/-. Since the appellant failed to pay the monthly instalments on time, hence there arose dues of Rs.2,80,25,074/, and to recover which claim the respondent/lender invoked arbitration proceedings.

Appellant/applicant appeared in the arbitration proceedings on some dates but thereafter failed to appear and hence was proceeded ex-parte and the impugned award was passed decreeing the recovery of the amount along with interest but subject to adjustment to be granted to the appellant with respect to the collateral amount of Rs. 90,00,000/-.

Appellant challenged the impugned award by filing objections before the court below under Section 34 of the Act, and which have been dismissed by the impugned judgment, hence the present appeal.

Decision: Appeal dismissed.

Reason:

Once, it is established by the respondent by leading evidence that appellant had taken a loan, that there was default in re- payment of the loan amount as there was default of the payment of monthly instalments, i.e. the respondent proved its claim in the arbitration proceedings, the impugned award dated 11.2.2016 could not have been interfered with by the court below under Section 34 of the Act. The court below could not have interfered with such an award not only because a court hearing objections does not sit as an appellate court to re-apprise the evidence as also findings of facts and conclusions, but also because even if the court below hearing objections was a civil court, yet the impugned award even as a decree could not have been set aside as the Respondent's entitlement was proved for recovery of the amount taken as loan (but not repaid) with the agreed rate of interest.

Learned counsel for the appellant firstly argued that it was the duty of the respondent/lender first to adjust the amount due by sale of hypothecated equipment, however when I put a query to counsel for the appellant that whether the appellant had returned the machinery to the respondent, it is conceded that the machinery/equipment purchased by the appellant, by utilization of the loan granted, have not being returned to the respondent.

Learned counsel for the appellant then argued that the respondent is liable to adjust the security amount, and to which there is no dispute, because, arbitrator as per the impugned award while granting relief as per para 8 directed recovery of the amount due only after adjustment of the amount of Rs.90,00,000/-.

Though, learned counsel for the appellant argued that the amount of Rs.90,00,000/- had to bear interest, however, this plea could only have been taken before this Court if the appellant had taken such a plea in the arbitration proceedings, and substantiated the same, but once the appellant chooses to remain ex-parte in the arbitration proceedings, a plea on merits which is not raised before the arbitration proceedings cannot be raised before the court hearing objections under Section 34 of the Act and much less this appellate court heaving appeal against the dismissal of objections.

Accordingly, this Court cannot adjudicate the issues on merits which were not addressed in the arbitration proceedings. In view of the above discussion, there is no merit in the appeal and the same is hereby dismissed.

LW 60:08:2017

KANCHAN UDYOG LTD v. UNITED SPIRITS LTD [SC]

Civil Appeal No.1168 of 2007

Ranjan Gogoi & Navin Sinha, JJ. [Decided on 19/06/2017]

Indian contract Act,1872- section 73- damages towards loss of anticipated profits- bottling contract- termination thereof by brand owner- bottler filed suit claiming damages for loss of anticipated profits- trial court decreed the suit while High Court reversed it- whether the plaintiff is entitled damages for loss of anticipated profits- Held, No.

Brief facts:

The appellant entered into an agreement with the respondent for establishment of a non-alcoholic beverages bottling plant. The concentrate (Essence), for preparation of the non-alcoholic beverage, was to be supplied by the respondent. The beverage was to be sold in specified districts of West Bengal, as provided for in the marketing agreement.

The bottler's agreement was terminated by the respondent. Commercial production at the plant ceased and the suit was instituted by the appellant in 1990. The learned Single Judge decreed the Suit, awarding damages towards loss of anticipated profits, and towards costs for installation of the plant, after deducting Rs.9.05 lakhs payable by the appellant to the respondent as consultancy charges. The respondent was held liable to pay to the appellant a sum of Rs.4,24,33,000/- with interest @ 10% from the date of suit till payment. The Division Bench in appeal reversed the decree, and dismissed the Suit. Hence the present appeal to the Supreme Court.

Decision: Appeal dismissed.

Reason:

In the facts of the present case, it cannot be held that the breach alone was the cause for loss of anticipated profits, much less was it the primary or dominant reason. The appellate court has adequately discussed the appellant's letter dated 04.07.1987 thanking the respondent for its advertising support. During the year 1986-87, the respondent spent Rs.2,05,13,376.14 for advertising purposes evident from its balance sheet. Similarly, in 1987-88, it spent Rs.1,65,87,158.73 towards advertisement and sale promotions. On the contrary, for the year ending 31.03.1987, the appellant spent Rs.6,68,856.00 towards advertisement and in the year 1987-88 it spent only Rs.39,288.00. The fact that it was unable to pay for the concentrates seeking deferred payment, acknowledgement on 09.05.1988 that it would continue to suffer loss for the next six years upto 1992-93 seeking long term credit for five years for supply of concentrates and its acknowledgement in letter dated 27.04.1987 that due to "many factors already discussed with you we have not been able to run the factory and the sales of our product have not picked up in the market", and not to press for payment of consultancy fees, failure to deploy adequate manpower as per its own projections demonstrates the poor financial condition of the appellant as the prime reason for its inability to run the plant and earn profits. As against a value of Rs.4,26,685.19 of raw materials in 1989, the appellant had an over draft of Rs.13,89,000.00. It had a credit entry of Rs.5,135.00 only in July, 1988 in its account with the State Bank of India. The current account with the Union Bank of India reflected a balance of Rs.1,28,619.25 on 28.03.1989. The Bank balance on 31.03.1989 reflected from its balance sheet was only Rs.43,345.38, and its loss as reflected in the balance sheet on 31.03.1987 was Rs.18,47,018.11. In the facts of the present case, it cannot be held that the breach by the respondent was the cause, much less the dominant cause for loss of anticipated profits by the appellant.

The appellate court with reference to evidence has adequately discussed that the appellant failed to take steps to mitigate it losses under the Explanation to Section 73 of the Act. We find no reason to come to any different conclusion from the materials on record. If concentrates were available from M/s. VEC, the appellant had to offer an explanation why it stopped lifting the same after having done so for nearly a year, and could have continued with the business otherwise and earned profits. It could also have taken steps to sell the unit after its closure in May, 1989 rather than to do so belatedly in 1996. No reasonable steps had been displayed as taken by the appellant for utilisation of its bottling plant by negotiations with others in the business. Nothing had been demonstrated of the injury that would have been caused to it thereby.

That leaves the question with regard to reliance loss and the expectation loss. Whether the two could be maintainable simultaneously or were mutually exclusive? In Pullock &

Mulla, 14 th Edition, Volume II, page 1174, the primary object for protection of expectation interest, has been described as to put the innocent party in the position which he would have occupied had the contract been performed. The general aim of the law being to protect the innocent party's defeated financial expectation and compensate him for his loss of bargain, subject to the rules of causation and remoteness. The purpose of protection of reliance interest is to put the plaintiff in the position in which he would have been if the contract had never been made. The loss may include expenses incurred in preparation by the innocent party's own performance, expenses incurred after the breach or even pre-contract expenditure but subject to remoteness.

In view of the conclusion, that the appellant was not entitled to any expectation loss towards anticipated profits, for reasons discussed, any grant of reliance loss would tantamount to giving a benefit to it for what was essentially its own lapses. There are no allegations of any deficiency in the plant. Contrary to its claim of Rs.2.52 crores towards cost of the plant, the learned Single Judge awarded Rs.1.60 crores without any discussion for the basis of the same. Though the appellant had preferred a cross appeal, it did not press the same.

The aforesaid discussion leads to the inevitable conclusion that the appellant had failed to establish its claim that the breach by the respondent was the cause for loss of anticipated profits, that the profitability projection in its loan application was a reasonable basis for award of damages towards loss of anticipated profits. The appellant had failed to abide by its own obligations under Exhibit 'C' and lacked adequate infrastructure, finances and manpower to run its business. It also failed to take reasonable steps to mitigate its losses. The appeal lacks merit and is dismissed.

LW 61:08:2017

INTERNATIONAL TRACTORS LTD v. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX [DEL]

W.P. (C) 4726 of 2014

S.Muralidhar & Prathiba M. Singh, JJ. [Decided on 13/07/2017]

Rule 18 of Central Excise Rules, 2002- import of materials under advance licence- export obligation discharged- duty refund claims rejected- whether exports made under advance licence export obligations are eligible for duty exemption refund-Held, No.

Brief facts:

The short issue arising in the present case is : Whether the petitioner is entitled to rebate of duty under Rule 18 of the Central Excise Rules, 2002 ("CER"), having availed of the benefit of Notification No.93/2004-Cus dated 10th September, 2004 ("Notification No. 93").

The petitioner, manufacturer of various models of tractors, imported raw materials on advance licence without paying customs duty by discharging its export obligations under the advance licence scheme under Notification No. 93. Thereafter, the petitioner filed 39 refund claims claiming refund of duty on exports. The revenue rejected the refund claim. Hence the present petition.

Decision: Petition dismissed.

Reason:

It is the admitted position that the petitioner has availed the benefits under the Advance Authorizations by importing input material and exporting the manufactured goods. The petitioner has, thus, availed of the benefit of non-payment of customs duty on the whole of the imports which it made during the relevant period. The discharge of the Advance Authorizations given in favour of the petitioner was as per Notification No.93 of 2004.

The submission of the petitioner, that availing of the benefit under Rule 18 of CER is not dependent or contingent upon any other notification or obligation, is incorrect. Rule 18 is a rebate, which is subject to such conditions or limitations, as may be stipulated.

In the present case, there is a categorical reference to Rule 18 in Notification No.93. It is a conscious and deliberate inclusion, inasmuch as, the policies envisaged in Rule 18 of the CER and Notification No. 93 is grant of rebate on payment of excise and exemption from payment of customs duty respectively. A party cannot be allowed to avail of both the exemptions when clearly, the intention seems to be to permit only one exemption.

The reference to Rule 18 and 19 (2) in Notification No. 93 clearly reveals that non-payment/rebate of either excise duty or customs duty is being granted to encourage exports. Once an export transaction has been used for seeking discharge of Advance Authorizations issued under the CA, the same export transaction cannot be used for seeking rebate of duty under CER, as the rebate, in this case, is subject to the conditions and limitations, as specified in Notification No.93, which clearly requires that 'the facility under Rule 18 or Sub-rule (2) of 19 of CER, 2002' ought not to have been availed. The Petitioner's right to seek rebate is clearly limited by this condition and hence it is not entitled to rebate under Rule 18 CER.

LW 62:08:2017

HONDA SIEL CARS INDIA LTD v. COMMISSIONER OF INCOME TAX [SC]

Civil Appeal No. 4918 of 2017 Arising out of SLP(C) No. 2140 of 2017)

A Bhushan & A Sikri, JJ. [Decided on 09/06/2017]

Income tax Act,1961- technical fee- payment of lump sum royalty- new joint venture to manufacture products in India- whether capital expenditure – Held, Yes.

Brief facts:

The assesse is a joint venture between Honda Motors Company Limited, Japan ("HMCL") and SEIL Ltd. After getting necessary approval from the Government of India, a joint venture company in the name of the assessee was incorporated. After incorporation of the assessee as a joint venture, several agreements were executed between HMCL and assesse, including a Technical Collaboration Agreement (for short, 'TCA'), under which the assesse was to pay a lump sum royalty terms as technical fee over a period of 5 years and a running royalty on the basis of actual production each year.

The dispute which has arisen is as to whether the said technical fee of 30.5 million US Dollar payable in five equal instalments on yearly basis is to be treated as revenue expenditure or capital expenditure. The assesse claimed it as revenue expenditure but the Revenue rejected the claim and considered it as capital expenditure. On appeal ITAT favoured the assesse and on appeal by Revenue, the High Court held the expenditure to be of capital nature. Hence the present appeal before the Supreme Court.

Decision: Appeal dismissed.

Reason:

We have considered the respective submissions of counsel for the parties on either side. First thing which is discernible in the impugned judgment of the High Court is that the High Court has proceeded entirely on the basis that technical know-how was used for setting up of a plant for manufacture of automobiles. Judgment of the ITAT, on the other hand, reveals that it had arrived at a contrary conclusion.

Distinction between capital and revenue expenditure with reference to acquisition of technical information and know-how has been spelled out by this Court as well as High Courts in series of cases. Primary test which is adopted to differentiate between capital and revenue expenditure remains the same, namely, the enduring nature test. It means where the expenditure is incurred which gives enduring benefit, it will be treated as capital expenditure. In contradistinction to the cases where expenditure of concurrent and reoccurring nature is incurred and the later would belong to revenue field. Technical information and know-how are intangible. They have different and distinct character from tangible assets. When the expenditure is incurred to acquire a tangible asset, determination as to whether the said acquisition of tangible asset is of capital nature or the expenditure is of revenue nature, may not pose a problem. However, in case of technical information and know-how, having regard to their unique characteristic, the questions that need to be posed for determining the nature of such an expenditure are also of different nature. In case where there is a transfer of ownership in the intellectual property rights or in the licences, it would clearly be a capital expenditure.

When we apply the aforesaid parameters to the facts of the present case, the conclusion drawn by the High Court that expenditure incurred was of capital nature, appears to be unblemished. Admittedly, there was no existing business and, thus, question of improvising the existing technical know-how by borrowing the technical know-how of the HMCL, Japan did not arise. The assessee was not in existence at all and it was the result of joint venture of HMCL, Japan and M/s. HSCIL, India. The very purpose of Agreement between the two companies was to set up a joint venture company with aim and objective to establish a unit for manufacture of automobiles and part thereof. As a result of this agreement, assessee company was incorporated which entered into TCA in question for technical collaboration. This technical collaboration included not only transfer of technical information, but, complete assistance, actual, factual and on the spot, for establishment of plant, machinery etc. so as to bring in existence manufacturing unit for the products. Thus, a new business was set up with the technical know-how provided by HMCL, Japan and lump sum royalty, though in five instalments, was paid therefor.

No doubt, this technical know-how is for the limited period i.e. for the tenure of the agreement. However, it is important to note that in case of termination of the Agreement, joint venture itself would come to an end and there may not be any further continuation of manufacture of product with technical know-how of foreign collaborator. The High Court has, thus, rightly observed that virtually life of manufacture of product in the plant and machinery, establishes with assistance of foreign company, is co-extensive with the agreement. The Agreement is framed in a manner so as to given a colour of licence for a limited period having no enduring nature but when a close scrutiny into the said Agreement is undertaken, it shows otherwise. It is significant to note in this behalf that the Agreement provides that in the event of expiration or otherwise termination, whatsoever, licensee, i.e., joint venture company/ Assessee shall discontinue manufacture, sale and other disposition of products, parts and residuary products. All these things then shall be at the option of licensor. In other words, licensee in such contingency would hand over unsold product and parts to licensor for sale by him. In case licensor does not exercise such an option and the product is allowed to be sold by licensee, it would continue to pay royalty as per rates agreed under the agreement. Clauses 19 and 21, in our view, make the Agreement in question, i.e., establishment of plant, machinery and manufacture of product with the help of technical know-how, co-extensive, in continuance of Agreement. The Agreement also has a clause of renewal which, in our view, in totality of terms and conditions, will make the unit continue so long as manufacture of product in plant and machinery, established with aid and assistance of foreign company, will continue. Since, it is found that the Agreement in question was crucial for setting up of the plant project in question for manufacturing of the goods, the expenditure in the form of royalty paid would be in the nature of capital expenditure and not revenue expenditure.

As a consequence, we find no merit in these appeals which are dismissed with cost.

4 FROM THE GOVERNMENT

- CORRIGENDUM
- NATIONAL COMPANY LAW TRIBUNAL (AMENDMENT) RULES, 2017
- CLARIFICATION REGARDING APPLICABILITY OF EXEMPTION GIVEN TO CERTAIN PRIVATE CORNPANIES UNDER SECTION 143(3)(I) OF THE COMPANIES ACT, 2013- REG.
- COMPANIES (TRANSFER OF PENDING PROCEEDINGS) SECOND AMENDMENT RULES, 2017
- COMPANIES (REMOVAL OF DIFFICULTIES) ORDER, 2017
- COMPANIES (MEETINGS OF BOARD AND ITS POWERS) SECOND AMENDMENT RULES, 2017
- COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2017.
- AMENDMENTS TO SCHEDULE IV OF THE COMPANIES ACT,2013
- COMPANIES (INCORPORATION) SECOND AMENDMENT RULES,2017
- ACTION AGAINST EXCLUSIVELY LISTED COMPANIES AND ITS PROMOTERS/DIRECTORS PENDING EXIT OFFER TO THE SHAREHOLDERS
- ONLINE FILING SYSTEM FOR ALTERNATIVE INVESTMENT FUNDS.
- SECURITIES AND EXCHANGE BOARD OF INDIA (INTERNATIONAL FINANCIAL SERVICES CENTRES) GUIDELINES, 2015 – AMENDMENTS
- POSITION LIMITS FOR AGRICULTURAL COMMODITY DERIVATIVES
- ONLINE FILING SYSTEM FOR REAL ESTATE INVESTMENT TRUSTS (REITS) AND INFRASTRUCTURE INVESTMENT TRUSTS (INVITS)
- INVESTMENTS BY FPIS IN CORPORATE DEBT
- DISCLOSURE OF DIVERGENCE IN THE ASSET CLASSIFICATION AND PROVISIONING BY BANKS
- GUIDELINES FOR PARTICIPATION/FUNCTIONING OF ELIGIBLE FOREIGN INVESTORS (EFIS) AND FPIS IN IFSC - AMENDMENT
- AMENDMENT TO INVESTOR GRIEVANCE REDRESSAL SYSTEM AND ARBITRATION MECHANISM
- GUIDELINES FOR ISSUANCE OF ODIS, WITH DERIVATIVE AS UNDERLYING, BY THE ODI ISSUING FPIS.
- ONLINE FILING SYSTEM FOR FOREIGN VENTURE CAPITAL INVESTORS.
- INVESTMENTS BY FPIS IN GOVERNMENT SECURITIES
- POLICY OF ANNUAL INSPECTION OF MEMBERS BY STOCK EXCHANGES/CLEARING CORPORATIONS
- MONITORING AND REVIEW OF RATINGS BY CREDIT RATING AGENCIES (CRAS)
- CLARIFICATION ON MONITORING OF INTEREST/ PRINCIPAL REPAYMENT AND SHARING OF SUCH INFORMATION WITH CREDIT RATING AGENCIES BY DEBENTURE TRUSTEES
- SPECIFICATIONS RELATED TO INTERNATIONAL SECURITIES IDENTIFICATION NUMBER (ISINS) FOR DEBT SECURITIES ISSUED UNDER THE SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008.
- ACCEPTANCE OF E-PAN CARD FOR KYC PURPOSE
- PARTICIPATION OF NON RESIDENT INDIANS (NRIS) IN THE EXCHANGE TRADED CURRENCY DERIVATIVES (ETCD) SEGMENT
- REVIEW OF OFFER FOR SALE (OFS) OF SHARES THROUGH STOCK EXCHANGE MECHANISM
- MARGIN TRADING FACILITY- CLARIFICATION

Corporate Laws

01 Corrigendum

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/1/2014-CL-V] dated 13.07.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii) vide S.O. 2218(E) dated 14.07.2017]

In the notification of the Government of India, in the Ministry of Corporate Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. 583(E), dated the 13th June, 2017 at page 4, in paragraph number 5, in the Table, in the column (3), in item (ii), for the words ''statement or'' read ''statement and''.

AMARDEEP SINGH BHATIA
Joint Secretary

02 National Company Law Tribunal (Amendment) Rules, 2017

[Issued by the Ministry of Corporate Affairs vide [F. N. 1/30/2013-CL-V] dated 05.07.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i) vide GSR 840(E) dated 06.07.2017]

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the National Company Law Tribunal Rules, 2016, namely:-

1. (1) These rules may be called the National Company Law Tribunal (Amendment) Rules, 2017.
   (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the National Company Law Tribunal Rules, 2016, after rule 87, the following rule shall be inserted, namely:-

"87A. Appeal or application under sub-section (1) and sub-section (3) of section 252.—(1) An appeal under subsection (1) or an application under sub-section (3) of section 252, may be filed before the Tribunal in Form No. NCLT. 9, with such modifications as may be necessary.

(2) A copy of the appeal or application, shall be served on the Registrar and on such other persons as the Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.

(3) Upon hearing the appeal or the application or any adjourned hearing thereof, the Tribunal may pass appropriate order, as it deems fit.

(4) Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that-

(a) the appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;
(b) on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;
(c) the appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and
(d) the company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

(5) An application filed by the Registrar of Companies for restoration of name of a company in the register of companies under second proviso to sub-section (1) of section 252 shall be in Form No. NCLT 9 and upon hearing the application or any adjourned hearing thereof, the Tribunal may pass an appropriate order, as it deems fit.".

AMARDEEP SINGH BHATIA
Joint Secretary

03 Clarification regarding applicability of exemption given to certain private cornpanies under section 143(3)(i) of the Companies Act, 2013- reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 08/2017 dated 25.07.2017]

1. Stakeholders have drawn attention of this Ministry to the serial no. 5 of notification No. G.S.R. 583(E) dated 13th June, 2017 which states that requirements of reporting under section 143(3)(i) of the Companies Act 2013 shall not apply to certain private companres as mentioned therein and have sought clarification w.r.t. the financiai year(s) in respect of which the said exemption shall be applicable. The issue has been -examined in the Ministry and it is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial years, commencing on or after 1st April,2016, which are made on oi after the date of the sald notification.
2. This issues with the approval of the Competent Authority.

K. M. S. NARAYANAN
Assistant Director

04 Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/5/2016-CL-V] dated 29.06.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i) vide GSR 732(E) dated 30.06.2017]

1. In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and

Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code), the Central Government hereby makes the following rules further to amend the Companies (Transfer of Pending Proceedings) Rules, 2016, namely:—

1. **Short title and Commencement.—** (1) These rules may be called the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017.
   (2) Save as otherwise provided they shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Transfer of Pending Proceedings) Rules, 2016 (hereafter referred to as principal rules), for rule 4, the following rule shall be substituted, namely:-
   "4. Pending proceeding relating to voluntary winding up.- All proceedings relating to voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Act but the company has not been dissolved before the 1st day of April, 2017 shall continue to be dealt with in accordance with provisions of the Act.".
3. In the principal rules, for rule 5, the following rule shall be substituted and shall be deemed to have been substituted with effect from the 16th day of June, 2017, namely:-
   "5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.— (1) All petitions relating to winding up of a company under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:
   Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:
   Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:
   Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent.".

AMARDEEP SINGH BHATIA
Joint Secretary

05 Companies (Removal of Difficulties) Order, 2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 16/61/2016-Legal] dated 29.06.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii) vide S.O. 2042(E) dated 30.06.2017]

Whereas clause (c) of sub-section (1) of section 434 of the Companies Act, 2013 (hereinafter referred to as the 2013 Act) provides that on a date which may be notified by the Central Government for the purpose of transfer of pending proceedings, all proceedings under the Companies Act, 1956 (hereinafter referred to as the 1956 Act) including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer;

And, whereas, the proviso to the said clause (c) provides that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government;

And, whereas, the said clause (c) of sub-section (1) of section 434 of the 2013 Act has come into force from the 15th December, 2016;

And, whereas, in pursuance of the third proviso to the said clause (c), as inserted by S.O. 3676 (E) dated 7th December, 2016, the proceedings relating to winding up of companies which have not been transferred from the High Courts shall be dealt with in accordance with provisions of the 1956 Act and the Companies (Court) Rules, 1959;

And, whereas, in accordance with the said third proviso read with rule 4 of Companies (Transfer of Pending Proceedings) Rules, 2016, all applications and petitions relating to voluntary winding up of companies pending before a High Court as on 1st April, 2017 shall continue with and dealt with by the High Court in accordance with provisions of the 1956 Act;

And, whereas, provisions of section 59 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) which provide for voluntary winding up have been brought into force on 1st April, 2017;

And, whereas, provisions of sections 304 to 323 of the 2013 Act, which sought to replace the corresponding provisions of the 1956 Act, were omitted by the Code;

And, whereas, difficulties have arisen regarding transfer of proceedings relating to those cases of voluntary winding-up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the 1956 Act but the company has not been dissolved before the 1st April, 2017, since the Code provides for a substantially different framework for persons who may be appointed as liquidators and for making of an application for dissolution by the liquidator. While under the 1956 Act, any person could be appointed as a liquidator, only an insolvency professional registered with the Insolvency and Bankruptcy Board of India can be appointed as a liquidator subject to certain conditions. Further, under the 1956 Act, liquidator is required to make a report to the Official Liquidator who, in turn, makes a report to the High Court for dissolution of the company, whereas under the Code, the liquidator is required to make an application for dissolution directly to the Tribunal;

And, whereas, re-appointment of liquidators by companies which had passed resolutions for voluntary winding up under the 1956 Act before 1st April, 2017 and making of report by the Official Liquidators to the High Court (wherein reports have been made by liquidators to the Official Liquidators) would create difficulties;

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

1. **Short title and commencement.-** (1) This Order may be called

the Companies (Removal of Difficulties) Order, 2017.
(2) It shall come into force with effect from the 29th day of June, 2017.

2. In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),-
   (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:-
   "Provided also that-";
   (b) after the third proviso, the following proviso shall be inserted, namely:-
   "Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959."

AMARDEEP SINGH BHATIA
Joint Secretary

06 Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/32/2013-CL-V-Part] dated 13.07.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

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

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017.
   (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings of Board and its Powers) Rules, 2014 (hereinafter referred to as principal rules), in rule 3,- (i) in sub-rule (3), for clause (e), the following shall be substituted, namely:-
   "(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year :
   Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.".
   (ii) in sub-rule (11), in clause (a), after the words "decision taken by maiority", the words "and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule(12)" shall be inserted.
3. In the principal rules, for rule 6, the following rule shall be substituted, namelv:-
   "6. Committees of the Board. - The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.".

AMARDEEP SINGH BHATIA
Joint Secretary

07 Companies (Appointment and Qualification of Directors) Amendment Rules, 2017.

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/22/2013-CL-V] dated 05.07.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i) vide GSR 839(E) dated 06.07.2017]

In exercise of the powers conferred by the second proviso to sub-section (1), sub-section (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017.
   (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules), rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely :-
   "(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-
   (a) a joint venture;
   (b) a wholly owned subsidiary; and
   (c) a dormant company as defined under section 455 of the Act.".
3. In the principal rules, in the Annexure, for Form DIR–5, the following Form shall be substituted, namely:-

FORM DIR-5
[Pursuant to section 153 of the Companies Act, 2013 and rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

सत्यमेव जयते

Application for surrender of Director Identification Number

Form language o English o Hindi

Refer the instruction kit for filing the form.

1. *Name of the DIN holder
(a) First name
(b) Last name
(c) Middle name

Photograph of the DIN holder

2. *Father's name
(a) First name
(b) Last name
(c) Middle name

3. *Reason for surrender of DIN
- o Having multiple DINs
- o DIN was obtained in a wrongful manner or by fraudulent means
- o Death of the concerned individual
- o Concerned individual is declared as a person of unsound mind by a competent court
- o Concerned individual has been adjudicated as insolvent
- o Concerned individual is/was not associated with any company/LLP

4. *Whether DIN holder is retaining any DIN O Yes O No

Pre-fill

The number of oldest DIN which is being retained

(Note: DIN being retained will replace all the other DINs for which surrender application is filed by the user)

5. *Specify the number of DIN(s) being surrendered by the applicant

*Particulars of the DIN(s) being surrendered

I

Pre-fill

(i) *DIN

(ii) Name

(iii) Father's name

6. (a) *Contact number of the applicant

(b) *e-mail ID of the applicant

(c) Other information, if any, which the applicant intends to submit with regard to this application

7. (a) *Whether the application is being digitally signed by the holder of DIN himself o Yes o No

(b) *Particulars of the applicant

(i) Name

(ii) Relation with the DIN holder

(iii) DIN of the applicant (if any)

(iv) PAN

Attachments | **List of attachments**

(1) *Proof of identity of the applicant; Attach
(2) *Proof of residence of the applicant; Attach
(3) Affidavit including declaration that retained DIN will be updated with all associated CIN/LLPIN; Attach
(4) Copy of court order declaring DIN holder as insolvent/unsound mind Attach
(5) Copy of death certificate Attach
(6) Optional Attachment-if any. Attach

Remove attachment

Declaration

☐ *I hereby declare that Information and other particulars given in this form are true and correct.

☐ I further declare that I have never been appointed as director/designated partner in any company/LLP and the DIN has never been used for filing of any document with any authority.

***To be digitally signed by** DSC Box

*Name

*DIN/PAN

Certificate by practicing professional

☐ *I declare that I have been duly engaged for the purpose of certification of this form.

☐ *I have satisfied myself about the identity of the applicant based on perusal of the original of the attached document.

Note: In case where the applicant is residing outside India the particulars have to be verified from the documents duly attested by the attesting authority as prescribed.

☐ *I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original records maintained by the applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed.

☐ *I further certify that all the required attachments have been completely and legibly attached to this form and it is understood that I shall be liable for action under Section 449 of the Companies Act, 2013 for wrong certification, if any found at any stage.

***To be digitally signed by** DSC Box

☐ Chartered accountant (in whole-time practice) or
☐ Cost accountant (in whole-time practice) or
☐ Company secretary (in whole-time practice)

*Whether associate or fellow o Associate o Fellow

*Membership number Certificate of Practice number

Note: Attention is also drawn to provisions of section 448 and 449 which provide for punishment for false statement and false evidence.

Modify | Check Form | Prescrutiny | Submit

For office use only :

Affix filing details

eForm Service request number (SRN) eForm filing date (DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected Confirm Submission

Date of signing (DD/MM/YYYY)

AMARDEEP SINGH BHATIA
Joint Secretary

Amendments to Schedule IV of the Companies Act,2013

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/22/2013-CL-V-part] dated 05.07.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

1. In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act,2013 (18 of 2013), the Central Government hereby makes the following amendments to Schedule IV of the said Act, namely:-
2. In the Companies Act,2013,in Schedule IV, -
   (i) in paragraph III, in sub-para (12), for the words "acting within his authority", the words "act within their authority" shall be substituted;
   (ii) in paragraph VI, sub-para (2), for the words " a period of not more than one hundred and eighty days", the words "three months" shall be substituted;
   (iii) in paragraph VII, in sub-para (1), for the words "in a year", the words "in a financial year" shall be substituted; and
   (iv) after paragraph VIII, the following note shall be inserted, namely:-
   "Note: The provisions of sub-paragraph (2) and (7) of paragraph II, paragraph IV, paragraph V, clauses (a) and (b) of sub-paragraph (3) of paragraph VII and paragraph VIII shall not apply in the case of a Government company as defined under clause(45) of section 2 of the Companies Act,2013 (18 of 2013), if the requirements in respect of matters specified in these paragraphs are specified by the concerned Ministries or Departments of the Central Govemment or as the case may be, the State Govemments and such requirements are complied with by the Government companies."
3. This notification shall come into force on the date of its publication in the Offtcial Gazette.

AMARDEEP SINGH BHATIA
Joint Secretary

Companies (Incorporation) Second Amendment Rules,2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/13/2013-CL-V] dated 27.07.2017. 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 (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules,2017.
   (2)They shall come into force on the date of their publication in the official gazette.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), for rule 28, the following rule shall be substituted, namely:-
   "28. Shifting of registered office within the same State.- (1) An application seeking confirmation from the Regional Dirrctor for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of

another Registrar of Companies, shall be filed by the company with the Regional Director in **Form No.INC.23** along with the fee and following documents,-

(a) Board Resolution for shifting of registered office;

(b) Special Resolution of the members of the company approving the shifting of registered office;

(c) a declaration given by the Key Managerial Personnel or any two directors authorised bythe Board, that the company has not defaulted in payment ofdues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;

(d) a declaration not to seek change in thc jurisdiction of the Court where cases for prosecution are pending;

(e) acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting".

3. In the principal rules, for rule 30, the following rule shall be substituted, namelv:-

"30' shifting of Registered office from one state or union Territory to another state

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one state Government or union territory to another, shall be filed with the central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-

(a) a copy of Memorandum of Association, with proposed alterations;

(b) a copy of the minutes ofthe general meeting at which the resolution authorising such alteration was passed, giving details ofthe nurnber of votes cast in favour or against the resolution;

(c) a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding rhe date of filing of application by not more than one month, setting forth the following details, namely:-

(a) the names and address ofevery creditor and debenture holder ofthe company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the list of creditors and debentule holders, accompanied by declaration signed by the company Secretary ofthe company, ifany, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that (i) they have made a full enquiry into the affairs ofthe company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and

(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief secretary of the concerned State Government or the Union territory.

(3) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 -

(a) advertise in the Form No.INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the state in which the registered office of the company is situated:

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter-response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule [5).

(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(8) Where an objection has been received,

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(9) The order passed by the Central Government confirming

the alteration may be on such terms and conditions, ifany, as it thinks fit, and may include such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed".

4. In the principal rules, for Form No,INC-23, the following form shall be substituted, namely:-*
5. In the principal rules, for Form No.INC-26, the following form shall be substituted, namely:-*

AMARDEEP SINGH BHATIA

Joint Secretary

* Not reproduced here for want of space. Readers may log on to MCA website www.mca.gov.in for the Forms.

10 Action against Exclusively Listed Companies and its Promoters/Directors pending Exit Offer to the Shareholders

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/MRD/DSA/CIR/P/2017/92] dated 01.08.2017.]

1. SEBI vide circular dated October 10, 2016, provided options to the Exclusively Listed Companies ("ELCs") on Dissemination Board ("DB") to raise capital for meeting the capital requirement for getting listed on the nationwide stock exchanges or to provide exit to investors. An exit mechanism for investors in such ELCs was also specified in the aforesaid circular. Further, ELCs were required to furnish the plan of action by January 09, 2017 to the Designated Stock Exchanges (DSEs), which was subsequently extended till June 30, 2017.
2. The aforesaid circular dated October 10, 2016 stipulated the following action against such ELCs, which remain non-compliant with the above timelines:
   - The company, its directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing for any equity shares for a period of ten years from the exit from the DB.
   - Freezing of shares of the promoters/directors.
   - List of the directors, promoters etc. of all non-compliant companies as available from the details of the company with NSE/BSE shall be disseminated on SEBI website and shall also be shared with other related agencies.
   - Attachment of bank accounts/other assets of promoters/ directors of the companies so as to compensate the investors.
3. In order to ensure that exit option is provided to the public shareholders of ELCs that are non-compliant with the provisions of the said circular dated October 10, 2016 and have not submitted plan of action to the DSEs and in order to protect the interest of investors in ELCs on DB it is hereby directed that, to begin with:-
   a. Such ELCs and the Depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares and the corporate benefits such as dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters or directors of non-compliant Exclusively Listed Companies till the promoters of such non-compliant Exclusively Listed Companies provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges ;
   b. The non-compliant Exclusively Listed Companies, its directors, its promoters and the companies which are promoted by any of them shall not be eligible to access the securities market for the purposes of raising capital till the promoters of such non-compliant Exclusively Listed Companies provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges.
   c. The promoters or directors of non-compliant Exclusively Listed Companies shall not be eligible to remain or become director of any listed company till the promoters of such non-compliant Exclusively Listed Companies provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges.
4. For the aforesaid purposes, "Exclusively Listed Companies" refer to those companies whose equity shares were exclusively listed at a recognised stock exchange at the time of exit of such exchange and were subsequently moved to the Dissemination Board of NSE and BSE and whose shares are available for buying and selling on Dissemination Board.
5. The concerned Designated Stock Exchanges and Depositories shall co-ordinate with each other and ensure compliance of these requirements.
6. SEBI may also take any other appropriate action(s) against the promoters/directors of Exclusively Listed Companies for non-compliance with SEBI circular dated October 10, 2016.
7. This circular is issued in exercise of powers conferred under Section 11 (1) and 11(2) (j) 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. This circular is available on SEBI website at www.sebi.gov.in.

BITHIN MAHANTA

Deputy General Manager

11 Online Filing System for Alternative Investment Funds.

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/IMD/DF1/CIR/P/2017/87] dated 31.07.2017.]

1. In a constant endeavor to facilitate ease of operations in terms of applying for registration, reporting and various compliances under SEBI (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as 'AIF Regulations'), SEBI has introduced an online system for filings related to Alternative Investment Funds (AIF). The online system can be used for application for registration, reporting and filing in terms of the provisions of AIF Regulations and circulars issued thereunder.
2. All applicants desirous of seeking registration as an AIF are now required to submit their applications online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in. Furthermore, all SEBI registered AIFs are now required

to file their compliance reports and submit applications for any request under the provisions of AIF Regulations and circulars issued thereunder, through the online system only. The aforesaid online filing system for AIF has been made operational with immediate effect.

3. Link for SEBI Intermediary Portal is also available on SEBI website - www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the Portal Helpline as specified in the manual.
4. Existing SEBI registered AIFs have already been advised to activate their online accounts.
5. This 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.

NAVEEN SHARMA
Deputy General Manager

12 Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 – Amendments

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/CIR/P/2017/85] dated 27.07.2017.]

1. Kindly refer to SEBI (IFSC) Guidelines, 2015 notified by SEBI on March 27, 2015.
2. In order to further streamline the operations at IFSC, based on the internal discussions and consultations held with the stakeholders, it has been decided to amend provisions of the aforesaid guidelines, which are as follows:

2.1. Eligibility and Shareholding in Stock Exchanges, Clearing Corporations and Depositories

Clauses 4 (1), (2) and (3) of SEBI (IFSC) Guidelines, 2015 which specify the eligibility and shareholding limit for stock exchanges, clearing corporations and depositories desirous of operating in IFSC are being replaced as follows:

"4. (1) Eligibility and shareholding limit for stock exchanges desirous of operating in IFSC: *Any Indian recognised stock exchange or any recognised stock exchange of a foreign jurisdiction shall form a subsidiary to provide the services of stock exchange in IFSC wherein at least fifty one per cent. of paid up equity share capital shall be held by such stock exchange and the remaining share capital shall be held by the following:*

i) any other stock exchange,
ii) a depository,
iii) a banking company,
iv) an insurance company,
v) commodity derivatives exchange,
whether Indian or of foreign jurisdiction and
vi) a public financial institution of Indian jurisdiction,
provided that any one of the aforesaid entities may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, upto fifteen per cent of the paid up equity share capital of such stock exchange.

(2) Eligibility and shareholding limit for clearing corporations desirous of operating in IFSC: *Any Indian recognised stock exchange or clearing corporation, or, any recognized stock exchange or clearing corporation of a foreign jurisdiction shall form a subsidiary to provide the services of clearing corporation in IFSC wherein at least fifty one per cent of paid up equity share capital shall be held by such stock exchange or clearing corporation, and the remaining share capital shall be held by the following:*

i) any other stock exchange,
ii) a clearing corporation,
iii) a depository,
iv) a banking company,
v) an insurance company,
whether Indian or of foreign jurisdiction and
vi) a public financial institution of Indian jurisdiction,
provided that any one of the aforesaid entities may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, upto fifteen per cent. of the paid up equity share capital of such clearing corporation.

(3) (a) Eligibility and shareholding limit for foreign depositories desirous of operating in IFSC: *Any regulated depository of a foreign jurisdiction shall form a subsidiary to provide the depository services in IFSC where atleast fifty one per cent of paid up equity share capital is held by such depository and remaining shares may be offered to any other registered depository or recognised stock exchange or clearing corporation, whether Indian or of foreign jurisdiction.*

(b) Setting up of IFSC Depositories Services by Indian registered depositories: *Any Indian registered depository may set up a branch – IFSC Depository Services (IDS) at IFSC. The interested depositories shall be required to obtain prior approval of the Board for setting up an IDS. Such Indian depository shall be required to ring fence its domestic operations, financially, operationally and technologically, from its operations at IFSC."*

2.2. Governance of Stock Exchanges

As per Clause 6 (4) of SEBI (IFSC) Guidelines which stipulates the governance structure of depositories, stock exchanges and clearing corporations is hereby amended to read as follows:

"Provisions of Chapter IIA of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and Chapter V of Securities Contracts (Regulation) (Stock Exchanges And Clearing Corporations) Regulations 2012 shall not apply to depositories, stock exchanges, clearing corporations in IFSC, as the case may be:

Provided that depositories, stock exchanges, clearing corporations operating in IFSC shall adopt the broader principles of governance prescribed by International Organization of Securities Commissions (IOSCO) and Principles for Financial Market Infrastructures (PFMIs) and such other governance norms as may be specified by the Board, from time to time. Further, the parent depository/stock exchange/clearing corporation shall be responsible for the governance of such depository, stock exchange and clearing corporation in IFSC at all times."

2.3. Intermediaries in IFSC

Clause 8 of SEBI IFSC Guidelines which specifies that any recognised entity or entities desirous of operating in IFSC as an intermediary, may form a company to provide such financial services relating to securities market has been amended as

follows:

"8. (1) Any SEBI-registered intermediary (except trading member or clearing member) or its international associates in collaboration with such SEBI-registered intermediary may provide financial services relating to securities market, in IFSC, without forming a separate company, subject to the prior approval of the Board.

(2) Trading members and clearing members desirous of operating in IFSC as an intermediary, shall form a company to provide such financial services relating to securities market, as permitted by the Board."

3. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of and to regulate the securities market.

BITHIN MAHANTA

Deputy General Manager

13 Position Limits for Agricultural Commodity Derivatives

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/CDMRD/DMP/CIR/P/2017/84] dated 25.07.2017.]

1. SEBI vide its circular No. CDMRD/DMP/CIR/P/2016/96 dated September 27, 2016 had updated and consolidated norms with regard to position limits of commodity derivatives including commodity-wise numerical value of overall client level open position limits.
2. SEBI has received feedback from the stakeholders that current numerical limits applicable for agricultural commodity derivatives are inadequate and not in consonance with the deliverable supply of the commodity. This circular is hereby issued in continuation of the abovementioned SEBI circular with an objective to outline a principle based methodology for revising the commodity-wise numerical value of overall client level open position limits for agricultural commodities with reference to the 'deliverable supply' of the such commodity available in the country during any specific year.
3. After due consultation with various stakeholders and on the basis of recommendations of CDAC (Commodity Derivatives Advisory Committee), following framework is hereby being prescribed for determination of numerical value of overall client level open position limits for agricultural commodities:

3.1. **Categorization of commodities:** In any given year, based on the average of production data and import data of past five years on a rolling basis and keeping in view various extraneous factors that affect the trading in derivatives, the agricultural commodities shall be classified into three categories viz., sensitive, broad and narrow as below:-

3.1.1. Sensitive Commodity: An agricultural commodity shall be classified as a sensitive commodity if it:

3.1.1.1. is prone to frequent Government/External interventions. These interventions may be in the nature of stock limits, import/export restrictions or any other trade related barriers; or

3.1.1.2. has observed frequent instances of price manipulation in past five years of derivatives trading.

3.1.2. **Broad Commodity:** An agricultural commodity shall be classified as 'Broad Commodity' if it is not 'Sensitive Commodity' and satisfies following criteria;

3.1.2.1. Average deliverable supply for past five year is at least 10 lakh Metric Ton (MT) in quantitative term and is at least INR 5,000 Crore in monetary term.

3.1.3. **Narrow Commodity:** An agricultural commodity which is not falling in either of the above two categories, viz 'Sensitive' or 'Broad' commodity, shall be classified as 'Narrow Commodity'.

3.2. **Deliverable Supply:**

The deliverable supply for an agricultural commodity would be **"Production + Imports"**

3.3. **Client Level Numeric Position Limits:** Numerical value of overall client level open position limits for each commodity shall be calculated from 'deliverable supply' available in a particular year, as per its category as given below:

Category of Commodity	Position limits
Broad	1% of the deliverable supply
Narrow	0.5% of the deliverable supply
Sensitive	0.25% of the deliverable supply

3.3.1. The numbers arrived based upon above formula should be rounded off downward to appropriate number of zeroes.

3.4. **Yearly Categorization of commodities and computation of position limits :**

3.4.1. All the national commodity derivatives exchanges shall jointly classify agricultural commodities into the afore-stated three categories on annual basis as per the principles indicated at para No. 3.1 above.

3.4.2. Whenever an agricultural commodity of 'narrow' category is required to be re-categorized to 'broad' in subsequent years, such re-categorization may be possible only if both, average deliverable supply of such commodity for the past five years and monetary value thereof as mentioned at Para '3.1.2.1' exceeds by more than 5%.

3.4.3. For determination of **'deliverable supply'** of various agricultural commodities for each year, the national commodity derivatives exchanges shall take into account the latest production figures of such commodities as annually declared by relevant government sources or from the latest 'third advance estimates' of agricultural commodities published by the Ministry of agriculture or any other yearly estimates/assessments of production and imports made by any governmental agencies such as Ministry of Agriculture, Ministry of Textiles, Ministry of Commerce, different statutory boards/ associations etc., concerned with different agricultural commodities. The national commodity derivatives exchanges shall indicate the sources from which the production and import / export data have been obtained for the purpose of determination of 'deliverable supply' of different agricultural commodities.

3.4.4. Every year, for each agricultural commodity that is being traded in the derivatives market, all

national commodity derivatives exchanges shall jointly complete the exercise of determination of 'deliverable supply, categorization/re-categorization of commodities and computation of numerical value of position limits. Numerical values of position limits for any agricultural commodity shall be revised only if the computation results in a revision in the value by at least 5% compared to previous year's limits. Exchanges shall, after prior intimation to SEBI, notify such details to the market through their respective websites sufficiently in advance and latest by **31st of July** (unless extended by SEBI under exceptional circumstances) of every year and revised limits shall become applicable for all running contracts with effect from **1st of September** of every year.

3.4.5. However for the current year, given the paucity of time, all the national commodity derivatives exchanges are directed to complete this exercise at earliest and notify the same to the market within 20 days of the circular under prior intimation to SEBI and the revised limits shall become applicable for all running contracts with effect from October 1, 2017

3.4.6. In the interest of trade and public, SEBI may exercise its due discretion in modifying the aforesaid position limits at any time during the year.

4. **Member Level Position Limits for Agricultural Commodities:** As already prescribed in Para '5.3' of SEBI Circular dated September 27, 2016, the overall member level position limits for an agricultural commodity across all the contracts shall be 10 times the numerical value of client level position limit or 15% of the market-wide open interest, whichever is higher.
5. **Exchange-wide Position Limit for Agricultural Commodities:** SEBI vide paragraph '5.5' of circular dated September 27, 2016 has prescribed that Exchange-wide gross position limit shall be capped at 50% of the annual estimated production and imports of the commodity. This paragraph '5.5' of the said earlier circular shall be substituted by the following paragraph:-

   "For any agricultural commodity, the overall Exchange-wide gross position limit on open interests hall be 50% of its 'deliverable supply' determined for the relevant year, which shall also be jointly notified by Exchanges along with client level numerical limits."
6. **Clubbing of position limits:** Broad guidelines for clubbing of open positions have been prescribed vide Para '6' of SEBI Circular dated September 27, 2016. In this regard all national commodity derivatives exchanges are directed to jointly formulate a uniform guidelines and disclose the same to the market within 30 days from the date of this circular.
7. There is no change in norms with regard to near month position limits, computation of open positions, monitoring of position limits or any other norm earlier prescribed by SEBI for position limits.
8. The provisions of this circular shall come into effect from the date of this Circular.
9. The Exchanges are advised to:
   i. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same.
   ii. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website.
   iii. communicate to SEBI, the status of the implementation of the provisions of this circular.
10. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
11. This circular is available on SEBI website at www.sebi.gov.in under the category "Circulars", "Info for Commodity Derivatives"

VIKAS SUKHWAL
Deputy General Manager

14 Online Filing System for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/IMD/DF1/CIR/P/2017/83] dated 24.07.2017.]

1. In order to facilitate ease of operations in terms of applying for registration, reporting and various compliances under SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, SEBI has introduced an online system for filings related to REITs and InvITs. The online system can be used for application for registration, reporting and filing under the provision of aforesaid Regulations.
2. All applicants desirous of seeking registration as REITs or InvITs are now required to submit their applications online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in. Furthermore, all SEBI registered REITs and InvITs are now required to file/ submit/ apply for any request, as may be required under the provision of aforesaid Regulations & Circulars issued thereunder, through the online system only. The aforesaid online filing system has been made operational.
3. Link for SEBI Intermediary Portal is also available on SEBI website - www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the Portal Helpline as specified in the manual.
4. Existing SEBI registered InvITs have already been advised to activate their online accounts.
5. This 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.

RICHA G. AGARWAL
Deputy General Manager

15 Investments by FPIs in Corporate Debt

[Issued by the Securities And Exchange Board of India vide Circular [F. No. IMD/FPIC/CIR/P/2017/81] dated 20.07.2017.]

1. This has reference to the SEBI circular SEBI/HO/IMD/FPIC/CIR/P/2016/67 dated August 04, 2016 whereby the Corporate debt limit of INR 244,323 cr for FPIs was redefined as the Combined Corporate Debt Limit (CCDL) for all foreign investments in Rupee denominated bonds issued both onshore and overseas by Indian corporates.
2. In partial modification to Para 4 of the said circular, the CCDL shall be available on tap for investment by foreign investors till the overall investment reaches 95%, after which, the auction mechanism shall be initiated for allocation of the remaining limits.
3. In the event the overall FPI investment in CCDL exceeds 95% (as indicated by the debt utilisation status updated daily on the websites of NSDL and CDSL), the following procedure shall be followed:
   a. The depositories (NSDL and CDSL) shall direct the custodians to halt all FPI purchases in corporate debt securities.
   b. The depositories shall then inform the exchanges (NSE and BSE) regarding the unutilised debt limits for conduct of auction. Upon receipt of information from the depositories, the exchange (starting with BSE) shall conduct an auction for the allocation of unutilised debt limits on the second trading day from the date of receipt of intimation from the depositories. Thereafter, the auction shall be conducted alternately on NSE and BSE.
   c. The auction shall be held only if the free limit is greater than or equal to INR 100 cr. However, if the free limit remains less than 100 cr for 15 consecutive trading days, then an auction shall be conducted on the sixteenth trading day to allocate the free limits.
   d. The auction shall be conducted in the following manner:

Particulars	Details
Duration of bidding:	2 hours (15:30 to 17:30 hrs)
Access to platform	Trading members or custodians
Minimum bid	INR 1 crore
Maximum bid	One-tenth of free limit being auctioned
Tick Size	INR 1 crore
Allocation Methodology	Price time priority
Pricing of bid	Minimum flat fee of INR 1000 or bid price whichever is higher
Time period for utilization of the limits	10 trading days from the date of allocation

   e. Once the limits have been auctioned, the FPIs will have a utilisation period of 10 trading days within which they have to make the investments. The limits not utilised within this period shall come back to the pool of free limits.
   f. Upon sale/redemption of debt securities, the FPI will have a re-investment period of 2 trading days. If the reinvestment is not made within 2 trading days, then the limits shall come back to the pool of free limits.
   g. A single FPI/ FPI Group cannot bid for more than 10% of the limits being auctioned.
4. The subsequent auction would be held 12 trading days after the previous auction, subject to the fulfilment of the condition mentioned at Point (3c) above.
5. As Rupee denominated bonds issued by Indian corporates overseas are covered under CCDL, issuance of such bonds overseas shall temporarily cease, until the limit utilisation falls back to below 92%.
6. The auction mechanism shall be discontinued and the limits shall be once again available for investment on tap when the debt limit utilisation falls below 92%.It is clarified that in such a scenario, the reinvestment facility mentioned at Point (3f) shall be terminated and cannot be availed for the same limits when the utilisation crosses 95% again. The custodians shall monitor and report the reinvestment facility availed by the FPIs to the depositories.
7. In partial modification to Para (2a) of the SEBI circular SEBI/HO/IMD/FPIC/CIR/P/2017/16 dated February 28, 2017, FPI investments in unlisted corporate debt securities shall compulsorily be in dematerialized form and subject to a minimum residual maturity of three years.
8. All other terms and conditions for FPI investments in listed and unlisted corporate debt securities shall remain the same.
9. The depositories shall put in place the necessary systems for the daily reporting by the custodians of the FPIs. The exchanges shall disseminate the auction summary on their respective websites.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992. A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

16 Disclosure of divergence in the asset classification and provisioning by banks

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/CFD/CMD/80/2017] dated 18.07.2017.]

1. Reserve Bank of India (RBI), vide its Notification No. RBI/2016-17/283; DBR.BP.BC.No.63/21.04.018/2016-17 dated April 18, 2017, requires disclosures by banks in a prescribed format in certain cases of divergence in the asset classification and provisioning. The Notification requires the disclosures to be made in the Notes to Accounts in the ensuing Annual Financial Statements published immediately following communication of such divergence by RBI to the bank.
2. Accordingly, all banks which have listed specified securities shall comply with the following:
   a) The banks shall disclose to the stock exchanges divergences in the asset classification and provisioning wherever:
      (i) the additional provisioning requirements assessed by RBI exceed 15 percent of the published net profits after tax for the reference period; and/or
      (ii) the additional Gross NPAs identified by RBI exceed 15 percent of the published incremental Gross NPAs for the reference period.
   b) The disclosures shall be made in the format specified in the Annex to the aforesaid RBI's notification. This format is also placed as Annexure to this circular for reference.
   c) The disclosures shall be placed as an Annexure to the annual financial results filed with the stock exchanges in accordance with clause (d) of sub-regulation (3) of Regulation 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Such disclosures shall be made along with the annual financial results filed

immediately following communication of such divergence by RBI to the bank.

3. The Stock Exchanges are advised to bring the provisions of this circular to the notice of banks which have listed specified securities and to disseminate the same on their websites.
4. This circular is issued under Regulation 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
5. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework/Circulars".

PRADEEP RAMAKRISHNAN
Deputy General Manager

Annexure

Divergence in Asset Classification and Provisioning for NPAs

(Rs in thousands)

Sr.	Particulars	Amount
1.	Gross NPAs as on March 31, 20XX* as reported by the bank	
2.	Gross NPAs as on March 31, 20XX as assessed by RBI	
3.	Divergence in Gross NPAs (2-1)	
4.	Net NPAs as on March 31, 20XX as reported by the bank	
5.	Net NPAs as on March 31, 20XX as assessed by RBI	
6.	Divergence in Net NPAs (5-4)	
7.	Provisions for NPAs as on March 31, 20XX as reported by the bank	
8.	Provisions for NPAs as on March 31, 20XX as assessed by RBI	
9.	Divergence in provisioning (8-7)	
10.	Reported Net Profit after Tax (PAT) for the year ended March 31, 20XX	
11.	Adjusted (notional) Net Profit after Tax (PAT) for the year ended March 31, 20XX after taking into account the divergence in provisioning	

* March 31, 20XX is the close of the reference period in respect of which divergences were assessed

17 Guidelines for participation/ functioning of Eligible Foreign Investors (EFIs) and FPIs in IFSC - Amendment

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/CIR/P/2017/79] dated 11.07.2017.]

1. Kindly refer to the SEBI circular IMD/HO/FPIC/CIR/P/2017/003 dated January 04, 2017 on the captioned subject.
2. Based on the discussions with various market participants, it has been decided to replace Clause 2 c) of the aforesaid circular with the following:
   "In case of participation of an EFI, not registered with SEBI as an FPI, but desirous of operating in IFSC, a trading member of the recognized stock exchange in IFSC may carry out the due diligence on its own or it may rely upon the due diligence carried out by a bank, which is permitted by RBI to operate in IFSC, during the account opening process of an EFI".
3. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

BITHIN MAHANTA
Deputy General Manager

18 Amendment to Investor Grievance Redressal System and Arbitration Mechanism

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/CDMRD/DEICE/CIR/P/2017/77] dated 11.07.2017.]

1. SEBI, vide its Circular No. CIR/CDMRD/DIECE/02/2015 dated November 16, 2015, mandated Investor Grievance Redressal System and Arbitration Mechanism to National Commodity Derivatives Exchanges (herein after referred to as Exchanges) and directed exchanges to comply with the provisions of circulars as issued by SEBI in this regard, with effect from April 01, 2016.
2. In order to further enhance the effectiveness of grievance redressal mechanism at Market Infrastructure Institutions (MIIs), based on the internal deliberations, discussions and feedback as received from MIIs, it has been decided to add/ modify certain provisions in the aforesaid circular, which are as follows:

   A. **Investor Grievance Resolution Panel (IGRP)/ Arbitration Mechanism**

   i. Public dissemination of profiles of arbitrators
   In order to enhance transparency and also to provide choice to parties, Exchanges shall disseminate information w.r.t. brief profile, qualification, areas of experience/ expertise, number of arbitration matters handled, pre-arbitration experience, etc. of the arbitrators on their website.

   ii. Submission of documents in soft copies
   In order to assist the arbitrators in pronouncing comprehensive and speedy awards, Exchanges shall make necessary arrangements in terms of hardware viz., computer, scanner, printer, etc. and required software's at exchange offices/ Investor Service Centers (ISCs) to facilitate the clients to type/ convert their documents into electronic format/ soft copy. Such electronic format/ soft copies shall be provided to the arbitrators along with original submissions in physical copies.

   iii. Review and Training of arbitrators
   Investor Service Committee of the Exchanges shall review the performance of the arbitrators annually and submit the review report to the Board of the Exchange. Training need of the arbitrators will be catered by National Institute of Securities Markets (NISM). Cost of training of arbitrators may be incurred from ISF of the exchange.

   iv. Mechanism for implementation of award
   Exchanges shall create a common database of defaulting clients accessible to members across the Exchanges.
   For this purpose, a client may be identified as defaulter if the client does not pay the award amount to the member as directed in the IGRP/ arbitration/ appellate arbitration order and also does not appeal at the next level of redressal mechanism within the timelines prescribed by SEBI or file an application to court to set aside such order in accordance with Section 34 of the Arbitration and Conciliation Act, 1996 (in case of aggrieved by arbitration/ appellate

award).

v. **Empanelment of arbitrators and segregation of arbitration and appellate arbitration panel**
There shall be separate panels for arbitration and appellate arbitration. Further, for appellate arbitration, at least one member of the panel shall be a Retired Judge. Exchanges shall obtain prior approval of SEBI before empanelment of arbitrators/ appellate arbitrators.

vi. **Empanelment of IGRP members**
Exchanges shall empanel IGRP members, however, no arbitrator/ appellate arbitrator shall be empaneled as IGRP member.

vii. **Revision in professional fee of arbitrators**
The arbitrator fee shall be upwardly revised to Rs.18,000/- (Rs. Eighteen thousand) per case. Consequent to this upward revision, the additional expenses attributable to a client over and above the fee structure as specified in point x, shall be borne by the client (wherever applicable) and Exchange equally. The total expense attributable to the member has to be borne by the concerned member.

viii. **Place of Arbitration/ Appellate Arbitration**
In case award amount is more than Rs. 50 lakh (Rs. Fifty lakh), the next level of proceedings (arbitration or appellate arbitration) may take place at the nearest metro city, if desired by any of the party involved. The additional cost for arbitration, if any, to be borne by the appealing party.

ix. **Arbitration / Appellate Arbitration award**
In order to safeguard the interest of the parties involved in arbitration and to ensure speedy implementation of the arbitration award, the rate of interest on the award passed by arbitrators shall be in compliance with Arbitration and Conciliation (Amendment) Act, 2015.

x. **Speeding up grievance redressal mechanism**

a. In order to have faster implementation of award and to discourage delayed filling of arbitrations by members, the fee structure (exclusive of statutory dues - stamp duty, service tax, etc.) for filing arbitration reference shall be as follows:-

b.

Amount of Claim / Counter Claim, whichever is higher (in Rs.)	**If claim is filed within six months from the date of dispute**	**If claim is filed after six months from the date of dispute or after one month from the date of IGRP order, whichever is later**	**If the claim is filed beyond the timeline prescribed in column 3, (only for member)**
≤ 10,00,000	1.3% subject to a minimum of Rs. 10,000	3.9% subject to a minimum of Rs.30,000	Additional fee of Rs. 3,000/- per month over and above fee prescribed in column 3
> 10,00,000 - 25,00,000 ≤	Rs. 13,000 plus 0.3% amount above Rs. 10 lakh	Rs. 39,000 plus 0.9% amount above Rs. 10 lakh	Additional fee of Rs. 6,000/- per month over and above fee prescribed in column 3
> 25,00,000	Rs. 17,500 plus 0.2 % amount above Rs. 25 lakh subject to maximum of Rs. 30,000	Rs. 52,500 plus 0.6 % amount above Rs. 25 lakh subject to maximum of Rs.90,000	Additional fee of Rs. 12,000/- per month over and above fee prescribed in column 3

c. The filing fee will be utilized to meet the fee payable to the arbitrators. Excess of filing fee over fee payable to the arbitrator, if any, to be deposited in the IPF of the respective exchange.

d. A client, who has a claim / counter claim upto Rs. 10 lakh and files arbitration reference, will be exempted from filing the deposit.

e. In all cases, on issue of the arbitral award the exchange shall refund the deposit to the party in whose favour the award has been passed.

xi. **Threshold limit for interim relief paid out of IPF in Exchanges**
SEBI vide its circular no CIR/CDMRD/DIECE dated November 16, 2015 has made applicable Circular No. CIR/MRD/ICC/30/2013 dated September 26, 2013 to Exchanges. In partial modification to Circular No. CIR/MRD/ICC/30/2013 dated September 26, 2013 on "Investor Grievance Redressal Mechanism" the following changes are prescribed:

(i) Exchanges, in consultation with the IPF Trust and SEBI, shall review and progressively increase the amount of interim relief available against a single claim for an investor, at least every three years.

(ii) The Exchanges shall disseminate the interim relief limit fixed by them and any change thereof, to the public through a Press Release and also through its website.

(iii) In case, award is in favour of client and the member opts for arbitration wherein the claim value admissible to the client is not more than Rs. 20 lakhs (Rs. Twenty lakhs), the following steps shall be undertaken by the Exchange:

a) In case the IGRP award is in favour of the client then 50% of the admissible claim value or Rs. 2.00 lakhs (Rs. Two lakhs), whichever is less, shall be released to the client from IPF of the Exchange.

b) In case the arbitration award is in favour of the client and the member opts for appellate arbitration then 50% of the amount mentioned in the arbitration award or Rs. 3.00 lakhs (Rs. Three lakhs), whichever is less, shall be released to the client from IPF of the Exchanges. The amount released shall exclude the amount already released to the client at clause (a) above.

c) In case the appellate arbitration award is in favour of the client and the member opts for making an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the appellate arbitration award, then 75% of the amount determined in the appellate arbitration award or Rs. 5.00

lakhs (Rs. Five Lakhs), whichever is less, shall be released to the client from IPF of the Exchanges. The amount released shall exclude the amount already released to the client at clause (a) and (b) above.

d) Total amount released to the client through the facility of interim relief from IPF in terms of this Circular shall not exceed Rs. 10.00 lakhs (Ten lakhs) in a financial year.

B. **Disciplinary Action Committee, Defaulters' Committee, Investors Service Committee, Arbitration Committee**

SEBI vide its circular no CIR/CDMRD/DEA/03/2015 dated November 26, 2015 has made applicable circular No. CIR/MRD/DSA/33/2012 dated December 13,2012 to Exchanges. In partial modification to circular no. CIR/MRD/DSA/33/2012 dated December 13,2012, the composition and functions of the Disciplinary Action Committee, Defaulter's Committee and Investors Service Committee will be as follows:

Sr. No	Name of Committee	Functions handled	Composition
1	Disciplinary Action Committee	i. The Committee shall formulate the policy for regulatory actions including warning, monetary fine, suspension, withdrawal of trading terminal, expulsion, to be taken for various violations by the members of the exchange. ii. Based on the laid down policy, the Committee shall consider the cases of violations observed during inspection, etc and impose appropriate regulatory action on the members of the exchange. iii. While imposing the regulatory measure, the Committee shall adopt a laid down process, based on the 'Principles of natural justice'.	(i) The Committee shall have a minimum of 3 members and a maximum of 5 members; (ii) The Public Interest Directors shall form a majority of the Committee; (iii) A maximum of two key management personnel of the exchange can be on the committee and one of which shall necessarily be the Managing Director of the exchange; (iv) The Committee may also include independent external persons such as retired judge, etc. (v) SEBI may nominate members in the Committee, if felt necessary in the interest of commodities market;
2	Defaulters' Committee	i. To realize all the assets / deposits of the defaulter/ expelled member and appropriate the same amongst various dues and claims against the defaulter/ expelled member in accordance with the Rules, Byelaws and Regulations of the exchange. ii. In the event both the clearing member and his constituent trading member are declared defaulter, then the Defaulter's Committee of the exchange and the Defaulter's Committee of the clearing corporation shall work together to realise the assets of both the clearing member and the trading member. iii. Admission or rejection of claims of client/ trading members/ clearing members over the assets of the defaulter/ expelled member. iv. Advise in respect of the claims to the Trustees of the IPF on whether the claim is to be paid out of IPF or otherwise.	i. The Committee shall have a minimum of 3 members and a maximum of 5 members; ii. The Public Interest Directors shall form a majority of the Committee. iii. A maximum of two key management personnel of the exchange can be on the Committee. iv. The Committee may also include independent external persons such as retired judge, etc. v. SEBI may nominate members in the Committee, if felt necessary in the interest of commodities market;
3	Investor Services Committee	i. Supervising the functioning of Investors' Services Cell of the Exchange which includes review of complaint resolution process, review of complaints remaining unresolved over long period of time, estimate the adequacy of resources dedicated to investor services, etc.; (i) Supervision of utilization of ISF; (ii) To have annual review of the arbitrators and arbitration/ awards (both quantum and quality of the awards).	i. The Committee shall have a minimum of 3 members and a maximum of 5 members. ii. The Public Interest Directors shall form a majority of the Committee. iii. A maximum of two key management personnel of the exchange can be on the Committee. iv. The Committee may also include independent external persons. v. SEBI may nominate members in the Committee, if felt necessary in the interest of commodities market;

3. The arbitration committee as mandated vide SEBI circular no. CIR/CDMRD/DEA/03/2015 dated November 26, 2015 read with CIR/MRD/DSA/33/2012 dated December 13, 2012 shall stand discontinued.
4. The Commodity Derivatives Exchanges are advised to:-
   - make necessary amendments to relevant bye-laws, rules and regulations 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.
   - communicate SEBI, the status of implementation of the provisions of this circular.
5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect immediately. All other provisions of the relevant circulars will continue to be in force .
6. The circular is available on SEBI website at www.sebi.gov.in.

PRASAD JAGADALE
Deputy General Manager

19 Guidelines for issuance of ODIs, with derivative as underlying, by the ODI issuing FPIs.

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/IMD/FPI&C/76/2017] dated 07.07.2017.]

1. In terms of the SEBI (Foreign Portfolio Investors) Regulation, 2014 (FPI Regulations) and circulars issued from time to time regarding ODI, the Foreign Portfolio Investors (FPIs) issuing ODIs (hereinafter referred to as ODI Issuers) are required to comply with the conditions for issuance of ODIs.
2. With the date of this circular, the ODI issuing FPIs are advised as follows:
   2.1. The ODI issuing FPIs shall not be allowed to issue ODIs with derivative as underlying, with the exception of those derivative positions that are taken by the ODI issuing FPI for hedging the equity shares held by it, on a one to one basis.
   2.2. In the case of the existing ODIs which have been issued by the ODI issuing FPIs with derivatives as underlying, where the said underlying derivatives position are not for

purpose of hedging the equity shares held by it, the ODI issuing FPI has to liquidate such ODIs latest by the date of maturity of the ODI instrument or by December 31, 2020, whichever is earlier. However, ODI issuing FPIs should endeavor to liquidate such ODI instruments prior to said timeline.

2.3. In the case of issuance of fresh ODIs with derivatives as underlying, a certificate has to be issued by the compliance officer (or equivalent) of the ODI issuing FPI, certifying that the derivatives position, on which the ODI is being issued, is only for hedging the equity shares held by it, on a one to one basis. The said certificate shall be submitted along with the monthly ODI reports.

2.4. It is clarified that the term "hedging of equity shares" means taking a one-to-one position in only those derivatives which have the same underlying as the equity share.

3. This circular is issued in exercise of powers conferred under SEBI Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and shall come into effect on immediate basis.
4. A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. The Designated Depository Participants (DDPs)/Custodian of securities are requested to bring the contents of this circular to the notice of their FPI clients for necessary compliance.

ACHAL SINGH
Deputy General Manager

20 Online Filing System for Foreign Venture Capital Investors.

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/IMD/DF1/CIR/P/2017/75] dated 06.07.2017.]

1. In order to facilitate ease of operations in terms of applying for registration, reporting and various compliances under SEBI (Foreign Venture Capital Investors) Regulations, 2000 (hereinafter referred to as 'FVCI Regulations'), SEBI has introduced an online system for filings related to Foreign Venture Capital Investors (FVCI). The online system can be used for application for registration, reporting and filing under the provisions of FVCI Regulations.
2. All applicants desirous of seeking registration as a FVCI are now required to submit their applications online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in. Furthermore, all SEBI registered FVCIs are now required to file their compliance reports and submit applications for any request under the provisions of FVCI Regulations, through the online system only.The aforesaid online filing system for FVCI has been made operational from July 1, 2017.
3. Link for SEBI Intermediary Portal is also available on SEBI website - www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the Portal Helpline as specified in the manual.
4. Existing SEBI registered FVCIs are advised to activate their online accounts, for which activation e-mail has been sent separately.
5. This 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.

NAVEEN SHARMA
Deputy General Manager

21 Investments by FPIs in Government Securities

[Issued by the Securities And Exchange Board of India vide Circular [F. No. IMD/FPIC/CIR/P/2017/74] dated 04.07.2017.]

1. RBI in its Fourth Bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015 had announced a Medium Term Framework (MTF) for FPI limits in Government securities in consultation with the Government of India. Accordingly, SEBI had issued circulars CIR/IMD/FPIC/8/2015 dated October 06, 2015, IMD/FPIC/CIR/P/2016/45 dated March 29, 2016 and IMD/FPIC/CIR/P/2016/107 dated October 03, 2016 and IMD/FPIC/CIR/P/2017/30 dated April 03, 2017 regarding the allocation and monitoring of FPI debt investment limits in Government securities.
2. It has been decided to revise the limit for investment by FPIs in Government Securities, for the July - September 2017 quarter, as follows:
   a. Limit for FPIs in Central Government securities shall be enhanced to INR 187,700 cr.
   b. Limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government securities shall be revised to INR 54,300 cr.
   c. The debt limit category of State Development Loans (SDL) shall henceforth have two sub-categories, namely, SDL-General and SDL-Long Term. SDL-General shall be available for investment on tap for all categories of FPIs while SDL-Long Term shall be available for investment on tap for only Long Term FPIs. The limit for investment by all FPIs in SDL-General shall be INR 28,500 cr while that for SDL-Long Term shall be INR 4,600 cr.
3. Accordingly, the revised FPI debt limits would be as follows:

Type of Instrument	**Upper Cap as on July 03, 2017 (INR cr)**	**Revised Upper Cap with effect from July 04, 2017 (INR cr)**
Government Debt – General	184,901	187,700
Government Debt – Long Term	46,099	54,300
SDL – General	27,000	28,500
SDL – Long Term	--	4,600
Total	**258,000**	**275,100**

4. Future increases in the limit for FPI investment in Central Government securities will be allocated in the following ratio - 75% for the Long-Term category of FPIs and 25% for the General category of FPIs.
5. The practice of transferring unutilized limits of the Long-Term category to the General category of FPIs shall be done away with.
6. To harmonize the approach to FPI investments in SDLs with that for Central Government securities, future increases in SDLs would be in the ratio of 75% for SDL-Long Term and

25% for SDL-General category of FPIs.

7. All other existing terms and conditions, including the security-wise limits, investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, shall continue to apply.

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

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

ACHAL SINGH
Deputy General Manager

22 Policy of Annual Inspection of Members by Stock Exchanges/Clearing Corporations

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/73] dated 30.06.2017.]

1. As per SEBI circulars MIRSD/Master Cir-04/2010 dated March 17, 2010, CIR/MIRSD/13/2012 dated December 07, 2012 and SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/92 dated September 23, 2016, stock exchanges are required to formulate a policy for annual inspection of their members in consultation with SEBI.
2. In terms of aforementioned circulars, the policy for annual inspection of members, as decided in consultations with Stock Exchanges/Clearing Corporations, is enclosed herewith at Annexure - I for necessary action.
3. The Stock Exchanges/Clearing Corporations are directed to:
   a. Make amendments to the relevant bye-laws, rules and regulations for theimplementation of the above directions.
   b. Communicate the implementation thereof to SEBI within 15 days from the date of the circular.
4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

DEBASHIS BANDYOPADHYAY
General Manager

Annexure - I

1. The criteria for selection of members for annual inspection are as follows:
   a. Stock brokers servicing investors, getting disabled on account of funds shortages on more than 3 times in a month shall be inspected irrespective of the fact of when they were last inspected.
   b. Stock brokers servicing investors, having overnight disablement on account of margin shortage for more than 2 days shall be inspected irrespective of the fact of when they were last inspected.
   c. Top 25 stock brokers paying high and recurring penalties fornon-reporting or short reporting of margin/Client Code modification/CTCL mismatch fines or any other similar high risk compliance issue shall be inspected irrespective of when they were last inspected.
   d. Top 25 stock brokers in terms of investor complaints and arbitration cases filed by investors shall be inspected irrespective of the fact of when they were last inspected.
   e. Stock brokers having adverse observations in the internal audit report on high risk issues like wrong reporting of margins, transfer of trades, pledging of client securities, dealing with unregistered intermediaries etc., shall be inspected irrespective of the fact of when they were last inspected.
   f. Subsidiaries of Regional Stock Exchanges shall be inspected every year.
   g. Stock Exchange shall frame internal policy for selection of stock brokers for inspection based on inputs/alerts from Risk Based Supervision.
   h. Besides the above, the special purpose/limited inspections shall be carried out based on any triggers like patterns found during investor complaint resolution/ Arbitration, complaints on specific malpractices of a broker or references from various authorities. The inspection shall be irrespective of the fact of when the last inspection was carried out.
   i. Apart from the above few stock brokers shall be selected by the Stock Exchanges on a random basis for inspection.
   j. Stock brokers who do not fall under any of the above category shall be inspected by the Stock Exchanges at least once in three years.
   k. Stock brokers selected on the above category shall be inspected for all segments and also for clearing activity if the stock broker is undertaking clearing for other stock brokers.
   l. Inspections of Professional Clearing Members shall be conducted by Clearing Corporations once in two years.
2. Clearing activity undertaken by stock brokers for other stock brokers shall be inspected by Clearing Corporations. Other activities of stock brokers shall be inspected by Stock Exchanges. If Stock Exchanges and Clearing Corporations so desire, they can conduct joint inspections of stock brokers. Where Clearing Corporation has not been set up, Stock Exchange shall inspect all activities of stock brokers including activity of clearing for other stock brokers.
3. The Stock Exchanges/Clearing Corporations are advised to continuously assess the risks posed by their members and review/revise the policy of annual inspection, as and when required, in consultation with SEBI.
4. The Stock Exchanges shall establish an information sharing mechanism with one another on the important outcome of inspection of members who hold multiple memberships of the exchanges in order to improve the effectiveness of supervision and shall also bring cases of repetitive and / or serious violations to the notice of SEBI.

23 Monitoring and Review of Ratings by Credit Rating Agencies (CRAs)

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/ HO/ MIRSD/ MIRSD4/ CIR/ P/ 2017/ 71] dated 30.06.2017.]

It has come to notice that there have been instances where Credit Rating Agencies have not taken cognizance of information

regarding delays in servicing debt obligations by the Issuer, even though the information has already been discounted by the market. As responsible institutions, CRAs are expected to proactively track all important changes relating to the client companies in order to yield timely and accurate ratings. It is reiterated that CRAs are required to ensure prompt and accurate rating action. Accordingly, the following clarifications in respect of monitoring mechanism, disclosure norms and timelines are being brought to the attention of CRAs for compliance:

1. **Surveillance Mechanism for identifying potential defaults:** As per Regulation 15 of SEBI (Credit Rating Agencies) Regulations, 1999, CRAs are required to continuously monitor the rating of securities and disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases on websites of CRAs as well as all the stock exchanges where the said securities are listed. In order to enable CRAs to develop efficient and responsive systems to keep track of all important changes relating to the client companies as required under clause 8 of Code of Conduct of SEBI (CRA) Regulations, 1999, following is clarified:

A. **Monitoring of repayment schedules:**

I. CRAs have to be proactive in early detection of defaults/ delays in making payments. In this regard, CRAs are required to track the servicing of debt obligations for each instrument rated by them, ISIN-wise, and look for potential deterioration in financials which might lead to defaults/ delays, particularly before/ around the due date(s) for servicing of debt obligations, on the basis of monitoring of indicators including, but not restricted to, the following:

a. EBITDA not being sufficient to meet even the interest payments for last 3 years
b. Deterioration in liquidity conditions of the Issuer
c. Abnormal increase in borrowing cost of the Issuer
d. Any other information indicating deterioration in credit quality/ debt servicing capability of the Issuer.

II. The CRA shall also monitor the Exchange website for disclosures made by the Issuer in this regard.

III. In case no confirmation of servicing of debt obligation by the Issuer is received by the CRA from the Debenture Trustee within 1 day post the due date, the CRA shall immediately follow up with the Issuer for confirmation of payment. In case no response is received from the Issuer within 2 days of such communication, the CRA shall issue a Press Release as enlisted at point 3B (III) below and disseminate the same on its website and to all stock exchanges where the security is listed.

IV. The CRA shall also make a reference to SEBI regarding such suppression of information by the issuer/ non-cooperation of Issuer with CRA. Failure to make such reference shall be considered as aiding and abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the CRA.

B. **Material Events requiring a review:**

I. CRAs shall carry out a review of the ratings upon the occurrence of or announcement/ news of material events including, but not restricted to, the following:

a. Quarterly/ Half-yearly/ Annual results
b. Merger/ Demerger/ Amalgamation/ Acquisition
c. Corporate debt restructuring, reference to BIFR and winding-up petition filed by any party / creditors.
d. Significant decline in share prices/bond prices of the issuer or group companies which is not linked to overall market movement
e. Significant increase in debt level or cost of debt of the issuer company
f. Losses, sharp revenue de-growth etc. based on publicly disclosed financial statements, which are not in line with CRA's earlier estimates
g. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.
h. Disruption/ commencement/ postponement of operations of any unit or division of the listed entity.
i. Any attachment or prohibitory orders against the Issuer
j. Any rating action taken by an International Rating Agency with respect to rating assigned to the Issuer/ Instruments issued by the Issuer.

II. CRAs shall publish on their website press release regarding the rating action (including reiteration of existing rating), if warranted, immediately, but not later than 7 days of occurrence of the said event.

C. ***'No Default Statement' to be sought from the Issuer on a monthly basis:***

I. In order to enable timely recognition of default by the CRA, the CRA shall seek a 'No Default Statement (NDS)' from the Issuer at the end of each month, which shall be provided to the CRA by the Issuer on the first working day of the next month.

II. The NDS shall require the Issuer to explicitly confirm to the CRA that it has not delayed on any payment of interest/ principal in the previous month.

III. In case there have been delays, the Issuers shall state the same in this statement and the CRA shall promptly conduct a rating review and disseminate the rating action through Press Release within 2 days of receipt of such statement.

IV. A standardized format of the NDS is provided at Annexure A.

2. **Timelines of review and Press Releases:**

A. In order to enable CRAs to disseminate information on ratings promptly through press releases as per requirements of Regulation 15 and 16 of SEBI (CRA) Regulations, following is clarified:

I. Initial Rating:

Scenario	**Timelines – immediately but not later than**
Acceptance of Rating/ Appeal for Review of Rating by the Issuer	5 working days of communication of rating by the CRA to the Issuer

Disclosure of rating as non-accepted Rating	In case rating is not accepted by the Issuer within a month of communication of rating by the CRA to the Issuer, the same shall be disclosed as Non-Accepted Rating on the CRA's website
Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee	2 working days of acceptance of Rating by the Issuer

II. **Periodic Surveillance:**

Scenario	Timeline - immediately but not later than
Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee	5 working days of Rating Committee Meeting

III. **Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee in case of event based review:**

Scenario	Timeline - immediately but not later than
Intimation from Issuer/ Debenture Trustee/ Bankers of the Issuer regarding delay in servicing debt obligation	2 working days of intimation
Material Events requiring review (as stated in point 1B)	7 working days of occurrence of the event.

3. **Disclosure Norms:**

A. **Press Release:**

I. In line with requirements of Circular MIRSD4/ CIR/ P/ 2016/ 119 dated November 01, 2016 on standardization of press release, it is reiterated that press releases for rating actions by CRAs shall include key financial indicators and ratios for the Issuer for the last and current financial year, in tabular form, as well as any other significant information relevant to the Issuer and its Sector.

II. With regard to Structured Finance products, the CRA shall include all the assumptions/ covenants made while carrying out the review of such products in the Press Release.

B. **Disclosures in case of considerable delay in providing information by the Issuer:**

I. As per Regulation 18(2) of SEBI (CRA) Regulations, 1999, the CRA, while covering the analysis of the various factors justifying the assessment in press release, shall also disclose the factors constituting a risk.

II. Accordingly, it is further clarified that if the issuer does not share information sought by the CRA within 7 days of seeking such information from the Issuer, even after repeated reminders (within these 7 days) from the CRA, the CRA shall take appropriate rating action depending upon the severity of information risk of the issuer.

III. The Press Release in such cases shall mention the efforts made by the CRA in seeking such information and limitations regarding such information availability.

4. **Rating Agreement between the Issuer and the CRA:**

A. **Rating Agreement to be signed between Issuer and CRA prior to commencement of rating exercise:**

I. Regulation 14 of SEBI (CRA) Regulations, 1999 requires CRAs to enter into a written agreement with each client whose securities it proposes to rate.

II. In this regard, it has come to the notice that in some instances, CRAs have provided indicative ratings to Issuers without entering into a written agreement with such Issuers and have thereafter not disclosed such ratings on their websites.

III. CRAs are advised to refrain from giving Indicative Ratings without having a written agreement in place. In case such Indicative Ratings are provided by the CRA, it shall be considered as aiding and abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the CRA.

B. **Strengthening of Rating Agreement:**

I. It is clarified that in order to ensure cooperation from the Issuer, as required under Regulation 14(d) of SEBI (CRA) Regulations, 1999, the following enabling clauses maybe built in the Rating Agreement:

a. *"The client (issuer/ borrower) agrees to provide the information sought by the CRA immediately, but not later than 7 days from the date of seeking such information by the CRA.*
In cases of delay/ default in servicing debt obligations, the information shall be provided immediately. Failure to provide the same immediately shall be considered as suppression of material information and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003"

b. *"The client (issuer/ borrower) agrees to inform the CRA details about the instrument in the format below immediately, but not later than 7 days from the date of placing the debt security. For instruments already listed, the information will be provided at the time of signing the agreement."*

Instrument type	ISIN	Issue Size (Rs cr)	Coupon Rate	Coupon Payment Dates	Terms of Rede-mption	Rede-mption date	Name and contact details of debenture trustee	Details of top 10 inve-stors

c. *"The client (Issuer/ borrower) undertakes to provide the CRA a No Default Statement on a monthly basis wherein the Issuer shall explicitly co*nfirm that it has not delayed on any payment of interest/ principal in the previous month. Such statement shall be provided to the CRA on the first working day of the next month."

5. **Internal Audit of CRAs:** As required under Regulation 22 of the SEBI (Credit Rating Agencies) Regulations, 1999 and provisions of Circular SEBI/ MIRSD/CRA/Cir-01/ 2010 dated January 06, 2010 and Circular MIRSD4/ CIR/ P/ 2016/ 119 dated November 01, 2016, compliance by CRA with the provisions clarified vide this Circular shall be verified during the half-yearly Internal Audit.
6. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20of SEBI (Credit Rating Agencies) Regulations, 1999 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

SURABHI GUPTA
Deputy General Manager

Annexure-A: Standard Template for No Default Statement (Minimum Information be sought)

To
<CRA Name and Address>
Dear Sir/ Madam,

1. We hereby Confirm that as on date there are no Over dues or default on our debt obligations
2. We also confirm that in the month ended <Month and Year name>, there has been no instance of delay in servicing of our debt obligations.
3. We also confirm that there has not been any instance of devolvement of Letter of Credit in the month ended <Month and Year name>.
4. We also confirm that in the month ended <Month and Year name>, there has been no instance of delay in servicing of debt obligations guaranteed by us.
5. We also confirm that there has been no overdraw of the drawing power sanctioned by the bank for a period of more than 30 consecutive days in case of bank facilities which do not have scheduled maturity/repayment dates.
6. Details of delay/ default/ rescheduling of interest or principal as on date/ in the month ended <Month and Year name>, in any of the above case (if any) :

Name of the Instrument	ISIN	Amount to be paid	Due Date of Payment	Actual Date of Payment	Remarks

24 Clarification on monitoring of Interest/ Principal repayment and sharing of such information with Credit Rating Agencies by Debenture Trustees

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72] dated 30.06.2017.]

1. SEBI (Debenture Trustee) Regulations, 1993 (“DT Regulations”) require the Debenture Trustees (DTs) to monitor that the debenture holders have been paid interest/ principal by the issuer companies on or before the due dates of such repayment[Regulations 15(1)(g)]. Further, the DTs are also required to share information available with them regarding client companies, with registered Credit Rating Agencies (CRAs) [Clause 13 of Code of Conduct read with Regulation 16].
   Moreover, the nature of such information to be shared with the CRAs has been clarified in the SEBI Circular CIR/ MIRSD/3/2013 dated March 15, 2013 which, inter-alia, includes information pertaining to event of any default in payment of interest or redemption amount and non-cooperation by the issuer company with respect to furnishing required information.
2. It is clarified that the DTs shall have adequate systems to ascertain the status of payment of interest/ principal by issuer companies on due dates in timely manner and efficiently share such information with the CRAs in order to comply with the abovementioned provisions, which shall include the following:
   i) The DTs shall, at least 7 days prior to the due date of interest/ principal payment, seek ISIN-wise information from issuer companies under intimation to CRAs advising them to confirm the status of payment of interest/ principal on or before the due date.
   ii) If the issuer company confirms the status of payment or where no information is received from the issuer company on or before the due date, the DTs shall accordingly provide ISIN-wise information to the CRAs latest by one day after such due date which shall state the following:
      a) Information about payment made on or before the due date or;
      b) Information about delay/ default in payment or;
      c) No information forthcoming from the issuer company on the payment status.
   iii) In cases where the CRAs have been informed as per point no. 2(ii) above that no information is forthcoming from the issuer company on the payment status, the DTs shall update the payment status to CRAs as and when any such information is available with the DTs.
3. In addition to above, it is reiterated that the DTs shall also ascertain the status of payment by the Issuer Company on the due dates from various sources available at their disposal which, inter alia, include the websites of stock exchange & Issuer Company, debenture holders and quarterly reports submitted by Issuer Companies.
4. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 require the listed entity to submit a certificate to the stock exchange within two days of the interest or principal of the listed debt securities becoming due that it has made timely payment [Regulation 57(1)] and the DT Regulations mandate the DTs to exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed [Regulation 15(1)(i)].
   In this regard, it is clarified that the DTs in their communication to the Issuer Companies as mentioned in point no. 2(i) above shall inform them that non-furnishing of information regarding status of payment by due date or non-disclosure of information with respect to timely payment by them on stock exchange website may be considered as suppression of material information and may attract provisions of Section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
5. The DT Regulations also mandates that the DTs shall not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board [Clause 19 of Code of Conduct read with Regulation 16] and adequate disclosures are made to the debenture holders,

in a comprehensible and timely manner so as to enable them to make a balanced and informed decision [Clause 15 of Code of Conduct read with Regulation 16].

It is clarified that if no information regarding payment by Issuer Company is received by the DTs by due date or such information is not disclosed by the issuer company on the stock exchange website, then, the DTs shall make reference to SEBI accordingly and disclose the non-availability of such information on their website. It is further clarified that failure to make such reference to SEBI in this regard and non-disclosure on its website shall be considered as aiding and abetting the issuer company in suppression of material information and may attract provisions of Section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

6 The Regulation 15(1)(a) of the DT Regulations requires the DTs to call for periodical reports from the body corporate. In order to make the quarterly reports by the issuer companies available to the DTs on timely basis, it is clarified that the DTs shall call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier.

7. In terms of SEBI Circular MIRSD/DPS III//Cir- 11/07 dated August 6, 2007, the DTs shall disclose the information to the investors and the general public by issuing a press release regarding default by Issuer Company to pay interest on debentures or redemption amount, failure to create a charge on the assets and revision of rating assigned to the debentures. Further, such information shall also be placed on the website of the DT, the issuer company and the stock exchanges. It is clarified that such actions shall be taken by the DT promptly and in any case not later than next day of the occurrence of such events.

8. The Stock Exchanges are advised to disclose the information submitted by the DTs as mentioned in point no. 7 above immediately on its website on receipt of such information from the DTs.

9. The DTs shall report compliance of the provisions of this circular in the Half Yearly Report which are required to be submitted by them to SEBI as per Circular CIR/MIRSD/25/2011 dated December 19, 2011.

10. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.

11. This circular is available on SEBI website (www.sebi.gov.in) under the categories “Legal” and “Circulars”.

MEDHA SONPAROTE
Deputy General Manager

25 Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/IMD/DF-1/ 67 /2017] dated 30.06.2017.]

1. A liquid corporate bond market helps in better price discovery of debt securities. Towards this, the working group, on “Development of corporate bond market in India”, under the chairmanship of Shri. H R Khan in its report, inter-alia, recommended that the issuers coming out with frequent debt issues with the same tenor during a quarter may club them under the same umbrella ISIN which in turn would increase the float in the market, thus enhancing its liquidity.
2. Accordingly, in respect of private placement of debt securities, it has been decided to specify the following:

2.1. International Securities Identification Number (ISINs):

2.1.1. A maximum number of 17 International Securities Identification Numbers (ISINs) maturing in any financial year shall be allowed. Additionally 12 ISINs shall also be available for the issuance of the capital gains tax debt securities by the authorized issuers under section 54EC of the Income Tax Act 1961 on private placement basis.

2.1.2. **Out of 17 ISINs maturing in a financial year, the bifurcation of ISINs shall be as under:**

2.1.2.1. A maximum of 12 ISINs maturing per financial year shall be allowed only for plain vanilla debt securities. Further, within these 12 ISINs, the issuer can issue both secured and unsecured debt securities

2.1.2.2. A maximum of 5 ISINs (i.e. for structured debt securities such as debt securities with call and/ or put option, etc.) maturing per financial year shall be allowed only for structured products/ market linked debt securities issued under the SEBI circular Cir/IMD/DF/17/2011 dated September 28, 2011, relating to issue and listing of structured/market linked debt securities.

2.1.3. An issuer issuing only structured/market linked debt securities, may utilise the entire bucket of 12 ISINs in a financial year only for structured/market linked debt securities. However, in such a scenario, the additional 5 ISINs as mentioned in paragraph 2.1.2.2 above shall not be available to an issuer for utilization, either for structured debt securities or for plain vanilla debt securities.

2.1.4. In case of structured /market linked debt securities which have embedded options viz. call and/or put option, the maturity of ISINs shall be reckoned on basis of original maturity date of debt securities.

For e.g. if a structured debt securities having maturity of 5 years , which is callable after 3 years and thereafter every year until its redemption, then the debt securities shall be grouped in the bucket of 5 years maturity period which is its original maturity period even though it may be callable after a period of 3 years.

2.1.5. The provisions of this circular shall be applicable for debt securities issued in the financial year (FY) 2017-18 i.e. after the date of this circular and shall not be applicable to the ISINs maturing in respect of the debt securities issued prior to the FY 2017-18. However, post FY 2017-18, whatever issuances are made by the issuer, the issues shall be grouped and consolidated under the ISIN maturing in the same FY.

2.2. Exemptions from applicability of ISINs:

The following classes of debt securities issued for raising

regulatory capital are exempted from the applicability of provisions of this circular:

2.2.1. Tier II bonds issued by Housing Finance Companies (HFCs), the maturity period of which is not less than five years issued as per "Master Circular-The Housing Finance Companies (NHB) Directions, 2010" dated July 01, 2016;

2.2.2. Tier II bonds issued by the standalone Primary dealers, with minimum maturity of five years issued as per "Standalone primary Dealers (Reserve Bank) Directions, 2016" dated August 25, 2016;

2.2.3. Subordinated debt issued by insurance companies, which is either perpetual or the maturity period of which is not less than ten years for life, general and reinsurance companies and seven years for health insurance companies issued as per the "IRDAI (Other forms of Capital) Regulations, 2015" dated November 13, 2015;

2.2.4. Additional Tier 1 bonds, which are perpetual, issued by banks under Basel III norms and Tier II bonds, having minimum maturity period of five years, issued by banks under the Basel III norms as per the "Master Circular- Basel III Capital Regulations" dated July 01, 2015.

2.2.5. Bonds issued by banks to raise resources for lending to long term infrastructure sub-sectors and affordable housing, which have a minimum maturity of seven years issued as per RBI circular dated July 15, 2014 on "Issue of Long Term bonds by banks-Financing of infrastructure and affordable housing".

2.2.6. Perpetual debt instrument issued by Systemically Important Non-Deposit taking Non-Banking Financial Companies issued as per RBI circular dated October 29, 2008 on "Enhancement of NBFCs' capital raising option for capital adequacy purposes";

2.2.7. Tier II bonds issued by Non-Systemically Important Non-Deposit taking Non-Banking Financial Company issued as per RBI "Master Direction-Non-Banking Financial Company-Non-Systemically important Non-deposit taking Company (Reserve Bank) Directions, 2016" dated September 01, 2016.

2.3. <u>Mechanism for honouring debt obligations arising out of capping of ISINs :</u>

2.3.1. An issuer may honour its debt obligations/liabilities, arising out of such ISIN restriction, in the manner as deemed feasible to them i.e. the issuer can make staggered repayments or bullet maturity re-payments or in any other manner deemed so.

2.3.2. An issuer may offer different type of payment options to different category of investors subject to such disclosures being made in the information memorandum in order to manage their asset liability mismatch.

For e.g. an insurance company may be offered staggered redemption, however mutual fund may be offered bullet payment.

2.3.3. Also, in case of any modification in terms or structure of the issue viz. change in terms of payment, change in interest pay-out frequency etc. the issuer may make such modification by following procedure as has been laid out in Regulation 59 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

2.3.4. **Record Date:** There may be cases where multiple record dates would arise on account of staggered payment or other cases viz. frequency of payment etc. In such a case, when announcing multiple record dates, the issuer has to disclose clearly to the stock exchanges the basis of payment to the investors viz. pro-rata, first cum basis etc.

2.4. <u>Time limit for carrying out necessary changes to the Articles of Association (AOA)/charter/constitution of the issuer:</u>

In order to comply with the provisions of clause (a) of Regulation 20A of the SEBI (ILDS) regulations, the issuer shall have a time period of six months from the date of this circular to make an enabling provision in its Articles of Association to carry out consolidation and re-issuance of debt securities.

3. **<u>Reporting and Monitoring:</u>**

3.1. <u>Issuers:</u>

3.1.1. All the issuers who have made private placement of debt securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, shall within fifteen working days of issue of this circular submit a statement containing data in the format as prescribed below:

Name of the issuer	ISIN number	Issuance date	Maturity date	Coupon rate	Payment frequency	Embedded option if any	Amount issued	Amount outstanding

3.1.2. Also, an issuer shall within fifteen working days from the end of every half year, submit a statement, to the recognized stock exchange, where its debt securities are listed, as well as to the depository containing data in the format as prescribed above.

3.1.3. In case there is any modification in terms or structure of the issue viz. change in terms of payment, change in interest pay-out frequency etc.as specified in paragraph 2.3.3. above, the issuer shall, forthwith, inform the same to the depository.

3.1.4. An issuer shall within thirty working days from end of six months from the date of this circular submit a confirmation certificate to Stock Exchanges with respect to compliance with para 2.4 above.

3.2. Recognized stock exchanges and depositories :

3.2.1. Upon receipt of the report as specified in paragraph 3.1.2 and 3.13 above, the recognized stock exchange (RSE) shall upload the same on its website as well as the Integrated trade Repository for corporate bonds.

3.2.2. Upon receipt of the report as specified in paragraph 3.1.2 and 3.13 above, the depository shall upload the same on the centralized database for corporate bonds/debentures as per SEBI circular CIR/IMD/DF/17/2013 dated October 22, 2013 as well as the Integrated trade Repository for corporate bonds.

3.2.3. The RSE shall within five working days of the expiry of the period as specified in paragraph 3.1.2 above, send the reports received by it to the depositories for the purposes of their reconciliation.

3.2.4. The depositories shall thereafter within five working days of receipt of reports from the recognised stock exchanges, send a status report to the latter regarding utilization of ISINs by the issuers.

3.2.5. The recognized stock exchanges shall within thirty working days from the end of every half year, shall submit a report to SEBI, in case there has been any violation by the issuers of any provisions of this circular.

4. The provisions of this circular shall be applicable with immediate effect for the debt securities issued in accordance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.
6. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework".

RICHA G. AGARWAL
Deputy General Manager

26 Acceptance of e-PAN card for KYC purpose

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/IMD/FIIC/CIR/P/2017/068] dated 30.06.2017.]

1. Please refer to SEBI circular no. CIR/MIRSD/01/2013 dated January 04, 2013, CIR/MIRSD/07/2013 dated September 12, 2013 and CIR/IMD/FPIC/123/2016 dated November 17, 2016.
2. Central Board of Direct Taxes (CBDT) has recently introduced a facility of E-PAN (electronic PAN card) vide press release dated April 11, 2017. Accordingly it is clarified that E-PAN issued by CBDT can also be produced by FPI for KYC compliance. The other instructions contained in Circular CIR/IMD/FPIC/123/2016 dated November 17, 2016 remains unchanged.
3. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
4. A copy of circular is available at the links "Legal Framework Circulars" and "Info for F.P.I" on our website www.sebi.gov.in. The DDPs/Custodians are requested to bring the contents of this circular to notice of their clients.

ACHAL SINGH
Deputy General Manager

27 Participation of Non Resident Indians (NRIs) in the Exchange Traded Currency Derivatives (ETCD) segment

[Issued by the Securities And Exchange Board of India vide Circular [F. No. SEBI/HO/MRD/DP/CIR/P/2017/63] dated 28.06.2017.]

1. Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular no. 30 dated February 02, 2017 has permitted Non Resident Indians (NRIs) to participate in the exchange traded currency derivatives market to hedge the currency risk arising out of their investments in India under FEMA, 1999.
2. NRIs are now permitted to trade in the currency derivatives segment of stock exchanges, subject to terms and conditions mentioned in the aforesaid RBI circular and this circular.
3. NRIs shall take position in the currency derivatives segment of a recognised stock exchange as specified in the para 5 of this circular subject to the following conditions:
   (i) NRIs shall designate an Authorised Dealer Category-I bank who is also a clearing member of the stock exchange / clearing corporation for the purpose of monitoring and reporting their combined positions in the OTC and ETCD segments.
   (ii) NRIs may take positions in the currency futures / exchange traded options market to hedge the currency risk on the market value of their permissible (under FEMA, 1999) Rupee investments in debt and equity and dividend due and balances held in NRE accounts.
   (iii) The onus of complying with the relevant provisions of the RBI A.P. (DIR Series) Circular no. 30 dated February 02, 2017 shall rest with the NRI and in case of any contravention, the NRI shall render itself liable to any action that may be warranted by RBI as per the provisions of Foreign Exchange Management Act, 1999.
4. The exchange/ clearing corporation shall provide details of all transactions of the NRIs to the designated bank to enable monitoring of positions of NRIs as per the provisions of the RBI A.P. (DIR Series) Circular no. 30 dated February 02, 2017.

Position limits for NRIs in the permitted currency pairs

5. The position limits for NRIs in the permitted currency pairs shall be as given in the table below

Currency Pair	Position limits
USD-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or USD 10 million, whichever is higher.
EUR-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or EUR 5 million, whichever is higher.
GBP-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or GBP 5 million, whichever is higher.
JPY-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or JPY 200 million, whichever is higher.

6. Accordingly, Para I.1.d. of the SEBI Circular SEBI/DNPD/Cir-38/2008 dated August 06, 2008 regarding Exchange Traded Currency Derivatives is modified as under:
   Appropriate mechanisms are implemented to prevent participation in Exchange Traded Currency Derivatives of "persons resident outside India", as defined in Section 2(w) of the Foreign Exchange Management Act, 1999, except persons allowed under regulation 5B of Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2016
7. Stock exchanges and Clearing Corporations are directed to:
   (i) take necessary steps to put in place necessary systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations,

(ii) bring the provisions of this circular to the notice of the stock brokers and also disseminate the same on their website, and

(iii) communicate the status of implementation of the provisions of this circular in the Monthly Development report submitted to SEBI including pre-trade and post-trade controls.

8. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

SANJAY PURAO
Deputy General Manager

28 Review of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/MRD/DP/ 65 /2017] dated 27.06.2017.]

1. Comprehensive guidelines on Offer for Sale of Shares through stock exchange mechanism were issued vide circular no CIR/MRD/DP/18/2012 dated July 18, 2012. These guidelines have been modified from time to time based on the representation/suggestion received from various stakeholders.
2. Based on the representation received and in order to further streamline the process of OFS with an objective to encourage greater participation by employees, the existing provision with respect to restriction on sale of shares by promoters post OFS is modified as follows:
   - 2.1. Promoters of eligible companies shall be permitted to sell shares within a period of 2 (two) weeks from the OFS transaction to the employees of such companies. The offer to employee shall be considered as a part of the said OFS transaction
   - 2.2. The promoters may at their discretion offer these shares to employees at the price discovered in the said OFS transaction or at a discount to the price discovered in the said OFS transaction.
   - 2.3. Promoters shall make necessary disclosures in the OFS notice to the exchange including number of shares offered to employees and discount offered if any.
3. Accordingly, the conditions stated at para 2.1, 2.2 and 2.3 shall be included in the para 1 (b) and para 5 (c) of circular dated July 18, 2012. All other conditions for sale of shares through OFS framework contained in the circulars CIR/MRD/DP/18/2012 dated July 18, 2012, CIR/MRD/DP/04/2013 dated January 25, 2013, CIR/MRD/DP/17/2013 dated May 30, 2013, CIR/MRD/DP/ 24 /2014 August 08, 2014, CIR/MRD/DP/32 /2014 December 01, 2014, circular CIR/MRD/DP/12/2015 dated June 26, 2015 and circular CIR/MRD/DP/ 36 /2016 February 15, 2016 dated remain unchanged.
4. Stock Exchanges are advised to:
   - 4.1. take necessary steps and put in place necessary systems for implementation of above.
   - 4.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above.
   - 4.3. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on their website.
5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

SANJAY PURAO
Deputy General Manager

29 Margin Trading Facility-Clarification

[Issued by the Securities And Exchange Board of India vide Circular [F. No. CIR/MRD/DP/ 86/2017] dated 01.08.2017.]

1. SEBI vide circular CIR/MRD/DP/54/2017 dated June 13, 2017 prescribed comprehensive framework for permitting stock brokers to provide margin trading facility to their clients.
2. Representations have been received from the Stock brokers and their Association requesting to enable them to utilize funds from sources other than Banks and Non-Banking Financial Company (NBFCs) for extending margin trading facility. Stock brokers have further represented that currently various sources of borrowing by way of issuance of Commercial Paper (CP) & unsecured loans from directors & promoters are available for brokers in the normal course of business. Therefore Stock brokers have requested that for the purpose of providing Margin Trading facility also, they may be allowed to borrow funds from these sources.
3. Accordingly, it is clarified that Stock brokers may borrow funds by way of issuance of CP and by way of unsecured long term loans from their promoters and directors. The borrowing by way of issuance of CPs shall be subject to compliance with appropriate RBI Guidelines. The borrowing by way of unsecured long term loans from the promoters and directors shall be subject to the appropriate provisions of Companies Act.
4. A stock broker shall not be permitted to borrow funds from any other source, except the sources stated at para 3 above.
5. The conditions stated at para 14 of circular dated June 13, 2017 shall stand modified as above. All other conditions stated in the circular CIR/MRD/DP/54/2017 dated June 13, 2017 remain unchanged.
6. The Stock Exchanges are advised to:-
   - 6.1. take necessary steps and put in place necessary systems for implementation of this circular.
   - 6.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
   - 6.3. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also disseminate the circular on the website.
7. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

SUSANTA KUMAR DAS
Deputy General Manager

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NEWS FROM THE INSTITUTE

- MEMBERS RESTORED
- CERTIFICATE OF PRACTICE CANCELLED
- EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2017-18
- EXTENSION OF LAST DATE OF PAYMENT OF THE ANNUAL SUBSCRIPTION FOR LICENTIATE FOR 2017-18
- ORIGIN OF CORPORATE GOVERNANCE FROM INDIAN ETHOS: INVITATION FOR ARTICLES

MEMBERS RESTORED FROM 01.06.2017 TO 30.06.2017

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	27128	ARVIND KUMAR	NIRC
2	A	33596	MANOJ GARG	WIRC
3	A	32892	RADHIKA AGARWAL	EIRC
4	A	41032	MUKESH SUBHASH THAKARE	WIRC
5	A	21923	GIRISH SARAN	SIRC
6	A	13119	ANITA NAIR	SIRC
7	A	30957	SANDEEP GUPTA	NIRC
8	A	20467	ANANTHA NARAYANAN R.	SIRC
9	A	21017	HEMANT SULTANIA	NIRC
10	A	38416	RAHUL RANKA	NIRC
11	A	40117	VARUN KOHLI	EIRC
12	A	4601	V S BALASUBRAMANI	F/SIRC
13	A	11193	ANIL KUMAR DHINGRA	NIRC
14	A	24322	SHIVANGI	NIRC
15	A	7921	MOHAN S. KUMAR	SIRC
16	A	3123	SUHAS KULKARNI	WIRC
17	A	43770	VIJAY AGRAWAL	WIRC
18	A	14806	D SRIKIRAN	SIRC
19	A	15449	BIJAY KUMAR SANKU	WIRC
20	A	30350	ANTARIMA KUNDU	WIRC
21	F	4963	RAVINDER KUMAR SINGAL	NIRC
22	A	5326	S VENKATARMANI	F/SIRC
23	A	30098	ABHA SRIVASTAVA	NIRC
24	A	18919	PRAVEEN KUMAR MALHOTRA	NIRC
25	A	30467	DIPASHREE ABHISHEK JOG	WIRC
26	A	17880	AMIT WALIA	NIRC
27	A	34017	ANISHA JAISANI	NIRC
28	A	23302	CHAYNIKA KOTHARI	WIRC
29	A	2943	S G PRABHAKHARAN	SIRC
30	A	16046	SHWETA KHANDELWAL	WIRC
31	A	41038	PREETY AGARWAL	EIRC
32	A	39048	NIMISHA DINESHBHAI HALANI	WIRC
33	F	5605	AJAY KUMAR SANCHETI	NIRC
34	F	4777	VIKAS GARG	NIRC
35	A	31768	MAHIMA SURI	NIRC
36	A	24449	HARPREET SINGH GULATI	NIRC
37	A	16408	PRITI SOMANI	EIRC

CERTIFICATE OF PRACTICE CANCELLED DURING THE MONTH OF JUNE, 2017

SL. No	NAME	MEMB NO	COP NO	REGN
1	MR. JOJO MATHEW	ACS - 45216	16533	SIRC
2	MS. SUNITA GAUR	ACS - 24376	16348	NIRC
3	MR. OM DATT GUPTA	FCS - 6502	6835	NIRC
4	MR. DEEPANSHU ARORA	ACS - 44595	17586	NIRC
5	MS. DEEPALI SRIVASTAVA	ACS - 26084	17045	NIRC
6	MR. MUKESH PAREEK	ACS - 36149	18281	WIRC
7	MS. ANJALI KABRA	FCS - 5982	9254	WIRC
8	MS. STUTI SAXENA	ACS 44149	16256	NIRC
9	MS. SAYALI VIJAYDHAR BHIDE	ACS 21898	12879	WIRC
10	MS. JYOTI KUMARI KHETRIWAL	ACS 46954	17967	EIRC
11	MS. ANUPAMA GOVARDHANAGIRI	FCS 9013	16916	SIRC
12	MR. NITIN KUMAR KAUSHIK	ACS 41447	17282	NIRC
13	MS. KAMNA	ACS 42769	17553	NIRC
14	MS. DEEPALI KAUSHIK	ACS 28761	11102	NIRC
15	MS. HEENA	ACS - 45373	18320	NIRC
16	MR. ASHISH KUMAR JHA	ACS - 35695	14840	NIRC
17	MS. NAMRATA NIRAV KUMAR SHAH	ACS - 41543	15950	WIRC
18	MS. NANCY JAIN	ACS - 38957	14916	NIRC
19	MR. UMESHKUMAR VASANT RAY BHATT	FCS - 8961	17308	WIRC
20	MR. RISHABH GUPTA	ACS - 49288	18657	WIRC
21	MS. ISHA LALIT JAIN	ACS - 25888	11573	WIRC
22	MR. ANKIT DOSHI	ACS - 23887	15738	NIRC
23	MR. AKASH PHALWAL	ACS - 43233	17493	NIRC
24	MR. VISHAL KHERA	ACS - 32272	11842	NIRC
25	MR. RAVI KANT	ACS - 48526	18409	WIRC
26	MS. YASH IMA SALUJA	ACS - 39764	14026	NIRC
27	MS. REKHA KEJRIWAL	FCS - 5978	15024	NIRC
28	MR. RUSHI JAGDISH SATHE	ACS - 40200	17672	WIRC
29	MS. SUNITA THAKUR	FCS - 7874	8771	NIRC
30	MS. MADHURI JEEVAN ANKALKHOPE	ACS - 39906	14799	WIRC
31	MR. VISHAL MITTAL	ACS - 36647	17503	NIRC
32	MR. DHRUV KHANDELWAL	ACS - 48749	17726	NIRC
33	MS. MEGHA BISHT	ACS - 47797	17804	NIRC
34	MS. SAYAALEE LAXMAN KULKARNI	ACS - 34883	13043	WIRC
35	MS. SWATI	ACS - 49082	17882	NIRC
36	MS. CHARMI DHIRENDRA SHAH	FCS - 7028	14379	WIRC
37	MS. JAYA SURANA	ACS - 48640	18180	EIRC
38	MR. RETNAVILASAM GOPINATHAN NAIR JISHNU	ACS - 32820	13789	SIRC
39	MS. MOHANA PRIYA M	ACS - 47463	18499	SIRC
40	MR. LOKESH SHARMA	ACS - 46247	17153	NIRC
41	MR. LOVE KUMAR ARORA	ACS - 27759	9921	NIRC
42	MR. AMOD KUMAR JHA	FCS - 6617	18295	NIRC
43	MR. SUMIT CHANDHOK	ACS - 30449	13217	NIRC
44	MRS. AMRITA SOGANI	ACS - 40658	15554	NIRC
45	MRS. ANKITA SACHDEV	ACS - 28728	13470	NIRC
46	MR. ARPIT KUMAR GOYAL	ACS - 40233	15801	NIRC
47	MRS. ANURADHA BHALCHANDRA KOPPALK	ACS - 30267	11216	SIRC
48	MR. RAVINDRA VISHNUPRASID JOSHI	FCS - 1419	886	WIRC
49	MR. SATHYA PRASAD YADAV TEKUMATLA	ACS - 18755	6775	SIRC
50	MR. VINEET GUPTA	ACS - 47642	18322	NIRC
51	MR. ANAND ROCHLANI	ACS - 32633	11973	NIRC
52	MS. PRIYANKA HARSHADBHAI VALAND	ACS - 43191	16230	WIRC
53	MS. SWETA DUGGAR	ACS - 35617	15216	NIRC
54	MS. USHA M	ACS - 40420	15015	SIRC
55	MR. AMIT KUMAR	ACS - 36223	14930	NIRC
56	MS. SHRIDHI JAIN	FCS - 8418	10984	NIRC
57	MR. SHUBHAM JAIN	ACS - 49541	17962	NIRC

EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2017-18

The annual membership fee and certificate of practice fee for the year 2017-2018 has become due for payment w.e.f. 1st April, 2017. The last date for the payment of fee was 30th June, 2017 which has now been extended upto 31st August, 2017.

A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/ Fellow Annual Membership fee subject to the furnishing of declaration to that effect.

The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

(i) Online (through payment gateway of the Institute's website (www.icsi.edu)

(ii) Cash/Cheque at par/Demand draft/Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id jitendra.kumar@icsi.edu or contact at telephone no. 0120-4082134

Extension of last date of payment of the Annual Subscription for Licentiate for 2017-18

The payment of Licentiate Subscription for the year 2017-18 became due for payment w.e.f. 1st April, 2017. The last date for payment of the same was 30th June, 2017 which has now been extended upto 31st August, 2017.

The Licentiates who want to renew their enrollment as Licentiate are requested to remit at the Institute's Headquarters or Regional/ Chapter offices through Cash/Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating their Name and Licentiate number on the reverse of the Cash/ Demand Draft and the details of remittance may please be intimated at email id neeru.pandey@icsi.edu . The payment may please be made so as to reach the Institute on or before 31st August, 2017.

In case the Licentiate subscription for 2017-18 has already been remitted, please send the particulars of the remittance at email Id neeru.pandey@icsi.edu to link up the same and update the records.

For queries, if any, please write to Ms. Neeru Pandey, a email id neeru.pandey@icsi.edu or contact at telephone No. 0120-4082134

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link http://www.icsi.edu/Member.aspx

Origin of Corporate Governance from Indian Ethos: Invitation for Articles

Corporate Governance and Ancient Wisdom

The concept of corporate governance in India has ancient connections. There is a great deal of similarity in the governance structures of the ancient kingdoms and modern corporations as is evident from our ancient text and scriptures like Vedas, Manu Smriti, Somadeva neeti stuti, Baharspatya Neeti stuti, Arthashastra etc. which focuses on good governance. All Upanishads, Vedas, and the Epic Kavyas like Mahabharata, Ramayana and Bhagwad Gita emphasize the essence of ethics being followed from within, be it Individual or be it the King or be it the whole kingdom. Further, all religious teachings or philosophical writing contain some directives on governance, like in Jain Sutra, Kuran, Bible and other religious and spiritual teachings etc.

Invitation to submit Papers

The ICSI request interested members/scholars/ experts to submit their papers explaining the principle enunciated in religious or spiritual teachings and what is the end effect of these on Corporate Governance. The papers may quote the ancient wisdom and correlate the same with the modern corporate governance practices and even write the instances from the above sources.
Honorarium

The Best researched papers would be awarded honorarium as per Institute practice.

Paper / Manuscript Guidelines

- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page.
- Authors are required to comply with the APA style of referencing only. For details on APA referencing style, please visit http://www.apastyle.org.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- The author(s) name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The complete papers should reach the Institute on or before 31st August 2017.
- Participants should email their papers on the following email id: icgc@icsi.edu.
- The ICSI reserves the right to publish or refer the selected papers for various publications viz.; Souvenirs, Books, Study materials published by the Institute or in any seminar / conference / workshop / Research Programs conducted by Institute either on its own or jointly with other organizations and also in regular course of activities of ICSI. The papers may also be used for submission before various national and international fora, Govt. and private bodies, etc.
- ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any royalty. In case of any dispute arose in future with respect to infringement of intellectual property rights of any person, the authors shall indemnify the ICSI for all such losses.

CS Ahalada Rao V
Chairman, ICSI- Research Committee

CS (Dr.) Shyam Agrawal
President, ICSI

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MISCELLANEOUS CORNER

- ETHICS & SUSTAINABILITY CORNER
- APPLICABILITY OF GST IN DECEMBER, 2017 EXAMINATION
- BOOK REVIEW
- GST CORNER
- CG CORNER
- RELEASES AT CAPITAL MARKETS WEEK

TOLERANCE- THE MEANS TO POWERFUL ADMINISTRATION

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

Tolerance is often termed as Sahan-Shakti. The name itself defines tolerance to be a power of the self. But today it is often disguised to be a weakness. We have heard people saying 'why should we tolerate this…..' and also 'a person who tolerates is treated as a doormat' etc. It has become a common understanding that Tolerance no more works in the world today. This is a result of shallow understanding of the real meaning of tolerance.

In today's world joint families have shrunk down to nuclear families and now even a couple finds it difficult to manage with each other. What has changed? On one hand resources have increased, on the other hand education and science has progressed. World has become very small in terms of communication but it is vice-versa when we talk of relations. This is due to lack of tolerance. The mere reason behind breaking a relationship is the lack of the power of tolerance. That is why we hear people saying 'I could not tolerate, so had to leave…', whether be it family or profession. Then we search for counselors. It is not that we do not have the will to tolerate, but that we have forgotten the art of tolerance. If only we could learn the trick once again by introducing spirituality in our lives, we would again be capable enough to use the power of tolerance to withstand any situation whether in our personal, professional or social life.

So, let us figure out what tolerance is, how can it be used as a power and how can we practically implement the power of tolerance?

1. Understanding Tolerance

Tolerance does not merely mean not saying anything, not opposing or keeping ones mouth shut when something against our understanding happens or someone shouts at us. This is only an incomplete understanding of Tolerance.

What happens outside in our behavior is not the primary demonstration of tolerance, but what is happening inside decides how tolerant one is. For example, if we are being abused by a person and we do not shout back, can we say that we are tolerant? Before judging whether we are or not, we need to see what is going on inside. It doesn't matter if our mouth is shut, but what if we are shouting at that person from inside, not speaking a word but abusing the person by creating negative thoughts for that person? Can we still be called tolerant? The answer is no. This is because, by not responding at that moment and creating negative thoughts, we are only postponing our response. These negative thoughts shall accumulate inside and whenever that person will again come in front of us and if the situation is in our favour, the entire accumulated negativity shall burst out. This explosion of the negativity that was already there inside, will not only spoil the communication and relation between the two but would also adversely affect our own mind.

So tolerance in the real sense means not getting disturbed by any situation, words or actions of others and reflecting the same thing outside, naturally. Let's find out the means to do this.

2. The Art of Acceptance

For being stable from inside, there is a pre-requisite called the Power of Acceptance. The more we accept, the more we can tolerate. Tolerance does not mean accepting something forcibly. Anything done by force is temporary and as soon as the force is removed, situation or thought process comes back to the way it was. So tolerance can only be permanent when it is done on the basis of acceptance.

Our response internally or physically is not dependent only upon external factors, but is primarily dependent on the amount of acceptance we have for the situation or for the other person. We have many examples of this in our day to day life. For example, if any adverse situation, which was already expected, comes in front of us, we have a greater amount of tolerance for it because we have already prepared ourselves to accept whatever is going to happen. Taking another example, a mother has a very high range of acceptance for her child and so in any event if there are chances of harm to the child then in order to protect him she can easily be seen demonstrating the power of tolerance beyond ones imagination. In that situation, a mother would never even feel that she has tolerated so much, because she is doing it for someone with which she has 'unlimited affection'. So we can say that prior

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knowledge of a situation and unlimited affection helps us tolerate situations and leads to the power of tolerance by increasing our acceptance. In the later part we shall see the details of both of them.

But only having the keys is not sufficient. In order to open the lock, we need to use the key. Today the problem lies with the fact that we do not even want to accept each other or situations as they are. On our list of 'want to change' our name is unfortunately always on the last. Everyone wants the other person to change first. This leads to misunderstandings, complains, dissatisfaction and ultimately stressed minds and relations. It is high time we need to understand this very clearly that until 'we' imbibe real unlimited affection and make acceptance a natural nature, tolerance would not be an easy thing to practice, and without the power of tolerance, no family or team shall be able to sustain forever.

When we say that 'my nature is not like that…' we are actually talking about our sanskaars. As souls, we have developed these sanskaars throughout the journey of our many births. Since each soul has been through a different journey, hence the sanskaars are different.

3. Changing our mindset

Whenever we are interacting or working with people, we often see others with reference to ourselves. The more they are like us, the more is the acceptance and vice-versa.

So, we first need to realize and have clear knowledge about who each one of us are. We are not the names, the faces, the skin color or the religion that we carry. We are living energies called souls driving this body. We all carry different names, faces and identities. No two individuals on this earth have the exact same identity. Nature has created all of us differently. It is a law. Then have we ever thought why we wish others to be like us? Why this false expectation beyond the natural rule? We are different, because we are meant to be different. But the irony is that we are unable to tolerate this difference.

When we say that 'my nature is not like that…' we are actually talking about our sanskaars. As souls, we have developed these sanskaars throughout the journey of our many births. Since each soul has been through a different journey, hence the sanskaars are different. We think, speak and act according to our sanskaars. Hence no two souls can think and act in the same way. Our only job is to match the sanskaars, synchronize with others and move forward. Like in a movie, we have a hero, a villain and all kinds of actors. We never get angry on the villain, instead we appreciate the wonderful role of a villain played by that actor. If the role of all the actors is the same, will anyone want to see the movie? Will there be any enjoyment left? Also if all are heroes with no villain, will that movie be interesting. Similarly, in life, each one of us has our own roles according to our sanskaars.

We in original form are embodiments of peace, love, purity, happiness, bliss, knowledge and power; and so is each and every soul. We have come with these qualities inbuilt and the purpose of life is to experience all of these. Each and every one of us today are on the same quest to attain these qualities. When we are in the awareness of who we are and what is our real identity, only then can we understand and see others in their true identity and only then can we appreciate, that whatever each one of us are doing, we are only heading towards a common goal i.e. to fill our lives with these qualities. Having this awareness is the means to having unlimited acceptance for everything and everyone. The more we remain in this stage called the soul-conscious stage; where we remain in the awareness of being a soul and see others as soul; we shall automatically start understanding others behavior and there shall be no space for any ill feelings. Such elevated consciousness is the soil where flowers of love and acceptance flourish. This love and acceptance is then unconditional, non-expecting, unbiased and by all means universal and unlimited.

Hence understanding that we all are part of a wonderful drama with different roles but same goals, we can admire the role of each and every individual, fading out the differences. It is then that we shall imbibe unlimited acceptance for each and every person and situation, hence increasing the power of tolerance.

4. Practicing Soul- Consciousness

We have seen above that practicing soul-consciousness is the means to accept and tolerate. The basic definition of soul-conscious stage is being aware that we are soul and others are also souls. But is mere awareness enough? Although awareness is the first step towards a soul-conscious stage, but more important is the practice of it. Being soul conscious means to constantly practice the original qualities of the soul discussed above. Every thought, word and action of a soul-conscious person is filled with peace, love, purity, happiness… etc. But in order to maintain these qualities even in adverse situations, we need to make them a part of our day to day life. For example, a student can perform well and pass in an examination only if he has prepared himself well before the exam. Same way if we do not practice soul consciousness constantly, we shall not be able to make it our natural nature or 'sanskaar' and then again in case of a situation we shall land up having to tolerate superficially.

The tool to practice this stage is Rajyog Meditation. Hearing the word 'meditation' we often think of a person sitting in silence in a disciplined posture and concentrating on something. Rajyoga Meditation is way beyond this physical practice. It is not a method but a way of life. It is not just limited to regaining focus or to experience peace, but it means to constantly be a master of every thought, word and action. Like a master has the full rule over his servants, similarly Rajyog Meditation helps us to naturally practice our original nature of divine qualities.

5. Key to powerful administration - Tolerance

A person who demonstrates such qualities in every action, word and thought through greater acceptance and tolerance, will not form opinions about others and will be free from the disturbances of situations. Like a rubber with high elasticity can be molded and stretched without breaking, similarly a person with the power of tolerance will be able to withstand tough times and tough people. Life is ought to bring ups and downs but a person with the power of tolerance will be able to remain stable. By this he will demonstrate such strength that will become an inspiration for everyone around. He shall be able to lead others by example and handle every kind of situation and person. Hence to tolerate needs a lot of strength and it never lets the person down. Power of tolerance is the key to a powerful administration and such person can be termed as a successful administrator.

What we have is what we give and what we practice is what we preach. The only means to change others is to change ourselves. Hence only by practicing acceptance, affection and tolerance, can we motivate others to follow the same and the basis of all these qualities is soul-consciousness. This way these qualities shall spread from us to others and from them to further more people and some day to the entire world.

We have seen above that practicing soul-consciousness is the means to accept and tolerate

Applicability of GST in December 2017 Examination

NOTIFICATION No. 7 of 2017

FOR STUDENTS APPEARING IN DECEMBER 2017 EXAMINATION

EXECUTIVE PROGRAMME

With the implementation of Goods & Services Tax from July 1, 2017, the students of Executive Programme are hereby notified that Part B (Marks 30) of the syllabus for Tax Laws and Practice Paper (Module - 1 Paper - 4) has been replaced with "The Goods & Services Tax (GST)" for December, 2017 examination.

The syllabus for Part-B of Tax Laws and Practice Paper Module - 1 Paper - 4 (30 Marks) for Executive Programme for December, 2017 exam shall be as under:

a) The Central GST Act, 2017
b) The Integrated GST Act, 2017
c) The Union Territory GST Act, 2017
d) The GST(Compensation to States) Act, 2017

The rules relating to GST regime shall not be applicable for December 2017 exam.

Note:

1. Questions relating to Service Tax Laws and Value Added Tax will not be asked in December, 2017 exam.
2. There is no change in the syllabus of Part A – Income Tax (70 Marks) of Tax Laws and Practice Paper (Module - 1 Paper – 4) of Executive Programme.

*Supplement relating to Indirect Tax covering the Goods and Services Tax "GST" will be uploaded at ICSI website under academic corner shortly.

Dinesh Chandra Arora
Secretary

Applicability of GST in December, 2017 Examination

NOTIFICATION No. 8 of 2017

FOR STUDENTS APPEARING IN DECEMBER, 2017 EXAMINATION

PROFESSIONAL PROGRAMME

With the implementation of Goods & Services Tax w.e.f July 1, 2017, the students of Professional Programme are hereby notified that the selected topics of Part B of the syllabus for "Advance Tax Laws and Practice" (Module 3 Paper 7) of Professional Programme has been replaced with Goods and Services Tax (GST) for December, 2017 examinations.

The syllabus of Part B (70 Marks) of Advance Tax Law and Practice Paper (Module - 3 Paper– 7) for Professional Programme for December, 2017 exam shall be as under:

PART B: CUSTOMS LAWS & GOODS AND SERVICE TAX (70 MARKS)

CUSTOMS LAWS

1. **Introduction**
   Special Features of Indirect Tax Levies – All Pervasive Nature, Contribution to Government Revenues; Constitutional Provisions Authorizing the Levy and Collection of Customs
2. **Customs Laws**
   - Levy of Customs Duties, Types of Customs Duty Leviable, Tariff Classification & Exemptions, Valuation of Imported and Exported goods
   - Provision of Assessment, Payment of Duties, Recovery and Refund of Customs Duties
   - Duty Drawback
   - Procedure for Clearance of Imported and Exported Goods
   - Transportation and Warehousing
   - Confiscation of Goods and Conveyances and Imposition of Penalties; Search, Seizure and Arrest, Offences and Prosecution Provisions
   - Adjudication, Appeal and Revision; Settlement of Cases, Advance Ruling
   - Other Relevant Areas and Case Studies under Custom Laws and Rules
3. **Promissory Estoppel in Fiscal Laws –** Principles and Applicability with reference to Indirect Taxes
4. **Tax Planning and Management –** Scope and Management in Customs, with Specific Reference to important Issues in the Respective Areas

GOODS AND SERVICES TAX

a.) The Central GST Act, 2017
b.) The Integrated GST Act, 2017
c.) The Union Territory GST Act, 2017
d.) The GST(Compensation to States) Act, 2017

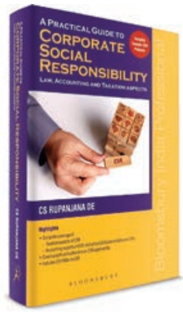
The rules relating to GST regime shall not be applicable for December, 2017 exam.

Note:

1. Questions relating to Central Excise Laws, Service Tax Laws and Value Added Tax will not be asked in December 2017 exam.
2. There is no change in the syllabus of Part A – Direct Tax Management (30 Marks) of Advance Tax Laws and Practice Paper (Module - 3 Paper –7) of Professional Programme.

*Supplement relating to Indirect Tax covering the Customs Law & Goods and Services Tax "GST" will be uploaded at ICSI website under academic corner shortly.

Dinesh Chandra Arora
Secretary



A Practical Guide to Corporate Social Responsibility

By CS Rupanjana De

Published by:
Bloomsbury Publishing India Pvt. Ltd., New Delhi

Pages : 300

Price : Rs.795

A Practical Guide to Corporate Social Responsibility with law, accounting and taxation aspects, is a unique compilation and systematic presentation of all the aspects relating to the Corporate Social Responsibility (CSR) and has a good coverage relating to CSR over the past centuries and the contributions made by the Corporates towards the CSR activities. CS Rupanjana De has covered global perspective of CSR since ancient times in various countries with the specific focus on India as well as how the CSR was in India prior to the mandate made in the Companies Act, 2013 and its impact in the society and CSR activities conducted by pioneers in India including, Tata Group, Hindustan Unilever, ITC, Infosys Technology, Wipro and many more.

CS Rupanjana has covered the journey from voluntary to the mandatory provisions for CSR under section 135 of the Companies Act, 2013, the Companies (CSR Policy) Rules, 2014 and various clarifications issued by the Government and CSE provisions. The Book is a compendium of everything relating to CSR with 360-degree approach and updated status of the law along with various circulars, clarifications, coverage of wide range of frequently asked 120 questions for providing entire clarity relating to CSR, practical illustrations on CSR applicability, coverage of taxation and accounting aspects and other aspects under the allied laws on CSR.

Government of India has made an estimate of compulsory CSR expenditure done by the corporates of about Rs.15,000 - 20,000 Crores every year for few years starting from the year 2014-15 and under the book having compiled data for the real experience for CSR in India which are little different and on lower side in terms of the amount of money actually expended. For the year 2014-15, 10475 corporates were eligible for CSR activities for the estimated amount of Rs. 14,675 Crores, whereas only 7334 companies reported CSR in their Boards' Report and the amount of Rs. 3,139 crores were actually spent by them. CS Rupanjana has also critically analysed the reasons for lesser expenditure towards CSR which includes CSR data not available, technical and procedural difficulties, CSR Policy formulation is under process, lack of clarity on CSR issues, etc. The trend of expenditure towards CSR is highest in health sector i.e. 31.73% followed by education sector at 31.29% and rural development at 10.70%. Relevant market check of CSR for the financial year 2014-15 and 2015-16 has been properly analyzed in this book.

CS Rupanjana, has authored this book with valuable assemble of data relating to all aspects of CSR, which is really a significant contribution to the subject with her long professional background. The Book has ten chapters with relevant titles for smooth reference and understanding for the corporates, their Board of directors, CSR Committee members, auditors and accounting department.

The Book also contains great source of information presented by way of illustrations given for calculation of the profits and eligible amount for CSR investments, model CSR policy, sectors specified for CSR under Schedule VII with proper clarity for coverage of activities which may be undertaken under the major heads for complete and easy reference for selection of project for CSR.

The CSR Committee of the corporates are expected to take timely decision for setting CSR goal, budget allocation, CSR policy for implementation and adequate disclosures with the estimate annual financial targets, its monitoring and quality check for proper utilization of the amount for the CSR activities done, so that these investments are properly utilized for the betterment of the society as a whole. It has been well recognised that the CSR activities also create brand image of the corporate.

As more than three years has already been passed after implementation of the CSR provisions and rules, most of aspects of CSR has been clarified in due course. The emphasis of law is mainly on transparency, disclosure and CSR management. Primarily, the Board of Directors are accountable for adequate disclosures regarding CSR activities, constitution of the CSR Committee, approval of the CSR policy as well as its hosting on the website of the corporate, supervision of the conduct of the CSR committee, etc. That apart from the Companies Act, 2013, the directors are also required to give disclosure in the Director's Responsibility Statement under the SEBI (LODR) Regulations, 2015, which specifically prescribes the responsibility of directors and in case of non-compliance of the applicable laws, they are accountable and liable for the consequences apart from the concerned corporates.
Different categories of members in

the CSR Committee such as non-executive directors and independent directors, have significant role to play for proper implementation of the CSR activities. The book advises directors to build a 'Safety Net' around them.

I am sure that the readers will find this book a very useful source of knowledge for their practical use while discharging their role as a member of the CSR Committee, member of the Board or CSR implementing agencies. Careful reading of the book will put the concerned in good stead and they will be in a position to act with sheer confidence while discharging their duties imposed by the law. The book will also serve as a guide for compliance managers, company secretaries, researchers and even students.

Non-compliance with the requirement towards investment in the CSR activities in the initial phase of 1-3 years is being reviewed by the government and may cause penal action in future, lack of knowledge and motivation to carry on CSR activities is being looked seriously and will be equally harmful to the corporates and specifically CSR Committee members. The governance demands that Board of directors and CSR committee must act with knowledge and understanding of importance of CSR. Therefore, the book has been designed to serve as a complete guide for corporates towards the CSR requirements and providing them knowledge of legal provisions with ease and intelligible manner.

CS Rupanjana De must be complimented and appreciated for introducing the book on "A Practical Guide to Corporate Social Responsibility."

CS (Dr.) D.K. Jain
Practising Company Secretary and Member, Editorial Advisory Board of Chartered Secretary

CORPORATE GOVERNANCE CORNER

DEVELOPMENTS – JULY 2017

CHINA'S STATE FIRMS TO SHED OLD CORPORATE GOVERNANCE STRUCTURES BY END-2017

China initiated a move to ***transform all state-owned companies (SOEs) into corporations by the end of the year 2017,*** as part of efforts to reform the sclerotic industrial giants.

According to the State Council of China's Cabinet:
All major Chinese enterprises owned by the Central Government of China will be turned into limited liability companies or joint-stock firms by the end of the year 2017.

The move is aimed to deepen SOE reforms in China by ***focusing on the establishment of a modern corporate governance system.***

The government of China recognised the need for restructuring fearing the fact that mass lay-offs at the under-performing firms could lead to social instability.
Restructuring of SOEs will separate government administration from management of day-to-day business operations, which will be a step forward towards greater efficiency.
The change will help China build a modern enterprise system and improve the market-oriented management mechanism thereby paving the way for modern age corporate governance.
As of now, ninety percent of China's state enterprises have already been turned into corporations.
In the month of June, 2017, the International Monetary Fund urged Beijing to phase out its support for under-performing state-owned enterprises and unwieldy structured companies that survive only on rolling credit from the banks.
China is also pushing ahead with mixed ownership by allowing private capital to invest in firms while retaining the government's presence in the companies.

A detailed write up in this regard is available at : http://www.nasdaq.com/article/chinas-state-firms-to-shed-old-corporate-governance-structures-by-end2017-20170726-01251

CONGRATULATIONS

Shri J Sridhar, FCS and Past President, ICSI, on his being awarded the Ph.D. degree by Savitribai Phule Pune University (formerly University of Pune) on 7 July, 2017.

OBITUARY

Chartered Secretary deeply regrets to record the sad demise of the following Member :

FCS 47 CS Shiv Kumar Parik (08.05.1931 – 01.06.2017), *a Fellow Member of the Institute from Kolkata.*

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed soul rest in peace.

GST CORNER

1. **GST Rate Finder App by NIC India now available to download**
   - Finance Minister Arun Jaitley has launched the GST Rate Finder App in India
   - This official Mobile App is here to help citizens of India search for various Goods, Services and their respective GST Rates in detail
   - App is developed by National Informatics Center, India and offered by NIC India Board of Excise and Customs (CBEC) and works offline too

2. **E-way bill under GST to come into effect from October, 2017**
   - The GST provision called the E-way bill, which requires goods worth more than Rs.50,000 to be pre-registered online before its movement, is likely to kick in from October after a centralised software platform is ready
   - The information technology platform for the e-way bill system is being developed by the National Informatics Centre (NIC) along with GST-Network

3. **Ensure all traders register under GST by August 15, 2019 Hon'ble Prime Minister to Chief Secretaries**
   - Hon'ble Prime Minister asked all Chief Secretaries to work expeditiously towards ensuring that all traders register under the GST regime before August 15, 2017

4. **Amid opposition, Jammu and Kashmir Assembly adopts resolution for implementing GST**
   - Jammu and Kashmir Assembly adopted a resolution for implementing the GST in the state
   - With this, all the states have implemented the Goods and Services Tax
   - The resolution moved by State Finance Minister Haseeb Drabu, was adopted through a presidential order calling on the Centre to safeguard the special status and exclusive taxation powers of the state

5. **Cabinet clears draft bill to replace GST ordinances for J&K**
   - The Cabinet approved a draft bill to replace ordinances that were promulgated to introduce the Goods and Services Tax in Jammu and Kashmir
   - The Central government had earlier this month promulgated ordinances to make the Central GST (CGST) and Integrated GST (IGST), which deals with inter-state commerce, applicable to the state
   - The Cabinet headed by Prime Minister Narendra Modi approved the bill, which will be introduced in Parliament during the current monsoon session

6. **GST rates won't be revised unless an anomaly: CBEC**
   - GST rates will not be revised unless there is an anomaly or the rates are unjustified - the Central Board of Excise and Customs (CBEC) Chairperson Vanaja Sarna
   - However, she assured the industry that revenue authorities will go slow in undertaking enforcement actions under GST for the first six months to give businesses adequate time to settle down into the new indirect tax regime.

7. **GST impact: Council increases cess on cigarettes**
   - In an out-of-turn meeting, GST Council raised the cess on cigarettes, in a bid to reduce profiteering by companies and harm to public health. The exact amount of the cess would depend on the length of the cigarettes
   - At present, cigarettes are taxed at the peak rate of 28 per cent, along with a cess of 5 per cent

8. **Government draws up checklists for GST audits**
   - The Centre has created a detailed road map for GST audits listing risks, target industries and even potential auditees for officials examining corporate India's transition to the new regime
   - In the past week, the government has reached out to tax commissioners on the audit process, highlighting the risk areas
   - Beginning next week, therefore, officials could visit companies to assess whether the transition
   - The government has shared sector-wise "risk factors" companies might exploit to avoid paying GST

9. **22 States abolish check posts after GST roll out**
   - As many as 22 States, including Delhi, West Bengal and Maharashtra, have abolished check posts days within implementation of the Goods and Services Tax
   - Eight States, including Assam, Punjab, Himachal Pradesh, and some north-eastern States, are also in the process of abolishing check posts
   - Shipping Minister claimed that logistics costs should decline by at least 20%

10. **EY India launches free helpdesk for small businesses**
    - Lending support to the Government's historic Goods and Services Tax regime, EY India launched the 'EY GST Helpdesk', a free of cost service for small businesses, traders and entrepreneurs
    - The newly launched service aims to provide help to the business community by addressing their concerns and queries related to the new taxation system

11. **Telcos ask distributors to join GST network**
    - Big phone companies have asked their distributors to complete all pending registrations under GST, warning that a failure to do so could invite government action, throw up legal complications, disrupt prepaid services business and hurt revenue in the July-September quarter

12. Field offices should be one-stop solution for GST payers: CBEC

- To facilitate a smooth GST regime, the government has asked field offices of CBEC to turn into "one-stop solution" for taxpayer's needs by hand-holding them to meet compliance requirements
- The CBEC had asked all its field offices to set up GST Sewa Kendras to provide all assistance to taxpayers
- GST Network has started call centre service for taxpayers for answering queries on enrolment

13. Government increases consumer helplines to 60

- The government has increased the number of consumer helplines on GST from 14 to 60, with specially trained professionals handling queries related to the new indirect tax regime

14. GST reimbursement scheme on fast track, says government

- The government is looking to expeditiously clear a reimbursement scheme for industries that have lost area-based excise exemption offered as incentives in states such as Himachal Pradesh and Uttarakhand under the GST regime
- The Department of Industrial Policy and Promotion (DIPP) has finalised the GST reimbursement scheme, which will shortly be taken up by the Expenditure Finance Committee

15. Centre deploys 200 top officials to counter GST mispropaganda

- Over 200 top officials at the central level are looking at only tackling the communication and information dissemination part of GST. They have reviewed articles, opinion pieces, cartoon strips, popular social media forwards that have appeared over the last few months in the run up to the GST launch
- This is the first time, we are not only implementing the tax but also proactively monitoring the response every day. Top most officials, experts at finance are dealing with how people's doubts should be addressed

APPOINTMENTS

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SNL manufactures needle roller bearings for automotive applications to serve OEMs and Aftermarket in India and overseas and are a professionally managed Listed Company with good profitability. For the year ended 31st March, 2017, its revenue were Rs. 37 crores and its PAT was Rs.6.58 Crores, which compares very favourably with other players in the industry.

Work Location: Mumbai, (Administrative reporting to the Plant head, Functional reporting to the Holding Company Functional Heads).

Job Responsibilities:
1. All matters relating to Board Meetings, Committee meetings and Shareholders meetings;
2. Compliance with the various SEBI/ Stock Exchange Listing Regulations and Regulatory filings with SEBI, BSE etc. All filings with MCA/ SEBI, including XBRL returns;
3. Handling of Shareholder/ Stock Exchange queries and co-ordination with RTA for share transfer Members Register;
4. Close interaction with operations and other teams at the plant, finalising Budgets/ Business Plans and monitoring actual v/s. budgets;
5. Co-ordination with Auditors – Internal, Statutory, Secretarial, Cost and Tax;

Desired Profile:
⇒ CS/ LLB from reputed institutions, in the age group of 35 to 40 years; with 10 years of experience (post qualification) in reputed Public Limited Company engaged in Manufacturing similar with exposure;
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Director

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Releases at Capital Markets Week

Dear Professional Colleagues,

The Institute of Company Secretaries of India (ICSI) is dedicated to professional excellence of the profession of Company Secretaries and has made 'inclusive growth' a key element in its various professional platforms. The Institute of Company Secretaries of India inaugurated one of its mega annual event, the ICSI Capital Market Week, 2017 on the theme of **"The Capital Market of New India: The Reform Agenda for Inclusive Growth"** at The Lalit, Mumbai on July 22, 2017. In order to achieve a professional growth process, the Institute placed open the week-long celebration on Pan India basis while putting forward the intellectual deliberations on the varied aspects of capital markets and its robust compliance paving the way for the inclusive growth of New India. The Mega Programme witnessed the presence of the distinguished dignitaries from profession, regulators, academia, industry and many other experts from varied field of law, regulation, capital market and compliance.

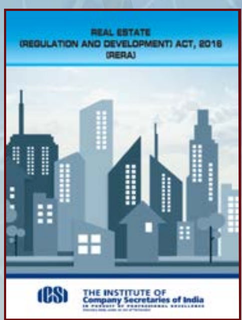
The mega programme witnessed launching of various new initiatives and release of Publications. The Council of the Institute has decided that soft copies of the publications be made available to the students and members free of cost. Accordingly, members and students can access pdf version of the releases made during Capital Markets Week on ICSI website at : https://www.icsi.edu/capitalmarketweek/Publications.aspx

Happy Reading !!

Regards,

CS (Dr.) Shyam Agrawal
President

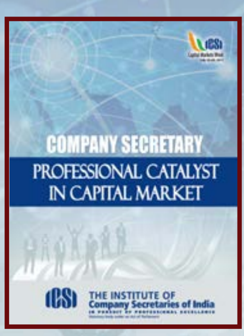
Backgrounder



Real Estate (Regulation and Development) Act, 2016 - RERA

Real estate sector plays a vital role in every aspect of an economy, society and environment. The Parliament enacted the Real Estate (Regulation and Development) Act, 2016.

The Institute brought out this publication, with a view to advance the knowledge and to build the capacity of professionals, stakeholders, members of the industry and experts.

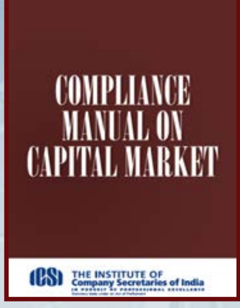


Company Secretary - Professional Catalyst in Capital Market

This publication describes and indoctrinate an advanced understanding of professional opportunities for Company Secretaries and facilitating role, they perform in the advancement of capital market along with ensuring the effective and efficient regulation of the market as a whole.

Issue and Listing of Debt Securities

This publication comprehensively captures compliance aspects with respect to issue and listing of debt securities, compliances under other regulations governing debt securities, compliance calendar, provisions of Companies Act, 2013 governing debt securities etc.



Compliance Manual on Capital Market

This Publication consists of various compliances require to be done by the company while issuing securities of any kind and to assist the professionals to acquaint with the facilities, ease and essential compliances required to be done while issuing any kind of security under Securities laws.

COMPLIANCE MECHANISM HARBINGER FOR ROBUST CAPITAL MARKETS

Compliance Mechanism Harbinger for Robust Capital Markets

The knowledge paper discusses in detail the inter-relationship between the Robust compliance mechanism and Robust capital market as a major contributory towards the emergent position of Indian economy at par.

ICSI Financial Services APP

Video on Financial Literacy

Video on Roles of CS in Capital Markets

Pdf version of the releases can be accessed at the ICSI website : https://www.icsi.edu/capitalmarketweek/Publications.aspx
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