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1. Meeting of ICSI Delegation with Minister of Petroleum & Natural Gas and Skill Development & Entrepreneurship, Government of India - CS Makarand Lele presenting a planter to Dharmendra Pradhan (Hon'ble Minister of Petroleum & Natural Gas and Skill Development & Entrepreneurship, Government of India) while Preeti Kaushik Banerjee look on.
2. Meeting of President ICSI with Secretary (CPV & OIA), Ministry of External Affairs, Govt of India - CS Makarand Lele presenting a planter to Dnyaneshwar M. Mulay (Secretary (CPV & OIA), Ministry of External Affairs, Govt of India).
3. CS Makarand Lele presenting a planter to Dr. Subhash Chandra Khuntia (Chairman, IRDAI) while CS Dinesh Chandra Arora & CS Ahalada Rao V. look on.
4. Meeting of ICSI Delegation with P.K.Gupta (Managing Director, SBI).
5. CS Makarand Lele presenting a memento to Atul Pande (President, Vidarbha Industries Association).
6. CS Makarand Lele presenting a planter to CMA Amit Anand Apte (President, Institute of Cost Accountants of India).



7. ICSI Delegation meeting with S K Mohanty (Whole Time Member, SEBI).
8. ICSI Delegation meeting with Ananta Barua for felicitating him on his Appointment as Whole Time Member, SEBI.
9. ICSI Delegation meeting with Senior Officials of The Federation of Telangana and Andhra Pradesh Chambers of Commerce and Industry- Standing from Left: Arun Luharuka (President, FTAPCCI), CS Ahalada Rao V., CS Makarand Lele, Sanjay Kapoor (Secretary General, FTAPCCI), Karunendra S. Jasti(Sr. Vice President, FTAPCCI), CS Dinesh Chandra Arora & others.
10. CS Makarand Lele felicitating P.K.Gupta (Managing Director, SBI) at Annual Regional Conference of ICSI-Western Region 2018.
11. ICSI Chamber Connect Initiative - CS Makarand Lele Meeting with members of South Gujarat Chamber of Commerce at Surat.
12. Webinar on "Input Tax Credit – Tax Saver for Corporates & PCS" - Addressed by President CS Makarand Lele, guest speaker CS P. K. Mittal and Member of GST Core Advisory Group.



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13. ICSI Signature Award MOU signed between the ICSI and Sri Venkateswara University, Tirupati- Standing from Left: CS Ahalada Rao V., M. M. Nayak((IAS), CMD, AP Power Distribution Company Limited), Prof. R K Anuradha (Registrar, Sri Venkateswara University), CS Makarand Lele, CS Ramasubramaniam C, CS S Dhanapal .
14. ICSI 43rd Regional Conference of Company Secretaries at Hyderabad- Standing from Left: CS S Dhanapal, Prasanta Mahapatra (General Manager, SEBI Adjudication), CS Ramakrishna Gupta R, N Ramachandra Rao (MLC, Mahaboobnagar, Ranga Reddy, Hyderabad Graduates Constituency in Telangana), CS Makarand Lele, CS C. Parthasarathy (Chairman & MD M/s. Karvy), CS Ahalada Rao V., CS Ramasubramaniam C & CS Kavitha Rani S.
15. ICSI Signature Award Signed with Gujrat University, Ahmedabad- Dr. Bhartiben Pathak ( Head, Commerce Department of Gujarat University), CS Ashish Doshi, Dr. Himanshu Pandya (Vice-Chancellor, Gujarat University), CS Makarand Lele, CS Ankur Shah, A. K. Srivastava and officials of ICSI were also present
16. CS Makarand Lele on Opening of the 75th Study Centre of ICSI at Swami Vivekanand Govt. Commerce College, Ratlam
17. ICSI MOU with Noble Group of Institutions, Junagadh as 76th Study Center of ICSI.
18. ICSI holds 19th All India Student Conference at Ahmedabad- Sitting on dais from Left: CS Ashish Doshi, CS Makarand Lele, CS Ankur Shah & CS Amit kumar Jain.



19. Group photo of ICSI Members meet at Dubai during the session on Value Added Tax (VAT).
20. Group photo of ICSI Members meet at Oman.
21. ICSI delegation CS Shweta Kharangate & CS Makarand Lele meeting with Sandip Bhandare ( President, Goa Chamber of Commerce & Industry).
22. CS Makarand Lele inaugurating the newly renovated office of ICSI Goa Chapter.
23. RVO Educational course on valuation of Securities or Financial Assets: Address by Debajyoti Ray ( Chief General Manager, IBBI). CS Pradeep Debnath and CS Nitesh Kumar Sinha seen sitting on the dais.
24. Webinar on New Syllabus, 2017 (for students)- Sitting on dais from Left: CS Savithri Parekh (Chief Legal & Secretarial, Pidilite Industries Limited), CS S.Sudhakar (Vice-President (Corporate Secretarial), Reliance Industries Limited), CS Pavan Kumar Vijay, CS Kiran Chitale (Head-Legal Function, Barclays) and CS Gaurav Pingle.



***“Develop a standard for excellence. Without distinction there is extinction.”***

***~Jon Michail, CEO & Founder, Image Group International***



Dear Professional Colleagues,

While commending and holding the efforts of the founding fathers of the Institute of Company Secretaries of India and the profession in high regard, I sometimes wonder whether in all their foresightedness, they would have imagined that half a century down the line, the members of this prestigious Institute shall comprise half the populace of Company Secretaries of the entire globe or the fact that the Institute would garner a place of such respect and prominence or stand at such a pedestal where its each and every move, each and every step shall be looked up to by its peers internationally or that it shall become a key role player in moulding, shaping and re-shaping the governance scenario not only in the corporate arena but the entire nation as well.

Come to think of it, the road travelled for the Company Secretaries, whether in employment or in practice has been a long one. From being mere assistance providers to the Boards of corporates to heading dedicated Secretarial Departments; from filing forms and scanning documents with fine toothed combs for Secretarial Audit to coming across as valuable and indispensable Registered Valuers and Insolvency Professionals, this brigade of professionals is surprising the world with its wholehearted dedication towards the achievement of the vision and mission of good governance. It gives me immense pleasure to share that the Institute, too, like a diligent parent is not only vying newer opportunities and bases of operation but also keeping up pace with the changing scenarios and attempting to brace its members and students with the same.

A contingent of 3.5 lakh students who would very well be forming a part of the existing army need to be equipped with the best of best knowledge and practices being pursued in the economy. The course structure while being given a 360 degree turnaround has been brought to stand at a podium wherefrom it fulfils the ever enlarging needs of knowledge and acumen of these future professionals. Going a step further, and realising the fact that the profession and the professionals cannot be contained within the territories of this economy, the Institute has moved notches ahead by getting in touch

with UK NARIC. UK's National Recognition Information Centre provides fully comprehensive datasets on global qualifications and skills, and has created the unique and world-leading series of International Comparisons. The ICSI in its recent meeting with Ms. Abigail Jones of NARIC presented the Company Secretaryship Course Curriculum, to be identified with and validated and be made a part of the global dataset of qualifications. I am also very much hopeful that this strategic alliance shall provide greater academic and professional mobility to the members and create a better understanding of our worthy qualification.

If numbers are to be cited, a 55,000 strong brigade of professionals backed by an almost 6 times bigger one of students, the Institute has somehow aced its responsibility of capacity building for strengthening of governance structure as far as the Indian Diaspora is to be deliberated. However, without sounding cliché, it is quite evident that there are grounds to be conquered and as we move from corporate to national, its time we brought international governance in our line of sight. During my meetings and greetings with not only the who's who but the members of the Institute having established their bases in other nations, I am not only intrigued but deeply heartened and pleased with their zeal to strengthen the roots of the profession and the Institute thereat. The members are eager to form associations, chapters all of which shall go a long way in strengthening the presence of the Institute as well as the brand value of the members in the times to come...

While we at ICSI are constantly on a lookout to undertake value additive initiatives for the members and moreso, even other professionals entrusted with the task of safeguarding the interest of corporate stakeholders, the recent talks at the Corporate Secretaries International Association (CSIA) regarding the bringing home of the much celebrated Corporate Secretaries Toolkit, developed in partnership with International Finance Corporation (IFC), a member of the World Bank Group reiterates our intent. The toolkit provides trainers with materials and instructions for conducting training for



Corporate Secretaries and covers the full spectrum of a Corporate Secretary's role, functions and responsibilities, which are at the core of a company's governance structure and systems. It aims to clarify the duties of Corporate Secretaries, develop their skills and emphasise their role in developing good corporate governance practices in their organisations.

With the broader perspective and picture in sight, if one was to focus on the days to follow, the excitement just perks up. With theme '**A Journey of 50 Glorious Years – Connecting from Grassroots to Global**', the mega-event of the year '**Golden Jubilee Year National Convention of Company Secretaries**' (46<sup>th</sup> Edition) and '**Golden Jubilee Year International Conference**' (6<sup>th</sup> Edition) at **Bhubaneswar, Odisha** will surely be a time to remember. From having amongst us the top notch members of the Indian politico, business, industry, academic and spiritual world, the knowledge and insight, the and more so the opinion about the past present and future of the profession, nation and the world seems to be gushing... I sincerely look forward to having your presence at the largest city of Odisha, the land of Lord Shiva, Bhubaneswar !!!

If the future is bright and beautiful, the days gone by, too, have been quite satisfying... The month of July brought with it not only rains for the entire country but various moments worth reminiscing and meetings with learned people. Amongst these those which stand out are:

#### **National Conclave on Ethics and Governance:**

While the entire Team of ICSI is focusing its energies and efforts on improving the governance scenarios across the boundaries and beyond of the nation, it is an agreeable fact that what precedes good governance is ethical conduct and such an ethical conduct can neither be expected solely from corporate form of business ventures nor can be kept in hindsight. Understanding this requirement, the ICSI has developed a 'Code of Business Ethics', which is voluntarily applicable to all forms of business entities irrespective of their form and structure and even their nation of incorporation. Alongwith this, while in the initial attempts the Institute had adopted a motto finding its roots in the Indian scriptures and texts and had even rolled out a publication titled 'Governance Pearls from ancient wisdom', the need of the hour seemed to be bring out a well chalked out 'Corporate Governance Code from Ancient Scriptures' which not only acts as a guiding light for the corporates and professionals but also reiterates to the world that the culture of good governance in the Indian backdrop precedes any and every effort made in this regard. The Conclave at Tirupati also witnessed the beginning of a new era with the release of The Companies Act and Rules under the Institute's flagship, which shall act as the perfect ready reckoner giving ample room to even the most recent developments and amendments.

#### **Meetings with Dignitaries:**

Amongst my various meetings all the month through with heads of Institutions, professional bodies, regulatory authorities, etc. one which stood out was the rendezvous with Shri Dharmendra Pradhan, Hon'ble Minister of Petroleum & Natural Gas and Skill Development & Entrepreneurship, Government of India. It is the result of his guidance and path-lighting that the Institute is in the process of initiating three new Certificate Courses – Certificate Course on '*Certified Panchayat Raj Governance Professionals*', '*Certified Ethics and Governance Professionals*' and '*Certified CSR Professionals*'.

In another meeting with Dr. Subhash Chandra Khuntia, Chairman, IRDAI, while deliberating the fact that the area of Insurance

Regulation seems yet to be fully explored, various potential areas of association were deliberated upon. The constitution of a core committee comprising members belonging to the areas of both life and non-life insurance to discuss and opine on the areas of insurance regulation seems to be in sight. I am sure that the days to follow shall witness the members of this Institute as well as the Institute itself treading into new seas and territories and finding new homes...

#### **Infrastructure and beyond:**

Understanding the significant value of research orientation in any educational institution, the Institute had initiated the building of a Centre of Excellence in the city of Hyderabad which was inaugurated at the august hands of Shri Venkaiah Naidu, Hon'ble Vice President of India. It gives me immense pride to share with you that the Facilities have been commissioned at the Centre rendering it fully functional to assist the Institute and its members in soaring new heights.

The city of Goa, too, hogged limelight in the past few days for witnessing the refurbished and renovated presence. The inauguration of the renovated chapter in the heart of the capital city of Goa at Panaji was a delightful affair; the energy contagious and the zeal to move forward and create a mark for ourselves very much visible.

#### **ICSI Chamber Connect:**

Stephen Covey, an American educator, author and businessman, said and I quote, "*Synergy is what happens when one plus one equals ten or a hundred or even a thousand!*" Heeding to his advice, and understanding the value of connecting with institutions dissimilar, the ICSI has brought forth a unique initiative titled 'ICSI Chamber Connect'. In an attempt to keep up with the emerging new business, economic and regulatory paradigm, by capitalizing inherent strengths for mutual benefits and nation building, The Institute shall, under the aegis of this initiative, support chambers in ease of doing business and in implementation of governance and compliance among their corporate members .

The Golden Jubilee Year has bestowed upon us not just millions of moments to cherish and remember but also has placed before us an assortment of opportunities, ones if chosen judiciously and utilized to the hilt shall place not just the professionals but the entire profession as well as the Institute for the world to see and take cues and guidance from. While we at ICSI are forever putting our best foot forward to create a brand image befitting the tasks and responsibilities entrusted upon us, it is upto the professionals, the members of the Institute to conduct themselves in a manner that the name speaks for itself. I, standing at the helm of affairs of the Institute would like to see brand reaching newer heights... For as Jeff Bezos, CEO & Founder, Amazon puts it, "*Your Brand is what other people say about you when you're not in the room*". Happy Reading!!

Best wishes.

Yours Sincerely



August 04, 2018  
New Delhi

CS Makarand Lele  
President, ICSI

# Recent Initiatives taken by ICSI

In furtherance to details published in the Chartered Secretary, we are pleased to share the following initiatives taken by the Institute during the month of July 2018:

## 1. Meeting with Dignitaries

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

- Shri Dharmendra Pradhan, Hon'ble Union Minister of Petroleum and Natural Gas, Skill Development and Entrepreneurship, Government of India.
- Shri Dnyaneshwar M. Mulay, Secretary (CPV & OIA), Ministry of External Affairs, Government of India.
- Shri Shailendra Singh, Additional Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.
- Shri S.K. Mohanty, Whole Time Member, Securities and Exchange Board of India.
- Shri Ananta Barua, Executive Director (Recently Appointed – Whole Time Member), Securities and Exchange Board of India.
- Brigadier H.S. Kahlon, Deputy Director General, Rehabilitation & Welfare Section, IHQ of MoD (Army)
- Colonel R.K.Nayar, Rehabilitation & Welfare Section, IHQ of MoD (Army)
- Shri Atul Pande, President, Vidarbha Industries Association.

## 2. ICSI Capital Markets Week, 2018

In order to strengthen the structure of good governance in the capital market leading to a balance between economic and social goals, the Institute has been observing Capital Markets Week annually as one of the mega events throughout the country. Taking this initiative forward in the Golden Jubilee Year of the Institute, the 'ICSI Capital Markets Week – 2018' was organised during July 23-29, 2018, on the theme 'Global Contours of Capital Market: Signpost of Good Governance'. Mega programs were organised at Kolkata, Chennai, Nagpur and New Delhi.

The mega program at Nagpur during the Capital Markets Week, was observed as National Infrastructure & Capital Market Summit on July 28, 2018. Following publications of the Institute were released during the Capital Markets Week, 2018:

- Company Secretary – A Professional Catalyst in Capital Markets
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015- A Brief Analysis

## 3. ICSI CHAMBER CONNECT

The ICSI and Chambers of Commerce and Industry, as institutions, need to keep pace with emerging new business, economic and regulatory paradigm, by capitalizing inherent strengths for mutual benefits and nation building. It is in this direction with the objective of creating synergy between the industry and professionals and support the implementation of various policy initiatives of Government of India, ICSI has launched a new initiative 'CHAMBER CONNECT'. The Institute will support chambers in ease of doing business and in implementation of governance and compliance among their corporate members. It will also support MSME category members in all legal, financial and governance aspects and undertake industry specific joint workshops/seminars and research project and training programmes on Company law, Corporate Governance, Corporate Social Responsibility (CSR), GST etc. The Chambers and ICSI will facilitate representation of their members on various Committees and participation in National/ International Conferences on reciprocal basis. It will also support exchange of Journals, case studies, research publications and other academic and research inputs

## 4. Symposiums on Quality of Professional Services

The profession of Company Secretaries has witnessed exponential growth over the years. With the elevation of the profession of Company Secretaries as 'Key Managerial Personnel' under the Companies Act, 2013, Company Secretaries are poised to act as conscience keepers of the corporate world. The reliance that the regulators placed on practicing professionals today, bears testimony to the fact that Company Secretaries as extended arms of the regulators, need to rise to shoulder this onerous responsibility, by adhering to the highest standards of ethical and professional behavior and professionalism while rendering professional services.

Under this perspective and with a view to improving the quality of professional services rendered by the members, the Quality Review Board of the Institute decided to organize a series of 'Symposiums on Quality of Professional Services' at various locations throughout the country.

The first Symposium in the series was held at Kolkata on July 14, 2018 and second such symposium was held at New Delhi on July 21, 2018. More such symposiums are scheduled to be held at other locations of the country.

## 5. ICSI National Conclave on Ethics and Governance

The Institute, with an aim of aligning its dynamism,

efforts and energies towards transforming governance culture on one hand and steady significance of ethics at workplace on the other, organised a National Conclave on Ethics and Governance during July 13-14, 2018 at Tirupati on the theme 'Professional Ethics – Need of the Hour'. Shri M.M. Nayak, Chairman and Managing Director, Andhra Pradesh Power Distribution Co. Ltd., addressed the participants as the Chief Guest. Following ICSI Codes and Publications touching upon the varied areas of Ethical Conduct and Good Governance were released to commemorate the event:

- Code of Business Ethics
- Corporate Governance Code from Ancient Scriptures
- The Companies Act, 2013 and The Companies Rules

**6. Golden Jubilee Year – 19th All India Students' Conference**

In order to build the capacities of its students in the emerging areas of compliance and governance, the Institute organises All India Students Conferences every year capturing the contemporary theme of professional interest. This year, the Golden Jubilee Year–19th All India Students' Conference was held on July 21-22, 2018 at Ahmedabad, Gujarat. National Level Student Conference was aptly deliberated on the theme of 'Building Strength, Empowering the Future' and endowed the students with an opportunity to interact with their fellow students, Institute's Officers and experts on related subjects.

**7. Webinar on Prevention of Sexual Harassment of Women at Workplace**

With a view to create awareness and to sensitize the members, particularly the female members in employment as well as in practice about the Prevention of Sexual Harassment of Women at Workplace Act and latest judicial pronouncements, the Institute organised a webinar on 'Prevention of Sexual Harassment of Women at Workplace' on July 14, 2018. CS Raqshanda Niazi, Chairperson and CS Rachna Roy, Member of the ICSI Taskforce on Prevention of Sexual Harassment of Women at Workplace addressed the webinar and interacted with members and students, to clarify queries.

**8. Webcast for Students on Pre-Exam Test under New Syllabus**

A Panel of Experts including CS Pavan Kumar Vijay, Past President, ICSI and Senior Officials of the Institute addressed the students via a webcast organised on July 14, 2018. The deliberations during the webcast focused on concerns of students pertaining to Pre-Exam Test under New Syllabus. The queries received from the students were also

answered by the experts during the webcast.

**9. Webinar on Input Tax Credit – Tax Saver for Corporates & PCS**

The Institute as part of its capacity building of its members organised a webinar on 'Input Tax Credit – Tax Saver for Corporates & PCS' on July 6, 2018 at New Delhi. CS Makarand Lele, President, ICSI addressed the webinar and technical session was addressed by guest speaker CSP.K. Mittal, Member, ICSI-GST Core Advisory Group. The webinar was viewed by members and students in large number and the queries raised by the participants were well addressed by the speakers.

**10. ICSI GST Newsletter**

July – 2018 Issue of GST Newsletter (Volume- 16), was released in the first anniversary month of GST.

**11. ICSI GST Educational Series**

The GST Educational Series, one of the capacity building initiatives of the Institute in the regime of GST, has been brought out with more than 290 issues so far. All the issues of GST Educational Series are available on the GST Corner of the Institute's website at <https://www.icsi.edu/GSTEducationalSeries.aspx>.

**12. ICSI GST Point**

The ICSI GST Point as a uniform platform to reply to the queries, difficulties and challenges faced by consumers, manufacturers, traders, MSMEs, public at large, professionals, etc. in understanding the various nuances and implementation of the Goods and Services Tax Law has successfully conducted Ninety-Nine (99) sessions till date. The GST Point is receiving tremendous response from all stakeholders with the queries resolved by experts over a wide range of topics including registration, filing, and input tax credit along with other GST modalities.

**13. ICSI GST App**

The ICSI GST App which enables users to get latest news, articles, regulations and various publications on GST by the Institute has 19081 active users and is available on the android platform as well as iOS.

**14. ICSI Convocation, 2018 – Northern Region**

The Institute is in process of awarding Certificate of Membership to the Associate members admitted during the period from October 1, 2017 to March 31, 2018 and to the Fellow members admitted during the period from September 6, 2017 to March 31, 2018, along with presenting prizes/medals to meritorious students (National) and winners of national level competitions.

Subsequent to the successful conduct of ICSI Convocations (Region-wise) in the Eastern and

Western regions, the first round of bi-annual Northern Region Convocation, 2018 was successfully held at the Siri Fort Auditorium, New Delhi on July 15, 2018 in two sessions.

- First Session of ICSI Northern Region Convocation was honored with the gracious presence of Shri Birender Singh Chaudhary, Hon'ble Union Minister of Steel, Government of India as the Chief Guest and Shri Vijay Goel, Hon'ble Union Minister of State for Parliamentary Affairs, Government of India as the Special Guest.
- Second Session of ICSI Northern Region Convocation was graced with the benign presence of Shri Sunil V. Deodhar, National Executive Member, BJP as the Chief Guest and with Dr. P R Trivedi, President, Confederation of Indian Universities as the Guest of Honour.

#### 15. 75th Study Center under ICSI Study Centre Scheme

In order to break the distance barrier for students belonging to cities/locations in which the representative offices of the Institute are not in existence, the Institute has come up with the Study Centre Scheme, wherein Study Centres are established in collaboration with reputed colleges in different locations. Taking this initiative towards proud laurels, the month of July, 2018 has witnessed the opening of 75th Study Center of ICSI at Swami Vivekanand Government Commerce College, Viriyakhedi, Ratlam, Madhya Pradesh. Another center was opened at Bhartiya Siksha Sankul, Chandpura, Sikar, Rajasthan.

#### 16. ICSI Student Month, 2018: A Tale of Accomplishment

The month of July is celebrated as Student Month throughout the country every year, with the aim at the inclusive development of students through their engagement in various activities organised by the Institute. Taking this initiative forward, this year too, several activities for the students have been organised during ICSI Student Month, 2018 on Pan India basis at Regional and Chapters offices of the Institute. Indicative details of some major activities of Student Month is as under:

- Blood Donation Camp were organised across India to pay tribute and to honor the doctors who save millions of lives.
- Career Awareness Week has been observed during the month. Further, in order to create awareness about the profession of company secretaries, special interactive sessions have been conducted in various colleges Pan India.
- Class Room Teaching has uniformly commenced at Regional/Chapter Offices, along with arranging Faculty Induction Program to enhance the quality of coaching imparted to the students.
- Kargil Vijay Divas was observed with organising an essay writing competition on the theme 'Due Diligence in Armed Forces'.

- Online Quiz was held for students during the month on daily basis, wherein thousands of students participated.
- Orientation Program and Guidance Sessions with the assistance of corporate houses were organised for students.
- Parent-Students Meet were arranged to recognize the contribution of parents in supporting the students during the course of their career.
- Samadhan Divas as a special day for Grievance Redressal was arranged, wherein each and every office of ICSI and Call Centre ensured zero pendency of complaints.
- Student Competitions including Elocution Competition, Quiz Contests, Moot Court Competition, Essay Writing Competition, PowerPoint Competitions, Video Byte Competitions and like were organised.
- In our complete solidarity with 'Swatch Bharat Abhiyan' of the Government, Cleanliness drives were organised in the Regional / Chapter Offices of the Institute.
- Training Programs on Communication and Soft Skills were held for sharpening and empowering Communication / Soft Skills of the students as a professional.
- 'Van Mahotsav Divas' was organised to create awareness among the stakeholders on adopting sustainable development and the need for undertaking 'Go Green' activities wherever feasible to save Mother Earth for the sake of future generations.

#### 17. Award Ceremony of CS Olympiad

In order to create awareness amongst the students about CS Course along with enhancing the brand value of ICSI, 2nd International Company Secretaries Olympiad (ICSO) Prize award ceremony took place at Kendriya Vidyalaya, Hyderabad and Delhi Public School, Hyderabad followed by Career Awareness Programs on July 23, 2018 and July 25, 2018 respectively.

Subsequently, Zonal Award Ceremony and a Career Awareness Program were held at Presentation Convent Sr. Sec School, Jammu on July 27, 2018.

#### 18. ICSI Signature Award Scheme

ICSI Signature Award, which aims at felicitate the top rank holders in B.Com. Final Examinations in reputed universities and also specialized programmes / papers of IITs / IIMs with the award of a Gold Medal and a Certificate, has been instituted in Twenty Two (22) Universities with Thirteen (13) Gold Medals being awarded under this scheme. During the month of July 2018, two MoUs have been signed with the following universities:

- Sri Venkateswara University, Gandhi Road, Tirupati, Andhra Pradesh.
- Gujarat University, Navrangpura, Ahmedabad, Gujarat.



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**CS Makarand Lele**  
President  
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# ICSI National Conclave on Ethics and Governance at Tirupati 2018



# ICSI National Conclave on Ethics and Governance at Tirupati 2018



# ICSI Capital Market Week 2018

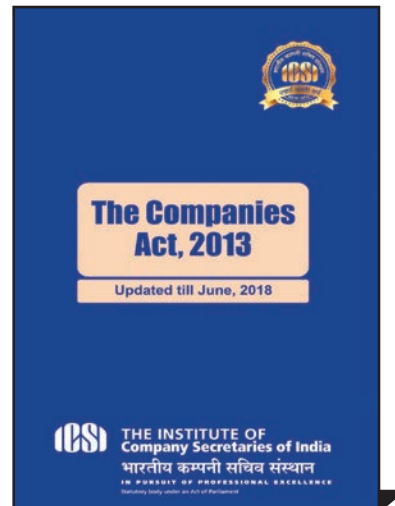
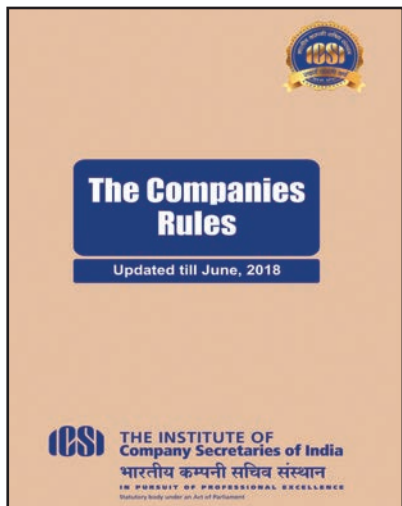
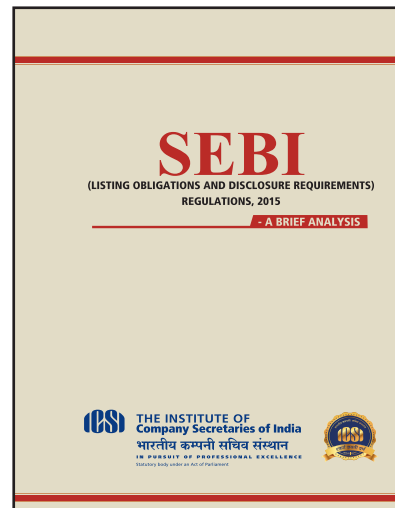
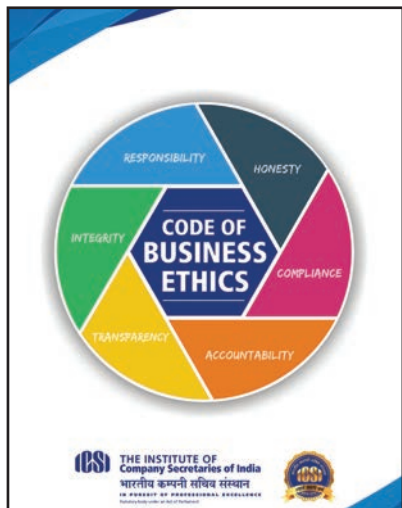
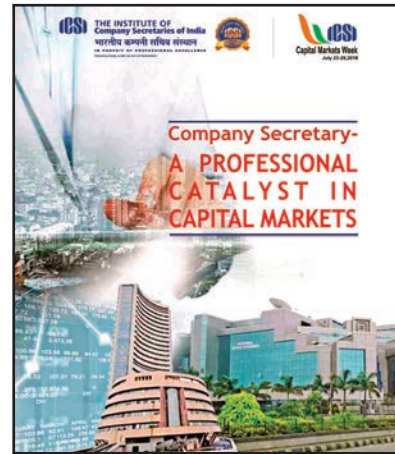




# ICSI Capital Market Week 2018



# Publications released in Capital Market week & National Conclave



# ICSI Convocation Ceremony 2018 Northern Region



# ICSI - RVO Educational Course on Valuation of Securities or Financial Assets at ICSI-SIRC





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The **7 days 50 hour**  
**course** shall be spread over  
two weeks as follows:  
**17th to 20th August, 2018**  
**and**  
**25th to 27th August, 2018**

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Regards,

**CS Makarand Lele**  
President, The ICSI

# Business Reform Action Plan

## Business Reform Action Plan

Department of Industrial Policy and Promotion (DIPP) has spearheaded a dynamic national level exercise that commenced in 2014 to rank all the States/UTs in the country basis the reforms undertaken by them on designated parameters. The aim of this exercise is to create a conducive business environment by streamlining regulatory structures and creating an investor-friendly business climate by cutting down red tape.

In 2017, a 372 point Business Reform Action Plan (BRAP) was developed and shared with States and UTs. New sectors were added, based on the insights gained from previous plans, such as Healthcare and Hospitality, Central Inspection system, Trade License, Registration under Legal Metrology and Registration of Partnership Firms & Societies.

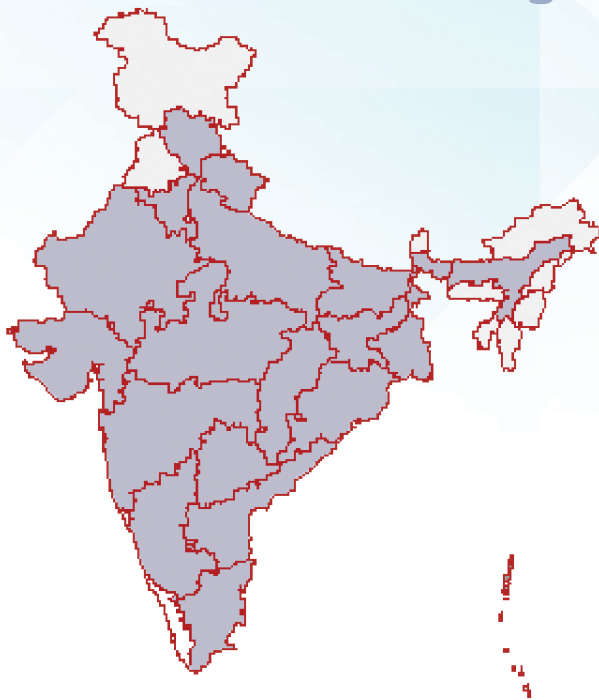
DIPP had taken numerous outreach and capacity building initiatives such as conducting capacity building workshops, arranging dedicated video conferences for North Eastern States, identification of easily implementable reforms and assigning leader States to help States/ UTs with lower implementation perform better.

An important addition to the assessment methodology under BRAP 2017 has been the inclusion of feedback exercise. Feedback was taken on 78 reform points from designated users for which the respondent data was provided by States/UTs. More than 5,000 private sector users in 23 States/ UTs including more than 4,300 businesses and 800 architects, lawyers and electrical contractors were interviewed.

Impact of the above reform initiatives over the years has been far reaching. 7,758 reforms were implemented with a national average of 60.21% in 2017-18 which is significantly higher than the average of 48.93% in 2016. 17 States/UTs have implemented more than 90% of the reforms. Few major impacts witnessed across areas are as follows:

- 22 States have reduced the number of documents required for obtaining electricity connection to only 2
- 12 States have created an online single window system for uploading building plans and providing construction permits
- 21 States have digitized land transaction deeds of last 2 years at all sub-registrar offices
- 19 States have established specialized Commercial Courts in major towns/clusters in the State

## “States Giving Wings to India’s Progress”



**A Combined score (reform evidence and feedback score) of greater than 80% achieved by 18 States represents**

**90 % of India’s population**

**84 % of India’s geographical area**

**79 % of India’s GDP**

### The third iteration of DIPP’s annual assessment of business reforms implemented by States and Union Territories

- Feedback was introduced in BRAP 2017-18 to garner effectiveness of reforms on-ground
- More than 5,000 users spread across 23 States/UTs were interviewed
- Respondents included new and existing businesses, architects, lawyers and electrical contractors
- BRAP 2017-18 witnessed a national average of 60.21%, a significant jump over previous years’s national average of 48.93%
- 7,758 reforms were implemented

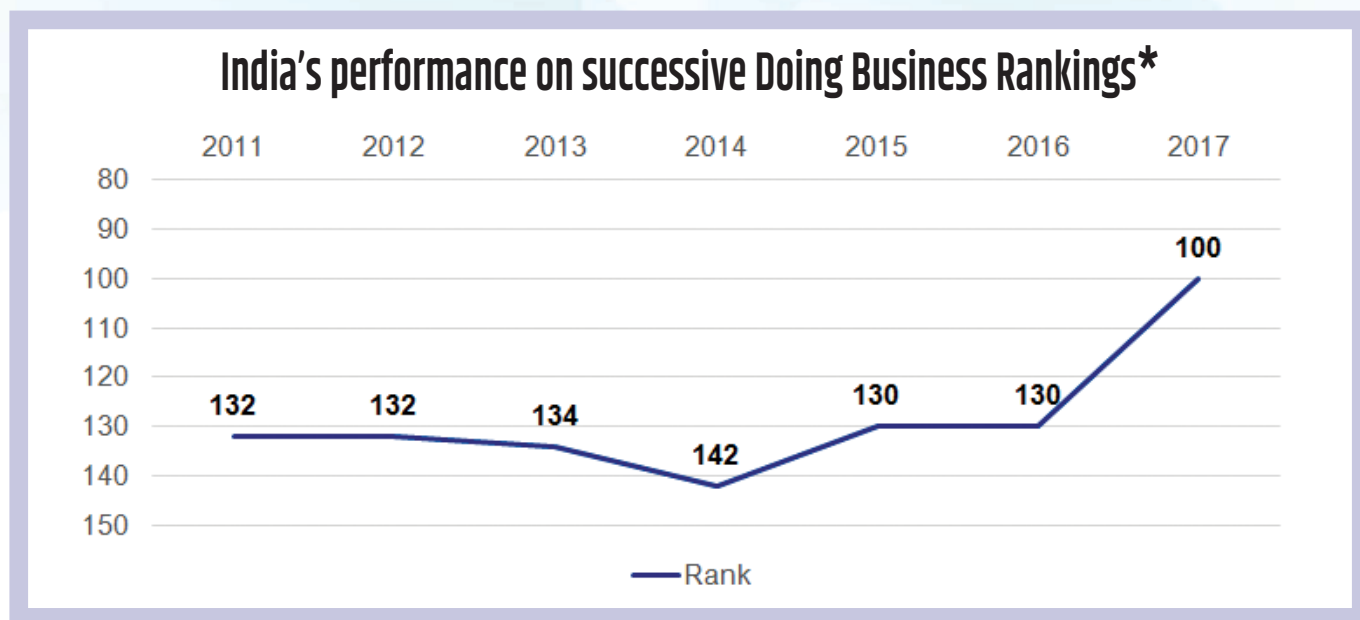
# Doing Business Achievements

## Ease of Doing Business Achievements

India ranked 100 in the Doing Business Report (DBR) 2018. This edition of the report acknowledges India as a top improver, with an improvement of 30 ranks compared to last year's rank of 130, the highest jump in rank of any country in the DBR, 2018. India is the only country in South Asia and BRICS economies to feature among most improved economies of the DB Report this year. India is amongst the top 30 economies of the world on 3 of 10 indicators, 4th in Protecting Minority Investors, 29th rank in Getting Credit and again 29th rank in Getting Electricity. The DBR is an assessment of 190 economies and covers 10 indicators which span the lifecycle of a business. India has improved its rank in 6 out of 10 indicators and has moved closer to international best practices (Distance to Frontier score).

India made starting a business faster by introducing a single form SPICe (Simplified Proforma for Incorporating Company electronically) by merging five different applications i.e. Name reservation, Company incorporation, Director Identification Number (DIN), Permanent Account Number (PAN) and the Tax Deduction/Collection Account Number (TAN). Also, getting construction permits has been made easier by implementing an online system that has streamlined the process at the Municipality of New Delhi and Municipality of Greater Mumbai. Payment of taxes has also been made easier by making electronic payment of Employee Provident Fund (EPF) mandatory and introducing a set of administrative measures easing compliance with corporate income tax. In Mumbai, import border compliance time has been reduced by improving infrastructure at the Nhava Sheva Port. To further streamline the process of contract enforcement National Judicial Data Grid has been introduced, which makes it possible to generate case measurement reports for local courts. India has adopted a new Insolvency and Bankruptcy Code that has introduced a reorganization procedure for corporate debtors and facilitated continuation of the debtor's business during insolvency proceedings.

**The DOING BUSINESS project provides objective measures of business regulations for local firms in 190 economies.**



- ◆ Biggest improver in the World in terms of improvement in rank
- ◆ Best performance of India since inception of World Bank's Doing Business project in 2003
- ◆ India is among top 5 improvers
- ◆ India records highest jump in Rank (30 ranks) among evaluated economies
- ◆ India is the only country in South Asia and BRICS economies to feature among most improved nations
- ◆ India ranks among top 30 in 3 indicators
- ◆ India has inched closer to international best practices on all 10 indicators
- ◆ India's rank improved in 6 out of 10 indicators

**Source: Department of Industrial Policy & Promotion, Ministry of Commerce and Industry**

## Part I

Articles on New dimension of Inbound and Outbound investment

## Harmonizing Host State's Sovereign Right to Regulate with its Obligations to Protect Foreign Investors under International Investment Laws

29

(Dr.) C . L. Bansal

International investments are imperative for economic development but these must be subject to the need to strike a balance between the sovereign rights of the host country to regulate foreign investors for safeguarding its national interests. This objective can be realized while complying with various principles of international customary law such as protection against appropriation, fair and equitable treatment, non-discrimination, MFN status, facility of repatriation of proceeds with right to seek arbitration against alleged breach of any of these guarantees. Only after the initial euphoria was over did the emerging countries realize the need to prevent negative fallout of too liberal provisions in their bilateral investment treaties. Towards this end, India has adopted a two-pronged approach. It has firstly repudiated various one sided BITs with a right to renegotiate them. Secondly, the country has formulated a Model BIT, 2015 for the protection of its national interests. Nonetheless, the provisions relating to the resolution of investor- state disputes through arbitration have been retained. The overall objective behind these changes in public policy relating to international investment has been to facilitate the development of an eco-system which would be conducive to promoting the unhindered flow of foreign investment in the host state.

## Tax Perspective for Inbound and Outbound Investments

34

Chhaya Kakadia

The article highlights the tax perspective for inbound and outbound Investments in India and impact of the determined decisions taken by Indian Government in the form of liberalisation and revamping of relevant corporate laws/regulations in order to compete in the global environment. Simultaneously tax payer are free to structure their business in the most efficient manner which is tax-optimum and legally compliant and organize his affairs in a manner so as to minimize taxation cost by using the Treaty Shopping under DTAA. However, such liberalisation gives rise to usage of mechanism to structure the business within the four corners of law which consequently results into tax avoidance. In response to this the countries react by providing certain 'poison pills' within its DTAA's or domestic tax systems. Further, the impact of

uncertain macroeconomics trend due to liberalisation end up corporate to undertake inorganic expansion.

## FDI Policy in India – Latest Changes and Emerging Issues

38

Mikil Gohil

Sectoral analysis is expected to enhance the understanding of industry specific FDI flows and its associated determinants. Thus, the overall significance of the model specified in this study would contribute to a greater understanding of the FDI determinants in the emerging markets, as well as, the findings of this study would also lay emphasis on the importance of liberalisation and economic policy reforms. It can be observed from the above analysis that at the sectoral level of the Indian economy, FDI has helped to raise the output, productivity and export in some sectors & to critically analyse the trend in FDI in select sector as to pave the way for the efficient implementation of various sectors under the government preview.

## Evolution of India as an Investment Hub with Ease of Doing Business

43

Mukesh Kumar Karna &amp; Kalyani Karna

According to the report of Forbes, India will be the third largest economy of the world in 2020. Indian economy seems better placed to reach new heights. The economists feel that problem of governance is the biggest constraint to achieve our development goals. Make in India program was launched when India was at the brink of economic failure. It is an unparalleled overhaul of policies and procedures. The "Make in India" program has been formulated to transform India into an investment hub. Whether it is Make in India or Make for India, the cost and ease of doing business is relevant. The foreign players will be attracted to make in India with ease of doing business. This article throws light on India's footing on the ground of ease of doing business and comparative analysis with country at top to gauge the areas of improvements.

## FDI: Indian Government's Prominent and Paramount Initiatives to Make India as a Global Investment Hub

47

Pradeep Kumar Ray

India is on its way to become the world's largest economic power. The way India is being looked upon by other countries all over the world, the way India is liberalizing its foreign investment policies, the way India is opening up its economy, this will happen in the very near future. Today, NRI investments in our country are treated as local investments. This is a great boost to all NRI investors who are viewing this as a big opportunity to invest back in our country. To attract greater investment, both the Centre and the states need to ensure that ease of doing



good business converts to the pleasure of doing business to enhance happiness index of entrepreneurs.

## Foreign Direct Investment Law & Policy in India – Latest Changes and Emerging Issues

53 ➤

Dr. Rajkumar S. Adukia

The Government of India, within the frameworks of the Foreign Exchange Management Act (FEMA), 1999, Rules and Regulations, formulates the Foreign Direct Investment Policy (FDI). Currently the FDI Policy effective from August 28, 2017 is in force. It was last amended on January 10, 2018. The flow of foreign exchange in India is governed by the Foreign Exchange Management Act (FEMA), 1999. FEMA is a regulatory mechanism that enables the Reserve Bank of India to pass Regulations and the Central Government to pass Rules relating to foreign exchange in tune with the Foreign Trade Policy. Foreign Direct Investment in India is regulated by the FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 and the Foreign Direct Investment Policy framed by the Government, in accordance with the provisions of the Act, Rules and Regulations. The importance of FDI in the economic growth and development of the nation cannot be underestimated, and hence it becomes important for company secretaries to understand and practice the laws and regulations related to foreign investments in India.

## Evolution of India as the Perfect Global Investment Hub

57 ➤

Srishti Vajpayee

The article discusses regulatory framework of foreign direct investment and foreign portfolio investment in India along with the recent developments in the related laws. It also deliberates on the pattern of the foreign investment in India in past few decades while making comparison of the same with other developing economies of the world. The article also presents the scenario of investment in different sectors and areas of the country. Most importantly, it examines and advocates the factors, relying upon which India can be considered as the best global investment hub where the investors of the foreign countries can safely park their funds for better returns.

### Part II

Other Articles

## A Critical Analysis of Section 90 of the Companies Act 2013

65 ➤

Dr. K R Chandratre

Section 90 of the Companies Act 2013, as substituted by the Companies (Amendment) Act 2017 read with Companies (Significant Beneficial Owners) Rules,

2018, requires shareholders who are 'significant beneficial owners' of shares, to make a declaration to the company, specifying the nature of his interest and other particulars, if they hold beneficial interest of not less than twenty-five percent or a lower percentage prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control over the company. It also requires the company which has received such declaration, to maintain a register of the interest declared and changes therein and to file a return of significant beneficial owners of shares so declared. The section has far-reaching effect but it poses interpretational challenges for the shareholders as well as the companies. The article attempts to unfold the true interpretation of the section.

## Demutualization & Listing of Stock Exchanges in India

70 ➤

Dr. Anil Kumar, Shweta Yadav & Gautam Kumar

Demutualization of stock exchange is a process in which a non-profit mutually owned exchange gets converted into for-profit investor owned corporation. With demutualization, the listing of stock exchange becomes the next imminent step for raising funds for upgrading technology. The listing dynamics of stock exchanges are different from the listing dynamics of a company because stock exchange acts as a regulator of the activities of those companies which are listed on its platform. This article evaluates the different alternatives with a stock exchange and global practices on listing of stock exchanges. It also examines the regulations in India on demutualization and listing of stock exchanges and the emerging scenario. While BSE is listed on NSE, NSE is yet to be listed but various issues raised by NSE for a listing arrangement of their choice are worth mentioning. It is commendable that both BSE and NSE are complying with the relevant rules and regulations laid down by the SECC Regulations, 2012 and LODR, 2015.

## Real Estate Investment Trusts (REITs) – An Innovative Concept For Real Investors

75 ➤

Mithun B. Shenoy

Real Estate Investment Trusts (REITs) being Trust registered under Indian Trusts Act, 1882 functions akin to Mutual Funds wherein pooled funds received from the unit holders against units issued, will be invested in revenue generating commercial properties. All the units issued through public issue shall be listed on the stock exchanges. REIT has to distribute dividend amounting to 90% of income accrued from its revenue to the unit holders. The term "REIT" as per Regulation 2 (zm) means a Trust registered as such under SEBI (Real Estate Investment Trusts) Regulations, 2014 as amended. With the latest amendments in SEBI (Real Estate Investment Trusts) Regulations, 2014, real estate developers are offered with liquidity option and the investors with an opportunity to participate in the realty market's growth. REIT Amendment Regulations (amended in the year 2016, 2017 and 2018) shall foster Indian real estate market in coming years.

## Research Corner

P-81

## The Existing Shape of Inbound FDI in India: Deterrents and Initiatives

82

Dr. Tapas Kumar Roy

India, the largest democracy of the world, has the potential to be the major destination for Foreign Direct Investment (FDI). The main advantages with India are the huge market and large pool of human resources. Therefore, India needs to improve its business climate in order to stay attractive to MNCs. Fortunately, as the existing Government is keen to increasing incoming FDI; it has been taking several steps to become attractive destination of Foreign Investment. This paper will assess the existing state of India's Inbound FDI; evaluate India's performance in global platform, ranking of India in two global indices, role of existing Government for increasing Inbound FDI and finally suggesting the ways forward to increase Foreign Investment.

## ICSI – CCGRT INVITES

### Research Papers on "Champion Sectors"

92

## Legal World

P-95

- **LMJ: 08:08:2018** Mere appointment of a Receiver in respect of certain shares of a company without more cannot, therefore, deprive the holder of the shares whose name is entered in the Register of Members of the company the right to vote at the meetings of the company or to issue a notice under section 169 of the Act. [SC]
- **LW 56:08:2018** The appellant being a principal employer was liable to pay the compensation to the respondent No. 2 on account of permanent disablement suffered by him during and in the course of his employment with the appellant. [J&K]
- **LW 57:08:2018** The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. [SC]
- **LW 58:08:2018** CCI orders investigation into the liquor procurement policy adopted by the OPs based on the complaint alleging abuse of dominance.
- **LW 59:08:2018** CCI dismisses the complaint, filed against oil marketing companies, alleging that they formed cartel in hiring tank trucks for transporting oil.
- **LW 60:08:2018** There is nothing in the law which requires the Tribunal to assess the income of the deceased only on the basis of a salary certificate for arriving at a just and fair compensation to be paid to the claimants for the loss of life. [SC]
- **LW 61:08:2018** In the present case, it is clear that the wording of the Agreement, as has been held by us above,

is clearly inconsistent with the view that the Agreement intended that disputes be decided by arbitration. [SC]

- **LW 62:08:2018** We are of the considered opinion that the appellant is not covered by the definition of local authority as contained in Explanation to Section 10(20).[SC]
- **LW 63:08:2018** In this case, the adjudicating authority adopted the proportionate percentage to the turnover method approach, which in this Court's opinion, is reasonable. [DEL]

## From the Government

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- Companies (Registration Offices and Fees) Third Amendment Rules, 2018
- Companies (Registration of Charges) Amendment Rules, 2018
- Companies (Authorised to Register) Second Amendment Rules, 2018
- Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018
- Companies (Acceptance of Deposits) Amendment Rules, 2018
- Companies (Incorporation) Third Amendment Rules, 2018
- Companies (Accounts) Amendment Rules, 2018
- Date of coming into force of the provisions of Section 20 of Companies (Amendment) Act, 2017
- Date of coming into force of the provisions of Certain Section of Companies (Amendment) Act, 2017
- Date of coming into force of the provisions of Certain Section of Companies (Amendment) Act, 2017
- Date of coming into force of the provisions of Section 36 of Companies (Amendment) Act, 2017
- Constitution of Committee to review the offences under the Companies Act, 2013
- Review of Adjustment of corporate actions for Stock Options
- Core SGF and standardised stress testing for credit risk for commodity derivatives
- Discontinuation of acceptance of cash by Stock Brokers
- Investment by Foreign Portfolio Investors (FPI) through primary market issuances
- Strengthening the Guidelines and Raising Industry standards for RTAs, Issuer Companies and Banker to an Issue - Clarification

## Other Highlights

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- Members Restored During The Month of June 2018
- Certificate of Practice Surrendered During The Month of June 2018
- Council / Regional Councils Elections – 2018
- Extension in the Last Date for Payment of Annual Membership Fee For the Year 2018-19
- Extension of Last Date of Payment of the Annual Subscription for Licentiate for 2018-19
- ICSI Convocation – 2018
- Ethics & Sustainability Corner
- GST Corner
- CG Corner
- ICSI Global Connect
- NATIONAL Convention of Company Secretaries (46<sup>th</sup> Edition)

# 1

## ARTICLES



- HARMONIZING HOST STATE'S SOVEREIGN RIGHT TO REGULATE WITH ITS OBLIGATIONS TO PROTECT FOREIGN INVESTORS UNDER INTERNATIONAL INVESTMENT LAWS
- TAX PERSPECTIVE FOR INBOUND AND OUTBOUND INVESTMENTS
- FDI POLICY IN INDIA – LATEST CHANGES AND EMERGING ISSUES
- EVOLUTION OF INDIA AS AN INVESTMENT HUB WITH EASE OF DOING BUSINESS
- FDI: INDIAN GOVERNMENT'S PROMINENT AND PARAMOUNT INITIATIVES TO MAKE INDIA AS A GLOBAL INVESTMENT HUB
- FOREIGN DIRECT INVESTMENT LAW & POLICY IN INDIA – LATEST CHANGES AND EMERGING ISSUES
- EVOLUTION OF INDIA AS THE PERFECT GLOBAL INVESTMENT HUB
- A CRITICAL ANALYSIS OF SECTION 90 OF THE COMPANIES ACT 2013
- DEMUTUALIZATION & LISTING OF STOCK EXCHANGES IN INDIA
- REAL ESTATE INVESTMENT TRUSTS (REITS) – AN INNOVATIVE CONCEPT FOR REAL INVESTORS

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3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/ argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
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  - a. the article titled"....." is my original contribution and no portion of it has been adopted from any other source;
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  - c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

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# Harmonizing Host State's Sovereign Right to Regulate with its Obligations to Protect Foreign Investors under International Investment Laws

The primary focus of the article is to highlight the principles and strategies which the countries hosting international investments need to adopt to harmonize their national interests with the need to protect the international investors. Towards this end, India has recently revoked many of its bilateral investment treaties with a view to re-negotiate them in conformity with its 2015 Model Bilateral Treaty Framework.



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New Delhi  
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## INTRODUCTION

**F**oreign investment involves the transfer of tangible or intangible assets from one country into another with the objective of generating wealth for the owner of those assets [M. Soranjah, 2007; Trakman, 2009]. These represent long-term investment by a foreign entity in the host country [N. McCloud, 2012] and may be made in a variety of ways like a joint venture or strategic alliance; Greenfield investment; direct investment in infrastructure or acquisition of new facilities. Besides investing foreign funds, these also introduce new management skills, linkages with world markets and transfer of technology, increase of productive capacity and employment, and also lead to integration of economies. International and domestic laws and legal institutions play an important role in the growth of FDI. The prevalence of financial development and political stability in a country is a major factor in attracting FDI in an efficient manner. Since states reserve the exclusive right to define and decide what constitutes foreign investment, much depends on the wording used in Bilateral Investment Treaties (BITs), regional trade agreements or investor-state investment agreement. For over three decades, various countries including India have tweaked their public policies to attract FDI through BITs. These bilateral treaties have been consonant with the principles of international customary law guaranteeing the foreign investors protection of their investments against appropriation, fair and equitable treatment at par with domestic firms, non-discrimination, MFN status, and facility of repatriation of proceeds. The foreign investors could seek arbitration for alleged breach

of any of these guarantees. But recently many of the developing countries had to wriggle out of BITs as these conflicted with their national interests. For instance, India has adopted a two-pronged approach to firstly repudiate about 58 of the one sided BITs with a right to renegotiate them. In addition, India has formulated Model BIT, 2015 for protection of its national interests while retaining the provisions relating to the resolution of investor-state disputes through arbitration.

## OBJECTIVE

This article has analysed the ways to bring about a balance between the sovereign right of the host country to regulate the accountability of MNCs and foreign investors for safeguarding its national interests along with those of the foreign investors. It will facilitate the development of an ecosystem which would be conducive to promoting the unhindered flow of foreign investment in the host state.

## EVOLUTION OF INTERNATIONAL INVESTMENT LAW

After the Second World War, international investment law existed mainly in the form of Friendship, Commerce and Navigation (FCN) Agreements which were based on recognition of reciprocal obligations by the concerned states. The customary law of foreign investment was founded on the principle that *an affront to the rights of a foreign owned business in the host state is an affront to the sovereignty and interests of the investor's home state*. Consequently, the protection of foreign investors was regarded as the sole goal of International Investment Agreements (IIAs). The conclusion in 1992 of NAFTA contributed in reinforcing this principle. The terms of General Agreement on Trade and Services (GATS) and Agreement on Trade Related Investment Measures (TRIMS) of the WTO subsequently constituted a limited regulatory framework on international investments. Since the provisions of these agreements are not a complete code, there persists a lack of consistency and standardization in the current international investment law. These factors are the main stumbling blocks for the proper development of law in this important area of international trade. There is thus a need to shift the focus from quantity to quality of investments. Equally necessary is the need to find out ways to harmonize the right to protection of foreign investment with the right of the host state to regulate such investment in national interest. In December 1962, the UN General Assembly passed a resolution number 1803 providing for the protection of foreign investments with obligation to pay compensation on expropriation of foreign property. But this

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**The World Bank provides help to developing countries in reforming their laws on FDI to reduce costs and risks to foreign investors. The International Centre for Settlement of Investor Disputes and the Multilateral Investment Guarantee Agency has made further positive contributions in promoting FDI.**



resolution has no binding force under the UN Charter except that it may at best amount to *opinio juris* under customary international law [*Texaco Overseas Petroleum Co v. Libyan Arab Republic* (1978) (Award) 17 ILM 3 (Ad Hoc Arb) para 27; Also *Dominique Carreau and Patrick Juilliard Droit International Economique* (3ed, Dalloz, Paris 2007) 1163].

Foreign investments fall within the purview of customary international law particularly which is essential to make the international community of states to adopt consistent regulatory practices. The universe of such practices will serve as general minimum standards of treatment of foreign investors to be followed by states from a common sense of obligation. No domestic statute or administrative measure may then derogate from these duties [Mathew, 2006]. In *L.F.H. Neer and Pauline Neer (USA) v. United Mexican States* (1926), it was held that the propriety of government act should be tested by reference to international standards so that the treatment of an alien in order to constitute an international delinquency, should amount to an outrage, bad faith, wilful neglect of duty or to an insufficient government action which falls short of international standard. The World Development Report 1997 considers an effective legal system comprising predictable and efficient implementable laws as a pre-requisite to attracting FDIs. To meet the need for a standard set of rules, the Legal Framework for the Treatment of Foreign investment has been formulated to guide the FDI policies of host countries. The World Bank provides help to developing countries in reforming their laws on FDI to reduce costs and risks to foreign investors. The International Centre for Settlement of Investor Disputes and the Multilateral Investment Guarantee Agency has made further positive contributions in promoting FDI. Internationally, there has now come about a plethora of FDI regulations which include: World Bank Guidelines on Foreign Investment; ICSID Arbitration Convention; WTO agreements, and Multilateral Agreement on Investment and Bilateral Investment Treaties. There is hardly any country which has imposed an outright ban on FDI though some restrictive provisions are almost universal. Such restrictions may comprise of sectoral bans or limits/prescription on investment in some sectors on the ground of protection of public interest; obligation on local participation in joint venture; requirements

as to licensing and administrative approvals; foreign exchange restrictions; restrictions on access to and use of land and natural resources and taxation. It is not possible to have a "one-size-fits-all" foreign investment policy. Most of the regulatory policies tend to take a targeted and performance-oriented view which combines the use of carrot and stick measures that are regarded to be more beneficial to attracting foreign investment [H.Chang, 2004]. Since 1990s, the International Investment Law has been emerging in the form of BITs mainly due to the recognition of foreign investments by developing nations as a key instrument of their economic growth. This has led to the so called 'treatification of international investment law' as per J.W. Salacuse (2000). Presently, there exists over 3000 BITs between various countries. Most of the BITs have provided for various obligations of the host state *inter alia* fair and equitable treatment (FET); full protection, security and national treatment to foreign investment; most favoured nation (MFN) treatment and prohibition on expropriation of the foreign investment without prompt, adequate and effective compensation. Most of these provisions are based on Model Convention put forth by the OECD (1967).

## REGULATORY PRINCIPLES GUIDING INTERNATIONAL INVESTMENT LAW

The Centre for International Environmental Law in its 2003 'International Law on Investment: The Minimum Standard of Treatment Rule of law' has advocated the adoption of following principles in the framing of foreign investment laws:


1. Prohibition against Expropriation  
Expropriation of foreign investment must be done on a lawful basis i.e., non-discrimination, public purpose, due process and compensation. Payment of compensation must follow expropriation rather than on the basis whether it is lawful or unlawful [OECD, 2004]. Investment law prohibits both direct and indirect expropriation. A direct expropriation is an outright seizure of a foreign investor's property and indirect expropriation may either be a discriminatory regulatory expropriation or a creeping expropriation wherein governmental measures reduce the value of an investment [Gazzini, 2007]. Permanent Court of International Justice has held in *Factory at Chorzow Germany v. Poland* ICJ (June 1923) Oxford Reports on International Law 23 that "the reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed".
2. Due Process  
The due process requirement is the benchmark to test the legality of expropriation. Expropriation without due process of law amounts to violation of the principle of equality, fair hearing and contravention of the principles of natural justice. The due process requirement was clearly expressed by the International Centre for Settlement of Investment Disputes (ICSID) in the case of *ACD v. Hungary*. The pre-requisites of due process consist of an obligation to give reasonable advance notice, a fair hearing and unbiased and impartial adjudication to make the legal procedure meaningful. OECD (2004) in its Working paper on 'Fair and Equitable Treatment Standard in International Investment Law (2004)' has stated that a state cannot hide behind its national legislation to deny the minimum standard of treatment to foreign investors. The state must give evidence that it has exercised due diligence

- and taken all preventive measures to protect the property of the investors within its borders.
3. Compensation on expropriation  
Compensation is triggered on violation of an international legal norm such as the expropriation not being for a public purpose, being discriminatory and violating international law principles. In the event of confiscation of foreign property, the host government is obliged to provide prompt, adequate and effective reparation.
  4. Non-discrimination  
The principle of state responsibility obligates the host state to follow a minimum standard of treatment in relation to aliens without any deviation. Negatively stated, the properties of foreign investors should not be subject to discriminatory legislation. Foreign investment must be subjected to the same laws, same administration, same protection and the same redressal for injuries which it gives to its own citizens. Some of the scholars however do not consider the principle of discrimination as an essential ingredient of customary international law. According to this view, differentiation is not prohibited except that it must be based on reasonable grounds [Klager,2011].
  5. Public purpose  
UNCTAD (2000) in its 'Taking of Property' series has acknowledged the right of the host country to determine what is in its public interest. It has been held by the US Court of Appeal in *Methane Corporation v. United States of America* 496 US 530 (1996) that a non-discriminatory regulation for public purpose, which is enacted with due process cannot be deemed expropriatory and is therefore not entitled to compensation unless the government has made specific commitments to the then putative foreign investor. UNCITRAL has also taken the same view in *Saluka Investment B v. Czech Republic* (1976) so that no compensation is payable when expropriation has been done in the normal exercise of regulatory powers which are non-discriminatory and based on *bona fide* regulations aimed at general welfare.
  6. Fair and equitable treatment  
Tudor (2008) has advocated an equal and even-handed application of laws to those falling within its purview. The host state cannot treat the foreign investors in a manner that falls short of international minimum standards that are accorded to all other foreign investors in the host state. It also includes the obligation to not change the domestic law post investment which may potentially breach international investment law except where the investment is inconsistent with environmental concerns [Article 1114, NAFTA]. Nonetheless, in *Parkerings-Compagniet AS v. Republic of Lithuania* (2007), CSID Case No. ARB/05/8, it was held that, 'a state has the right to enact, modify or cancel a law at its own discretion. Save for the existence of an agreement, in the form of stabilization clauses or otherwise, there is nothing objectionable about the amendment brought to the regulatory framework existing at the time an investor made its investment. As a matter of fact, any businessman or investor knows that law will evolve over time. What is prohibited however is for state to act unfairly, unreasonable or inequitably in the exercise of its legislative power.'
  7. Most Favoured Nation treatment (MFN)  
The main aim of this principle is to provide a conducive and equally competitive environment to investors and third countries. Usually incorporated in IIAs, it requires that foreign investors and their investments shall enjoy treatment that is no less favourable than that accorded to investors of any third state [UNCTAD, 1999]. It prohibits both favouritism and discrimination.
  8. Repatriation of Funds  
The main motivation for a foreign investor in seeking to do business in the host country is to make profits and remit the profits for distribution among shareholders of the company. It highlights the significance of the need to repatriate funds. Fund repatriation is also needed for other purposes such as servicing an external loan, paying license fees, purchasing raw materials and machinery for production and payment for other services. The repatriation of profits will be frustrated if host country prevents repatriation though an absolute obligation may handicap the host country particularly where the country is faced with shortfall in relevant foreign currency.
- Other Principles which are advisable may include:
- (a) Regulatory transparency in the sense of its provisions being known to all those who falls within its scope [*Metalclad Corp v. United Mexican States* ICSID (2000) (Award) 40 ILM 36 (NAFTA) para 74].
  - (b) Actions of governmental institutions must be in line with specified and known rules of law and these institutions must be legally accountable for their action. Institutional back up in the form of administrative and judicial bodies is imperative for execution of investment laws. All these institutions must be law conversant, compliant and efficient in their functioning. They must also be well versed in handling complex commercial transactions and free of corruption. Additionally attorneys must be able to negotiate, plan and structure transactions for clients.

## CHALLENGES TO HARMONIZING

### A: Issue of balancing the need for protection of international investment with Regulatory power of Host state to protect its national interests

Customary international law recognizes the right of a state to control foreign investment within its territory in accordance with the principle of sovereignty over its natural resources in order to reduce dependency on foreign enterprises. The actual legal treatment of FDI is largely dependent on host country's national interest, its history and developmental goals. Foreign investors are not totally free to invest or act

 International law has not provided any comprehensive and universal framework which may indicate what regulations are permissible within a state's regulatory power. The major challenge is to distinguish between a legitimate exercise of governmental discretion that interferes with foreign-owned property *vis-à-vis* a legislation which amounts to expropriation requiring compensation. Under international law, the host must have substantially interfered with the private property of an investor to justify expropriation.

as they please. Rather they remain subject to the regulatory burden of the host state. Any constraints on state sovereignty would compromise the ability of host state to regulate for public benefit. The aligning of law and policy of the host state on foreign investments with absolute protection of foreign investment is fraught with problems. The developing countries are always apprehensive of exploitation by foreign multinational enterprises. The issue therefore is to explore ways to coincide the interests of host state with those of foreign investors. Many of the public policies of the host state relating to laws on taxation, competition, companies, employment and environmental are bound to impact the rights of foreign investors and may possibly lead to potential breach of international obligations. In these situations, the state can function with a 'sovereign mind set' and violate its commitments under international investment agreement. Alternatively, the host state may change the international investment law by agreement with the contracting parties. In actual, the host state will have to work out suitable alternatives on a case by case basis by adopting a co-operative perspective. Still another alternative is to forge state-investor partnership with a general provision in the preamble of international Investment Agreement (IIA) conferring the right to security of international investment without threatening host state's regulatory power.

#### **B: Conflict between Right to Regulate and Expropriation of Foreign Investment**

The right to regulate is an inalienable right flowing from sovereignty of a state. Accordingly, a foreign investor is subject to all legitimate laws and regulations of the host state yet it does not imply that the foreign investor has consented to abuse by a host state of its regulatory powers. International law has not provided any comprehensive and universal framework which may indicate what regulations are permissible within a state's regulatory power. The major challenge is to distinguish between a legitimate exercise of governmental discretion that interferes with foreign-owned property *vis-à-vis* a legislation which amounts to expropriation requiring compensation. Under international law, the host must have substantially interfered with the private property of an investor to justify expropriation.

In *Saluka investments B.V. v. The Czech Republic* 17 (1976) UNCITRAL(17 March 2006), it was held that an expropriation shall not be unlawful if:

- (a) It is not in clear violation of the law of the state concerned;
- (b) There is no unreasonable departure from the principles of justice as recognized by the principal legal systems of the world;
- (c) There is no abuse of powers to deprive an alien of his property;

OECD has stated that there must be clear and convincing evidence as well as serious consequences in order to establish the abuse of rights. The following three approaches may be helpful in balancing the conflicting interests between the protection of investors and the host state's regulatory power

#### **1 Sole effect Doctrine**

It solely considers the "effect" of the regulatory measure on foreign investment in determining whether or not there has been an indirect expropriation. This doctrine has been adopted by many tribunals to determine the right of a host state to regulate. If the effect of a measure leads to a certain threshold whereby the property of foreign investor is rendered valueless, it shall amount

to expropriation.

#### **2 The Purpose Test**

This test looks into the purpose of the measure to infer whether the extent of interference with a foreign investor's property amounts to indirect expropriation.

#### **3 Proportionality test**

This test requires the existence of a reasonable relationship between the weight imposed on the foreign investor and the aim sought to be achieved by the regulation. The test will weigh and balance the purpose with effect thereof to solve the conundrum between expropriation and regulation. It has been argued that the proportionality test helps to balance rights of the foreign investor *vis-a-vis* public interest.

### **HARMONIZATION STRATEGIES**

The following could resolve the conflict possibilities between host state's public policy and its obligations under international investment law:

1. *Inclusion of General Exception clause in the International Investment Agreement* specifying the regulatory acts which would not constitute breach of obligations. The following clause included in the United States Model BIT, 2004 is illustrative in this regard:

"Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment do not constitute indirect expropriations".

Similarly, Article XX of the GATT adopted in Free Trade Agreements contains general exceptions that provide for the imposition of trade-restrictive measures for internationally recognized policy objectives as are "necessary to protect human, animal or plant life or health". To the same effect is Article XIV in GATS which concerns services regime.

Notwithstanding the grafting of exclusion provisions in the investment law as a part of sovereignty prerogative of host state, it shall still remain subject to arbitral jurisprudence.

2. *Forging International partnerships through appropriate procedural guidelines*

To avoid possible breaches of international investment law, the following procedural measures may be found useful:


- (a) *Adopting Transparency in Investment Governance* as ordained by UNCTAD which obligates local authorities to make accessible to foreign investors all the relevant information about legislation, administrative rulings, judicial decisions, exceptions to national treatment and most favoured nation status, procedures for applying for authorizations, administrative practices, privatization and monopolies. The OECD has similarly identified three main transparency measures relating to information on policies of interest to international investors; clear definitions of the limits of transparency obligations; ensuring information accessibility through notification of changes in measures.
- b. *Establishment of Single Window for International Investor Grievance Resolution* as is the case with Morocco which has set up Regional Centers of Investment to enable international investors to avoid a costly and long drawn-out involvement with administrative authorities.
- c. *Provision for Investor Consultation for Dispute Resolution to dispense with costly litigation.*

The ICSID Convention and Rules, ICC Rules of Optional



- Conciliation, 1998, and UNCITRAL Conciliation Rules 1980 contain extensive provisions for conciliation preceding arbitration to prevent many eventual disputes.
- d. State acting as a partner negotiator *vis-a-vis* investors. Utmost obsession with sovereignty may prevent the host state from effective public policy implementation *vis-a-vis* external investors. To provide legal security to foreign investors, the state must act as a partner with foreign investors. Towards this end, a mechanism may be established which could autonomously conclude international investment contracts which are compatible with norms of international investment law.
3. *Adoption of Model International Agreement Investment for Sustainable Development (IISD) drafted by International Institute of Sustainable Development.*  
The IISD is a multilateral agreement which states may follow to balance the rights and obligations of three main players namely foreign investor, the host state and the country of origin. It is designed to align states' public policies related to environment and sustainable development with the international investors' behaviour.

## CONCLUSION

Singular requirement for the formulation of a robust public policy on international investment law is to ensure complete transparency in its decision making procedures by the concerned state. To achieve this goal, it is imperative for the state to establish a dedicated institution vested with the responsibility to undertake initial consultation with investors before finalizing the regulatory policy. Such a strategy will help the host state avoid infringing the legitimate expectations of foreign investors. These expectations have recently become the central notion of the security of international investments. The Model Investment Treaty drafted by the International Institute for Sustainable Development has provided interesting and original alternative provisions. Its provisions however are only an indicator of the evolution of this area of law without any binding force. Nonetheless, the current thinking is focused on exploring realistic ways of ensuring a better balancing of the rights and interests of foreign investors and respect for legitimate public concerns of the host state. In negotiating new IIAs or revising their current ones, countries need to legitimately consider new concerns such as environment, health and social issues. One way of doing so is for states to remove legal ambiguities which have led to inconsistent and uncertain interpretations by various tribunals. The areas of confusion are mainly due to inconsistent definition of terms like 'foreign investor', 'fair and equitable treatment' or 'indirect expropriation', etc. The New BITs particularly must guard against the inclusion therein of any measure, whether in the name of environment or public security, which may amount to indirect expropriation. 

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# Tax Perspective for Inbound and Outbound Investments

Corporates, in order to sustain competitive advantage amidst the rising competition, are compelled to structure their business in the most efficient manner. When the multinationals look at business opportunities beyond the boundaries of their countries, they are faced with the crucial question of structuring. This is where the professionals like company secretaries can offer their expertise and guide the corporates in putting together a structure, which is tax-optimum and legally compliant.



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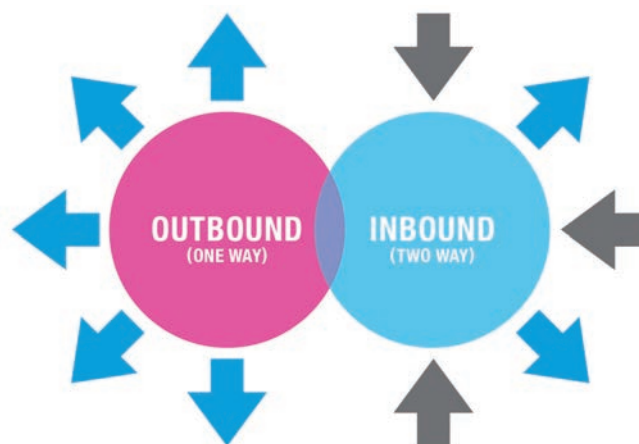
## INTRODUCTION

The Indian Government have revamped almost all relevant corporate laws/ regulations in India in the last few years, be it the Takeover Code, Delisting Guidelines, Income Tax Act, Companies Act, Accounting, Competition Law, etc. Tax laws are continually evolving and so are Foreign Exchange Management Act (FEMA) Regulations, impacting both inbound and outbound investments. In order to sustain competitive advantage amidst the rising competition, the corporates are compelled to structure their business in the most efficient manner. When the multinationals look at business opportunities beyond the boundaries of their countries, they are faced with the crucial question of structuring. This is where the professionals like company secretaries can offer their expertise and guide the corporates in putting together a structure, which is tax-optimum and legally compliant.

Tax systems are neutral when they do not influence the economic choices of the taxpayers on cross-border transactions. They may be tax neutral either on capital export or on capital import. The developed countries tend to favour capital export neutrality, under which the taxpayers' choices between investing at home and abroad remain unaffected. On the other hand, the developing countries generally prefer capital import or competitive neutrality to ensure that the investment decisions of domestic and foreign investors in their country are on par.

## TAXATION UNDER CROSS BORDER STRUCTURES

Domestic tax is an obligation whereas foreign tax is a cost. Hence, it is only natural for the companies to structure their cross-border transactions in a tax efficient manner. Due to the provisions related to Controlled Foreign Corporation (CFC) and Passive Foreign Investment Company (PFIC) etc. corporates are very rarely able to get away without paying tax anywhere. Even if they do not pay tax in the country of source, they may still end up paying tax in their country of residence. This is particularly true with countries like US. Even in these situations, it still makes a logical sense to structure their investments using



holding company jurisdictions. This is because often full tax credits are not captured due to domestic tax law restrictions. Further, induction of appropriate offshore jurisdiction provides insulation from potential tax consequences on restructuring. Also, it helps in achieving certainty in tax costs associated with cross-border transactions.

### 1. Inbound Investments

For foreign companies investing in India, Mauritius has become the most favourable option, especially for portfolio investors, who earn capital gains from portfolio investments in India, setting up a holding company in Mauritius is inevitable. A holding company in Mauritius helps them to achieve capital gains tax neutrality. Most countries around the world do not levy capital gains tax on non-residents investing in shares in their country. If a foreign company holds shares in Indian company directly, it will end up paying 21% tax on long term capital gains and 42% tax on short term capital gains. In case of most countries, the maximum rate is below 35%. Therefore, in case of short term gains, the foreign company will not get the full credit for the taxes paid in India. Further, in case of FII's and venture capital funds, most of the investors are pension plans, which are otherwise tax exempt entities in their home countries. Therefore, they do not have taxable income to offset the tax paid in India. This is the reason many inbound investments have flown into India *via* Mauritius. A substantial chunk of foreign direct investment has gone into IT and ITES industries. Most of the companies set up for IT services and BPOs enjoy a tax holiday under Section 10A/ 10B of Income Tax Act, 1961. It is very common for the founders to start the business with minimum seed capital, to take the companies to a reasonable maturity stage and then invite private equity investors to invest in these companies. At this stage, invariably the shareholding changes. By virtue of provisions like Section 10A(9), often these companies lose the tax holiday at the time new investors join in. This is derogatory

to the main objective of providing the tax incentive to these units set up in STPs for development of software industry and encouraging their expansions. Often, provisions like this compel foreign investors to induct holding companies so that they are neutral to changes in foreign law or internal restructurings.

Besides Mauritius, Cyprus and UAE also have a tax treaty with India, which gives similar capital gains tax exemption on sale of shares in Indian company. However, UAE is generally not preferred due to political instability. Cyprus has certain domestic tax implications and hence often, Mauritius remains the first choice for foreign investors contemplating investments in India.

## 2. Outbound Investments

From taxation point of view, direct investment from India completely distorts the dividend repatriation back into India. In many cases, only 40 to 45 percent of the earnings of the foreign company are available to the Indian parent. There is double taxation of the same income: once in the hands of the foreign company and then in the hands of Indian company.

In order to address such situation, many countries and tax treaties allow tax credit for the corporate taxes paid on profits in the country of source against taxes payable on dividends in the country of residence of the recipient company. Under these provisions, the recipient of dividend could claim tax credit, for taxes paid in the other countries by the subsidiary companies on profits from which such dividends are distributed. Such tax credit is known as 'underlying tax credit'. Underlying tax credit is over and above tax credit for taxes withheld on dividend distributed by the subsidiary companies. It reduces the final tax incidence by eliminating double taxation of the same income in the country of source as well as residence. Since underlying tax credit is not available in India, except under some tax treaties like India - Mauritius, the net result is higher incidence of tax.

As per the existing provisions of the Income Tax Act, 1961 ("ITA"), income of an Indian company is subject to tax at the rate of 36.75%. Therefore dividends received by an Indian company from an overseas company will be subject to tax in India at the rate of 36.75%. ITA does not provide for underlying tax credits, however, an Indian company could claim such underlying tax credit if the double taxation avoidance agreement that India has entered into with the country of residence of the company paying such dividends provides for the same. Indian company can claim tax credit in India for the taxes that have been withheld by the foreign company on such distribution. Long-term capital gains realized by an Indian company from sale of shares of a foreign company will be subject to tax in India at the rate of 21%, whereas short-term capital gains would be subject to tax at normal corporate tax rates of 36.75%.

As such, there is no golden rule for a preferred structure for outbound investments as it depends on the country in which the investment is sought. However, countries like Mauritius, U.K., Netherlands etc. are close contenders for location of Offshore Holding Company out of India for holding investments worldwide.

## BUSINESS STRUCTURES IN GLOBAL ENVIRONMENT

'Structuring' is often looked at with suspicion. It is perceived that using offshore structures to minimize the tax implications with an intricate interplay of domestic tax system and a DTAA is a sinful deed. There is a larger school of thought in favour of structuring.

**Tax systems are neutral when they do not influence the economic choices of the taxpayers on cross-border transactions. They may be tax neutral either on capital export or on capital import. The developed countries tend to favour capital export neutrality, under which the taxpayers' choices between investing at home and abroad remain unaffected. On the other hand, the developing countries generally prefer capital import or competitive neutrality to ensure that the investment decisions of domestic and foreign investors in their country are on par.**



While domestic tax is an obligation, foreign tax is cost. Therefore, a tax payer is free to use all legal means to organize his affairs in a manner so as to minimize this cost. Whenever a national or resident of a third country avails of the benefit of the DTAA between two countries, by setting up a conduit resident company or otherwise, 'Treaty shopping' arises. The issue of Treaty shopping raises the question of interpretation of DTAAs. However Government of India has permitted treaty shopping through several tax havens.

A treaty is a bilateral contract. It is a contract signed between two Governments. Hence it should normally mean that the contract has been signed with full knowledge, understanding and free consent of both the Governments. Under a treaty, the Contracting States mutually undertake the obligation to respect and apply the treaty provisions. One of the fundamental principles of the law of treaties is 'pacta sunt servanda' which roughly means "treaties shall be complied with". This principle has been codified in the preamble and in few Articles of the Vienna Convention. Articles 26 and 31 of the Vienna Convention provide that a Double Tax Avoidance Treaty should be implemented in good faith and Article 27 provides that a Government may not invoke its internal law as justification for its failure to perform a treaty. However the question here arises is "is the obligation of Implementation in good faith applicable only to the Governments; or does it apply to the tax payers also".

## MEANING OF TREATY OVERRIDE

It is a situation where the domestic legislation of a State overrides provisions of either a single treaty or all treaties hitherto having had effect in that state, would be construed as 'Treaty Override'. The principle of 'Treaty Override' implies that a country, by legislature provides that the domestic law will override the international law and thus refuses to fulfil some of its contractual obligations with the other country under the pretext that the treaty obligations conflict with the domestic law. It does not need an expert lawyer or the Vienna Convention to say that Treaty Override is wrong. It is wrong because it amounts to the Government going back on its own promise. It is unfair, unethical and hence wrong. 'Treaty Override' can be avoided if a country specifically provides in its domestic law, that the DTAAs will override the domestic law. India is one of the countries, which has done this by inserting sub-section 2 in section 90 of the Income-tax Act, 1961.

## POISON PILLS WITHIN DOUBLE TAXATION AVOIDANCE AGREEMENT

International business structures are exposed to the risk of double taxation, whereas, on the other hand they also offer opportunities for tax avoidance or evasion. While tax evasion may be illegal, structured tax avoidance within the four corners of law is not. In response to tax evasion, the countries react by providing certain 'poison pills' within its DTAAs or domestic tax systems. Few examples of such poison pills are as follows:

### 1. 'Substance over Form' Rule

Most countries have wide ranging anti-avoidance rules under the domestic law or judicial practices. These measures include 'substance over form' doctrine to prevent sham transactions, and the commercial justification rule under the 'business purpose test'. In particular, they require that transactions should not have tax savings as the only or dominant purpose. Under this doctrine, the tax officers can lift the 'corporate veil' to look at the real transaction or structure.

### 2. Transfer Pricing

In view of the different tax systems and difference in rates of taxation, the multinational organizations are tempted to undertake a transaction at a price which may not be the price if the transaction is undertaken on an 'arm's length' basis. This is done with the objective of shifting the profits from a 'high-tax' country to a 'low-tax' country. Most of the developed countries today have strict rules for transfer pricing. The revenue authorities are given power to investigate the pricing and to use their own judgement to apply tax on the price at which the transaction

would have been undertaken if executed on an 'arm's length' basis. India has recently joined the band wagon with its own set of transfer pricing regulations which are very stringent.

### 3. Tax Havens

Tax havens are countries with nil or low rate of taxation. They are often used to route a transaction between two countries with a high rate of taxation. Many countries have announced a list of countries which they consider as 'Tax havens'. This list is known as 'black list'. The revenue authorities may be given the power to examine the transactions in more detail, when it involves a tax haven country. In Australia, wherever a foreign exchange transaction involves a listed country, the transaction must be referred to the Commissioner of taxation who may cancel or modify such transactions if they appear to involve tax avoidance or evasion, or if they represent a form of capital flight. Some countries have also announced a list of countries which they do not consider as 'tax havens'. This list is known as 'white list'. U.K. has announced a 'grey list' which consists of countries which may be considered as 'tax havens' at some times and not at some other times. OECD has conducted a study of countries and has come out with its own black list of countries which do not have a certain standard rate of tax or have some other features which are akin to a tax haven.

### 4. Thin Capitalization Rules

These rules prevent financing structures with high debt-equity ratios. Interest expense is tax deductible, whereas dividend payments are not. Therefore, high debt-equity ratios can reduce taxation on business profits. The interest payments in thinly capitalized companies are disallowed and may be taxed as constructive dividends.

### 5. Limitation of Benefits

Many DTAAs include anti-abuse or anti-treaty shopping provisions which prevent the non-treaty partner country residents to take advantage of the DTAA. For example, the India-U.S. tax treaty provides an article on 'Limitation of Benefits', which restricts the benefits of the DTAA only to residents of both India and the U.S.

### 6. Exchange of information

Tax treaties provide for the exchange of information between the tax authorities of Contracting States. They allow the tax information to be shared by them in suspected cases of tax avoidance and evasion. Most countries today have such an arrangement in order to curb money laundering and financial terrorism. In particular, post-September 11, this has become a crucial requirement and many countries have set up Financial Intelligence Units.

## MACROECONOMIC TRENDS FOR INVESTMENTS

The world economy is divided between mature and emerging markets. The recent trend of an increase in buyers from emerging markets investing in mature markets can have a dynamic effect on the deals space. Due to the monetary easing policies of developed countries, banks and corporates have more funds which are deployed towards Mergers and Amalgamations activities. With the US Central Bank increasing rates in 2016, there is bound to be an impact on corporates' ability to undertake inorganic expansion.

Capital markets are always a key influencer in mergers and amalgamations activities. The action taken by Federal Bank



Whenever a national or resident of a third country avails of the benefit of the DTAA between two countries, by setting up a conduit resident company or otherwise, 'Treaty shopping' arises. The issue of Treaty shopping raises the question of interpretation of DTAAs. However Government of India has permitted treaty shopping through several tax havens.



of USA is likely to affect worldwide capital markets, which would have to embrace lot of volatility before things stabilise. The insecurity is intensified due to events such as Brexit, the ramifications of which cannot be gauged yet.

Commodity prices have been under pressure, and the sector is expected to undergo a phase of consolidation. Further, uncertainty regarding the policies of Donald Trump, the new president of the world's largest economy, has been sending confusing signals to emerging markets.

### THE INDIAN SCENARIO AND MACROECONOMICS IMPACTING INDIA

The regulatory reform of the Reserve Bank of India (RBI) allowing lenders (banks) to boost support for a debt issued by a company to 50% from the erstwhile 20% has helped to enhance the credit rating of securities and spur the bond market. This regulatory reform would increase investor interest worldwide, and the increase in credit enhancement would inflate opportunities for the company to expand further. In addition, the opening up of the banking sector through the issuance of new banking licences, payment bank licences, etc., has provided a much-needed impetus to the financial sector and the overall economy.

Consolidation of banks, as suggested by the former RBI Governor, Raghuram Rajan, in the Report of the Committee on Financial Sector Reforms, is a clear measure to integrate banks with the global economy and aid them in achieving fuller capital account convertibility. The recent merger of State Bank of India (SBI) and its associate banks would increase SBI's asset base by five times more than that of the second-largest Indian bank, ICICI Bank, post-merger. In July 2015, a Press Information Bureau release by the Ministry of Commerce and Industry, Government of India, stated that there has been a 48%

growth in FDI equity inflows after the launch of the Make in India campaign. This reaffirms the confidence of global investors in a resurgent India. In addition, it ensures that such initiatives lead to a positive growth environment.

In line with the above initiatives, the government has liberalised the FDI policy to increase the cap of FDI investments in various sectors. For example, the FDI cap in the insurance and pension sectors has been raised to 49%. And 100% FDI has been allowed both in railway infrastructure (excluding operations) and the defence sector. This has attracted large investments in the insurance and defence sector over the last few months.

Non-debt finance in the form of FDI pursuant to these liberalisations is an unseen advantage to the country.

The government recently took a bold demonetisation initiative that affected not just common people but also the economy to a great extent. It was an unflinching measure to merge the unorganised and organised sectors.

Due to demonetisation, banks have been flooded with funds. This surplus of funds with banks could lead to enhanced lending in high-growth sectors. Subsequently, increased lending may lead to reduced interest rates, bringing in multiple benefits such as lower cost of production to companies, higher profits and diversified growth. The manifold consequences of demonetisation could take growth in the Indian economy to new heights.

This favourable impact on India due to reforms in policy regimes could have a domino effect, leading to enhanced availability of resources for the country's future missions, including that of smart cities. In the World Economic Forum's Global Competitiveness Index, which ranks countries based on parameters such as institutions, macroeconomic environment, education, market size and infrastructure, India has jumped 16 notches to rank 39 among 138 countries.

### PRACTICAL INSTANCE OF TAX CONCERNS UNDER MACROECONOMICS IN INDIA

Starting from 2007, when the Vodafone controversy erupted, India has witnessed several high-profile tax controversies surrounding mergers and amalgamations transactions, which were on account of withholding tax obligations on indirect transfer of capital assets situated in India. In spite of an argument based on Section 9 (1) (i) of the ITA that said, "all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India or through the transfer of a capital asset situate in India" the Indian government saw over Rupees 20,000 crore in unpaid taxes by Vodafone. Vodafone's tax feud with the Government is not the only one of its kind. Global debates on the tax planning strategies of companies and what governments can do to stop them had been initiated.

With the advent of the proposed GAAR in 2017, structuring of transactions is set to become more vexed. It is likely that tax indemnity negotiations between parties could get more involved, and, to achieve certainty, more taxpayers could approach tax authorities (such as the Authority for Advance Rulings) for clarity.

### THE ROAD AHEAD

Given the backdrop of a well-developed mergers and amalgamations, legal and regulatory framework in India, the road ahead for the Indian Inbound and Outbound Investments landscape seems to be brightly lit.

# FDI Policy in India – Latest Changes and Emerging Issues

Foreign direct investment (FDI) in India is a major monetary source for economic development of the country. Foreign companies invest directly in fast growing private Indian businesses to take benefits of cheaper wages and changing business environment of India. In 2015 India overtook China and the US as the top destination for the Foreign Direct Investment. The present article discusses in detail routes of foreign direct investment, Government initiatives, key changes in the FDI policy in 2018, etc.



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**F**oreign direct investment (FDI) in India is a major monetary source for economic development in India. Foreign companies invest directly in fast growing private Indian businesses to take benefits of cheaper wages and changing business environment of India. Economic liberalization started in India in the wake of the 1991 economic crisis and since then FDI has increased steadily in India, which subsequently generated more than one crore jobs. According to the Financial Times, in 2015 India overtook China and the US as the top destination for the Foreign Direct Investment. In first half of the 2015, India attracted investment of \$31 billion compared to \$28 billion and \$27 billion of China and the US respectively.

## ROUTES OF FOREIGN DIRECT INVESTMENT

There are two routes by which India gets FDI.

- **Automatic route:** By this route FDI is allowed without prior approval by Government or Reserve Bank of India.
- **Government route:** Prior approval by Government is needed via this route. The application needs to be made through Foreign Investment Facilitation Portal, which will facilitate single window clearance of FDI application under Approval Route. The application will be forwarded to the respective ministries which will act on the application as per the standard operating procedure. Foreign Investment Promotion Board (FIPB) which was the responsible agency to oversee this route was abolished on May 24, 2017. It held its last meeting on 17th April, which was the 245<sup>th</sup> meeting of the Board. On 24 May 2017, Foreign Investment Promotion Board was scrapped by the Union Government. Henceforth, the work relating to processing of applications for FDI and approval of the Government thereon under the extant FDI Policy and FEMA, shall now be handled by the concerned Ministries/Departments in consultation with the Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, which will also issue the Standard Operating Procedure (SOP) for processing of applications and decision of the Government

under the extant FDI policy.

Foreign Direct Investment (FDI) into India has been breaking records each consecutive year since 2014, and looks to keep this trend going as further reforms help fasten the flow of FDI into India. Total capital inflows reached \$208.99 billion during the period April 2014 to December 2017, according to the Minister of State for Commerce and Industry, C R Chaudhary. India has already been the world's leading recipient of green field FDI for the previous couple of years. There have been more structural reforms since the previous edition of Invest in India. In January this year, the government announced a reform that is likely to have significant impact – the relaxation of rules in single-brand retail up to the extent of 49 per cent. The inaugural issue of Invest in India focused on how a 'New India' was shaping up, and the role FDI is playing.

By showcasing the best of investment experiences in India, it also chronicled how the myriad opportunities for FDI are transforming the Indian economy and building a New India. We continue and build on the journey to showcase the myriad opportunities India, positioned to be the fifth largest economy in the world this year, offers across diverse sectors. With an impressive growth figure of 6.7 per cent likely this year, India is one of the fastest growing economies in the world, according to the IMF. The outlook for India is optimistic, as indicated by numerous global indices where India is the best performing large economy. Goods and Services Tax, launched in 2017, has been heralded as one of the most significant economic reforms in independent India's history, and its benefits in the form of smoother, faster transactions with greater clarity are shoring up the economy, benefitting the nation in various forms. According to the Department of Industrial Policy and Promotion (DIPP), India has now thrown open 92.5% of FDI through the automatic route, further easing the investment process. In this edition, Prime Minister Narendra Modi, who has been driving various initiatives to attract FDI into India, shares his vision for brighter, more prosperous economy for the country. Since taking over in his present role, he has visited many countries and aggressively sought overseas participation in flagship schemes such as Make in India, Digital India and Start Up India. Make in India is a project he launched to encourage companies to manufacture products in India. This has played a big role in attracting FDI, not just in the automotive sector but also in infrastructure, electronics, renewable energy, especially solar power among others. He also delivered the plenary speech at Davos, where he highlighted the progress India is making as an economic powerhouse, making it an attractive destination for India.



Our interview series with the captains of Indian industry features Baba Kalyani of Bharat Forge, a benchmark setting global conglomerate holding the Indian flag proudly aloft. He shares his views on opportunities of investing in India. A number of success stories of global companies investing in India, highlights from the logistics sector and entrepreneur stories are also part of the investment journeys currently transforming the nation. India's growth story still has a long way to go.

## GOVERNMENT INITIATIVES

The Government of India has amended FDI policy to increase FDI inflow. In 2014, the Government increased foreign investment upper limit from 26% to 49% in insurance sector. It also launched Make in India initiative in September 2014 under which FDI policy for 25 sectors was liberalized further. As of April 2015, FDI inflow in India increased by 48% since the launch of «Make in India» initiative.

India was ranking 15th in the world in 2013 in terms of FDI inflow, it rose up to 9th position in 2014 while in 2015 India became top destination for foreign direct investment.

## SECTORS

During 2014–15, India received most of its FDI from Mauritius, Singapore, Netherlands, Japan and the US. On 25<sup>th</sup> September 2014, Government of India launched Make in India initiative in which policy statement on 25 sectors were released with relaxed norms on each sector. Following are some of the major sectors for Foreign Direct Investment.

### Infrastructure

10% of India's GDP is based on construction activity. Indian Government has invested \$1 trillion on infrastructure from 2012–2017. 40% of this \$1 trillion had to be funded by private sector. 100% FDI under automatic route is permitted in construction sector for cities and townships.

### Automotive

FDI in automotive sector was increased by 89% between April 2014 and February 2015. India is the 7th largest producer of vehicles in the world with 17.5 million vehicles annually. 100% FDI is permitted in this sector *via* automatic route. Automobiles shares 7% of the India's GDP.

### Manufacturing

India is making progress turning itself into a magnet for

With an impressive growth figure of 6.7 per cent likely this year, India is one of the fastest growing economies in the world, according to the IMF. The outlook for India is optimistic, as indicated by numerous global indices where India is the best performing large economy.

manufacturers, the aim being to increase the share of manufacturing in India's GDP from a stagnant 15-16% since 1980 to 25% by 2022 and create an additional 100 million jobs. Electronics contributes to India's success in manufacturing but some challenges remain with foreign direct investment.

### Pharmaceuticals

Indian pharmaceutical market is 3rd largest in terms of volume and 13th largest in terms of value. Indian pharma industry is expected to grow at 20% compound annual growth rate from 2015 to 2020. 100% FDI is permitted in this sector.

### Service

FDI in service sector was increased by 46% in 2014–15. It is US \$ 1.88 Billion in 2017. Service sector includes banking, insurance, outsourcing, research & development, courier and technology testing. FDI limit in insurance sector was raised from 26% to 49% in 2014.

### Railways

100% FDI is allowed under automatic route in most of the areas of railways, other than the operations, like High speed train, railway electrification, passenger terminal, mass rapid transport systems etc. Mumbai-Ahmedabad high speed corridor project is the single largest railway project in India, other being CSTM - Panvel suburban corridor. Foreign investment more than 90,000 crore is expected in these projects.

### Chemicals

Chemical industry of India earned revenue of \$155–160 billion in 2013. 100% FDI is allowed in Chemical sector under automatic route. Except Hydrocyanic acid, Phosgene, Isocyanates and their derivatives, production of all other chemicals is de-licensed in India. India's share in global specialty chemical industry is expected to rise from 2.8% in 2013 to 6–7% in 2023.

### Textile

Textile is one major contributor to India's export. Nearly 11% of India's total export is textile. This sector has attracted about

\$1647 million from April 2000 to May 2015. 100% FDI is allowed under automatic route. During year 2013–14, FDI in textile sector was increased by 91%. Indian textile industry is expected to reach up to \$141 billion till 2021.

The ability to attract large scale Foreign Direct Investment (FDI) into India has been a key driver for policy making by the Government. Prime Minister Modi seems to be going along the right track, with India receiving FDI inflows worth USD 60.1 billion in 2016-17, which was an all-time high. Hence, the FDI policy of India has always been closely watched and carefully amended over the years.

On August 28<sup>th</sup>, 2017, the Department of Industrial Policy and Promotion (DIPP) had issued the updated and revised Foreign Direct Investment Policy, 2017 – 2018 (FDI Policy 2017). The FDI Policy 2017 incorporated various notifications issued by the Government of India over the past year.

A brief analysis of the key amendments brought in by the FDI Policy 2017 to the erstwhile FDI Policy of 2016 and their potential impact on FDI in India is given hereunder:

### NEW STREAMLINED PROCEDURE FOR GOVERNMENT APPROVAL

- **Abolition of the Foreign Investment Promotion Board (FIPB):** The most significant amendment to the FDI regime has been the institutional change brought by notification dated June 5<sup>th</sup>, 2017 issued by the Department of Economic Affairs confirming the abolition of the FIPB (the erstwhile government body authorised to approve proposals for FDI requiring government approval); and the introduction of the 'Foreign Investment Facilitation Portal' (FIFP), an administrative body to facilitate FDI applicants.
- **Introduction of 'Competent Authorities':** The FDI Policy 2017 defines and lists sector-specific Administrative Ministry/ Department as 'Competent Authorities' empowered to grant Government approval for FDI. Competent Authorities listed in the FDI Policy 2017 include the DIPP in respect of applications for FDI in the Single Brand, Multi Brand and Food Product retail trading and the Department of Economic Affairs of India for FDI in the financial services sector.
- **Introduction of 'Standard Operating Procedure' (SOP) to process FDI proposals:** The DIPP had also issued the SOP which sets out a detailed procedure and timeline for applications as well as the list of 'competent authorities' for processing government approvals for FDI in India.

Under the SOP, investors are required to make an application on the website of the FIFP, supported by the specified documents which *inter alia* include relevant charter documents, board resolutions, etc. The application shall then be forwarded to the concerned 'Competent Authority' and the Reserve Bank of India (for comments from a foreign exchange law perspective) within 2 (two) days. Proposals requiring security clearance (in sectors such as defence and telecommunication) shall also be forwarded to the Ministry of Home Affairs. The Competent Authority shall process the complete proposal and convey the approval/rejection of such proposal to the applicant in the format prescribed under the SOP.

- **Key provisions likely to benefit applicants with proposals for FDI:** Consultation with the DIPP has been made strictly need based, leading to a more streamlined procedure and expeditious timeline (maximum time of 10 weeks) for approval. Moreover, the FDI Policy 2017 also states that

the Competent Authority may only reject a proposal, or stipulate conditions in addition to those listed in the FDI Policy 2017/applicable sectoral laws with the concurrence of the DIPP.

### CONVERSION OF LIMITED LIABILITY PARTNERSHIPS (LLPS)

An LLP, operating in sectors/activities where 100% FDI is allowed under the *automatic* route is permitted to convert into a company. Similarly, conversion of a company into an LLP is also now permitted under the automatic route.

### ISSUE OF CONVERTIBLE NOTES BY START-UPS

- The FDI Policy 2017 has introduced the issuance of (a) 'Convertible Notes' (instruments representing debt repayable at the option of the holder, or convertible into equity shares within 5 years from issue) by Start-ups to persons resident outside India; and (b) equity or equity linked/debt instruments by Start-ups to Foreign Venture Capital Investors.
- Issuance of Convertible Notes is, however, subject to the following conditions: (a) Under automatic route, a Non-Resident may purchase Convertible Notes for approximately USD 39,500 or more in a single tranche and the consideration shall be received by inward remittance through normal banking channels or as otherwise permitted under the extant foreign exchange regulations applicable; (b) Start-ups engaged in sectors requiring government approval for FDI may issue Convertible Notes only with government approval; (c) Non-Residents may acquire or transfer Convertible Notes from or to persons resident in India or Non-Residents only in accordance with applicable pricing guidelines under the Indian foreign exchange regulations; and (d) Start-ups issuing Convertible Notes must comply with reporting requirements prescribed by the Reserve Bank of India.

### REVISIONS TO EXISTING PROVISIONS OF THE FDI POLICY OF 2016

The FDI Policy 2017 also incorporates all Press Notes issued by the DIPP during the course of the year. Set out below are the sector-specific significant amendments brought about in the last year:

- **Manufacturing:** To further liberalise the manufacturing sector (which allowed 100% FDI under the automatic route), 100% FDI under government approval route was allowed for retail trading, including through e-commerce, in respect of food products manufactured and/or produced in India.
- **Civil Aviation:** The threshold for FDI in existing projects under the automatic route was increased from 74% to 100%.

 **Make in India is a project launched to encourage companies to manufacture products in India. This has played a big role in attracting FDI, not just in the automotive sector but also in infrastructure, electronics, renewable energy, especially solar power among others.**



As per the extant FDI policy, issue of equity shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. is permitted under Government approval route.

It has now been decided that issue of shares against non-cash considerations like pre incorporation expenses, import of machinery etc. shall be permitted under automatic route in case of sectors under automatic route.



- *Single Brand Retailing:* Sourcing norms applicable for FDI were relaxed and will not be applicable up to 3 years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.
- *Other Financial Services:* The previously applicable capitalisation norms for non-banking financial services companies were struck off, and all financial sector activities by entities already regulated by financial sector regulators fall under the 100% automatic route of investment, with applicability of sectoral laws.

## SOME THOUGHTS

The changes in the FDI Policy 2017 display the efforts of the Indian Government to remove multiple layers of bureaucracy, and to process proposals for FDI under the Government approval route in a more streamlined, positive and expeditious manner. The Government has eased 87 FDI rules across 21 sectors in the last 3 years, opening up traditionally conservative sectors like rail infrastructure and defence. Even India's agriculture sector has received FDI worth INR 515.49 crore in 2016-17.

The FDI Policy 2017 for the first time makes specific reference to fund raising through convertible instruments by Start-ups, which should encourage fund raising by Indian Start-ups from FVCI's and Non-Residents. The three year relaxation of the local sourcing norms in single brand retail should make it easier for the likes of iconic investors Apple and Tesla to open shops in India. But further details may be needed before the likes of such investors commit to India.

It is expected that the Government will continue to bring about liberalisation of the FDI regime in India in the months to come.

## KEY CHANGES IN FDI POLICY OF INDIA IN YEAR 2018

On 10<sup>th</sup> January, 2018, the Union Cabinet chaired by the Prime Minister Shri Narendra Modi, has given its approval to a number of amendments in the FDI Policy. Intended to liberalize and simplify the FDI policy so as to provide ease of doing business in the country leading to larger FDI inflows contributing to growth of investment, income and employment. Major changes in FDI policy in 2017-2018 are as follows.

**100% FDI under Automatic Route for Single Brand Retail Trading (SBRT):** It has now been decided to permit 100% FDI under automatic route for SBRT. It has been decided to permit single brand retail trading entity to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1st April of the year of the opening of first store against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India for that single brand (in INR terms) in a particular financial year over the preceding financial year, by the non-resident entities undertaking single brand retail trading entity, either directly or through their group companies. After completion of this 5 year period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.

**100% FDI under Automatic Route in Construction Development:** It has been decided to clarify that real estate broking service does not amount to real estate business and is therefore, eligible for 100% FDI under automatic route. Foreign airlines allowed to invest up to 49% under approval route in Air India. As per the extant policy, foreign airlines are allowed to invest under Government approval route in the capital of Indian companies operating scheduled and nonscheduled air transport services, up to the limit of 49% of their paid up capital. However, this provision was presently not applicable to Air India, thereby implying that foreign airlines could not invest in Air India. It has now been decided to do away with this restriction and allow foreign airlines to invest up to 49% under approval route in Air India subject to the conditions that: Foreign investment(s) in Air India including that of foreign Airline(s) shall not exceed 49% either directly or indirectly. Substantial ownership and effective control of Air India shall continue to be vested in Indian National FIIS/FPIS allowed to invest in Power Exchanges through Primary Market. Extant policy provides for 49% FDI under automatic route in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010. However, FII/FPI purchases were restricted to secondary market only. It has now been decided to do away with this provision, thereby allowing FIIs/FPIs to invest in Power Exchanges through primary market as well.

## OTHER APPROVAL REQUIREMENTS UNDER FDI POLICY

(i) As per the extant FDI policy, issue of equity shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. is permitted under Government approval route. It has now been decided that issue of shares against non-cash considerations like pre incorporation expenses, import of machinery etc. shall be permitted under

automatic route in case of sectors under automatic route (ii) Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company(ies)/LLP and in the Core Investing Companies is presently allowed up to 100% with prior Government approval. It has now been decided to align FDI policy on these sectors with FDI policy provisions on Other Financial Services. Thus, if the above activities are regulated by any financial sector regulator, then foreign investment up to 100% under automatic route shall be allowed; and, if they are not regulated by any Financial Sector Regulator or where only part is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route, subject to conditions including minimum capitalization requirement, as may be decided by the Government.

### **Competent Authority for Examining FDI Proposals from Countries of Concern**

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

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

### **PROHIBITION OF RESTRICTIVE CONDITIONS REGARDING AUDIT FIRMS:**

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

Prime Minister Narendra Modi during his keynote address at the WEF 2018 delivered a strong message to the world by calling for unity against protectionism and invited global companies to invest in India. He said due to the structural reforms carried out by the current Government, India has opened a "new door of the FDI". He assured the CEOs and the leaders of world powers that India was ready to take on any challenges like protectionism and terrorism. Here are some

key takeaways from Prime Minister Narendra Modi's speech for 'Make in India'.

### **Assures companies of smooth policie**

PM Modi said India has no indirect motives, and that it works in close coordination with partner countries without any agenda. Slamming the protectionist policies adopted by many developed countries, PM Modi said they need to change their self-centered way. He even compared the problem of protectionism with climate change and terrorism. "We are facing a big obstacle in terms of countries turning self-centered. Many countries who preach globalisation have chosen to remain self-centered. This is equal to terror and climate change, and the sheen of globalisation is slowly fading," said PM Modi.

### **India at cusp of major social change**

The Prime Minister said: "We are not only doing small changes in our economic and social policies but are bringing revolutionary changes by adopting a policy of reform, perform and transform." Boasting how the Government has made it easy to invest in the country, PM said due to our simple policies for investment, "it is now very easy to invest, visit, work, manufacture and export your product to all corners of the world from our country". "The Indian youths were earlier tied due to poor policies. But now situation has changed, and in three years big changes have happened in India. Now Indian youths are eyeing for \$5 trillion economy by 2025, and they are capable in doing this," said the PM.

### **From red tape to red-carpet nation**

Assuring India has completely shed its conservative working policy and that anyone could invest in India without facing much bureaucratic hurdles, PM Modi told the gathering "my country has now changed from a red tape to a red-carpet nation. The PM said that to improve major political, economic and security issues of the world, there's a need for strong coordination between likeminded nations. "There's a strong need to speed up global economic growth. Current results are encouraging but technology and digital revolution can help find out answers to these problems." The PM concluded his speech with a passionate call for investment by stating that "if you want wealth and wellness, come to India. If you want health and wellness, come to India. India will always welcome you."

### **Investment opportunities in solar power**

PM Modi drove the people's attention towards the problem of climate change by showing India's progress on the initiative. He said the real solution of problems lie in first accepting them and then finding solutions by working together. "We have to ask if economic progress at the cost of environment degradation is the real progress. Why are we not thinking about these challenges? In India, we have set a target to produce 175 gigawatt renewable energy by 2022. Total 60 gigawatt of the desired target has already been achieved." Prime Minister said that India and France united in 2016 to make an organization to tackle the solar energy production challenges and formed the International Solar Alliance.

"India is ready for business and open to investments, Prime Minister has reiterated many a time, his agenda of 'reform, perform, transform' has already seen India attract unprecedented levels of FDI."

CS

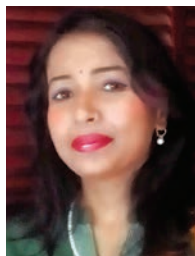
# Evolution of India as an Investment Hub with Ease of Doing Business

Honourable Prime Minister of India, Mr. Narendra Modi during his maiden speech on the Independence Day 15th August 2014 invited the world class manufacturers to make in India and supplicated to Indian manufacturers for staying in our nation. The “Make in India” program has been formulated to transform India into an investment hub. The lion in the logo of Make in India is symbolic of strength and power whereas the wheels signify the development and progress. But the dream of “Make in India” will not fructify without ease of doing business in India.



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## INTRODUCTION

**E**conomies are ranked by World Bank on the basis of several parameters to measure the environment of doing business in a country. The higher numeral value of ranking refers to awful environment for regulating business in the country. However, the lower numeral value of rank stands for congenial environment of operation for the firms. The ease of doing business index comprises ten indices for ranking the regulation of business in a country. The ten parameters used for ranking the countries on the scale of ease of doing business are as under:



Ten dimensions for ranking Ease of doing business

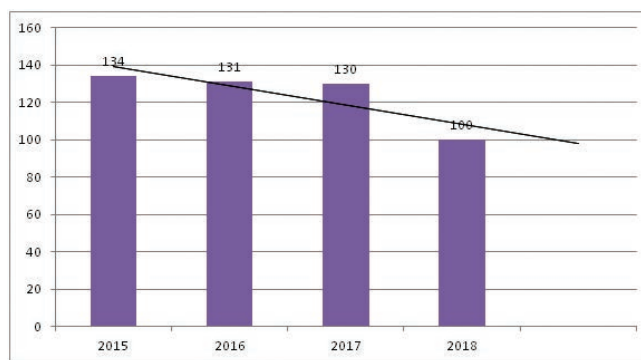
According to the World Bank report on Doing Business 2018, India stands at the position of 100 among 190 countries on the basis of above ten facets of ranking for ease of doing business.

Economy	Rank
New Zealand	1
Singapore	2
Denmark	3
Korea Republic	4
Hong Kong	5
United States	6
United Kingdom	7
Norway	8
Georgia	9
Sweden	10
India	100

Source: Doing business database (World Bank)

Table 1: Ranking of economies for ease of doing business

India stood at 134<sup>th</sup> position in Doing Business report 2015 while it jumped to 130<sup>th</sup> position in the ranking made for the year 2017. The ranking made a jump of 30 points and India secured the rank of 100 in Doing Business Report 2018.



Ranking of India on ease of doing business index

## COMPARATIVE ANALYSIS WITH TOP FIVE COUNTRIES FOR EASE OF DOING BUSINESS

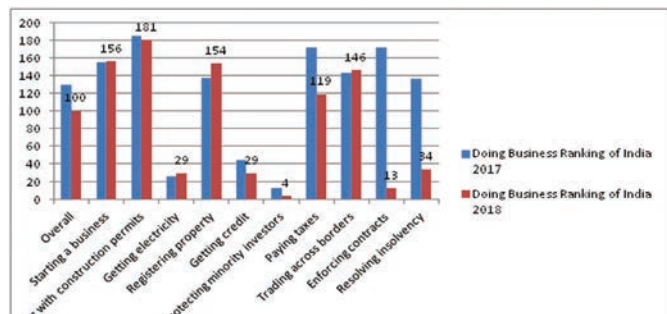
According to the report of World Bank, India remained one of the toughest places to do business despite various reforms. New Zealand has hit the list followed by Singapore. India stands at 100<sup>th</sup> position among 190 countries in the World Bank's ease of doing business rankings 2018. Why India sits lowly at the ranking? Let us have a comparative view with five countries at top level in the World Bank's ten facets for ease of doing business ranking 2018.

Topics	Doing Business Ranking 2018					
	India	New Zealand	Singapore	Denmark	Korea	Hong Kong
Overall	100	1	2	3	4	5
Starting a business	156	1	6	34	9	3
Dealing with construction permits	181	3	16	1	28	5
Getting electricity	29	37	12	16	2	4
Registering property	154	1	19	11	39	55
Getting credit	29	1	29	42	55	29
Protecting minority investors	4	2	4	33	20	9
Paying taxes	119	9	7	8	24	3
Trading across borders	146	56	42	1	33	31
Enforcing contracts	164	21	2	32	1	28
Resolving insolvency	103	32	27	7	5	43

(Source: World Bank database)

**Table 2: Ranking of India on “Doing business 2018”**

The ranking of India on Doing Business parameters for the year 2017 and 2018 can be graphically shown as follows:



Comparison of improvement or decline in performance of India on ten facets of doing business over the year 2017:

COMPARATIVE ANALYSIS			
	Doing Business Ranking of India 2017	Doing Business Ranking of India 2018	Comparison
Overall	130	100	Improved
Starting a business	155	156	Declined
Dealing with construction permits	185	181	Improved
Getting electricity	26	29	Declined
Registering property	138	154	Declined
Getting credit	44	29	Improved
Protecting minority investors	13	4	Improved
Paying taxes	172	119	Improved
Trading across borders	143	146	Declined
Enforcing contracts	172	13	Remarkable improvement
Resolving insolvency	136	34	Remarkable improvement

Source: Doing business database (World Bank)

**Table 3: Comparative analysis of India in ease of doing business with previous year**

The ranking secured by India is not favourable for doing business though the situation has improved from the year 2017. The comparative study of ten facets of ease of doing business ranking with top countries will enable to find the avenues for improvement.

**Country at top position in each dimension of ease of doing business**

Topic	Rank	Country
Starting a business	1	New Zealand
Dealing with construction permits	1	Denmark
Getting electricity	1	United Arab Emirates
Registering property	1	New Zealand
Getting credit	1	New Zealand
Protecting minority investors	1	Kazakhstan
Paying taxes	1	United Arab Emirates
Trading across borders	1	Austria
Enforcing contracts	1	Korea Rep.
Resolving insolvency	1	Japan

Source: Doing business database (World Bank)

**Table 4: Countries at top position for each dimension**

**COMPARATIVE ANALYSIS OF EACH FACTOR, MESAURES TAKEN UNDER MAKE IN INDIA PROGRAM, AND AREAS FOR IMPROVEMENT**

**1. Starting business**

Starting a business measures the paid up capital requirement, number of procedures, days, and cost as percentage of per capita income required to register a firm for married men and women. The rank of India is 156 among 190 economies for starting a business in India. The condition is quite unfavourable for the dream of Make in India. However, the government has taken following measures under Make in India program to improve the ranking for starting a business.

- Company incorporation through SPICE (Simplified Proforma for Incorporating Company Electronically): SPICE is the simplification of registration process of company. This is simplified integrated process for incorporation of company in form INC-32, pre drafted Memorandum of Association in form INC-33, and INC-34 for Articles of Association at the portal of Ministry of Corporate Affairs.
  - Removal of common seal of company and minimum paid up capital requirement under Companies (Amendment) Act, 2015
  - Online registration for ESIC and EPFO has reduced the time and cost of registration
  - Online application for Industrial license and Industrial Entrepreneur Memorandum at eBiz website and the application form has been simplified
  - The validity period of Industrial license has been raised to three years from two years
  - Integration of twenty services at eBiz portal to obtain clearances from governments
  - Online application for Environment and Forest clearances at the Ministry of Environment and Forest and Climate change portal
- Still, the number of procedures and days required to start business in India is much higher as compared to other top ranked countries.

	Number of procedures	Time men days	Cost-men as % of income per capita
India (2017)	12.9	26	13.8
India (2018)	12	29.5	17.6
Ranking of best performer	1 (New Zealand)	0.5 (New Zealand)	0.00 (United Kingdom)

Source: Doing business database (World Bank)

**Table 5: Ranking for starting of business**

The time men days required for doing business in India and cost has declined from the year 2017. The ease of doing business ranking can be improved with reduction of cost per capita income,

number of procedures, and requirement of days to start a business.

## 2. Dealing with construction permits

Dealing with construction permits tracks the number of procedures, time and cost required to establish a warehouse in a country. India ranks at 185<sup>th</sup> position for dealing with construction permits. The number of days required to build a warehouse in India is more than 1.5 times the time required by the country at top.

	Number of procedures required to build a warehouse	Time in days required to build a warehouse	Cost as % of warehouse value
India (2017)	35.1	190	25.9
India (2018)	37	193.9	22.5
Ranking of best performer	7 (Denmark)	27.5 (Korea)	0.10 (five economies)

Source: Doing business database (World Bank)

**Table 6: Ranking for dealing with construction permits**

The government has taken following measures for improvement under Make in India program:

- Fast track approval system: The Municipal Corporations of Delhi and Mumbai have introduced common application form for getting construction permits
- Uniform Building Rules Bye Laws, 2016: The Uniform Building Rules Bye Laws provides deemed construction permit within 30 days.

Despite the actions taken by the Government of India the time days and number of procedures required to build warehouse has declined from the previous year.

## 3. Getting electricity

Getting electricity measures the number of days, procedures required, and cost incurred to get permanent electricity connection for newly established warehouse. It also measures the transparency of tariff, and reliability of electricity supply.

	Number of days required to get permanent electricity connection	Cost as a percentage of per capita income	Number of procedures
India (2017)	45.9	133.2	5
India (2018)	5	47	18.7
Ranking of best performer	2 (United Arab Emirates)	10 (United Arab Emirates)	0.00 (Japan)

Source: Doing business database (World Bank)

**Table 7: Ranking for getting electricity**

The rank given to India for getting electricity has shown remarkable improvement over the previous year in Mumbai but the overall ranking has declined from the rank of 26 (2017) to 29 (2018).

## 4. Registering properties

This topic measures the number of procedures, days and cost incurred as percentage of per capita income to register a property (purchase of dispute free land and building by an entrepreneur).

	Number of procedures required to register properties	Time (number of days required for registration)	Cost as a % of per capita income
India (2017)	7	46.8	7.7
India (2018)	8	53	7.6
Ranking of best performer	1 (four economies)	1 (three economies)	0.00 (five economies)

Source: Doing business database (World Bank)

**Table 8: Ranking for registering properties**

The government has taken the following measures for the improvement:

- **Digitization of sub-registrars' offices:** Delhi Government has digitized all the sub-registrars' offices. It will reduce the cost and time incurred to register the property.
- **Integration of sub-registrars' offices with Land Records Department:** Delhi Government has also integrated the records of sub-registrars' offices with Land Records Department.
- **Digitisation of all property tax records:** Maharashtra government has digitized all the records related to the property. It will reduce the cost and time.

## 5. Getting credit

Getting credit is a parameter to measure the degree of protection available to the borrower and lender under collateral and Bankruptcy law. It also measures the degree to which rules and practices affecting the accessibility, scope, coverage of credit information. New Zealand has been ranked at number one position on the basis of this parameter whereas India stood at 44<sup>th</sup> position.

	Strength of legal right index [Degree to which collateral and Bankruptcy laws protect borrower and lender and facilitates lending] (total index is 0-12)	Depth of credit information index [Degree to which rules and practices affect the accessibility, and coverage of credit information] (total index is 0-8)
India (2017)	6	7
India (2018)	8	7
Ranking of best performer	12 (four economies)	8 (34 economies)

Source: Doing business database (World Bank)

**Table 9: Ranking for getting credit**

The Government has taken the following steps to improve the ranking on the basis of getting credit:

- Amendment of SARFAESI Rules, 2011: Rule 4 of the SARFAESI Rules, 2011 has included several additional charges as security interest in immovable property by mortgage other than deposit of title deeds, security interest in hypothecation of plant and machinery, stocks, debt including book debt or receivables, security interest in intangible assets, and security interest in any under construction residential or commercial building or a part thereof.

## 6. Protecting minority investors

Protecting minority investors tracks the degree of protections available to the minority shareholders against the misuse of corporate assets by directors. It also measures the transparency of business.

	Minority interest regulation index (0-10)	Extent of shareholder governance (0-10)
India (2017)	7.3	8
India (2018)	7.3	8.7
Ranking of best performer	9.3 (New Zealand)	9.0 (Kazakhstan)

Source: Doing business database (World Bank)

**Table 10: Ranking for protecting minority investors**

## 7. Paying taxes

Paying taxes records the administration of tax payment by a medium sized firm in the country. It analyses the number of tax payments, time taken for preparation and payment of taxes and total tax paid during the second year of operation as percentage of profit. The tax

rate as percentage of profit in India is higher than other countries. It will make the business less attractive for investors.

	Number of payments per year	Time in hours per year taken to prepare, file, and pay taxes	Total tax rate as % of profit
India (2017)	25	241	60.6
India (2018)	12	214	55.3
Ranking of best performer	3 (Hong Kong)	50 (Estonia)	18.47 (32 economies)

Source: Doing business database (World Bank)

**Table 11: Ranking for paying taxes**

## 8. Trading across borders

Trading across border measures the cost associated with the import and exports made from a country. The time and cost (excluding tariff) associated with the import and export are measured on the basis of border compliances, documentary compliances, and domestic transport. The time and cost of border compliance measures the time and cost incurred in preparing and submitting the documents during border handling, inspection charges, and custom clearances. The time and cost associated with the documentary compliance measures the time incurred and cost associated with the preparation, processing and submission of the documents for import and export.

	Time to export in hours: documentary compliances	Cost to export in USD: documentary compliances	Time to import in hours: documentary compliance	Cost to import in USD: documentary compliance
India (2017)	38	92	61	135
India (2018)	58	94	65	129
Ranking of best performer	1 (25 economies)	0.0 (19 economies)	1 (30 economies)	0.0 (30 economies)

Source: Doing business database (World Bank)

**Table 12: Ranking for trading across borders**

The crucial measures taken by the Government for ease of doing business regarding export and import are:

- Directorate General of Foreign Trade has limited the number of documents required for import and export to three
- Up-gradation in the official website of CBEC: The ungraded version of the website of CBEC acts as one stop shop for easy access to the Acts, Rules, Regulations, Notifications and Circulars related to Indirect Tax. It also provides duty calculator, allied Acts of customs, grievance handling facility, and social media connectivity
- 24x7 online filing of documents for custom clearances through EDI system
- Adoption of digital signature for ACP clients with effect from May 1, 2015.

## 9. Enforcing contracts

This indicator of ease of doing business measures the time and cost associated with resolving the commercial dispute and the quality of judicial process.

	Time taken to resolve disputes (in days)	Cost (court fees and attorney fees as % of debt value)	Quality of judicial processes index (0-18)
India (2017)	1,420	39.6	9
India (2018)	1,445	31	10
Ranking of best performer	164 (Singapore)	9 (Iceland)	15.5 (Australia)

Source: Doing business database (World Bank)

**Table 13: Ranking for enforcing contracts**

The following measures have been taken by the Government to resolve the commercial dispute:

- Commercial Courts, Commercial Division, and Commercial Appellate division of High Court Act, 2015 has been enacted to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudication of commercial disputes of specified value and matters. This Act came into force on 23 October, 2015
- Establishment of National Judicial Data Grid (NJDG): National Judicial Data Grid has been established and opened to public on 19<sup>th</sup> September 2015. It provides state wise cases pending, judgment, and helps to track the position of status of a case.

## 10. Resolving insolvency

Resolving insolvency ranks the countries on basis of weaknesses and bottlenecks in administrative and procedural aspects of resolving insolvency processes. The recovery rate in India is much lower and time taken to resolve the insolvency cases are much higher as compared to other countries.


	Recovery rate (cents on dollar)	Time in years	Cost as % of estate
India (2017)	26	4.3	9
India (2018)	26.4	4.3	9
Ranking of best performer	93.1 (Norway)	0.4 (Ireland)	1 (Norway)

Source: Doing business database (World Bank)

**Table 14: Ranking for resolving insolvency**

India could not improve its ranking on the parameter of resolving credit over the year 2017. The ranking is almost similar. However, the Central Government has introduced a comprehensive legislation for resolving corporate insolvency.

## CONCLUSION

According to the report of Forbes, India will be the *third largest economy* of the world in 2020. Indian economy seems better placed to reach new heights. However, India has been ranked at 100<sup>th</sup> position for ease of doing business and at 156<sup>th</sup> position for starting a new business. (Source: World Bank data). The economists feel that problem of governance is the biggest constraint to achieve our development goals. Make in India program was launched when India was at the brink of economic failure. It is an unparalleled overhaul of policies and procedures. Whether it is Make in India or Make for India, the cost and ease of doing business is relevant. The foreign players will be attracted to make in India with ease of doing business. Improvement on different facets of ease of doing business will fructify the dreams of Make in India. And, the improvement will help to suffice the definition of FDI (First Develop India). The Prime Minister of India depicted while launching the Make in India on 25 September 2014, "I do not have to waste time to invite...I need to give the address. For the world, FDI is an opportunity. My definition of FDI for the people of India is *First Develop India*." 

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# FDI: Indian Government's Prominent and Paramount Initiatives to Make India as a Global Investment Hub

India is turning into a global hub for investments due to the conducive and investment friendly environment provided by the Central Government under the dynamic and visionary leadership of Prime Minister Narendra Modi. The Union Government has been driving various initiatives to attract FDI into India by negotiating world countries and seeking overseas participation aggressively in flagship schemes such as 'Make in India', 'Digital India' and 'Start Up India'. The article elucidates the salient features of the initiatives undertaken by the Government to make India as the global investment hub.



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***We are not merely reforming our country. We are transforming India. We have pledged to build a new India by the time independent India turns 75 years.***

## **-Indian Prime Minister Narendra Modi**

India is the sixth biggest economy in the world with buoyant investment climate. It is the fastest growing economy in the world, passing through a very robust, splendid and reformative transformation phase with a view to promote 'Make in India', 'Start up India' and improve its world ranking in 'Ease of doing Business' index. Here economic fundamentals are strong and reform momentum still continues. India is only second to China in the league of favourite investment destinations. As the Indian economy is developing very fast, it has opened new avenues for people to start businesses. Doing business in India is a profitable option as the majority of the industries and sectors are almost untapped and hence the fear of facing stiff competition is less.

## **FDI AND THE MAKING OF A NEW INDIA**

Foreign Direct Investment (FDI) into India has been breaking records each consecutive year since 2014 and looks to keep this trend going as further reforms help fasten the flow of FDI into India. Total capital inflows reached \$208.99 billion during the period April 2014 to December 2017, according to the Minister of State for Commerce and Industry. India has already been the world's leading recipient of greenfield FDI for the previous couple of years. There have been more structural reforms since the previous edition of Invest in India. The journey from its infancy in 2014 to a global winner is best reflective of the story of new India – a transformation,

unprecedented in speed and scale. And all this was achieved at a fraction of the budget of global peers. Invest India is spearheading transformational changes in India's investment landscape.

In January this year, the Government announced a reform that is likely to have significant impact – the relaxation of rules in single-brand retail up to the extent of 49 per cent. Overseas retailers can now delay having to meet the 30% local sourcing norm by five years. The inaugural issue of Invest in India focused on how a 'New India' was shaping up and the role FDI is playing. There is a wide gamut of subjects related to FDI in India. The voices of decision makers – including ministers, CEOs, policy makers, experts and entrepreneurs, provided the best sense of the direction this growth story is taking. By showcasing the best of investment experiences in India, it also chronicled how the myriad opportunities for FDI are transforming the Indian economy and building a New India. With an impressive growth figure of 6.7 per cent likely this year, India is one of the fastest growing economies in the world, according to the IMF. The outlook for India is optimistic as indicated by numerous global indices where India is the best performing large economy. Goods and Services Tax, launched in 2017, has been heralded as one of the most significant economic reforms in independent India's history and its benefits in the form of smoother, faster transactions with greater clarity are shaping up the economy benefitting the nation in various forms.

According to the Department of Industrial Policy and Promotion (DIPP), India has now thrown open 92.5 per cent of FDI through the automatic route, further easing the investment process.

## **SUCCESS MANTRA OF FDI**

The last few years have seen records broken each consecutive year for the amount of FDI attracted to India. The main reasons behind this success are that in the last four years, every year inward FDI numbers have broken the previous year's records. There are two ways in which investors view India. As the India growth story picks pace, investors from around the world are interested in investing in India. More importantly, as a result of the transformative reforms, investors are seeing India as a globally competitive investment destination. India saw \$60.1 billion of FDI inflows in 2016-17, a record 75 per cent rise from 2013-14. And received \$48.2 billion of FDI in the first 9 months of 2017-18.

In this edition, Prime Minister has been driving various initiatives to attract FDI into India, visiting many countries and aggressively sought overseas participation in flagship schemes

such as Make in India, Digital India and Start Up India. Make in India is a project he launched to encourage companies to manufacture products in India. This has played a big role in attracting FDI, not just in the automotive sector but also in infrastructure, electronics, renewable energy, especially solar power among others. Some notable features of FDI initiatives are as follows:

#### 1. INVEST INDIA

On 28th August 2009, the Cabinet approved DIPP's proposal to set-up Invest India, under Section 25 of the Companies Act 1956. Invest India was given the national responsibility for winning FDI for India — Investment Promotion and Facilitation. At Invest India, the Government works with investors across their investment lifecycle and translates these investments into jobs for the nation's emerging workforce. In a relatively brief period, Invest India has been impactful across many areas. It has been effective in increasing the competitiveness of doing business in India, supporting start-ups and facilitating pioneering investments in major sectors.

#### 2. INVEST INDIA CENTRE

Invest India set up 'India Investment Centre' at Davos. The India Investment Centre was the focal point for all business to government interactions and a centre for discussions on key investment opportunities in India. Invest India organised a series of roundtables to showcase and discuss investment opportunities.

#### 3. INVEST IN INDIA: A MAGAZINE DEDICATED TO FDI

Being India's first and the only magazine dedicated to FDI, 'Invest in India' carries the message of the New India and contributes to winning FDI that changes the lives of millions of Indians. Good economics is at the center of good politics, and job creation is its foremost benchmark.

#### 4. INVESTMENT PROMOTION & FACILITATION: WINNING FDI FOR INDIA

Investment promotion & facilitation is a long-term strategic activity. It requires clear and consistent strategies implemented over many years with active support of and the adequate resourcing from the Government. An effective Investment promotion Agency (IPA) is critical to attract transformational FDI, according to World Bank and UNCTAD. DIPP is entrusted with the task of formulation of FDI policy, monitoring of Ease of Doing Business Reforms and Investment Promotion and Facilitation.

#### 5. WINNING FDI

Winning FDI is not just attracting investments. It requires hard work on the ground, through the last mile. Invest India works with all the state governments across India to make this happen. To raise the bar of investment promotion and facilitation by state governments, Invest India evaluated the capabilities of state IPAs across India and conducted a nation-wide workshop to help them fill the gaps and facilitate knowledge sharing.

Winning FDI is not a solo-journey of a superman but an orchestra where multiple actors work in tandem. Recognizing the need for increased real-time frictionless coordination, the Government is linking the Indian missions, central ministries, Invest India and state governments on a first-of-its kind technological platform.

This will ensure that the investors have a seamless experience from the Boardrooms in global capitals to the districts and blocks of the states in India. While a quick look at the data

Being India's first and the only magazine dedicated to FDI, 'Invest in India' carries the message of the New India and contributes to winning FDI that changes the lives of millions of Indians. Good economics is at the center of good politics, and job creation is its foremost benchmark.



shows us that 2017-18 is going to be another record-breaking year for FDI in India, Team Invest India's journey has just begun. By initiating a number of reforms and new policies, India is looking to attract much greater investment and boost exports as it treads down the path of becoming a high-income economy in two decades.

#### 6. NEW INDUSTRIAL POLICY

The Government has also been planning a new industrial Policy. The new industrial policy envisages creating a globally competitive Indian Industry of the future equipped with skill, scale and technology. The policy centres around three main themes:

- a) To prepare India for future industries;
- b) To modernize existing enterprises and infrastructure; and
- c) To equip the Indian industry with certain enablers.

These enablers will help make doing business in future much simpler, along with improving trade-manufacturing links and skills required for the future jobs. The proposed policy aims to chart the course for India to become a world leader and has clearly stated its aspirations.

#### 7. WORLD ECONOMIC FORUM (WEF) - 2018

A 360° outreach with global media publishers was organised for interactions with the DIPP delegation to amplify the India opportunity. The annual meeting of the (World Economic Forum) WEF presented a great opportunity for the visibility of the 'New India' opportunity. It was an intense five days of showcasing India as the primary destination for investments for the global industries. It was essential to capitalise on this event to promote the 'India Opportunity' among a distilled gathering of global financial influencers.

Team New India participated in WEF 2018 and highlighted



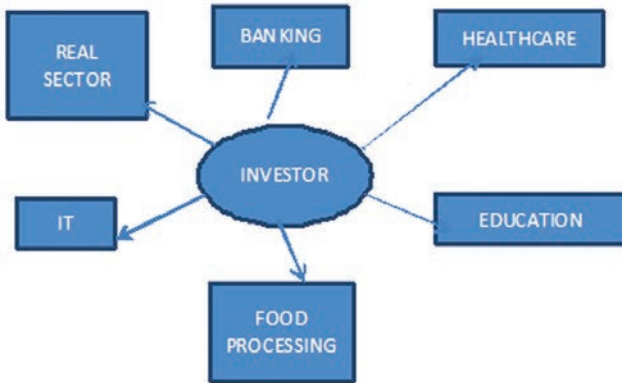
the opportunity that India presents for the Global economy to create a future which is more inclusive and shared. A high level Government and private sector delegation from India under the leadership of Hon'ble Prime Minister Narendra Modi had participated in WEF 2018 to chalk out the strategies for global investment in India. The National Investment Promotion and Facilitation Agency of India had also organized various round tables and orchestrated multiple sessions to bring together the Senior Government delegation and various Global as well as Indian leaders to discuss these opportunities and next steps.

#### 8. ENTRY ROUTES FOR INVESTMENT IN INDIA

Foreign Investment is easily permitted in almost all sectors. An Indian company may receive Foreign Direct Investment under two routes:

- Automatic route:** The foreign investor does not require any approval from the Reserve Bank of India or the Government of India for making investments. FDI up to 100 per cent is allowed under the automatic route in all sectors specify under the consolidate FDI Policy.
- Government Route:** The prior approval of the Government of India, Ministry of Finance, and Foreign Investment Promotion Board (FIPB) is required for making investment in India.

Sectors that an investor can look for long-term prospective are:



- Banking:** The Indian banking sector has enormous upside growth potential. Investing in India can give investors above average return over longterm in the banking sector.
- Healthcare:** The health and pharma sectors are quite promising in the current market condition due to rise in disposable incomes and penetration of healthcare insurance. The demand for healthcare is growing day by day and investors with a long-term prospect can invest in strong companies in the healthcare sector.
- Education:** The Indian Education industry is now at the wings of growth. Increasing awareness, rising disposable incomes and availability of loans for higher education creates a huge demand in the sector. So, it is one of the most important investment sectors in India.
- Food processing:** India is a country that largely depends on its agriculture. Thus, food processing industry in the country is among the largest in the world. The industry enjoys patronage from Government, private players and cooperative sectors. Even the Government ensures steady

investment in this sector by introducing various changes in the “National Food Processing Policy”.

- IT Sector:** India is known as the IT hub. The BPO (Business Process Outsourcing) and the KPO (Knowledge Process Outsourcing) industries are enjoying a fast paced growth rate. Thus, investing in the giant software industry in India is really a good decision.

- Real estate:** Real estate has emerged as one of the most appealing investment sectors for domestic as well as foreign investors. The real estate sector will continue to derive its growth in future because of changing consumer lifestyles. For example, nowadays people prefer to live in societies (apartments) with facilities like swimming pool, gym, security rather than just houses.

#### 9. FDI Policy: Sectors under Automatic Route with Conditions

(as on 08.07.2016)

S. No.	Sector/Activity	Relevant Para of Consolidated FDI Policy, June 2016	Cap
1.	Agriculture	5.2.1	100%
2.	Plantation Sector	5.2.2	100%
3.	Mining of metal and non-metal ores	5.2.3.1	100%
4.	Mining – Coal & Lignite	5.2.3.2	100%
5.	Manufacturing	5.2.5	100%
6.	Food Product Retail Trading	5.2.5	100%
7.	Broadcasting Carriage Services (Teleports, DTH, Cable Networks, Mobile TV, HITS)	5.2.7.1	100%
8.	Broadcasting Content Service - Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	5.2.7.2.3	100%
9.	Airports – Greenfield	5.2.9.1 (a)	100%
10.	Airports – Brownfield	5.2.9.1 (b)	100%
11.	Air Transport Service - Non-Scheduled	5.2.9.2 (2)	100%
12.	Air Transport Service - Helicopter Services/ Seaplane Services	5.2.9.2 (3)	100%
13.	Ground Handling Services	5.2.9.3 (1)	100%
14.	Maintenance and Repair organizations; flying training institutes; and technical training institutions	5.2.9.3 (2)	100%
15.	Construction Development	5.2.10	100%
16.	Industrial Parks -new and existing	5.2.11	100%
17.	Trading – Wholesale	5.2.15.1	100%
18.	Trading – B2B E-commerce	5.2.15.2	100%
19.	Duty Free Shops	5.2.15.5	100%
20.	Railway Infrastructure*	5.2.16	100%
21.	Asset Reconstruction Companies	5.2.17	100%
22.	Credit Information Companies	5.2.20	100%
23.	White Label ATM Operations	5.2.25	100%
24.	Non-Banking Finance Companies	5.2.26	100%
25.	Pharma – Greenfield	5.2.27.1	100%
26.	Petroleum & Natural Gas - Exploration activities of oil and natural gas fields	5.2.4.1	100%
27.	Petroleum refining by PSUs	5.2.4.2	49%
28.	Infrastructure Company in the Securities Market	5.2.21	49%
29.	Commodity Exchanges	5.2.21	49%
30.	Insurance	5.2.22	49%
31.	Pension	5.2.23	49%
32.	Power Exchanges	5.2.24	49%

(Proposals involving FDI beyond 49% in sensitive areas from security point of view, to be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis).


### 10. FDI Policy: Sectors where Government Approval is required

(as on 08.07.2016)

S. No.	Sector/Activity	Relevant Para of Consolidated FDI Policy, June 2016	Cap	Govt. Approval
1.	Mining and mineral separation of titanium bearing minerals and ores	5.2.3.3	100%	Upto 100%
2.	Food Product Retail Trading	5.2.5	100%	Upto 100%
3.	Defence	5.2.6	100%	Beyond 49%
4.	Publishing/printing of scientific and technical magazines/specialty journals/periodicals	5.2.8.3	100%	Upto 100%
5.	Publication of facsimile edition of foreign newspapers	5.2.8.4	100%	Upto 100%
6.	Print Media - Publishing of newspaper and periodicals dealing with news and current affairs	5.2.8.1	26%	Upto 26%
7.	Print Media - Publication of Indian editions of foreign magazines dealing with news and current affairs	5.2.8.2	26%	Upto 26%
8.	Air Transport Service – Scheduled, and Regional Air Transport Service,	5.2.9.2(1)	100%	Beyond 49%
9.	Investment by Foreign Airlines	5.2.9.2	49%	Upto 49%
10.	Satellites- establishment and operation	5.2.12	100%	Upto 100%
11.	Telecom Services	5.2.14	100%	Beyond 49%
12.	Trading - SBRT	5.2.15.3	100%	Beyond 49%
13.	Pharma – Brownfield	5.2.27.2	100%	Beyond 74%
14.	Banking- Private Sector	5.2.18	74%	Beyond 49%
15.	Banking- Public Sector	5.2.19	20%	Upto 20%
16.	Private Security Agencies	5.2.13	74%	Beyond 49%
17.	Broadcasting Content Service			
	a) FM Radio	5.2.7.2.1	49%	Upto 49%
	b) Uplinking of 'News & Current Affairs' TV Channels	5.2.7.2.2		
18.	Trading – MBRT	5.2.15.4	51%	Upto 51%

### 11. DRAFT DEFENCE PRODUCTION POLICY

The Indian Government has floated the draft Defence Production Policy 2018 that sets an ambitious target to achieve a turnover of \$26 billion in defence goods and services by the year 2025, including exports to the tune of \$5 billion in the next seven years. The draft policy document states that the FDI regime in defence will be further liberalised and that FDI up to 74% under automatic route will now be allowed in niche technology areas. The current policy allows up to 49% of foreign direct investment in such technologies. India aims to be among the top five

 The Government has liberalised the FDI process for many sectors including infrastructure. Besides the automotive sector, anything that is connected with technology is a priority to India as the Nation is emerging as a Global Leader. There are a lot of opportunities in sectors, like mining, ports, defence manufacturing, etc.

countries in aerospace and defence. The policy aims at reduced dependence on imports and self-reliance in development and manufacturing of indigenous weapon systems. One of the objectives stated in the document is to achieve a turnover of Rs. 1.7 lakh crore in defence goods and services by 2025, which will translate to Rs. 70,000 crores of additional investment and employment creation for 2 to 3 million people.

### 12. CABINET CLEARS 100% FDI IN AVIATION UNDER AUTOMATIC ROUTE

The Union Cabinet announced a major easing of FDI norms for the aviation sector allowing 100 per cent foreign direct investment into Indian airline operators under the automatic route. As per the current policy, foreign airlines are allowed to invest in Indian companies operating scheduled and non-scheduled air transport services, up to the limit of 49 per cent of their paid-up capital, under the Government approval route. However, this provision was not applicable to Air India, thereby implying that foreign airlines could not invest in Air India. This has now been done away with as the Cabinet approved investment up to 49 per cent under the approval route in Air India.

### 13. GOVT EXAMINES A PROPOSAL TO BRING FDI IN PENSIONS

The Government is examining a proposal to bring the foreign direct investment (FDI) policy for the pensions sector in line with that of the insurance sector. Such a move is expected to lead to higher overseas investment in the sector and benefit incumbents such as HDFC Pension Management and ICICI Prudential Pension Fund Management.

### 14. DIPP CLEARS FDI PROPOSAL IN DAMRO FURNITURE

DIPP has approved the FDI proposal in the retail sector of Damro Furniture worth over Rs. 400 crore. Damro Furniture would undertake single-brand retail trading of Damro branded products in India according to the DIPP's foreign investment facilitation portal. The company had proposed to invest Rs. 402 crore. Damro is among the world's largest furniture manufacturers offering a diverse range of modern and traditional furniture.

### BRIGHT PHASE OF FDI IN INDIA

Currently, FDI into India is pretty much open with several sectoral caps gone. As India goes into the next phase, the focus will be on achieving the right balance between the quantity of FDI and the quality of it.

The quality of FDI will be assessed by its ability to boost domestic manufacturing, create new jobs and value addition

is sectors. The focus will be on industrialization beyond cities, at district levels. National level surveys and impact dashboards will be created to collect detailed information that will in turn allow policy makers to draw better insights as well as steer FDI into more relevant sectors. Invest India will continue to play a key role in facilitating and promoting FDI into the country. Within a short span of their operations they have built a huge pipeline of projects. A key focus of the Government is to convert intent – expressed in both sectoral and state-focused – into investments. FDI into India is pretty much open with several sectoral caps gone. As India goes into the next phase, the focus will be on achieving the right balance between the quantity of FDI and the quality of it.

In the current year, the Department of Industrial Policy and Promotion (DIPP) hosted the India Welcome Reception on 22nd January, 2018 which was attended by 75 companies from 20 countries across 23 sectors. This gave the companies a platform to interact with the senior-most political leadership of the country to discuss policy concerns and investment plans for India. A number of these companies had indicated strong intentions to invest in India.

Interaction of the Hon'ble Prime Minister with the senior-most management of these companies reiterated the importance being placed on encouraging FDI in the country as well as addressing any policy concerns or other issues they may harbour. This was critical in helping these companies to firm up their India investment plans and to bring new and advanced technologies, jobs and export opportunities to the country.

#### 15. LIBERALISATION OF FDI PROCESS FOR MANY SECTORS

The Government has liberalised the FDI process for many sectors including infrastructure. Besides the automotive sector, anything that is connected with technology is a priority to India as the Nation is emerging as a Global Leader. There are a lot of opportunities in sectors, like mining, ports, defence manufacturing, etc.

### GLOBALISATION

Globalisation is going through a phase where countries are revisiting and evaluating their role in it. The country has come to the stage where other countries are re-examining, revisiting and evaluating what should be the role of the nation in the community. In the first phase of globalisation, it had faced a lot of opposition, while in the second phase, countries tried to embrace it and participate more. In the third phase, countries are revisiting their role. India is trying to engage with traditional and new partners in this new phase, particularly with ASEAN. India continues to be one of the most open economies in the world with its GDP set to touch the \$5 trillion mark in 2025.

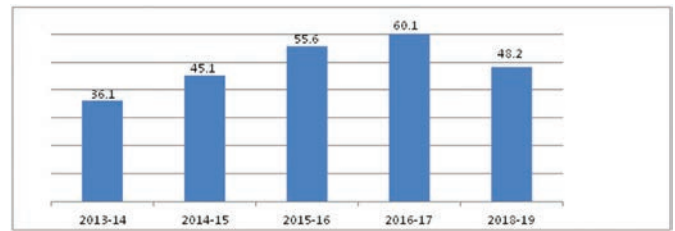
Both manufacturing and service sectors are expected to grow at more than 10% in the near future which creates opportunities for more inflow of FDI. The new EODB rankings also point towards an improving business ecosystem within the country and this will aid India in continuing to be an attractive destination for FDI.

### TOTAL FDI INTO INDIA

India's economy is the fastest growing of the large economies of the world, a clear signal that foreign investors are taking

long-term bets on the Indian economy. A look how the numbers read -

(in \$ billion)



(\* 2018-19 figures for 9 months)

### INDIA : AN ATTRACTIVE INVESTMENT HUB

Clear national vision, strong political will and focus on execution has made India one of the world's most attractive investment destinations. Far reaching reforms across a wide ambit have led to the transformation of India and India becoming the world's most open economy. A human capital of 1.3 billion of which more than 65% are under the age of 35, India is becoming a global power house. With the highest ever jump in the World Bank's Ease of Doing Business rank, India presents a multitude of opportunities spanning across sectors. India today is the top greenfield FDI investment destination. The youngest nation in the world, with an average age of 29 years, offers unprecedented opportunities for higher returns on your investments.

### MAJOR INSTANCES OF FOREIGN INVESTMENT

#### 1. ENGIE SA, ABRAAJ GROUP

With a view to invest in wind power platform, French energy firm Engie SA and Dubai's private equity firm Abraaj Group announced a partnership to build a wind power platform in India. "Together, Abraaj and Engie have identified a robust pipeline of wind power projects representing over 1 GW (gigawatt) in several key states," the companies said in a joint statement. Foreign investments are crucial for India's renewable energy industry as the lower cost of foreign capital and size of the market has helped bring down tariffs.

#### 2. SKETCHERS: LOOKED TO INVEST MORE IN INDIA

American footwear major Skechers plans to invest in expanding its retail infrastructure, technology, people, and marketing. By end of 2020, the brand aims to have between 400-500 stores in India, up from 113 presently. Most of these will come up in Tier II cities. At present the company operates around 25 per cent stores in smaller towns. The brand is expected to add more products. Internationally, Skechers sells watches, apparel, socks, sunglasses and other products. Over the course of next three years, many of these products are expected to be manufactured in India once the brand reaches the scale and see to make a viable option.

### FDI SHAPING INDIA'S FUTURE

FDI in India is already growing at record levels and the future looks to be bigger and better. As the agency entrusted with guiding FDI into the country, DIPP plays a crucial role, acting as the hub of contact for global companies looking to invest in India. DIPP has set new benchmarks in attracting FDI to India. India is the third largest economy in Purchasing Power Parity (PPP) terms and would soon be the fifth largest economy in terms of nominal GDP. As the Prime Minister has pointed

out that there are very few countries in the world which have all the key components in place for doing business together at the present moment. India has all three components i.e. Democracy, Demand and Demography.

For FDI, India is the most open economy in the world. Investing in India have been traditionally attracted its trained manpower, relatively lower wages, special investment incentives such as tax exemptions, setting up special economic zones and other such measures. Invest India is a one stop shop for foreign investors.

Within a short span of just two years, Invest India is facilitating over \$83 billion of projects, accounting for over seven lakh of direct employment and has actualized over \$10 billion of investments that have created close a lakh direct jobs on the ground. Today, Invest India is among the most awarded Investment Promotion Agencies (IPA) including UNCTAD's award of being the #1 IPA in the World. India also houses the maximum tech R&D centres located outside home countries of MNCs.

### GOLDEN PHASE OF FDI

The two decades since 1991, there has been a manifold increase in the amount of FDI into India. There is change in trends from the earlier phases. Now, 25 years on from when the Indian economy was first liberalised, India's investment climate has never been better. India is now in the top-100 club on ease of doing business – and expected to rise much further as current reforms kick in. India received the record FDI of \$60.1 billion in the last fiscal, which made it the top green field FDI recipient in the World according to Financial Times' FDI Intelligence. It could be seen as a golden phase of foreign investment in India. It is not just the record numbers that are speaking for themselves. New frontiers in investment are being established, and India is no longer seen as a low-cost destination. It is now a preferred destination.

India is ready for business and open to investments. The Prime Minister has reiterated many a time, his agenda of "reform, perform, transform". This has already seen India attract unprecedented levels of FDI destination for research and development across multiple sectors. Its digital presence is growing and again given the Government's push on digitisation, e-commerce is now increasingly a way of life. Investing in India is no longer just about selling products but making India a global leader.

### ROLE OF INVEST INDIA IN AUGMENTING MORE FDI INTO INDIA

Recently, India achieved the milestone of breaking into top 100 countries in the ease of doing business. Simplifying the business environment is an ongoing process and not a onetime effort. Invest India is mandated to provide a seamless experience for the investor from the global boardrooms to the last mile at the districts and blocks in India. Invest India will augment its global presence and at the same time enhance its capability to handhold the investor at the states and district – both are equally critical for the seamless investor experience. Invest India has launched two pioneering platforms – Nalanda and India Investment Grid. Nalanda brings together all stakeholders – foreign missions, central line ministries and state governments – on a single platform for better coordination. India Investment Grid has all information needed for the investor, the investible projects or other investment opportunities and investment advisors within a single virtual

framework, thus creating a virtual one stop shop. These initiatives are extremely critical to ensure that investments are 'grounded' in other words intent is translated into actual investments on the ground. The Startup India Hub launched this year is playing a similar role, taking the startup revolution to tier 2 and 3 cities.

### FUTURE OF FDI ESPECIALLY IN THE NEAR TERM

India's economy is slated to grow at over seven per cent for the next decade with its GDP likely to reach \$5 trillion by 2025. India has a huge domestic market with a substantial segment of its population who enjoy middle class standards of living. By 2030, another 250 million will be added to the middle class, almost the size of a United States.

So far over 14,000 reforms and administrative measures have been carried out in the Centre and in the States, which further enhances India's attractiveness as a destination for investments, foreign and domestic. The Indian economy has reached an inflection point as it is going to the one of the future growth engines of the global economy. Thanks to an increasingly liberal policy regime, big-ticket FDI flows are bound to gather momentum. India's infrastructure is getting a major uplift under this Government. Initiatives on highway development have seen many foreign investors putting in money in transforming the sector. A record of 10,000 km of roads have been built in financial year 2017-18.

The Government has taken major policy decisions to clear investment in aviation and the coming decade should see India emerge as the third largest aviation market in the world. The opening up of the retail sector to 100 per cent FDI under the automatic route for single-brand retail is already in place. The next phase of FDI will be around not just attracting record number of FDI but also enhancing the quality of FDI. India is ready for business and open to investments, the Prime Minister has reiterated many a time. His agenda of "reform, perform, transform" has already seen India attract unprecedented levels of FDI. With national goals set much higher, and further reforms in the pipeline to make India an even more attractive destination for FDI, the road ahead seems unstoppable for a resurgent India. However, special emphasis needs to be given to Two important sectors, viz., Infrastructure which needs more than trillion dollars in investment and Manufacturing.

### CONCLUSION

India is on its way to become the world's largest economic power. The way India is being looked upon by other countries all over the world, the way India is liberalizing its foreign investment policies, the way India is opening up its economy, this will happen in the very near future. Today, NRI investments in India are treated as local investments. This is a great boost to all NRI investors who are viewing this as a big opportunity to invest back in their country of origin. To attract greater investment, both the Centre and the State Governments need to ensure that the ease of doing good business converts to the pleasure of doing business to enhance happiness index of entrepreneurs. CS

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# Foreign Direct Investment Law & Policy in India – Latest Changes and Emerging Issues

Foreign Direct Investment is important for the growth and development of Indian economy, as it provides access to cheaper capital and latest technology to the businesses of the country. The flow of foreign exchange in India is governed by the Foreign Exchange Management Act (FEMA), 1999. The inflow of capital leads to increase in employment generation and job creation. In this article an attempt has been made to understand and practice the laws and regulations related to foreign investments in India.



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**T**he flow of foreign exchange in India is governed by the Foreign Exchange Management Act (FEMA), 1999. The Act came into force on June 1, 2000. It was enacted "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India."

FEMA replaced FERA or the Foreign Exchange Regulation Act, which was in effect since January 1, 1974. As per FERA, all the activities relating to foreign exchange were prohibited, unless specifically permitted by the Act. These provisions hampered the growth of the nation. Also, all the offences under FERA were treated to be criminal offences, leading to jail terms for minor offences. Whereas FEMA makes the offences related to foreign exchange, civil offences.

FEMA is a regulatory mechanism that enables the Reserve Bank of India to pass regulations and the Central Government to pass rules relating to foreign exchange in tune with the Foreign Trade Policy.

The Foreign Exchange Management Act consists of 49 sections, divided into 7 chapters. Besides the Act, there are 5 Rules and 19 Regulations notified thereunder.

The subject of investments is dealt with under Section 6 of the FEMA, 1999, Capital Account Transactions. Section 2(e) explains Capital Account Transactions as, 'a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6.

It provides that any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction, subject to the class or classes of capital account transactions permissible and the limit up to which foreign exchange shall be admissible for such transactions. The limits are set by

the Reserve Bank of India in consultation with the Central Government.

Sub-section 3 of Section 6 of the FEMA, 1999 empowers the Reserve Bank of India to prohibit, restrict or regulate the following transactions by framing Regulations in this regard.

- a. transfer or issue of any foreign security by a person resident in India;
- b. transfer or issue of any security by a person resident outside India;
- c. transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- d. any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- e. any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- f. deposits between persons resident in India and persons resident outside India;
- g. export, import or holding of currency or currency notes;
- h. transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- i. acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- j. giving of a guarantee or surety in respect of any debt, obligation or other liability incurred,
  - i. by a person resident in India and owed to a person resident outside India; or
  - ii. by a person resident outside India.

Also, sub-section 6 of section 6 reads as "Without prejudice to the provisions of this section, the Reserve Bank may by regulation prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business."

"Foreign Security" is defined in Section 2(o) as any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities explained in foreign currency, but where redemption or any form of return such as interest and dividend is payable in Indian currency.

In exercise of powers conferred by clause b of sub-section 3 of section 6 and section 47 of the FEMA, 1999, and in suppression of Notification No. FEMA 20/2000-RB and Notification No. FEMA 24/2000-RB, both dated May 3, 2000, as amended from

**Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval.**



time to time, the Reserve Bank, vide Notification No. FEMA 20(R)/2017 – RB, dated November 7, 2017, made Foreign Exchange Management (Transfer or Issue of Security by a person Resident Outside India) Regulations, 2017. These Regulations are notified to regulate investment in India, by a person resident outside India.

The FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations consists of 16 Regulations and 10 Schedules.

Regulation 2(xvii) define 'Foreign Direct Investment' as investment through capital instruments by a person resident outside India, in an unlisted Indian company, or in 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

The regulations define Capital Instruments as equity shares, debentures, preference shares and share warrants issued by an Indian company.

The Government of India, within the framework of the Act, Rules and Regulations, formulates the Foreign Direct Investment Policy (FDI).

Currently the FDI Policy effective from August 28, 2017 is in force. It was last amended on January 10, 2018 by an approval from the Union Cabinet, chaired by the Prime Minister.

### WHO CAN INVEST IN INDIA THROUGH FDI?

- A non-resident entity
- NRIs resident in Nepal and Bhutan and citizens of Nepal and Bhutan
- A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs
- Foreign Institutional Investor(FII) and Foreign Portfolio Investors(FPI) as per provisions of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations
- Registered FIIs, FPIs and NRIs
- A SEBI registered Foreign Venture Capital Investor (FVCI)
- A Non-resident Indian may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA).

Investors from Pakistan and Bangladesh can invest in India, only with prior Government approval. Also, FDI from these two countries is not allowed in convertible notes issued by Indian startup company and Limited Liability Partnerships.

### WHERE CAN FDI BE MADE?

- Indian company
- Partnership firm/Proprietary Concern
- Trusts
- Limited Liability Partnerships (LLPs)
- Investment Vehicle
- Start Up Entities
- Subject to the conditions of FDI policy in force.

### ENTRY ROUTES AND SECTORAL CAPS

Provisions relating to Entry routes and Sectoral Caps are contained in Regulation 16 of the Foreign Exchange (Issue or Transfer of Security by Persons Resident Outside India) Regulations, 2017.

Accordingly, Foreign Direct Investment can be made through two routes:

**Automatic route:** entry route through which a person resident outside India does not require the prior Reserve Bank approval or Government approval.

Indian companies engaged in various industries can issue shares to foreign investors upto 100% of their paid-up share capital in Indian companies.

**Government approval route:** Certain categories that are not covered under the automatic route, require prior government approval for FDIs. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

The application for grant of approval for foreign investment for sectors/activities requiring Government approval should be made to the concerned Ministry/ Department. In respect of applications in which there is doubt about the Administrative Ministry/Department concerned, Department of Industrial Policy and Promotion shall identify the Administrative Ministry/ Department, where the application shall be processed.

Fresh prior approval of the Government is not required in the following cases:

- i. Entities the activities of which had earlier required prior approval of Government and which had, accordingly, earlier obtained prior approval of Government for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;
- ii. Entities, the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained prior approval of Government for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps;
- iii. Additional foreign investment into the same entity where prior approval of Government had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI Policy is not required for any other reason/purpose; and
- iv. Additional foreign investment up to a cumulative amount of Rs. 5000 crores into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

Sectoral caps are the restrictions or limits of the amount of foreign investment allowed in that particular sector. Foreign investment in such sectors/activities is subject to applicable laws/ regulations, security and other conditionalities.

Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.

Up to an aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy. Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/ statutory cap.

The onus of compliance with the sectoral/statutory caps on such foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment.

Besides, entry routes and sectoral caps, there may also be imposed entry conditions like minimum capitalisation, lock in period, etc.

## SECTOR SPECIFIC CONDITIONS ON FDI

FDI is prohibited in:

- a) Lottery Business including Government/private lottery, online lotteries, etc.
- b) Gambling and Betting including casinos etc.
- c) Chit funds.
- d) Nidhi company.
- e) Trading in Transferable Development Rights (TDRs).
- f) Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
- g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- h) Activities/sectors not open to private sector investment.
- i) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery business and Gambling and Betting activities.

## PERMITTED SECTORS

Sectors in which foreign investment is permitted can be further classified into four categories:

**Category I:** Sectors in which FDI is permitted upto 100% under automatic route

This includes,

- Agriculture and Animal Husbandry
- Plantations (Tea, Coffee, Rubber, Cardamom, Palm Oil Tree, Olive Oil Tree)
- Mining and exploration of Metals and Non- Metal ores excluding titanium bearing minerals and its ores



**Up to an aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities.**



- Coal and lignite mining for captive consumption in respect of eligible activities
- Single brand retail trading, Duty free shops
- Airports (Greenfield and existing projects) and Railway Infrastructure
- Transport services (Air Transport services – non-scheduled air transport service/ helicopter service/ seaplane service requires DGCA approval
- Construction Development Projects (Development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships and real estate broking business)
- Cash and carry wholesale trading
- Civil aviation – Greenfield and Brownfield
- Exploration of petroleum and natural gas
- Broadcasting carriage services
- Market place e-commerce services
- Asset reconstruction and credit information companies
- Other services at airport (ground handling services subject to sectoral regulations and security clearance, maintenance and repair organisations, flying training institutes and technical training institutions)
- Up-link of 'non-news and current affairs' TV channels, downlinking of TV channels
- Other Financial services (registered/regulated entity)
- Pharmaceuticals – Greenfield sector and medical device manufacturing
- White label ATM operations
- Industrial Park.

**Category II:** Sectors in which FDI is permitted upto 100% under Government route

- Mining and minerals separation of titanium bearing minerals and ores, its value addition and integrated services
- Retail trading through e-commerce of food products manufactured and/or produced in India
- Publishing /printing of scientific and technical magazines/

- speciality journals/ periodicals
- Publication of facsimile edition of foreign newspapers
- Satellites – establishment and operations.

**Category III:** Sectors in which FDI is permitted beyond certain limit under government route

Services	Automatic Route	Government Route
Telecom Services	Upto 49%	Above 49%
Defence Industry	Upto 49%	Above 49%
Pharmaceutical – Brownfield	Upto 74%	Above 74%
Air Transport Services	Upto 49%	Above 49%
Banking – Private Sector	Upto 49%	Above 49% upto 74%
Private Security Services	Upto 49%	Above 49% upto 74%

**Category IV:** Sectors wherein FDI is permitted up to certain limit under both Government and Automatic routes subject to applicable laws/ regulations security and other conditionalities. This includes Insurance, Petroleum Refining by PSUs, Infrastructure Companies in Securities Market, Power Exchanges, Pension Sector, Multi Brand Retailing, Print Media Publishing amongst others.

## CHANGES IN FDI POLICY AS EFFECTED ON JANUARY 10, 2018

Foreign Investment in Investing companies registered as Non-Banking Financial Companies with Reserve Bank of India, being overall regulated, would be under 100% automatic route. Foreign Investment in Core Investment Companies and other Investing companies, engaged in the activity of investing in the capital of other Indian Companies/LLP is permitted under Government approval route. CICs will also have to follow RBI's regulatory framework for CICs.

In the aviation sector, the foreign investment in Air India, shall not exceed 49% directly or indirectly and substantial ownership and effective control shall continue to be vested on Indian Nationals.

It has been noted that the real estate broking service does not amount to real estate business and 100% foreign investment is allowed in the activity under automatic route.

Major changes have been made in Single brand retail trading (SBRT) sector. Earlier, a sourcing requirement was attached to foreign investment in this sector, requiring the investors to source 30% of the value of goods purchased for their Indian business from local businesses. This proved a major stumbling block, as lot of time and resources were spent in searching and tying up with local businesses.

The amendment has diluted the mandatory requirement, now giving foreign companies five years to comply with the local sourcing requirement. Further, as per the new definition of 'Incremental sourcing', whatever increase occurs in entity's sourcing from India for global operations every year would be included in the figures for 'local sourcing' for Indian operations. In the Pharmaceuticals sector, FDI is allowed under 100% automatic route for Greenfield pharmaceuticals and under the Brownfield, upto 74% is allowed under automatic route, beyond which Government approval is necessary.

A definition of medical device is provided under the head Pharmaceuticals, which has been revised to include devices in relation to in-vitro diagnostics. Also, the phrase "the definition of medical device at Note (ii) would be subject to amendments in Drugs and Cosmetics Act" has been deleted.

Annexure-3 of the FDI Policy deals with Provisions relating to Issue/Transfer of Shares, has also been amended. It now requires that for the sectors under the automatic route, issue

of equity shares against the import of capital goods/machinery/equipment (excluding second hand machinery) and pre-operative/pre-incorporation expenses (including payments of rent, etc.) is permitted under automatic route, subject to compliance with respective conditions and reporting to RBI in appropriate form as per the procedure prescribed under the FDI policy.

## REPORTING STRUCTURE

The reporting under FEMA, 1999 was being done through 12 different forms, with different forms to be submitted within different time limits. This became cumbersome both for the authorities and the receivers of FDI.

For the purpose of ease of doing business and simplification of reporting under FEMA, a new reporting mechanism has been introduced and named as the Single Master Form (SMF), subsuming all the existing reports.

The new reporting regimen has been implemented in two Phases. For the purpose, an online application, FIRMS (Foreign Investment Reporting and Management System) has been introduced.

The two phases of reporting are:

**Phase I: Entity Master Reporting (EMR)** – This is a one-time reporting to be complied with, by all the Indian organisations, in receipt of foreign investment in any form, irrespective of the fact that the regulatory reporting for the same had been made or not and whether the same had been acknowledged or not. This form was kept open for data entry from June 28, 2018 to July 20, 2018.

The entities who have failed to provide information under EMR will be deemed to be non-compliant under FEMA and shall not be eligible to receive further foreign investment.

**Phase II: SMF (Single Master Form)** – before SMF, FDI infusion was to be reported within 30 days in Form ARF and within 30 days of allotment of Capital Instruments, Form FC GPR was to be filed. Now, both the forms have been merged in FC GPR.

Further, reports earlier filed in Forms FC TRS (on transfer of Capital Instrument), LLP-I, LLP-II, ESOP (Form Employees' Stock Option), DRR and CN (Form Convertible Notes) would also be filed in SMF only. SMF also subsumes Form DI and Form InVi.

Thus, SMF replaces 9 different forms and makes the reporting of foreign investment simpler.

The remaining three forms, i.e. Form FLA, Form LEC (FII) and Form LEC(NRI), will still have to be filed separately by the Indian firms.

The second phase has come into effect from August 1, 2018.

## CONCLUSION

The Foreign Direct Investment is important for the growth and development of Indian economy, as it provides access to cheaper capital and latest technology to the businesses of the country. The inflow of capital leads to increase in employment generation and job creation. Continuous liberalisation and inflow of foreign funds, ultimately leads to improved quality of Indian goods and better goodwill of Indian products in international markets. Hence, it becomes important for us professionals to understand and practice the laws and regulations related to foreign investments in India.

CS



# Evolution of India as the Perfect Global Investment Hub

Foreign investment has consistently been welcomed by regular announcement of easier, transparent and faster mechanisms in India. Progressive Economic Factors and Stable Political Factors, Improvement in Sovereign Rating, Upgrading in Rank of Doing Business, Relaxed Regulations, Enhanced Legal System, Programmes like Make in India, Skill India, Start-up India, Invest India, Digital India etc. with the Growing Market Capitalisation of Domestic Listed Companies complemented by Fair and Transparent Indian Capital Markets provide reasons to Foreign Investors to trust in Indian Economy and are responsible for giving a thrust to FDI in India.



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## INTRODUCTION

Since 1991, the period pertaining to the introduction of post liberalisation and globalisation, Government of India has made every possible effort to keep the regulatory environment easy and healthy for foreign investment in India. Foreign investment has consistently been welcomed by regular announcement of easier, transparent and faster mechanisms according to the need and capability of management of funds by the country at that point of time. India, with the objective of maximum governance and minimum government is considered as investor friendly country and been ranked 9<sup>th</sup> for inbound investment in the world, in terms of FDI inflows by UNCTAD.<sup>1</sup>

As per the definitions given by Reserve Bank of India (RBI):<sup>2</sup>

- (a) **Foreign Investment means** “Any investment made by a person resident outside India on a repatriable basis in capital instruments of an Indian company or to the capital of an LLP.”
- (b) **Foreign Direct Investment means** “The investment through capital instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.”
- (c) **Foreign Portfolio Investment means** “Any investment made by a person resident outside India in capital instruments where such investment is (a) less than 10 percent of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company or (b) less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company.”

## REGULATORY FRAMEWORK IN RECENT PAST AND TRANSITION INTO THE PRESENT SCENARIO

Any type of foreign investment in India is allowed either under (i) automatic route which does not require any kind of approval from the Government & RBI or (ii) *via* approval route, where the investment to be made, if, is not in the list of automatic route, then the same needs prior permission by the Government of India and RBI for entry. Recently, there have been few more positive developments in the framework of their regulation and approval. The Government has removed stringent norms and allowed FDI from automatic route up to 100% in most of the sectors and activities of the country.<sup>3</sup>

The developments are discussed below.

### a. Abolition of Foreign Investment Promotional Board (FIPB) and Transfer of Charge to Department of Industrial Policy & Promotion (DIPP)

Earlier, FIPB was the body to grant approvals of FDIs in India which has been phased out since May, 2017 and respective administrative ministries and departments are allowed and mandated to process applications with respect to FDIs in different sectors in discussion with DIPP,<sup>4</sup> which require the Government approval under the extant consolidated FDI Policy of 2017 and FEMA Regulations. DIPP is responsible for forming policies related to FDI which are reviewed on on-going basis

<sup>1</sup> Source : <https://www.investindia.gov.in/foreign-direct-investment> (as accessed on July 23, 2018)

<sup>2</sup> Source : <https://www.rbi.org.in/scripts/FAQView.aspx?ld=26#Q1> (as accessed on July 23, 2018)

<sup>3</sup> Source : <http://dipp.nic.in/policies-rules-and-acts/policies/foreign-direct-investment-policy> (as accessed on July 23, 2018)

<sup>4</sup> Source : <http://pib.nic.in/newsite/PrintRelease.aspx?relid=162097> (as accessed on July 23, 2018)

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where stakeholders' consultation is also made in order to keep it liberalised and continuing India as the attractive investment destination. DIPP also maintains and manages the data, based on the remittances & transmittals reported by the RBI.

#### b. Transition from the Concept of Foreign Institutional Investors (FIIs) to Foreign Portfolio Investors (FPIs) Regime

The Securities and Exchange Board of India (SEBI) in the year 2014 came up with the new regulation i.e. SEBI (Foreign Portfolio Investors) Regulations, 2014 by virtue of which SEBI (Foreign Institutional Investors) Regulations, 1995 and all the relevant circulars were repealed. The extant regulations were introduced in order to harmonise, simplify and rationalise the systems and procedures of foreign portfolio investment in India. FPIs included FIIs, Qualified Foreign Investors (QFIs) and Sub-Accounts of FIIs which was earlier governed by different regulations, circulars and guidelines, and later on categorised under one.

Foreign portfolio investors are required to register with designated depository participants in order to participate in the Indian securities markets. The scope of investment in the extant regulations by SEBI has been increased and the classes and masses which were earlier not allowed to access Indian securities market are now also permitted to invest in Indian capital markets. There are three categories of FPIs as discussed below:<sup>5</sup>

#### Category I –

“Government and Government related foreign investors such as Foreign Central Banks, Governmental Agencies, Sovereign Wealth Funds, International/Multilateral Organizations/Agencies, etc.”

#### Category II –

- “Appropriately regulated broad based funds such as Mutual Funds, Investment Trusts, Insurance/ Reinsurance Companies, other broad based funds etc.”
- “Appropriately regulated entities such as Banks, Asset Management Companies, Investment Managers/ Advisors, Portfolio Managers etc.”
- “Broad based funds whose Investment Manager is appropriately regulated”
- “University Funds and Pension Funds”
- “University related Endowments already registered with

SEBI as FII/Sub-Account”

#### Category III –

“All other Foreign Investors investing in India under PIS route, not eligible under Category I and Category II such as Endowments, Charitable Societies/Trust Foundations, Corporate Bodies, Trusts, Individuals, Family Offices, etc.”

### GROWTH TRAJECTORY OF FOREIGN INVESTMENTS IN INDIA

Figure 1, below clearly shows that there is constant and continuous growth in foreign investments in India *via* automatic route, *via* Government approval route and through acquisition of existing shares also. The scenario is demonstrating favourable environment of investment by the foreigners along with the gradual building of their trust in the country as the safer and fruitful economy for their money to be parked for short-term as well as long term.

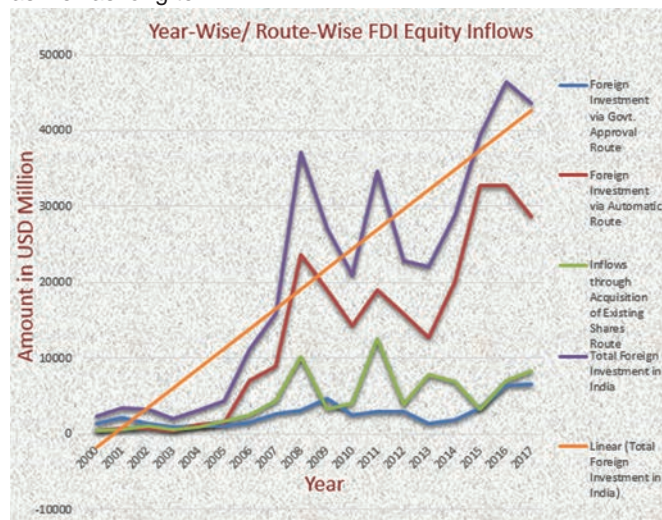


Figure - 1

Table 1, below indicates that the total foreign investments in India accounted for USD Million 2346 only in the year 2000, which has gradually with the ease of policies and rules, improved and increased to USD Million 43576 in just seventeen years of time span, accounting for more than 1700% increase in those years.

Table - 1 - Year-Wise/ Route-Wise FDI Equity Inflows (In USD Million)

Calendar Year (January-December)	Foreign Investment via Govt. Approval Route	Foreign Investment via Automatic Route	Inflows through Acquisition of Existing Shares Route	Total Foreign Investment in India
2000	1475	394	477	2346
2001	2142	720	658	3520
2002	1450	813	1096	3359
2003	934	509	637	2080
2004	1055	1179	980	3214
2005	1136	1558	1661	4355
2006	1534	7121	2465	11120
2007	2586	8889	4447	15922
2008	3210	23651	10234	37095
2009	4680	19056	3309	27045

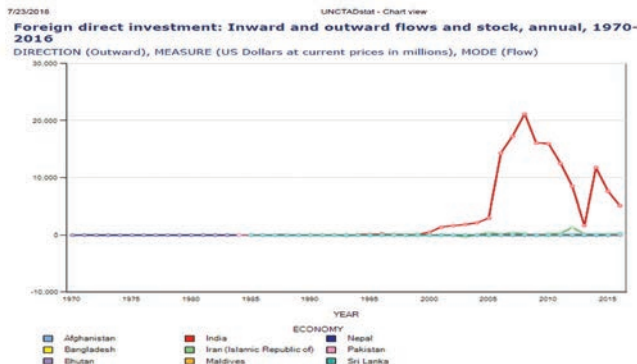
<sup>5</sup> Source: RBI, (FED) Central Office, Mumbai (data as accessed on July 23, 2018)

2010	2542	14353	4111	21006
2011	2933	19053	12636	34622
2012	2964	15825	4000	22789
2013	1345	12806	7887	22038
2014	1809	20089	6887	28785
2015	3390	32704	3232	39326
2016	6461	32833	7108	46402
2017	6627	28614	8335	43576

Source: RBI, (FED) Central Office, Mumbai (as accessed on July 23, 2018)

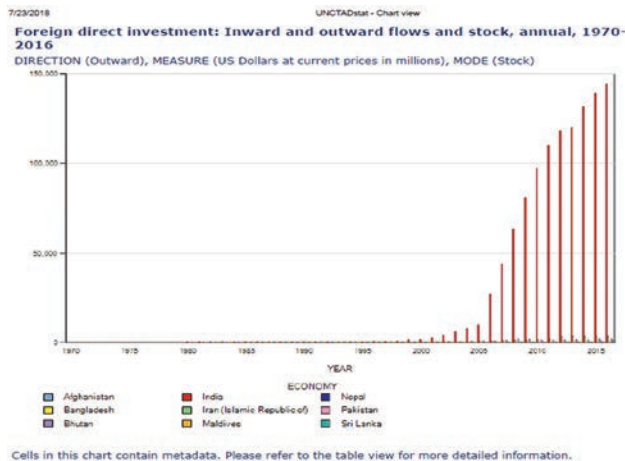
The data of United Nations as shown in the consolidated study and analysis of figure 2, figure 3, figure 4 & figure 5, below draws an inference that from the year 1970 to 1995, the economies of neighbouring countries of India were moving approximately at a similar rate in terms of FDI inward and outward flows. Later on, starting from late 1990s, it shows that India outpaced all of them leaving each such neighbouring country far behind in terms of globalisation and foreign involvement. Both FDI inflows and outflows are comparatively much higher than any other country shown therein. The figures conclude and are proof of development of the country which is in path of writing its own growth story.

Figure - 2



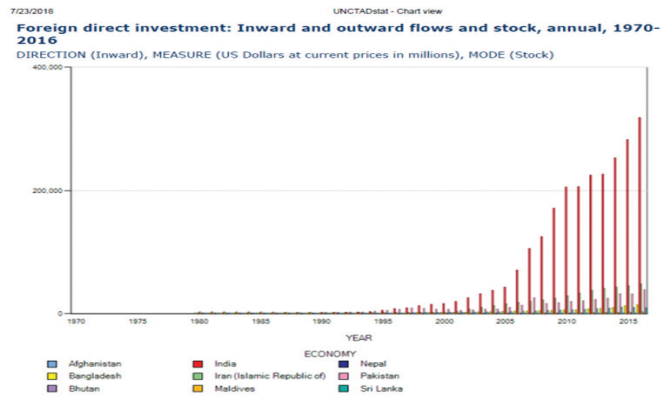
Source: <http://unctadstat.unctad.org/EN/> (as accessed on July 23, 2018)

Figure - 3



Source: <http://unctadstat.unctad.org/EN/> (as accessed on July 23, 2018)

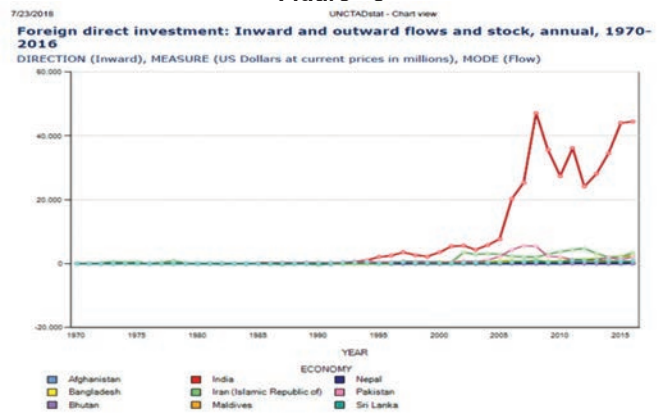
Figure - 4



Cells in this chart contain metadata. Please refer to the table view for more detailed information.

Source: <http://unctadstat.unctad.org/EN/> (as accessed on July 23, 2018)

Figure - 5



Cells in this chart contain metadata. Please refer to the table view for more detailed information.

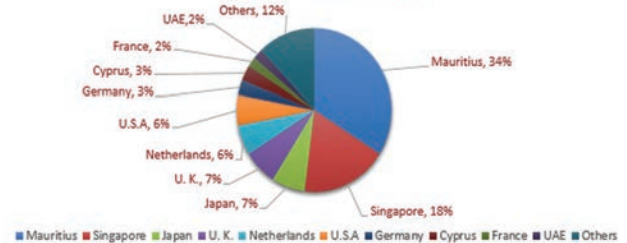
Source: <http://unctadstat.unctad.org/EN/> (as accessed on July 23, 2018)

THE PRESENT SCENARIO

The report of Department of Industrial Policy & Promotion shows that presently Mauritius (34%), Singapore (18%), Japan (7%) and U.K. (7%) are the major investors in Indian economy. Also, 18% of the total FDI is concentrated towards the Service Sector of Indian Economy, followed by Computer Software and Hardware (8%), Telecommunications (8%) and Constructions (7%). In addition, it also displays that Mumbai (31%), Delhi (20%), Bangalore (8%) and Chennai (7%) are the most preferred cities by the investors as shown in figures 6, 7 and 8.

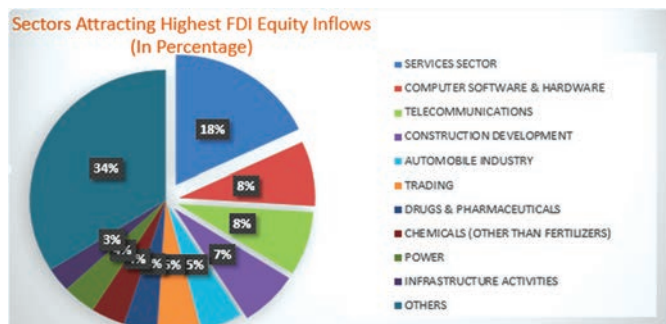
Figure - 6

Shares of Top Investing Countries in India - FDI Equity Inflows (In Percentage)



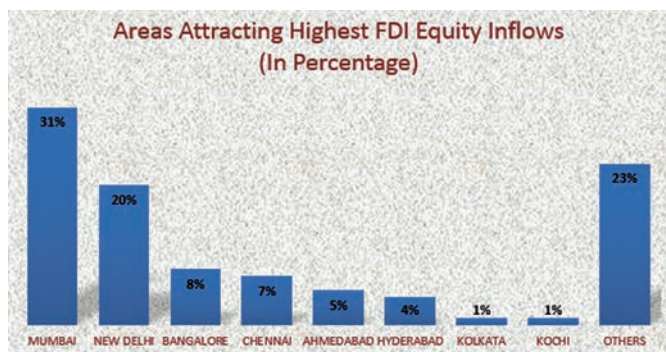
Source - DIPP as on March, 2018 (data as accessed on July 23, 2018)

Figure - 7



Source - DIPP as on March, 2018 (data as accessed on July 23, 2018)

Figure - 8



Source - DIPP as on March, 2018 (data as accessed on July 23, 2018)

## FACTORS SUPPORTING INDIA TO SUSTAIN ITSELF AS A MOST PREFERRED GLOBAL INVESTMENT HUB

The Asian Development Bank believes that India shall continue to be the fastest growing major economy.<sup>6</sup> In addition the World Bank quotes "The quality of expenditures at the general government level has shifted towards productive infrastructure spending in recent years, providing an additional stimulus to growth."<sup>7</sup> The country is heading towards the journey of developed nation and is expected to have major reforms throughout, in every sector. Major aspects which advocates in favour of India for providing the best investment climate globally are listed below:

### a. Progressive Economic Factors and Stable Political Factors are Giving FDI, a Thrust

In the history of India, since its independence it has not seen any recession. Also, India has not faced any internal or external turmoil in past few decades. Contained and stable inflation rate of 5% as of June, 2018<sup>8</sup> which is less than the growth rate of more than 6%<sup>9</sup> makes the country as economically viable place for foreign investments to be positioned. India is considered as one of the largest, safer, secured, peaceful and stable economy of the world by the supra national bodies.<sup>10</sup>

<sup>6</sup> Source : <https://www.adb.org/countries/india/economy> (as accessed on July 25, 2018)

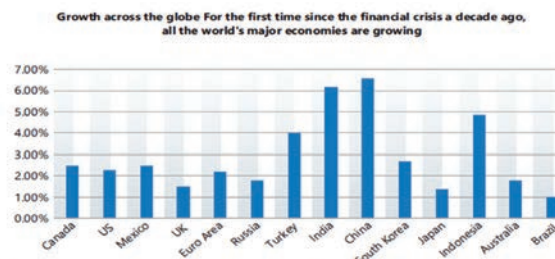
<sup>7</sup> Source : <http://www.worldbank.org/en/country/india/overview> (as accessed on July 25, 2018)

<sup>8</sup> Source : <https://tradingeconomics.com/india/indicators> (as accessed on July 25, 2018)

<sup>9</sup> Source : Refer figure 9 (as accessed on July 25, 2018)

<sup>10</sup> Source : <http://visionofhumanity.org/app/uploads/2018/06/Global-Peace-Index-2018-2.pdf> (as accessed on July 25, 2018)

Figure - 9



Source: The Conference Board, Bureau of Labor Statistics; cited in New York Times

Government debt to GDP as on December, 2017 at the rate of 68.7%<sup>11</sup> is much better than any other developed and developing countries like France, Canada, Australia, USA, Germany etc. which has crossed the levels of even 100%.<sup>12</sup> Indian government bond yields 7.79% as on July, 2018<sup>13</sup> and the lowest rate of interest on savings provided by the government pertains to 6.25% as of June, 2018<sup>14</sup> which is way above than any other developed or developing country is granting to their public. This higher rate of return on savings and investments, make India as profitable investment venture for foreigners.

The India's Growth Story (March, 2018), a research by the World Bank reports that since independence all the sectors of India are continuously in growth phase where service sector is the fastest growing sector in India integrating itself more into global economies with the trade ratio of exports and imports to GDP adding up to five times the ratio in 1971. It is contributing in the world export markets at a faster pace than any other emerging markets. The report further discloses that India has population of approximately 1324.171 Million<sup>15</sup> with cheap labour and is rich in resources. India does have stable monetary and fiscal policies which are changed time to time on the basis of requirements only after the consultation with various stakeholders to bring effective and positive change in the processes and procedures making them more efficient. In addition there has been significant increase in the savings bank accounts by more than 600 percent between 2010 and 2017. The domestic savings are also increasing as the latest data from RBI shows that since 2011-12, there is growth of INR Billion 15457.36 in gross domestic savings and accounts for rise of more than 51% making it a total of INR Billion 45725.73 in the year 2016-17.<sup>16</sup> Rise in savings shows that the countrymen also are confident for better returns on their investments and savings placed with the bank and financial institutions.

World Bank is of the view that the inflation and external conditions are expected to remain stable for long run in India.<sup>17</sup> Also, India is gradually improving its rank year on year in political stability index,<sup>18</sup> political globalisation index<sup>19</sup> and in corruption

<sup>11</sup> Source : <https://tradingeconomics.com/india/indicators> (as accessed on July 25, 2018)

<sup>12</sup> Source : <http://www.usdebtclock.org/world-debt-clock.html> (as accessed on July 25, 2018)

<sup>13</sup> Source : <https://tradingeconomics.com/india/indicators> (as accessed on July 25, 2018)

<sup>14</sup> Source : <https://tradingeconomics.com/india/indicators> (as accessed on July 25, 2018)

<sup>15</sup> Data as on 28-06-2018 - From World Bank Indicators by the World Bank (as accessed on July 25, 2018)

<sup>16</sup> Source : <https://dbie.rbi.org.in/> (as accessed on July 25, 2018)

<sup>17</sup> Source : <http://www.worldbank.org/en/country/india/overview> (as accessed on July 25, 2018)

<sup>18</sup> Source : [https://www.theglobaleconomy.com/rankings/wbi\\_political\\_stability/](https://www.theglobaleconomy.com/rankings/wbi_political_stability/) (as accessed on July 25, 2018)

<sup>19</sup> Source : <https://www.statista.com/statistics/268169/index-for-political-globalization/> (as accessed on July 25, 2018)



perception index<sup>20</sup> as compared to previous years. India also possess the consumer confidence of 95.1 index points as on March, 2018<sup>21</sup> which shows the faith and extremely positive confidence of the citizens of the country on its economy.

India also has got its poverty rate declined since 2004-05<sup>22</sup> and various other ranks with respect to human development index, life expectancy, financial literacy, per capital income and labour force participation has improved gradually by the passage of time.<sup>23</sup> Forex and gold reserves in India has grown by USD Million 368345.70 from June, 2000 (USD Million 36730) to July, 2018 (USD Million 405075.70) which is more than 1000%.<sup>24</sup>

#### **b. Improvement in Sovereign Rating of India, Provides Reasons to Foreigners to Trust in Indian Economy**

Sovereign rating of India was raised by Moody's on November 17, 2017 this year from the lowest investment grade of Baa3 to Baa2, and changed the standpoint from stable to positive. The same is upgraded for the first time in last 14 years. The Moody's provides rationale by saying that "The decision to upgrade the ratings is underpinned by Moody's expectation that continued progress on economic and institutional reforms will, over time, enhance India's high growth potential."<sup>25</sup> The event for the first time in last 14 years proves that India is considered as one of the best location for investments by the world in the eyes of rating agencies and they have positive outlook towards the nation's development.

#### **c. Improvement in Rank of Doing Business, Guaranteeing the Increasing Simplicity of Lengthy Processes along with Single Window Formalities and Online Clearances**

As per the Doing Business Report, 2018, India was declared as one of the most improved economies in 2016-17 in the areas tracked by ease of doing business i.e. starting a business by registration of companies, obtaining licences, obtaining construction permits, registering a property, getting credit, enforcing contracts, paying taxes, direct portal delivery, online process of exporting, online land records, e-stamps, filing electronic cases in disputes and resolving insolvency with no physical touch point and in single window clearance. Due to the improvement in aforementioned and many other factors rank of India is improved from 130 to 100 in just one year.<sup>26</sup> The same is considered as a blessing for any

kind of business set up by foreign entities where less procedure is required and entities can only focus on their principal business activity with ease and efficiency.

#### **d. Relaxed Regulations and Enhanced Legal System with Maximum Governance, Supports the Agenda of Foreign Partnership with India**

Recently introduced indirect tax system of GST for harmonising the fragmented and complex tax structure and removing the cascading effect of tax from goods and services; new Insolvency and Bankruptcy Code; Companies Act; Listing Obligations, establishment of National Company Law Tribunal; reforms in Legal Metrology Act, etc. have added value and resulted in improvement of lengthy legal formalities. It provides easier and area specific mechanisms of dealing with various issues of the economy in speedy manner. The complete reform is leading into rapid growth of Indian economy in lines with other developed nations. Electronic filing and reporting system of ESI, EPF, Income Tax, Corporate Tax and Corporate Filing including online filings for foreign investments facilitating foreign trade with the facility of electronic risk based systems are also introduced complementing the entire ecosystem of ease of business and relaxed norms and laws.<sup>27</sup>

#### **e. Programmes of Government of India - Make in India, Skill India, Start-up India, Invest India, Digital India, etc.**

To support start-ups, Government has created funds for start-ups at Small Industries Development Bank with a corpus of INR 10,000 Crores and has relaxed norms of public procurement for them. Also they are provided with tax exemptions in capital gains along with tax exemption of three years on income in the period of seven years. To build the entrepreneurial environment in the country, start-ups and MSMEs are provided with all the legal support and fast track patent examination system. They have also been facilitated with the self-certification compliance regime. DIPP has launched and is under execution of several schemes and projects like Delhi-Mumbai and other various interstate industrial corridor projects, convention centres, smart cities, etc.<sup>28</sup> "Digital India" is one of the major programmes of the Government of India where the Prime Minister himself, focussed on converting India into the digital economy abolishing the use of any physical involvement introducing end to end technology at every place. Additionally, Ministry of Commerce had unveiled its first five-year foreign trade policy aiming to nearly double exports of goods and services to \$900 Billion by 2020.<sup>29</sup>

DIPP, also has taken "Make in India" initiative in 2014 with the aim of making India as a global hub for research, innovation and manufacturing inviting FDI up to 100% under automatic route in most of the sectors and activities. Government also introduced a programme known as "Invest India" through an official investment promotion and facility agency as the first point of reference for potential investors. It is actively working with states to enhance investment promotion and facilitation activities.<sup>30</sup> It is also constantly involved with international bodies and United Nations Industrial Development Organisation for the purpose of investment promotion

<sup>20</sup> Source : [www.transparency.org/cpi](http://www.transparency.org/cpi) (as accessed on July 25, 2018)

<sup>21</sup> Source : <https://tradingeconomics.com/india/indicators> (as accessed on July 25, 2018)

<sup>22</sup> Source : <http://www.worldbank.org/en/country/india/overview> (as accessed on July 25, 2018)

<sup>23</sup> Source : <http://www.mospi.gov.in/statistical-year-book-india/2017/170> (as accessed on July 25, 2018)

<sup>24</sup> Source : <https://www.rbi.org.in/scripts/WSSViewDetail.aspx?PARAM1=2&TYPE=Section> (as accessed on July 25, 2018)

<sup>25</sup> Source : <https://www.livemint.com/Politics/Sl8yTV7cvoo9xnW3wYkJ4/Moodys-upgrades-Indias-credit-rating-in-boost-to-Narendra.html> (as accessed on July 25, 2018)

<sup>26</sup> Source : <http://www.doingbusiness.org/reports/global-reports/doing-business-2018> (as accessed on July 27, 2018)

<sup>27</sup> Source : Report – India's Doing Business Achievement by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India (as accessed on July 27, 2018)

<sup>28</sup> Source : Annual Report (2017-18) by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India (as accessed on July 27, 2018)

<sup>29</sup> Source : India and Europe 29 - Synergising Economic Vision For Expanded Economic Relations (March, 2018)– Report by FICCI (as accessed on July 27, 2018)

<sup>30</sup> Source : National Report, An Assessment Of State Investment Promotion Preparedness, International Finance Corporation, The World Bank Group and Invest India, Government of India Programme (as accessed on July 27, 2018)

events, conferences, meetings and programmes along with active participation in the norms of World Intellectual Property Organisation for better protection of in house technologies and to safe guard the rights of the investors who come here with their researches, designs, patents, know-hows, copyrights, trademarks, brands etc.<sup>31</sup>

**f. Steep Growing Market Capitalisation of Domestic Listed Companies of India**

Figure 10 below, demonstrates the fact that market capitalisation of Indian listed companies in the year 2003 was USD 279092.83 Million which has jumped to USD 2331566.70 Million in 2017 as shown in figure 11, leading to the growth of more than 735% in just 15 years of time period. Figure 12 clearly indicates the steep rising trend of the market capitalisation showing growth and development across all the horizons and sectors of the country.

Figure –10



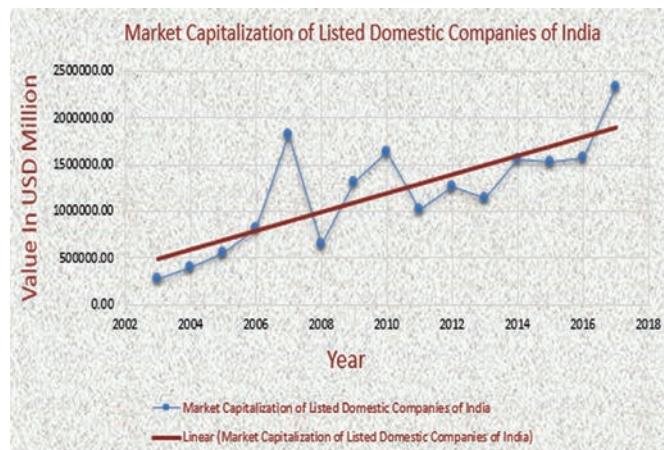
Source : <https://data.worldbank.org/indicator/CM.MKT.LCAP.CD?locations=IN&view=chart> (as accessed on July 27, 2018)

Figure – 11



Source : Data as on 28-06-2018 - From World Bank Indicators by the World Bank (data as accessed on July 27, 2018)

Figure – 12



Source : Data as on 28-06-2018 - From World Bank Indicators by the World Bank (as accessed on July 27, 2018)

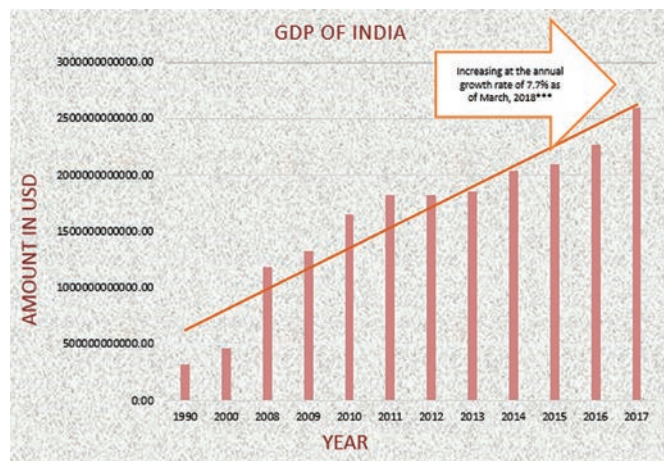
Table - 2

Year	Market Capitalization of Listed Domestic Companies of India (In Million USD)	Year	Market Capitalization of Listed Domestic Companies of India (In Million USD)
2003	279092.83	2011	1007182.90
2004	387851.16	2012	1263335.50
2005	553073.74	2013	1138834.02
2006	818878.58	2014	1558299.69
2007	1819100.51	2015	1516216.71
2008	647204.77	2016	1566680.49
2009	1306520.25	2017	2331566.70
2010	1631829.54		

**g. Consistent Progress in the Gross Domestic Product (GDP) of the Country**

Figure 13, below indicates the growth pattern of the GDP of the country which rose from USD 316697337894.51 in 1990 to 2274229710530.03 in 2016 which is the rise of more than 600%.

Figure – 13



Source : Data as on 28-06-2018 - From World Bank Indicators by the World Bank (data as accessed on July 27, 2018)

\*\*\* Source : <https://dea.gov.in/sites/default/files/MER-May%202018.pdf> (as accessed on July 27, 2018)

<sup>31</sup> Source : Annual Report (2017-18) by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India (as accessed on July 27, 2018)

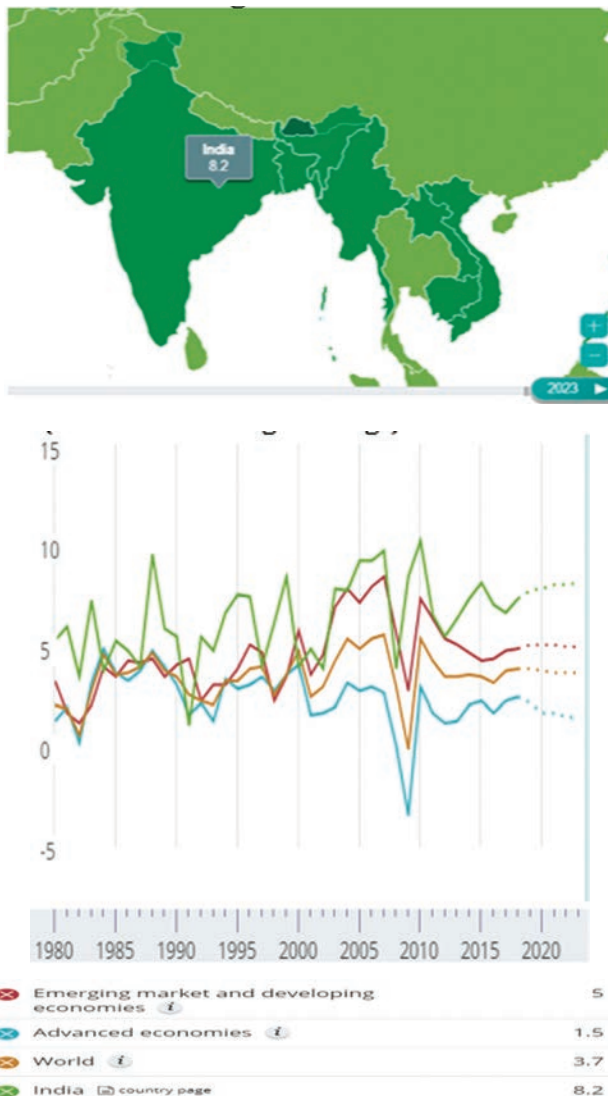
Table - 3

Year	GDP of India in US\$	Year	GDP of India in US\$
1990	316697337894.51	2012	1827637859136.23
2000	462146799337.70	2013	1856722121394.42
2008	1186952757636.11	2014	2039127446299.30
2009	1323940295874.06	2015	2102390808997.09
2010	1656617073124.71	2016	2274229710530.03
2011	1823049927772.05	2017	2597491162897.67

Source : Data as on 28-06-2018 - From World Bank Indicators by the World Bank (as accessed on July 27, 2018)

Also, as per the latest research conducted by International Monetary Fund, the real GDP of India is expected and tend to grow at the rate of 7.4% in 2018 reaching upto 8.2% in 2023 as shown in figure 14 below.

Figure – 14 - Real GDP Growth (Annual Percentage Change)



Source: [http://www.imf.org/external/datamapper/NGDP\\_RPCH@WEO/OEMDC/ADVEC/WEOWORLD/IND](http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEOWORLD/IND) (as accessed on July 27, 2018)

#### h. Developments in Indian Capital Markets making it More Fair and Transparent

National Stock Exchange is the fourth largest exchange in

the world by equity trading volume.<sup>32</sup> The exchanges in India follow settlement cycle of T+2<sup>33</sup> which is one of the fastest in the world. Most of the listed shares are in the demat form and 99.9% transactions take place in dematerialised mode only.<sup>34</sup> The exchanges are continuously strengthening the mechanisms of surveillance in order to prevent any kind of unfair insider trading practices, harming innocent investors.<sup>35</sup> The Government is also in process of mandating for holding of all the shares in demat form only in order to bring greater transparency in the system and avoid any kind of frauds related to shares and their pledge.

Further to curb any practice of money laundering the Government has introduced various reforms. Recently, it was directed by SEBI, the capital market regulator in India that all payments to/by the brokers shall be received/made, from/to the clients strictly by account payee crossed cheques/demand drafts or by way of direct credit into the bank account through electronic fund transfer or any other mode permitted by the RBI.<sup>36</sup> Additionally, RBI instructed that the name of the purchaser shall be incorporated on the face of the demand draft, pay order, banker's cheque, etc. by the issuing bank.<sup>37</sup> Exchanges of India have enough indices which show the transparency in the market and are parameters or standards of the particular industry or sector of the Indian economy which grant accurate measurements showing the pattern of India.<sup>38</sup>

#### CONCLUSION

Secretary, Economic Affairs, recently in an event said that an "Indian economy is on a stage of "take off" and is expected to be the world's third largest economy by 2030." He also said that "In the first 40 years of independence, the country hardly grew at the rate of 3.5% and today, 7-8% is the norm." He further added that "by 2030, we can legitimately expect to be a \$10 trillion economy in terms of GDP." He sees it as a challenge and an opportunity, both. He showed his confidence and claimed that "8 per cent growth is very much achievable and going forward possibly by 2030, the digital economy would be half of the total economy."<sup>39</sup> Aforementioned facts and confidence of the Government itself shows that India is on the path of being a developed nation and justifies itself to be the best global investment hub, which provides each and every opportunity to a foreigner to park his money safely with the expectation of maximum returns. CS

<sup>32</sup> Source : [https://www.nseindia.com/global/content/about\\_us/about\\_us.htm](https://www.nseindia.com/global/content/about_us/about_us.htm) (as accessed on July 28, 2018)

<sup>33</sup> Source : [https://www.nseindia.com/products/content/equities/equities/settlement\\_cycle.htm](https://www.nseindia.com/products/content/equities/equities/settlement_cycle.htm) (as accessed on July 28, 2018)

<sup>34</sup> Source : [https://www.sebi.gov.in/sebi\\_data/faqfiles/jan-2017/1485859328096.pdf](https://www.sebi.gov.in/sebi_data/faqfiles/jan-2017/1485859328096.pdf) (as accessed on July 28, 2018)

<sup>35</sup> Source : NSE Circular No. 190/2018 and 191/2018 & BSE Notice No. 20180723-15 (as accessed on July 28, 2018)

<sup>36</sup> Source : SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2018/113 dated July 12, 2018 (as accessed on July 28, 2018)

<sup>37</sup> Source : Circular - RBI/2018-19/14 - DBR,AML,BC.No.210/14.01.001/2018-19 dated July 12, 2018 (as accessed on July 28, 2018)

<sup>38</sup> Source : [https://www.nseindia.com/live\\_market/dynaContent/live\\_watch/live\\_index\\_watch.htm](https://www.nseindia.com/live_market/dynaContent/live_watch/live_index_watch.htm) (as accessed on July 28, 2018)

<sup>39</sup> Source : <https://economictimes.indiatimes.com/news/economy/policy/india-expected-to-be-10-trillion-economy-by-2030-subhash-chandra-garg/articleshow/64987639.cms> (as accessed on July 27, 2018)



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# A Critical Analysis of Section 90 of The Companies Act 2013

Section 90 of the Companies Act 2013 casts on shareholders of companies holding 10% or more shares and having beneficial interest in shares and on companies legal duties as to disclosure and maintenance of record. The section initially introduced in the 2013 Act empowered the Central Government to have investigated beneficial ownership with regard to any shares. The new section now makes the beneficial owners of shares. Company Secretaries have compliance obligations under the new section.



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## INTRODUCTION

**S**ection 90 was originally enacted by the Companies Act, 2013. It was replaced by the Companies (Amendment) Act, 2017 and the amended section was made effective from 13 June 2018. Simultaneously, Companies (Significant Beneficial Owners) Rules, 2018 were notified on 13 June 2018.

The Companies (Amendment) Act, 2017 also amended section 89 by inserting therein subsection (10) which defines inclusively the expression 'beneficial interest in a share' for the purposes of sections 89 and 90.

Both these sections apply to all companies.

## DEFINITION OF "BENEFICIAL INTEREST" IN SHARES

The ordinary meaning of 'beneficial interest' (in property such as shares) is a right to benefit from something, such as a right to receive the income from property or the profits that are made from selling something; and the meaning of 'beneficial owner' is the owner of an investment, a property, etc. who has the right to benefit from it, for example, by receiving the profits that are made from it. This person may not be the legal owner and another person or company may keep or look after the investment, etc. for them. [see Oxford Law Dictionary]

The Black's Law Dictionary, 10<sup>th</sup> edition, defines this expression as follows:

"A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property."

In *Central Bureau of Investigation v. Duncans Agro Industries Ltd., Calcutta* (1996) 5 SCC 591, the Supreme Court held: The term 'beneficial interest' has a specific meaning and connotation. When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the 'beneficial interest'. The

trustee has the power of management and the beneficiary has the right of enjoyment. Whenever there is a breach of any duty imposed on the trustee with reference to the trust property or the beneficiary, he commits a breach of trust.

Section 3 of the Indian Trusts Act, 1882 provides that a "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; and the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property.

Section 2(12) of the Prohibition of Benami Property Transactions Act defines 'beneficial owner' as a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar.

Sub-section (10) of section 89 defines 'beneficial interest' for the purpose of section 90, as follows:

"For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) receive or participate in any dividend or other distribution in respect of such share."

This is an inclusive definition. It applies to every beneficial interest in shares (directly or indirectly), but there must be some contract, arrangement or understanding between the beneficial owner and another person by which that other person has been given the right:

- (i) to exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) to receive or participate in any dividend or other distribution in respect of such share.

It was stated by the MCA in the context of section 187C of the 1956 Act, that this section envisages two kinds of interests in shares: the legal interest which vests in the registered holder and the beneficial interest which vests in beneficial owner of the shares, such as a trustee and the beneficiary of a trust.<sup>1</sup>

## CONTRADICTION BETWEEN SECTION AND RULES

Section 90(1) provides for a declaration to be made by every individual who holds beneficial interest in shares of a company or significant influence or control over the company. The word 'individual' makes it clear that the section cannot apply unless the holder of shares or significant influence/control is a natural person (human being) and not an artificial person such as a company or other body corporate.

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

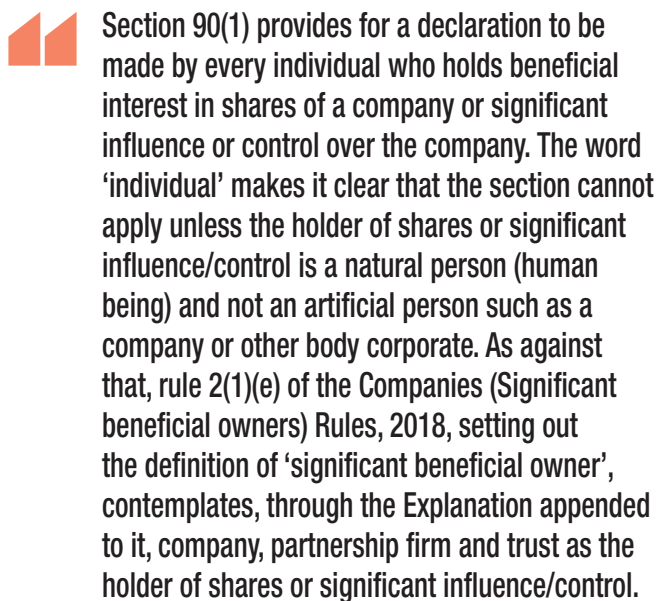
<sup>1</sup> MCA Circular 12 of 1975, dated 7th June, 1975.

As against that, rule 2(1)(e) of the Rules, setting out the definition of 'significant beneficial owner', contemplates, through the Explanation appended to it, company, partnership firm and trust as the holder of shares or significant influence/control.

Thus, there is a contradiction between the statutory provision and the rules, or, in other words, between the principal legislation and the subordinate legislation.

It is a well settled principle that a rule, regulation or bylaw must not be *ultra vires*, that is to say, if a power exists by statute to make rules, regulations, bylaws, forms, etc., that power must be exercised strictly in accordance with the provisions of the statute which confers the power, for a rule, etc., if *ultra vires*, will be held incapable of being enforced. Where under a statute the State Government could have issued a notification specifying certain places as stands for motor vehicles of the Transport Department which may include State transport undertakings i.e. MTCL, but the State Government, had no statutory authority to issue a notification allowing the State transport undertakings to provide shelters for passengers. It is well settled in law that neither the Rule nor a Regulation nor a Notification can transgress the postulates engrafted under the Act, it was held that it is well settled in law that neither the Rule nor a Regulation nor a Notification can transgress the postulates engrafted under the Act.<sup>2</sup>

In *Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited* AIR 2015 SC 2978, the Supreme Court dealt with section 61 of the Petroleum and Natural Gas Regulatory Board Act that gave the Board the power to "make regulations consistent with the Act and the Rules made thereunder to carry out the provisions of the Act" and it also provided that "without prejudice to the generality of the foregoing power, such Regulations may provide for all or any of the following matters and the matters have been enumerated thereafter", but the statute did not empower the Board to fix MRP at which gas was to be supplied to consumers. The Supreme Court held that, section 61 enabled the Board to frame Regulations: if on reading of the statute in entirety, a power (to make a regulation in respect of a particular matter) does not flow, a delegated authority cannot frame

 Section 90(1) provides for a declaration to be made by every individual who holds beneficial interest in shares of a company or significant influence or control over the company. The word 'individual' makes it clear that the section cannot apply unless the holder of shares or significant influence/control is a natural person (human being) and not an artificial person such as a company or other body corporate. As against that, rule 2(1)(e) of the Companies (Significant beneficial owners) Rules, 2018, setting out the definition of 'significant beneficial owner', contemplates, through the Explanation appended to it, company, partnership firm and trust as the holder of shares or significant influence/control.

a regulation as that would not be in accord with the statutory provisions nor would it be for the purpose of carrying on the provisions of the Act.

## DECLARATION OF BENEFICIAL INTEREST IN SHARES

Subsection (1) of section 90 reads as follows:

"(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein after referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section."

Subsection (1) of section 90 is applicable, when an individual holds:

- beneficial interest in shares of any company of 25% or more (or such other percentage prescribed by the Central Government). Such beneficial interest may be held either individually or together with or through one or more persons or trust (including a trust and persons resident outside India); or
- the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company.

Such individual is called significant beneficial owner and such individual must declare to the company, the nature of his interest and other particulars, in the prescribed manner and period of acquisition of the beneficial interest or rights and any change thereof.

Sub-section (1) uses the two expressions 'significant influence' and 'control'. But it adopts only the definition of 'control' under section 2(27); it does not adopt the definition of 'significant influence' in section 2(6).

Rule 2(1)(e) of the Companies (Significant Beneficial Owners) Rules, 2018 provides the definition of "significant beneficial owner" which reads as follows:

(e) "significant beneficial owner" means an individual referred to in sub-section (1) of section 90 holding ultimate beneficial interest of not less than ten per cent) read with sub-section (10) of section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly.

Thus, the limit of 25% specified in the section has been reduced to 10%.

## DOES SECTION APPLY WHEN LEGAL OWNER AND BENEFICIAL OWNER OF SHARES IS ONE AND THE SAME PERSON?

Reading sub-section (1) of section 90 and the rule 2(1)(e) together, it is apparent that, although subsection (1) lacks clarity in this regard, rule 2(1)(e) makes it clear that for the applicability of subsection (1), there must exist two parties in relation to shares of a company to attract section 90(1), namely (1) legal owner of shares and (2) beneficial owner of those shares. In

<sup>2</sup> Nova Ads. v. Metropolitan Transport Corporation AIR 2015 SC 1468.



other words, in relation to shares of a company, the registered shareholder must be acting for and on behalf of someone else who is the beneficial owner of the shares. There has to be some agreement, understanding or arrangement (oral or written) between the legal owner and the beneficial owner of the shares in order to get this section attracted. The definition of 'beneficial interest' in section 89(1) specifically provides beneficial interest in a share includes, directly or indirectly, through any contract, agreement or arrangement, or otherwise. It cannot be presumed that a registered owner is not the beneficial owner and that there is someone else who is the beneficial owner of the shares registered in the name of the registered shareholder. On the contrary, the registered shareholder has to be presumed to be the beneficial owner of the shares unless there is a declaration made under section 89 or until it is established that the beneficial owner is somebody else.

This section is an extension of section 89. Section 89 was introduced in the Companies Act in 1974 mainly to deal with cases of *benami* shareholding. This is evident from what was stated in the Notes on Clauses appended to the Companies (Amendment) Act, 1974:

"By section 187C, it is made obligatory that all *benami* holdings of shares in existence at the commencement of the Amendment Act must be declared both by the *benamidar* and the beneficial owner and failure to do so will be punishable. Likewise, all beneficial interest in shares in future also to be declared and with a view to check any possible evasion of the proposed legislation, it is provided that the *benami* holdings of shares must be reported both by the *benamidar* and the beneficial owner within the specified time and failure to do so is made punishable. All collateral agreements entered into, or instruments executed in connection with *benami* holdings, which are not so reported, cannot be enforced by the beneficial owner or any person claiming through him."

However, actually section 89 applied in all cases of shareholder in whose name shares are registered but who is not the beneficial owner of the shares. Likewise, section 90 would apply when shares are held *benami* as well as in other cases (such as trustees holding shares acquired by a trust) involving one person being a legal owner (registered shareholder) of shares of a company and another person being a beneficial owner of the shares. Subsection (1) of section 89 aptly describes this as follows:

"Where the name of a person is entered in the register of

members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed<sup>3</sup> to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares."

Thus, section 89 as well as section 90 cannot apply where the registered owner of the shares is also the beneficial owner and he acts and exercises the rights attached to the shares on his own and for his own benefit and it would apply in cases where the person in whose name the shares are registered is not the beneficial owner of the shares.

The first part of Section 90(1) applies to 'beneficial holding' by a person. This term is defined in section 89(10). It covers those holding where a person has the right/entitlement to exercise rights in relation to such shares or to receive dividends/distribution in respect of such shares. This definition should apply only to those cases where the legal owner is different from the beneficial owner. It would not make any sense if even legal owners are required to make such disclosures. Thus, the term 'beneficial owner' will apply only to those cases where the beneficial owner who is entitled to such rights, etc. is a person different from the legal owner. In the present case, the legal and beneficial owner is the same person.

The second part of section 90(1) applies to having right to exercise or actual exercise of significant influence or control. This part of section 90(1) should also apply in the same way as the first part, i.e. only to those cases where a person holds 'beneficial interest' but not legal interest. If the person holds both legal and beneficial interest, the provisions of this section do not apply. The section applies to those persons who hold beneficial (but not legal) interest in any of the three matters mentioned – shares, right to exercise or actual exercise. Thus, unless the right to exercise or actual exercise significant influence/control in a company is held by a person other than the legal owner, the question of this provision applying does not arise.

Section 90(5) refers to the obligation on a company to issue a notice to persons whom it knows or has reasonable cause to believe that they are the significant beneficial owners. This provision also supports the view that the provisions of this section can only apply where the legal and beneficial owners are different. Under the Companies Act, every company is required to maintain a register of members (and in the case of shares in demat mode, such register is maintained by the depository) and such register gives, *inter alia*, the number of members held by each member of the company. So, every company has the knowledge as to who the legal owners of its shares are and the persons whose names

3 See Rule 9 and Form No. MGT.4, Companies (Management and Administration) Rules, 2014.

appear on the register are to be presumed to be the beneficial owners of the shares. Hence, there does not seem to be any reason for a company to ask who are the legal owners; and it is only when the legal owner and the beneficial owner are different and the company either knows or has reason to believe that the legal owner is not the beneficial owner but someone else is the beneficial owner of the shares, that the question of a notice under subsection (5) would arise. Otherwise, the provision would not make any sense.

That to attract section 90, there must be two separate persons - legal owner and beneficial owner of shares - is also clear from the definition of "significant beneficial owner" given in the Rules (noted above).

In this definition, the words "holding ultimate beneficial interest ... but whose name is not entered in the register of members" make it clear that there must be two persons, one having legal ownership (whose name is entered on the register of members) and the other having beneficial ownership of the shares.

This Rule gives in its Explanation some criteria in case of beneficial holding by persons other than individuals. However, for these criteria to apply, the holding should first of all be by a person who holds beneficial but not legal holding. In other words, the basic and essential requirement for the applicability of the section, namely that there must be a beneficial owner who is not the legal owner (registered shareholder) of the shares, must be first satisfied.

Furthermore, the Form BEN-1 contains a declaration which reads as follows:

### 3. Declaration

In pursuance of sub-section (l) of section 90 of the Companies Act 2013, I, ....., hereby declare that I hold/have acquired a significant beneficial interest in the above-mentioned shares of the company which are registered in the name of the person whose particulars are furnished below."

This declaration also contemplates existence of two interests in shares of a company: one who is the legal owner of the shares held by him as the registered shareholder and second who is the beneficial owner of those shares.

Whether there exists beneficial ownership of a person other than the registered shareholder must be determined according to the definition given in subsection (10) of section 89. As noted above, the expression 'beneficial interest' is used in section 89 and it is now defined 'for the purposes of this section and section 90' in subsection (10) of section 89. In my opinion, the said definition,

**“By section 187C, it is made obligatory that all benami holdings of shares in existence at the commencement of the Amendment Act must be declared both by the benamidar and the beneficial owner and failure to do so will be punishable. Likewise, all beneficial interest in shares in future also to be declared and with a view to check any possible evasion of the proposed legislation, it is provided that the benami holdings of shares must be reported both by the benamidar and the beneficial owner within the specified time and failure to do so is made punishable.**

would apply only to those cases where the legal owner is different from the beneficial owner. Thus, the term one person (beneficial owner) is entitled to the rights and privileges attached to the shares which are registered in the name of another person (legal owner). When the legal owner and beneficial owner is the same person, the provisions of Section 90 read with Section 89(10) cannot apply. It is also to be noted that no useful purpose would be served by requiring disclosure of shareholding of the persons who are on the register of members. That information is already available elsewhere; what is not available (and what the government is interested to know) is the true (beneficial) owners of the shares registered in someone else's names.

Although section 90(1) refers to 'individual', according to the Explanation I appended to the definition of 'significant beneficial ownership' in rule 2(1)(e), the significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under-

(i) where the member is a company, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent share capital of the company or who exercises significant influence or control in the company through other means;

(ii) where the member is a partnership firm, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent of capital or has entitlement of not less than ten per cent of profits of the partnership;

(iii) where no natural person is identified under (i) or (ii), the significant beneficial owner is the relevant natural person who holds the position of senior managing official;

(iv) where the member is a trust through trustee, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

### PROCEDURE FOR MAKING THE DECLARATION

Rule 3 lays down the procedure for making the declaration under section 90(1). It reads as follows:

#### 3. Declaration of significant beneficial ownership in shares under section 90-

(1) Every significant beneficial owner shall file a declaration in Form No. BEN-I to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.

(2) Every individual, who, after the commencement of these rules, acquires significant beneficial ownership in a company shall file a declaration in Form No. BEN-I to the company, within thirty days of acquiring such significant beneficial ownership or in case of any change in such ownership.

### REGISTER OF BENEFICIAL INTERESTS IN SHARES

Under subsection (2) of section 90, every company shall maintain a register and record in it the particulars of declarations received by it under section 90(1) and changes therein. The particulars to be recorded shall include the name of individual, his date of birth, address, details of ownership in the company. In addition, such other details as may be prescribed will also be recorded in the register.

The register maintained under sub-section (2) shall be open to

inspection by any member of the company on payment of the prescribed fees.

Under sub-section (11), the company and every officer of the company who is in default shall be punishable with fine of a minimum of ten lakh rupees and a maximum of fifty lakh rupees and in the case of a continuing failure a further fine of one thousand rupees for every day after the first during which the failure continues, in the case of any of the following defaults:

- failure to maintain the register under sub-section (2);
- failure to file the return under sub-section (4)];
- failure to provide inspection of the register under sub-section (3).

Rule 5 provides as follows:

#### 5. Register of significant beneficial owners-

(1) The company shall maintain a register of significant beneficial owners in Form No. BEN-3.

(2) The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

#### RETURN OF SIGNIFICANT BENEFICIAL OWNERS OF SHARES

Under subsection (4) of section 90, every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

Rule 4 provides as follows:

#### 4. Return of significant beneficial owners in shares.-

Where any declaration under rule 3 is received by the company, it shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, along with the fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014.

#### NOTICE TO ASCERTAIN SIGNIFICANT BENEFICIAL OWNERSHIP OF SHARES

Under sub-section (5) of section 90, a company has to give a notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

- to be a significant beneficial owner of the company;
- to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

Rule 6 provides as follows:

#### 6. Notice seeking information about significant beneficial owners-

A company shall give notice seeking information in accordance with under sub-section (5) of section 90, in Form No. BEN-4.

The person to whom a notice under sub-section (5) has been given, must furnish the information required by the notice within 30 days of the date of the notice. [Sub-section (6)]



Every significant beneficial owner shall file a declaration in Form No. BEN-I to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.



But if (a) the person fails to give the company, the information required by the notice within the time specified therein; or (b) the information given is not satisfactory, the company must, apply to the Tribunal within 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and other prescribed matters. [Sub-section (7)]

Rule 7 provides as follows:

#### 7. Application to the Tribunal

The company may apply to the Tribunal in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including -

- restrictions on the transfer of interest attached to the shares in question;
- suspension of the right to receive dividend in relation to the shares in question;
- suspension of voting rights in relation to the shares in question;
- any other restriction on all or any of the rights attached with the shares in question.

On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make an order restricting the rights attached with the shares within 60 days (or any other prescribed period) of receipt of application. [Sub-section (8)]

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8). CS

# Demutualization & Listing of Stock Exchanges in India

The article evaluates the different alternatives with a stock exchange to list its securities which may be self-listing or cross-listing, by analyzing listing arrangements of some bourses around the globe. It also examines the regulations in India on demutualization and listing of stock exchanges and the emerging scenario. While BSE is listed on NSE, NSE is yet to be listed but various issues raised by NSE for a listing arrangement of their choice are worth mentioning. It is commendable that both BSE and NSE are complying with the relevant rules and regulations laid down by the SECC Regulations, 2012 and LODR, 2015.



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## INTRODUCTION

Initially stock exchanges were established as a non-profit mutually owned organization with responsibilities of regulating the various activities of its members. But with a change in the volume of business and complexity, stock exchanges realized the need of profit for surviving the competition and adoption of technology. These factors led to the transformation in the structure of stock exchange from non-profit organization to profit seeking organization. This transformation from a non-profit mutually owned organization into for-profit investor owned corporation is referred to as demutualization. The first stock exchange to get demutualized was the Stockholm stock exchange in 1993. With increased global competition, there was increase in the requirement for the adoption of world class technology

which required huge investment. Demutualization of exchanges provided this much needed financing to the exchange to be competitive. But demutualization of exchanges leads to the problem of conflicting interest in the activities of stock exchanges as exchange gets vested with an additional role of profit making along with regulatory role. There can be numerous conflicts of interest whenever regulatory and revenue role are not aligned. First conflict of interest arises in case of listing requirements. If the listing standards are set very high, there may be loss in the revenue as a few companies will apply for listing due to stringent norms and if the listing standards are set low, it leads to listing of poor quality companies which negatively impacts reputation of the exchange. The other conflict is related to the regulation of market operations. Under regulatory role an exchange regulates the activities of various members like involvement in insider trading, market manipulation etc. on the other hand an exchange earns a significant amount of revenue from order flows on its platform. In this case if an exchange takes regulatory action against the members who control large order flows, there may be revenue loss while at the same time if regulatory actions against such members are not taken, it will lead to the loss of reputation on grounds of unfair management.

## LISTING AND INTERNATIONAL ARRANGEMENTS

With demutualization, the listing of stock exchange becomes the next imminent step. Listing is most often driven by the need of funds to finance growth and provide liquidity to the shareholders to divest. The listing dynamics of stock exchanges are different from the listing dynamics of a company because stock exchange acts as a regulator of the activities of those companies which are listed on its platform. Self-listing and cross-listing are the two methods being followed for listing of a bourse. When a stock exchange gets listed on its own platform, referred to as self-listing, it will act as its own regulator which itself increases the probability of conflicts in interest. Self-listing is a globally practiced phenomenon and major bourses like New York Stock Exchange (NYSE), Australian Stock Exchange (ASX), Tokyo Stock Exchange, Hong Kong Stock Exchange, Singapore Stock Exchange, London Stock Exchange, EURONEXT and NASDAQ are all self-listed. Major benefit associated with self-listing is that the bourse is not exposed to weaknesses of the other exchange like liquidity problem, incompetent investor base, weaker risk management system, etc. The problem associated with self-listing is conflict of interest. A stock exchange acts as a regulator as it regulates the activities of listed companies, various brokers and other related parties. If a stock exchange is listed on its own

platform in that case it will be its own regulator which can lead to lapses in regulation. Alternatively, if the exchange is listed on some other exchange (which is called cross-listing), this conflict of interest is reduced as a different stock exchange regulates the other listed stock exchange. This elimination of problem of conflict of interest and promotion of transparent regulatory disclosures are the main advantage of cross-listing over self-listing. But the other stock exchange may be its competitor and it may give rise to unfair treatment and loss of commercial secrets.

Internationally, different regulators have followed different arrangements to eliminate various conflicts of interest. The arrangements being followed by some of the major stock exchanges are as follows:

#### **Australian Stock Exchange**

Australian Stock exchange (ASX) is self-listed. It has to file a yearly report to a parliamentary committee and answer questions of the committee regarding its operations. Australian Securities & Investments Commission (ASIC), the Australian securities market regulator monitors and supervises whether ASX complies with the listing rules and exercises all powers regarding the admission, removal, granting, stopping or suspending of the quotation of ASX's securities as ASX would perform with regard to other listed entities. Thus it is regulated by a market regulator and not its own administrator.

#### **London Stock Exchange**

London Stock Exchange (LSE) one of the world's oldest stock exchanges, is self-listed. Just after the listing of LSE on its own platform, the listing standard power was transferred from LSE to Financial Services Authority (FSA). Due to the regulatory failure during the financial crisis of 2007–2008, the UK Government restructured financial regulation and abolished the FSA with effect from 1 April 2013. Its responsibilities were then split between two new agencies: the Financial Conduct Authority (FCA) and the Prudential Regulation Authority of the Bank of England. FCA monitors the corporate disclosure of LSE and ensures that LSE do not get the unfair advantage of listing on its own stock exchange.

#### **New York Stock Exchange (NYSE)**

New York Stock Exchange (NYSE) is the world's largest stock exchange by market capitalization of its listed companies at US\$21.3 trillion as of June 2017. NYSE is self-listed and is a self-regulating organization subject to the regulatory oversight by the Securities and Exchange Commission. Being a self-regulating organization, NYSE sets forth its own rules and regulations and adopts its own acceptable and ethical business practices. NYSE Regulation (NYSER) the non-profit arm of NYSE is responsible for monitoring activities on the NYSE's equities, options, and bonds markets including the NYSE Exchanges. NYSER enforces both the NYSE Exchanges' and their members' compliance with NYSE Exchange rules and applicable federal securities requirements. It also monitors and enforces listed companies' compliance with applicable listing standards of the NYSE Exchanges.

#### **NASDAQ Stock Exchange**

Nasdaq Stock Exchange is the second largest stock exchange in the world by market capitalization. Nasdaq is owned and operated by Nasdaq, Inc. the stock of which was listed on its own securities exchange on July 2, 2002. The National Association of Securities Dealers (NASD) was the self-regulatory organization of the

With demutualization, the listing of stock exchange becomes the next imminent step. Listing is most often driven by the need of funds to finance growth and provide liquidity to the shareholders to divest. The listing dynamics of stock exchanges are different from the listing dynamics of a company because stock exchange acts as a regulator of the activities of those companies which are listed on its platform. Self-listing and cross-listing are the two methods being followed for listing of a bourse.



securities industry responsible for the operation and regulation of the Nasdaq stock market. In 2007, it merged with the Financial Industry Regulatory Authority (FINRA). FINRA is an independent regulatory entity which is governed by a board of directors consisting of one half from the securities market and the other half from the public. FINRA is responsible for the operation and regulation of the Nasdaq stock market. It is monitored by the SEC and sanctioned to enforce the rules and regulations of the SEC.

#### **Singapore Stock Exchange**

Singapore Stock Exchange (SGX), formed on 1 December 1999 as a holding company, is the second exchange in Asia-Pacific to be listed on its own bourse. ASX was listed in 1998 and SGX on November 23, 2000. It serves as a frontline regulator for the markets and clearing houses that it operates in Singapore. The Monetary Authority of Singapore (MAS) regulates SGX in the discharge of its regulatory functions and management of regulatory conflicts. Being a Self-Regulatory Organisation (SRO), SGX has constituted the Regulatory Conflicts Committee (RCC) to manage any perceived or actual conflicts. In April 2017 a regulatory subsidiary SGX RegCo was established to undertake all regulatory functions on behalf of SGX. SGX RegCo will be governed by a board of directors which will be separate from that of SGX. Following the establishment of SGX RegCo, SGX RegCo board will take over all of RCC's current roles and responsibilities. And once SGX RegCo becomes operational in Q1FY2018, RCC will be dissolved.

#### **Hong Kong Stock Exchange**

Hong Kong Stock Exchanges (HKEx) is self-listed. Securities and

Futures Commission (SFC), an independent statutory body set up in 1989 to regulate Hong Kong's securities and futures markets, has the power to administer, monitor and enforces the Listing Rules in relation to HKEx. In case of conflict which may arise between the interests of HKEx as a listed company and companies of which it is the controller, HKEx has constituted Conflict Committee.

From the study of above stock exchanges, the regulatory arrangements in case of self-listing can be categorized into three categories:

**Market Regulator as Supervisor Model:** Under this model all the regulatory activities of the exchanges are managed and supervised by the market regulator. Stock exchanges do not have any rights to control the regulatory functions as per their will. This model is followed in case of Australian stock exchange and London stock exchange.

**Subsidiary as Regulator Model:** Under this model the commercial activities and regulatory activities are completely separated. The regulatory activities are performed by an independent subsidiary of the stock exchange. The problem with this is the fact that directly or indirectly the subsidiary is owned by the parent company only and this can lead to lax in regulatory supervision. This model is followed by NASDAQ and NYSE.

**Independent Public Authority as a Regulator Model:** Under this a separate and independent public authority is made responsible for controlling and supervising the regulatory role of the stock exchange. This arrangement ensures that there is an independent element in the supervision. But the main issue with this model is that there are chances that the appointed public authority may not be that competent to understand the regulatory operation of the stock exchange.

## CORPORATIZATION AND DEMUTUALIZATION IN INDIA

In 2003, the Indian Government announced its proposal to corporatize and demutualize the stock exchanges to ensure the segregation of ownership, management and trading members of the exchanges. Following the announcement, SEBI constituted a committee under the chairmanship of Justice M.H. Kania, former Chief Justice of India on "Corporatization and Demutualization of the Stock Exchanges". The Committee noticed that there were various issues involved that needed to be considered in the process of corporatization and demutualization of the stock exchanges in India relating to the structure of the stock exchanges, taxation impact and stock exchange's listing. Till then only 20 out of 23 stock exchanges were set up as companies either limited by guarantee or by shares and the rest of the three, namely, Bombay stock exchange (BSE), Indore stock exchange and Ahmadabad stock exchange, were functioning as association of persons.

For a stock exchange to get demutualized, it has to be corporatized first. Keeping this into consideration, the committee recommended that the 20 stock exchanges, which were set up as companies, need to be limited by shares only. Apart from this, the other 3 exchanges which were operating as association of persons need to get corporatized and then demutualized. The committee also recommended that clause (j) of section 2 of Securities Contracts (Regulation) Act, 1956 needs to be amended to provide that a stock exchange is a company as per the Indian Companies Act.

On the issue of listing of the stock exchanges, the committee was of the view that stock exchange can get listed on itself or on some other exchange, but listing should not be made mandatory. Also, the committee recommended that the listing conditions of stock exchanges should be monitored by a central listing authority like SEBI. This was also proposed by R.H. Patil in the paper titled "The

capital market in 21<sup>st</sup> century" to have a central listing authority responsible for the monitoring and management of listed stock exchanges.

After considering the various recommendation of Kania Committee on corporatization and demutualization of Stock Exchanges, Securities Contracts and Regulation Act (SCRA), 1956 was amended in the year 2004 for mandating corporatization and demutualization of stock exchanges in India. Section 4A was inserted in the SCRA which provides "On and from the appointed date (12th day of October, 2004), all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B".

In 2010, a Committee was constituted by Securities and Exchange Board of India (SEBI) under the chairmanship of Dr. Bimal Jalan (Former Governor, Reserve Bank of India) to examine the issues arising from the ownership and governance of market infrastructure institutions (MII). The Committee examined the Indian capital market with respect to various measures adopted in international capital market relating to the listing and governance of the exchanges. The Committee gave various recommendations on managing the conflicts of interest, competition in capital market, autonomy of exchanges, listing of exchanges and other issues. The Committee recommended that a firewall should be created between the regulatory and other departments of the exchange to completely stop the flow of information from one department to another. On listing of exchange, the Committee was of the view that listing of stock exchanges should not be allowed but all the regulatory requirements applicable to listed companies should be applicable to stock exchanges. The Committee opposed the listing of the stock exchange stating that a stock exchange should not be a vehicle for attracting speculative investments and, also that any downward movement in its share price may lead to the loss of credibility, which can be detrimental to the market.

The recommendations of the Committee were criticized for being anti-competitive and regressive by many stakeholders, including stock exchanges, market intermediaries, depositories, private equity investors, economists and journalists.

The non-acceptance of major recommendations of Jalan Report was confirmed when SEBI made the listing of stock exchanges possible by amending the existing Stock Exchanges and Clearing Corporations (SECC) Regulations in the year 2012 to pave the path for the exchange to cross-list their shares through an Initial public offering (IPO). Some of the important provisions of the Securities Contracts (Stock Exchanges and Clearing Corporations) Regulations, 2012 as amended till date are:

### Consideration of grant of recognition

Regulation 7(2) provides the conditions for recognition as a stock exchange which requires that:

- the applicant is a company limited by shares;
- the applicant is demutualised; ("demutualised" means that the ownership and management of the applicant is segregated from the trading rights or clearing rights, as the case may be, in terms of these regulations).
- the applicant, its directors and its shareholders who hold or intend to hold shares, are fit and proper persons as described in Regulation 20;
- the applicant satisfies requirements relating to ownership and governance structure specified in these regulations;
- the applicant satisfies net worth requirements specified in these regulations; (as of now it is Rupees 100 crores).



Every recognised stock exchange shall constitute independent oversight committees of the governing board, each chaired by a public interest director, in order to address the conflicts of interest in respect of (a) member Regulation; (b) listing functions, and (c) trading and surveillance function.



(f) the applicant satisfies requisite capability including its financial capacity, functional expertise and infrastructure.

#### Shareholding in a recognised stock exchange

To ensure dispersed ownership of the recognized stock exchange, Regulation 17 provides that at least 51 per cent of the paid up equity share capital of a recognised stock exchange shall be held by public with no individual acquiring or holding more than 5 per cent of the paid up equity share capital. In case of a stock exchange, a depository, a banking company, an insurance company, and a public financial institution the limit is up to 15 per cent of the paid up equity share capital. To insulate the stock exchange from foreign control, regulations provide that the combined holding of all persons resident outside India in the paid up equity share capital of a recognised stock exchange shall not exceed, at any time, 49 per cent of its total paid up equity share capital.

### GOVERNANCE OF STOCK EXCHANGES

#### Composition of the Governing Board

As per Regulation 23 the governing board of every recognised stock exchange shall include: shareholder directors; public interest directors; and Managing director. The number of public interest directors shall not be lesser than the number of shareholder directors in a recognised stock exchange. The important prohibition is "No trading member or clearing member, or their associates and agents, shall be on the governing board of any recognised stock exchange" and "No foreign [portfolio] investor shall have any representation in the governing board of a recognised stock exchange".

#### Segregation of regulatory departments

Regulation 28 stipulate that the recognized stock exchange to segregate its regulatory departments from other departments in the manner specified in Part C of Schedule II of the Regulations.

#### Oversight Committees

Regulation 29(1) - Every recognised stock exchange shall constitute independent oversight committees of the governing board, each chaired by a public interest director, in order to address the conflicts of interest in respect of (a) member Regulation; (b) listing functions, and (c) trading and surveillance function.

#### Disclosure and corporate governance norms

Regulation 35 - The disclosure requirements and corporate governance norms as specified for listed companies shall *mutatis mutandis* apply to a recognized stock exchange. That implies SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 are also required to be complied with by a recognized stock exchange whether listed or not.

### LISTING OF STOCK EXCHANGE

Regulation 45 of the SECC Regulations provides for listing of stock exchanges. As per Regulation 45(1) a recognised stock exchange may apply for listing of its securities on any recognised stock exchange, other than itself and its associated stock exchange, if: (a) it is compliant with the provisions of these regulations particularly those relating to ownership and governance; (b) it has completed three years of continuous trading operations immediately preceding the date of application of listing; and (c) it has obtained approval of the Board.

Regulation 45(2) - The Board (SEBI) may specify such conditions as it may deem fit in the interest of the securities market including those in relation to transfer of shares held by any person.

Regulation 45(3) - A recognised stock exchange shall not list any securities of its associates.

### BOMBAY STOCK EXCHANGE (BSE)

The history of Indian capital market can be traced back to 18<sup>th</sup> century when some brokers started trading under a banyan tree. With the passage of time more people joined this group and finally in 1875 Bombay stock exchange was established. Initially registered as an association of persons, Bombay Stock Exchange renamed as BSE is Asia's oldest bourse and world's largest exchange by number of listed companies as currently 3063 companies are listed on it ([www.bseindia.com](http://www.bseindia.com)). BSE offers various capital market services like trading in equity, currency, debt instruments, derivatives and mutual funds. After getting demutualized in May 2007, BSE initiated move to get listed in the coming years.

#### Before Listing

The journey of BSE from its demutualization till its listing consists of ups and downs. From the amendment of SECC, 2012 which allowed the listing of exchanges to the confusion on deciding whether an exchange should self-list or cross-list, the listing of BSE was delayed a lot. Finally, SEBI approved the cross-listing arrangement with a view that the activity of one exchange will be regulated by the competitor exchange. BSE seemed satisfied with this arrangement and finally got itself listed on NSE. Under this arrangement, BSE is required to submit regulatory disclosures to NSE on a time to time basis. This arrangement of cross listing by SEBI is unique in itself as even though cross listing is followed by other exchanges as well, but a deeper analysis shows that those exchanges got cross listed on an exchange which had different business from the listed exchange. So, for example a stock exchange which only deals in equities gets listed on an exchange which deals in derivatives only. But the Indian scenario is different as here both exchanges have their businesses in same segments and acts as competitors to each other.

### After Listing

BSE's IPO in 2017 was the first IPO and it was the most successful one with the exchange's IPO getting massive 51 times subscription during the bidding period. The shares got listed at a premium of 34.62% at INR 1085 compared with the issue price of INR 806. BSE listing was indeed a watershed moment for itself and the capital market too as listing ensures strict governance and regulatory control. BSE is following all the rules and regulations which are applicable to a listed company like SECC Regulations, listing and disclosure requirements etc. (BSE annual report 2016-17). Even though the share prices of BSE have plunged by 13 % since its listing ([www.nseindia.com](http://www.nseindia.com)), no detrimental impact on capital market of such downward trend in share price has been noted.

### NATIONAL STOCK EXCHANGE (NSE)

National Stock Exchange set up in 1993, was the first demutualized stock exchange of India. Incorporated as a company limited by shares, NSE has contributed a lot in the development of Indian Capital Market. NSE launched various services which were first of its kind in India like electronic screen based trading in 1994, derivatives trading (in the form of index futures) and internet trading in 2000 ([www.nseindia.com](http://www.nseindia.com)).


NSE is yet to be listed but various issues raised by NSE for a listing arrangement of their choice are worth mentioning. NSE was not comfortable with the idea of the listing on the BSE. Two major arguments are given by the NSE against listing on BSE. First, after listing NSE will be liable to file disclosure documents with BSE on a time to time basis. NSE argued that since BSE and NSE are competitors, these disclosure requirements can lead to loss of commercial secrets to BSE which can impact the business of NSE. Secondly, BSE lags behind in terms of liquidity when compared to NSE. This lack of liquidity can negatively impact the price of shares of NSE when traded on BSE and will lead to undervaluation of its shares. NSE made huge efforts so that it can self-list on its listing by giving example of global counterparts where self-listing is followed like NYSE, ASX etc. It is important to mention that NYSE (self-listed) has been fined many times by SEC on issues like providing market information to some investors before it went public and more, thus only strengthening the fear of conflict of interest. But this request of self-listing by NSE is rightly rejected by SEBI on ground of transparency and accountability. Now NSE has proposed to get cross-listed on a condition that its disclosure document should be dealt by an independent agency and those documents should not pass through BSE. SEBI is still working on this proposal.

Other important thing is that both NSE and BSE have been pleading to allow them to trade their share on their own platforms under the "permitted to trade" category. Under the permitted to trade category, shares of a company can be traded on a stock exchange even if that company is not listed on that stock exchange. There is no clarification on this plea from SEBI till now. If this plea is accepted by SEBI, then the liquidity concern of NSE will be sorted out as NSE will be able to allow the trade of its shares on its platform. This will further strengthen the cross-listing arrangement of exchange. SEBI may accept the proposal of NSE with some additional conditions borrowed from international arrangements like appointment of independent authority to regulate the activities or others. But overall it can be said that SEBI has followed a unique approach to eliminate the conflicts of interest arising from listing of exchanges.

It is commendable that both BSE and NSE are complying with the relevant rules and Regulations laid down by the SECC Regulations, 2012 and LODR, 2015. Both exchanges are competing against

each other to gain an edge over other in terms of trading value, volumes, listing and so on. But at the same time both the stock exchanges are managing their compliances and Regulations very well to ensure that exchange do not suffer any loss in reputation on account of governance and control which can impact the long-term business aspect of the exchange.

### SUGGESTION

BSE and NSE are regulated by Securities and Exchange Board of India. The major concern after demutualization and listing of stock exchanges is related to the governance of the stock exchanges and fulfilling the listing requirements. Indian stock exchanges are dually governed by SECC Regulations and LODR, 2015 which ensure that there are no lapses in the governance mechanism of the exchanges. Even though the stock exchanges are dually governed, there is still a need of an independent authority which can look up for requirements and Regulations relating to the listing only. While listing of an exchange is a watershed moment for exchange and capital market, this requires proper and continuous vigil mechanism on the various activities of the exchanges relating to the listing for the fair play in the securities market. On the lines of suggestions made by Dr. R.H Patil, we recommend the formation of an independent authority solely responsible for the listing activities and which may be called listing corporation of India which can be financed from the portion of listing fees received by the exchanges. 

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# Real Estate Investment Trusts (REITs) – An Innovative Concept For Real Investors

Real Estate Investment Trust (REIT) can be narrated as a professionally organised Institution that offers real investors with an opportunity to invest in revenue generating real estate assets. The focus of this article is to critically examine and highlight the recent changes introduced in REIT Regulations including its amendment regulations.



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## INTRODUCTION

Indian Real Estate Sector especially Commercial Real Estate is one of the most robust and fast growing sector. This sector is gradually moving towards organised one and is possible only through participation of investors. The year 2017 had witnessed drastic change in the sector followed by the enforcement of Goods and Services Tax (GST) and The Real Estate (Regulation and Development) Act, 2016 (RERA). Over the last few decades, post the economic liberalisation initiated in the year 1991, Indian real sector had shown a rally due to the opening of Foreign Direct Investment (FDI), Central Government's Urban renewal programme "Smart Cities Mission" and the Credit Linked Subsidy Scheme (CLSS) for making affordable housing under Pradhan Mantri Awas Yojana (PMAY) and is expected to grow at 30% over the next decade. The Indian real estate market is anticipated to accomplish US\$ 180 billion in which Housing Sector foresee its contribution of around 11% to India's GDP by the year 2020 according to a joint report by CREDAI and Jones Lang LaSalle (JLL). Increased transparency in this sector through RERA will strengthen its attractiveness in the ensuing years. However, its major issues are (i) projects delay due to court interference in land cases, (ii) misleading and deceitful advertisement to sell product, (iii) Absence of legitimate land titles deeds, (iv) speculation in land value and (v) high input cost.

With an intend to enable investors to invest in Indian real estate market and to uplift funding into the sector without depending on bankers, The Securities and Exchange Board of India (SEBI) had notified SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations") on September 26, 2014 (as amended from time to time). This article seeks to critically examine REIT Regulations including its amendment regulations.

## DECODING THE CONCEPT - REAL ESTATE INVESTMENT TRUSTS

Real Estate Investment Trusts (REIT) being Trust registered under Indian Trusts Act, 1882 functions akin to Mutual Funds wherein pooled funds received from the unit holders against

units issued, will be invested in revenue generating commercial properties. All the units issued through public issue shall be listed on the stock exchanges. REIT has to distribute dividend amounting to 90% of income accrued from its revenue to the unit holders. The term "REIT" as per Regulation 2 (zm) means a Trust registered as such under REIT Regulations. REITs are often categorised into "equity-type REITs" i.e., own properties and "mortgage-type REITs" i.e. create mortgages on properties. The concept was first enacted by United States in the year 1960 through Cigar Excise Tax Extension Act which had envisaged in providing real investors the opportunity to invest in diversified portfolios of revenue generating real estate assets. Consequently around 36 countries had adopted this investment vehicle. Even if REITs are widely accepted in European and American market, it does not have the same impact in Indian market. But the Finance Minister at the Centre, Shri Arun Jaitley in his Finance Budget 2016 had withdrawn the dividend distribution tax (DDT) from REITs which had offered real estate developers a liquidity option and investors an opportunity to participate in the realty market's growth.

## MAJOR AMENDMENTS IN REIT REGULATIONS

In order to further liberalise the directives for the REITs and to bring ease in its development, SEBI had amended REIT Regulations which are summarised as under:

- A. SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2016 w.e.f. 30.11.2016 ("REIT Amendment Regulations, 2016")
  - Inserted the concepts "Holding Company" (Holdco) (Regulation 2 (qa)) and "Sponsor Group" (Regulation 2(zta)). REIT Amendment Regulations, 2016 empowered REITs to invest in two-tier structure through Holding Company subject to minimum holding in Holdco and SPV. SEBI had also instigated the concept 'Sponsor Group' which included the term Sponsor; entities controlled by or who control the sponsor (in case Sponsor is a body corporate); immediate relative of or entities controlled by sponsor (in case Sponsor is an individual). The entire sponsor group is required to meet the eligibility criteria under the REITs Regulations. "Sponsor" (Regulation 2(zt)) means any person(s) who set(s) up the REIT and designated as such at the time of application made to the SEBI.
- B. SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2017 w.e.f 15.12.2017
  - REITs were authorised to raise funds through issue of

Debt Securities. To give effect to this change, SEBI had amended the term 'debt securities' to include bonds and other securities issued by a Trust registered as a REIT, under SEBI (Issue and Listing of Debt Securities) (Second Amendment) Regulations, 2017 dated December 15, 2017.

- REITs are empowered to lend to its underlying Holdco/ SPV.
- The term "Strategic Investor" had introduced through Regulation 2 (ztb) for REITs on the similar lines of Infrastructure Investment Trusts (InvITs). Intention is to give confidence to other investors.
- SEBI had permitted REIT to carry single asset over 2 projects. Prior to this amendment, it had stipulated that a REIT shall hold at least 2 assets for a project and not more than 60% of the value of its assets shall be held in a single project.
- The term Valuer has been amended in the line of Companies Act, 2013.
- SEBI (Real Estate Investment Trusts) (Amendment Regulations, 2018 w.e.f. 10.04.2018)
- The "Real Estate Assets" (Regulation 2(zj)) and "REIT assets" (Regulation 2 (zn)) has been altered to include properties held by REIT, on a freehold or leasehold basis, whether directly or through a Holdco or SPV. ("Real Estate" or "property" is defined under Regulation 2 (zi))

**ELIGIBILITY CRITERIA**

As per Regulation 3 of REIT Regulations, a person shall not act as a REIT unless it is registered with SEBI. An application for grant of certificate of registration as REIT shall be made by the Sponsor on behalf of the Trust in a prescribed form along with non-refundable fee.

<b>GENERAL CONDITION</b>	<ul style="list-style-type: none"> <li>a) Applicant is the Sponsor and a trust deed shall be duly registered;</li> <li>b) Trust deed has the main objective of undertaking activity of REIT along with responsibilities of the Trustee;</li> <li>c) Sponsor(s), Manager and Trustee shall be separate entities;</li> <li>d) No Unit holder of the REIT enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of REIT ;</li> </ul>
<b>SPONSOR</b>	<ul style="list-style-type: none"> <li>a) It shall hold at least 5% of total REIT units on post offer basis;</li> <li>b) It shall be identified clearly in the application for registration to the SEBI and in the offer document/ placement memorandum;</li> <li>c) It shall have net worth of at least Rs. 100 Crores and individually at least Rs. 25 Crores;</li> <li>d) It has at least 5 years of experience in real estate development and where the sponsor is a developer, at least 2 projects have been completed;</li> <li>e) the applicant and parties to the REIT are fit and proper persons.</li> </ul>
<b>MANAGER</b>	<ul style="list-style-type: none"> <li>a) It has net worth/ Net tangible Assets of at least Rs. 10 Crores if it is body corporate/ LLP;</li> <li>b) It has at least 5 years of experience in fund management/ advisory services/ property management in the real estate industry (including its at least 2 key personnel);</li> <li>c) It has at least half, of its directors in the case of a company or of governing Board Members in case of an LLP, as independent; and</li> <li>d) It has entered into an investment management agreement with the trustee.</li> </ul>

<b>BOARD OF TRUSTEE</b>	<ul style="list-style-type: none"> <li>a) It is registered with SEBI</li> <li>b) It has such wherewithal w.r.t. infrastructure, personnel, etc. to the satisfaction of the SEBI</li> </ul> <p>(The term "Trustee" is defined under Regulation 2(zv))</p>
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**MODUS OPERANDI IN REITS**

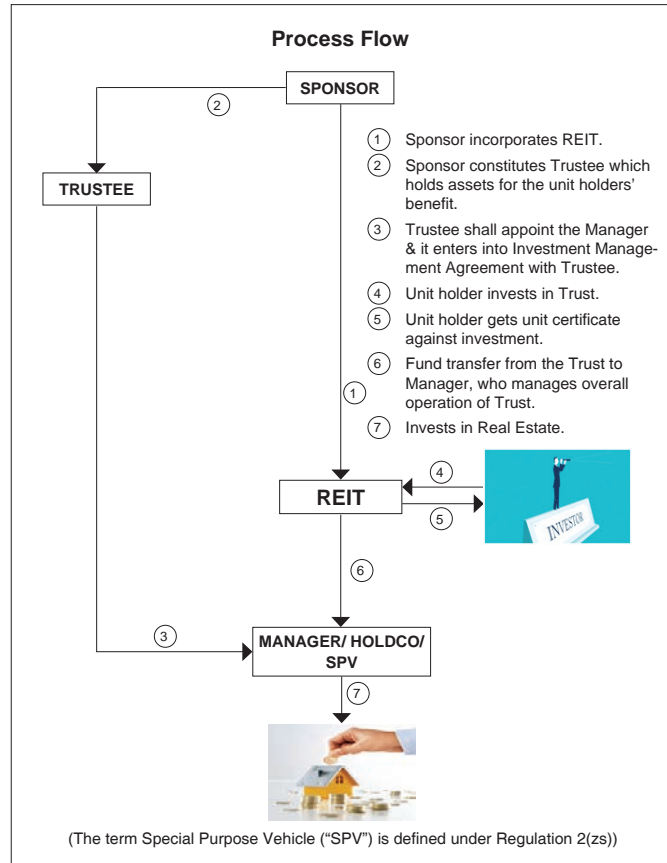


Figure 1

**LISTING AND ALLOTMENT OF UNITS (Regulation 14)**

<b>PRE-REQUISITES</b>	<ul style="list-style-type: none"> <li>(i) SEBI registered REIT shall make an initial offer of its units by way of public issue through book building process only.</li> <li>(ii) REIT assets value shall be at least Rs. 500 Crores.</li> <li>(iii) Minimum unit holders (other than Sponsor(s), its Related Parties and its Associates) shall be at least 200 nos.</li> <li>(iv) Offer size is Rs. 250 Crores or more.</li> <li>(v) For raising funds through initial offer, unit proposed to be offered to the public: <ul style="list-style-type: none"> <li>• Shall be at least 25% of outstanding REIT units and its post issue capital is &lt; Rs. 1600 Crores;</li> <li>• Shall be of value at least Rs. 400 Crores if post issue capital of REIT is between Rs. 1600 Crores and Rs. 4000 Crores;</li> <li>• Shall be at least 10% of outstanding REIT units and its post issue capital is &gt;= Rs. 1600 Crores;</li> </ul> </li> <li>(vi) Appoint SEBI registered Merchant Banker and the Depository (as unit issue is in De-mat mode only).</li> <li>(vii) REIT fails to make its initial offer within 3 years from its registration date, it shall surrender its registration certificate and ceases to operate.</li> </ul>
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Figure 2

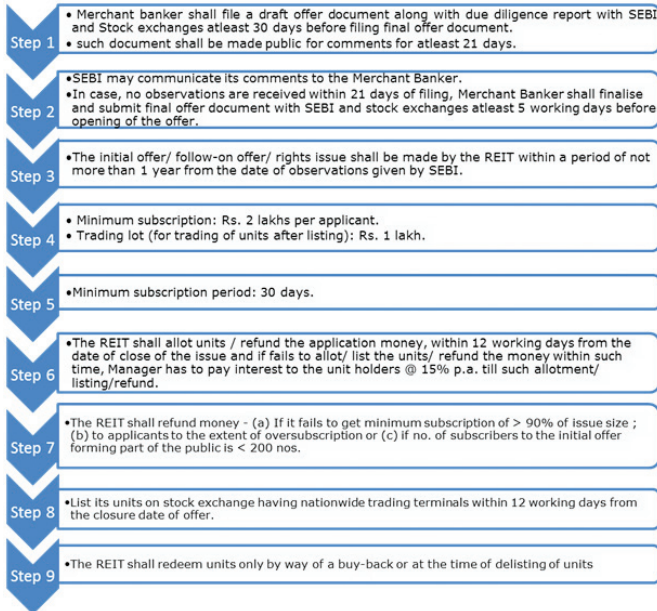


Figure 3

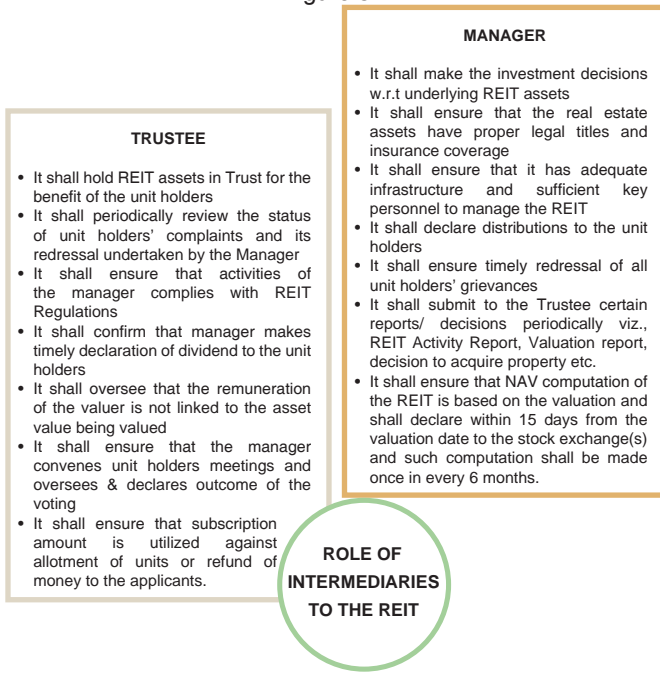


Figure 4

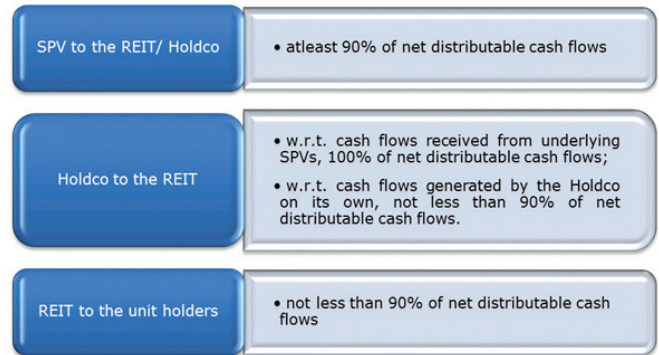
**INVESTMENT CONDITIONS AND DISTRIBUTION OF SURPLUS (Regulation 18)**

**Dos**

- REIT's Investment shall be made only in Holdco/SPVs or properties or securities or Transferable Development Rights (TDR) in India
- At least 50% of revenues of the REIT, Holdco and SPV other than gains arising out of disposal of properties shall be from lease rental income
- A REIT shall hold any completed and rent generating property, whether directly or through Holdco or SPV, for a period of at least 3 years from the date of purchase
- Investments conditions shall be monitored on a half-yearly

basis and at the time of acquisition of an asset by the manager

- With respect to distributions made by the REIT and the Holdco and/or SPV:-



(Net Distributable Cash Flow here means income from investments less expenses)

Figure 5

- Such distributions shall be declared once every 6 months in each financial year and shall be made not later than 15 days from the declaration date. If it is not apportioned within the due date, then the manager shall be liable to pay interest to the unit holders @ 15% p.a. till the distribution is made

**Don'ts**

- The REIT shall not invest in vacant land or agricultural land or mortgages other than mortgage backed securities or land which is extension of an existing project being implemented in different stages
- A REIT shall not invest in units of other REITs.

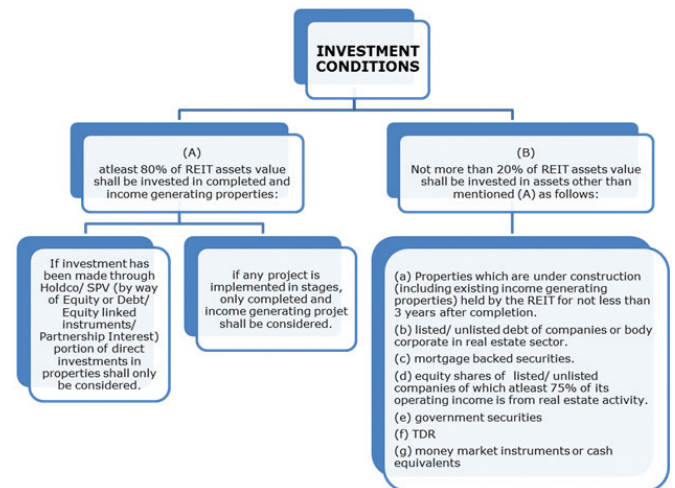


Figure 6

**RELATED PARTY TRANSACTIONS (RPT) (Regulation 19)**

- Related Party Transactions shall be on an arms-length basis and in the best interest of unit holders
- A REIT may undertake following RPT subject to the conditions:
  - acquire assets from related parties

- sell assets or securities to related parties
- lease assets to related parties
- lease assets from related parties
- invest in securities issued by related parties
- Borrow from related parties.

(As per Regulation 2 (zo) Related Party means the term defined under the Companies Act, 2013 or applicable Accounting Standards and shall also include (i) parties to the REIT and (ii) sponsors, directors and partners of the persons in clause (i))

Purchase or Sale of Properties (after initial offer) shall be subject to the following:

- (i) 2 valuation reports from two different valuers shall be obtained.
  - (ii) Transactions for such asset purchase/sale shall be at a price not greater/not lesser than 110% or 90% of the average of 2 such valuations.
- Transaction between two or more of the REITs with a common manager or sponsor shall be deemed to be RPT for each of the REITs and provisions of this regulation shall apply.

#### **BORROWINGS** (Regulation 20)

- A REIT, whose units are listed on stock exchanges, may issue debt securities and such securities shall be listed on recognized stock exchange(s)
- The aggregate borrowings and deferred payments of the REIT/holdco/SPV(s), net of cash and cash equivalents shall never exceed 49% of REIT assets value

#### **ASSET VALUATION** (Regulation 21)

- The valuer shall be independent with at least 5 years of experience in real estate valuations
- A full valuation shall be conducted at least once in every financial year within 3 months from the end of the year
- A half yearly valuation of the REIT assets shall be conducted within 45 days from the half year ending on September 30 for incorporating any key changes in the previous 6 months
- Such valuation reports shall be submitted to the stock exchanges and unit holders within 15 days of receipt
- A Valuer shall not undertake valuation of the same property for more than 4 consecutive years with a cool off time of 2 years from the date of its ceasure

#### **MEETING OF UNIT HOLDER** (Regulation 22)

Following items may be considered in the ordinary course of business with respect to Annual Meeting:

- (i) latest Annual Accounts and Performance of the REIT;
- (ii) Approval of auditors and their fees;
- (iii) latest valuation reports;
- (iv) appointment of valuer, if any;
- (v) any other issue including special issues under Regulation 22(6).

#### **APPROVAL OF UNIT HOLDERS FOR CERTAIN ITEMS**



Figure 7

#### Items require approval by Simple majority\*

- For any sale of property, whether by the REIT or Holdco or SPV or for sale of shares or interest in SPV by Holdco or REIT exceeding 10% of REIT assets value in a financial year
- Asset purchase/ sale at a price > 110% or < 90% of REIT asset value
- Total value of Related Party Transactions pertaining to acquisition or sale of properties whether directly or through Holdco or SPVs, or investments into securities exceeds 10% of REIT value in a financial year
- Value of the funds borrowed from Related Parties exceeds 10% of consolidated borrowings of REIT or Holdco or SPVs in a financial year
- With respect to any properties leased to related parties to the REIT if
  - a. Such lease area exceeds 20 % of the total underlying assets area;
  - b. Leased value of assets exceeds 20% of the total underlying assets value;
  - c. Rental income from such leased assets exceeds 20% of the rental income of underlying assets.
- For any further borrowing, if borrowing in excess of aggregate borrowings and deferred payments of REIT or Holdco or SPV(s), net of cash and cash equivalents exceeds 25% of REIT assets value
- Any transaction, other than any borrowing, value of which >= 25% of the REIT assets
- Any issue of units after initial offer by the REIT other than any unit issue which may be considered by the SEBI under Regulation 22(6)
- Increasing period for compliance with investment conditions to 1 year under regulation 18(9)
- Any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or manager, is material
- Any issue for which SEBI or stock exchanges require approval

(\* substituted by REIT Amendment Regulations, 2016 in place of "at least 60%")

#### Items require approval by atleast 60% majority\*

- Any change in Manager including its removal or change in control.
- Any material change in investment strategy or any change in the REIT management fees
- Sponsor(s) or Manager proposing to seek delisting of REIT units
- Units' value held by a person along with its associates other than the sponsor(s) and its associates exceeding 50% of outstanding REIT units' value, prior to acquiring any further units
- any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or manager or trustee requires the approval
- any issue for which SEBI or stock exchanges require approval
- any issue taken up on request of the unit holders including:
  - a. Removal of the Manager, auditor, valuer and their appointment.
  - b. Delisting of the REIT if the unit holders have sufficient reason to believe that such delisting would act in the unit holder's interest. If no such approval is obtained,

- then exit opportunity should be given to unit holders.
- Any issue which the unit holders have opinion that is detrimental to its interest.
  - Change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to its interest.

(\* substituted by REIT Amendment Regulations, 2016 in place of "atleast 75%")

#### Items require approval by atleast 75% majority

- Change in Sponsor or re-designated sponsor or change in its control. In case no such approval is obtained, sponsor shall provide exit opportunity to the dissenting unit holders.

#### RIGHTS OF UNIT HOLDERS (Regulation 22)

- Right to receive dividend
- Right to receive Annual Report within 3 months from the financial year end
- Right to attend the Annual General Meeting (it must be held once in a year within 120 days from the financial year end). Time gap between two such meetings shall not exceed 15 months)
- Right to vote at the General Meeting (such voting shall be done either through Postal Ballot or electronic mode)
- Right to receive the General Meeting Notice (at least 21 days before such meeting)
- Right to receive half-yearly report of the REIT's activities (within 45 days from the end of September 30)

#### DELISTING OF UNITS (Regulation 17)

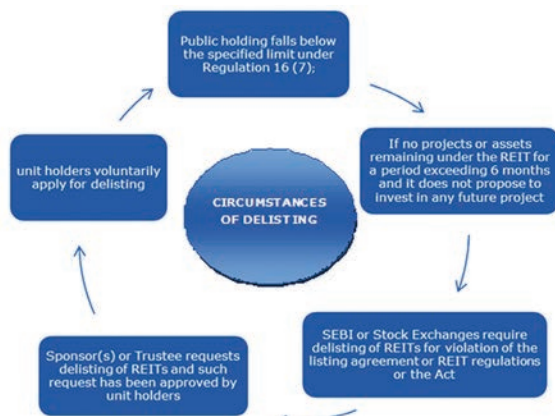


Figure 8

(After delisting of its units, the REIT shall surrender its registration certificate to SEBI and shall no longer undertake activity of a REIT)

#### MAINTENANCE OF RECORDS (Regulation 26)

The manager shall maintain records pertaining to the REIT activities including decisions of the manager w.r.t. investments, details of investments made by the REIT, agreements entered into by the REIT etc. for a period of at least 7 years.

#### MERITS OF REITS

- REIT units are traded on the stock exchanges which provide liquidity to investors as against which trading in real estate that requires lot of effort, expense, and expertise

- REITs are managed by qualified professionals
- The distribution of dividend at least 90% of their income attracts investors to invest in this instrument
- Transparency in its operations as REIT is making regular disclosures
- Long term stable income to the unit holders as REITs own physical property which often have long term lease contract
- REITs unit may provide diversified investment portfolio to the investors.

#### DEFECTS OF REITS

- REITs have to distribute substantial part of its income for dividend distribution. On the other part, it can reinvest a maximum of 10% of its surplus into their core business each year which may grow at slower rate as compared to normal company
- Recurring ups and down in real estate business could make REITs business volatile which results in its income that cannot be guaranteed
- REITs investment could become exorbitant as it has to make investment only in projects which have completed 90% of construction
- Higher Dividend payout may make management to opt for leverage which may create debt burden/interest rate risk and lower its return

#### FOREIGN INVESTMENT IN REIT

As per Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 through Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 as amended from time to time, foreign investment in units issued by REITs governed by SEBI regulations shall be allowed, subject to the prescribed conditions.

As per Regulation 5(8), a person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest in units of an Investment Vehicle subject to the terms and conditions including entry routes, sectoral caps or the investment limits specified in Schedule 8.

(The term "Investment Vehicle" is defined under regulation 2 (xxix))

#### CONCLUDING REMARKS

With advent of this investment vehicle, new portfolio of investment in real estate sector with better regular return in the form of dividend is unlocked before the real investors. SEBI's amendments had liberalised the REIT regulation which could foster real estate market in India in coming years. CS

#### SOURCES:

- SEBI (Real Estate Investment Trusts) Regulations, 2014 including amended regulations
- Website of SEBI: [www.sebi.gov.in](http://www.sebi.gov.in)
- RBI notification on FDI in units issued by REITs governed by SEBI dated 21.04.2016
- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017
- Website of NAREIT: <https://www.reit.com/nareit>
- Website of India Brand Equity Foundation: [www.ibef.org](http://www.ibef.org)

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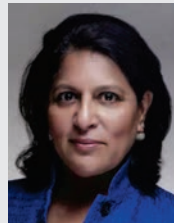
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# 2

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- THE EXISTING SHAPE OF INBOUND FDI IN INDIA: DETERRENTS AND INITIATIVES
- ICSI – CCGRT - INVITES RESEARCH PAPERS ON CHAMPION SECTORS

# The Existing Shape of Inbound FDI in India: Deterrents and Initiatives\*

India, the largest democracy of the world, has the potential to be the major destination for Foreign Direct Investment (FDI). The main advantages with India are the huge market and large pool of human resources. Therefore, India needs to improve its business climate in order to stay attractive to MNCs. Fortunately, as the existing government is keen to increasing incoming FDI; it has been taking several steps to become attractive destination of Foreign Investment. This paper will assess the existing state of India's Inbound FDI; evaluate India's performance in global platform, ranking of India in two global indices, role of existing government for increasing Inbound FDI and finally suggesting way forward to increase Foreign Investment.

**Key Words:** Foreign Direct Investment, FDI, GDP, FDI flows; Inward FDI flows; Projections for global FDI in 2018; FDI prospects; investment determinants, investment policy, policy framework.



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## INTRODUCTION

In the era of globalisation, the vibrant local economy is a top priority for most countries including India and apart from systematic planning and development measures by the nations, revenue generation through International Trade and Industrialisation through Inbound-Foreign Direct Investment (FDI) significantly contribute to achieve this objective.

FDI is an integral part of an open and effective international economic system and a major catalyst to development. Yet, the benefits of FDI do not accrue automatically and evenly across countries, sectors and local communities. National policies and the international investment architecture matter for attracting FDI to a larger number of developing countries and for reaping the full benefits of FDI for development.

The challenges primarily address host countries, which need to establish a transparent, broad and effective enabling policy environment for investment and to build the human and institutional capacities to implement them (FDI Development document OECD, 2002)<sup>1</sup>.

Several studies on FDI have documented the superior performance in productivity, innovation and R&D of foreign affiliates relative to domestic firms in host countries. Therefore, developing countries, emerging economies and countries in transition have come increasingly to see FDI as a source of economic development and modernisation, income growth and employment. Countries have liberalised their FDI regimes and pursued other policies to attract investment through FDI.

Furthermore, foreign capital results in unintended benefits that

typically spill over from MNCs to the local economy they invest in. Local benefits can potentially arise from FDI when foreign firms demonstrate new technology that disseminate to local companies, train workers who subsequently transfer to other firms, and stimulate competition which leads to improved efficiency in the local market. When these multifaceted benefits are assimilated by local suppliers, customers, the workforce, and local firms, FDI contributes additional productivity for the host economy.

Therefore, all the countries, especially, the developing and emerging one will try to attract maximum Inbound-FDI for their economic growth and improve their investment atmosphere for foreign capital and aggressively market themselves as an attractive FDI destination.

## ON THIS COMPETITIVE BACKDROP OF INVESTMENT THROUGH INBOUND-FDI:

- Where does India stand in terms of attracting MNCs to invest within its borders?
- What issues serve as deterrents to India receiving even more cross-border investments?
- How does India's current business climate rank among other competing nations in regards to openness, taxation and other factors that are important to attracting inward FDI?

This Research paper seeks to examine these issues by analysing data from the IMF's World Economic Outlook database, International Country Risk Guide of World Bank, the Organisation for Economic Co-operation and Development (OECD), the World Bank<sup>2</sup> and other multilateral organizations that track International Trade & Investment, and the FDI Policy document of Government of India. In particular, emphasis will be positioned on the OECD's "FDI Restrictiveness Index" and the World Bank's "Ease of Doing Business" ranking as they are two of the most reputable global organizations that track trade and investment data for countries worldwide. More importantly, the well-defined performance criteria tracked by these two indices will be used to gain a better understanding of India's current inbound FDI status.

## SECTION-1

### CURRENT STATE OF INDIAN INBOUND FDI

India is the seventh largest economy in the world based on its gross

\*The author is thankful to Dr. S. K. Dixit, Mentor-Research Cell, CS Sonia Baijal, Director and Dr. Prasant Sarangi, Director (Research) for encouraging, guiding and giving necessary inputs while developing the manuscript.

<sup>2</sup> <https://www.google.co.in/search?q=international+country+risk+guide+data+xls&oq=International+Country+Risk+Guide&aqs=chrome..69l57j0l5.6807j0j7&so=urceid=chrome&ie=UTF-8>

domestic product (GDP) which stood at USD \$ 2611 billion at the end of 2017. It is a major trading associate for most advanced countries and many developing nations. It accounts for 1.65% of global exports and 2.21% of global imports<sup>3</sup> [WTO, 2016]. India ranks 20th world wide in merchandize exports and 14th in merchandize imports and ranks 8th and 10th for commercial services export and import, respectively.

Foreign Direct Investment in India increased by 3971 million USD in May, 2018. Foreign Direct Investment in India averaged 1318.29 million USD from 1995 until 2018, reaching an all-time high of 8579 million USD in August, 2017 and a record low of -1336 million USD in November, 2017<sup>4</sup>.

India's position as a major economy with many competitive advantages, as well as a classy and wealthy consumer base, makes it a major player in the international trade and investment arena.

According to the data provided by the Reserve Bank of India (RBI), India's outward Foreign Direct Investment (OFDI) in equity, loan and guaranteed stood at US\$ 784.28 million in the month of February 2018 as against US\$ 866 million in January 2018 and US\$ 1.35 billion in February 2017.

Particularly, India has emerged as one of the strongest performers in the deal-street across the world in mergers and acquisitions.<sup>5</sup> M&A deal volume in India increased 14 per cent to 1,022 transactions, worth US\$ 46.8 billion, in 2017.

to the United Nations Conference on Trade and Development (UNCTAD) 2017-World Investment Report.<sup>6</sup> Foreign Direct Investment inflows hit an all-time high of USD 60.1 billion in 2016-17, according to data by the Ministry of Commerce and Industry, Government of India. The value of cross border deals in India grew sharply in 2017 - from USD 8 billion to USD 22 billion - driven by a number of large deals, including, for example, acquisition of 49% stake in Essar Oil by Petrol Complex Ltd, Singapore owned by Rosneftgaz of Russia.

As Table 1 shows, the Foreign Direct Investment Flow in India has doubled compared to 18,286 million US \$ in 2012-13 to 36,068 million US \$ in 2015-16 and it was estimated to reach 36,317 million US \$ in 2016-17. Mauritius was the largest source of foreign investment in India, followed by the US and the UK, according to a census by Reserve Bank of India. The table also reflects that in 2013-14 the flow of inbound FDI investment reached at its lowest level at 16,054 million US \$ as far as the period taken into consideration. Among the other inbound investment from individual countries, FDI from Singapore became around half of its investment in 2016-17 compared to 2015-16 from 12,479 million US Dollar to 6,529 million US Dollar and still it is the highest investment in India from a contour alone whereas FDI from China is significantly decreasing with the passage of time. Overall the FDI flow in India though increased but the scope is there to increase the volume at the next higher level.

**Table 1: Foreign Direct Investment Flows to India: (COUNTRY-WISE)**

Industry	2012-13	2013-14	2014-15	2015-16	2016-17 P
Total FDI	18,286	16,054	24,748	36,068	36,317
<b>Country-wise Inflows(US \$ million)</b>					
Mauritius	8,059	3,695	5,878	7,452	13,383
Singapore	1,605	4,415	5,137	12,479	6,529
Japan	1,340	1,795	2,019	1,818	4,237
Netherlands	1,700	1,157	2,154	2,330	3,234
U.S.A.	478	617	1,981	4,124	2,138
United Kingdom	1,022	111	1,891	842	1,301
Germany	467	650	942	927	845
U.A.E.	173	239	327	961	645
Switzerland	268	356	292	195	502
France	547	229	347	392	487
South Korea	224	189	138	241	466
Italy	63	185	167	279	364
Cyprus	415	546	737	488	282
Spain	348	181	401	141	213
British Virgin Islands	3	0	30	203	212
China	148	121	505	461	198
Belgium	33	66	47	57	172
Others	1,394	1,501	1,754	2,677	1,109
<b>P: Provisional.</b>					
<b>Note: Includes FDI through SIA/FIPB and RBI routes only.</b>					

Source: Compiled from RBI Annual Report -2016-17

India ranked among the top 10 host economies for FDI, according

<sup>3</sup> <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Country=IN&Language=F>

<sup>4</sup> <https://tradingeconomics.com/india/foreign-direct-investment>

<sup>5</sup> <https://www.ibef.org/economy/indian-investments-abroad>

**Table 2: Foreign Direct Investment Flows to India: (INDUSTRY-WISE)**

Source/Industry	2012-13	2013-14	2014-15	2015-16	2016-17 P
<b>Sector-wise Inflows (US \$ million)</b>					
Manufacturing	6,528	6,381	9,613	8,439	11,972
Communication Services	92	1,256	1,075	2,638	5,876
Financial Services	2,760	1,026	3,075	3,547	3,732
Retail & Wholesale Trade	551	1,139	2,551	3,998	2,771
Business Services	643	521	680	3,031	2,684
Computer Services	247	934	2,154	4,319	1,937
Miscellaneous Services	552	941	586	1,022	1,816
Electricity and other Energy Generation, Distribution & Transmission	1,653	1,284	1,284	1,364	1,722
Construction	1,319	1,276	1,640	4,141	1,564
Transport	213	311	482	1,363	891
Restaurants and Hotels	3,129	361	686	889	430
Education, Research & Development	150	107	131	394	205
Mining	69	24	129	596	141
Real Estate Activities	197	201	202	112	105
Trading	140	0	228	0	0
Others	43	292	232	215	470
<b>P: Provisional.</b>					
<b>Note: Includes FDI through SIA/FIPB and RBI routes only.</b>					

Source: Compiled from RBI Annual Report -2016-17

India's inbound FDI Statistics also shows (Table-2) that around Sixty percent of these investments were concentrated in just three industries namely: Manufacturing (32.97%), Communication

<sup>6</sup> <https://en.portal.santandertrade.com/establish-overseas/india/foreign-investment>

Services(16.18%) and Financial Services (10.28%). Other areas such as Real Estate, Transport, Education, Research & Development, Mining, etc. attracted very little foreign capital. International Merger and Acquisition (M&A) is an important component of FDI evidenced by the fact that it is the strategy mostly used by Multinational Corporations (MNCs) to enter a Foreign Market. Before the financial crisis in 2007, M&A accounted for approximately 80% of global FDI but fell to around 60% in 2013 however from 2016 onwards M&A is gaining to return to its existing levels.(OECD, 2016).

**Table 3: Inbound FDI Flows in India from 2013 to 2017**

2013	2014	2015	2016	2017
1.516275	1.698738	2.10578	1.963873	1.639109
28153	34576	44008	44458	39978

Source: Compiled from OECD FDI regulatory Index

As % of GDP	Billions of USD
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The Global M&A has been increasing steadily. In 2013 the total value of global M&A deals were USD 3,698.86 billion and the value of global M&A deals amounted to 4.74 trillion USD in 2017.<sup>7</sup>

For the same period however, India's inbound M&A was inconsistent, increasing 11% in 2013, then decreasing 17% in 2017 from 2013 levels (% calculated from Table-3). Despite stagnant foreign direct investment (FDI) inflow of \$ 44458 billion in 2016, India will most likely remain most favoured destination due to its attractiveness among MNCs for cross-border mergers and acquisitions<sup>8</sup> though the UN Trade Report, 2016 said that there are tax related concerns that may pose as deterrent to some foreign investors to invest in India. Foreign Multinational Companies (MNCs) are increasingly relying on cross-border M&As to penetrate the rapidly growing Indian market.

## FDI CONFIDENCE INDEX<sup>9</sup>

Kearney Foreign Direct Investment Confidence Index is one of the important yardsticks used by the MNCs before making the investment decision in a particular country.

**Table 4: Kearney Foreign Direct Investment Confidence Index**

Country	Rank-2018	Rank-2017	Rank-2016	Score in 2018
USA	1	1	1	2.09
Canada	2	5	3	1.82
Germany	3	2	4	1.81
UK	4	4	5	1.77
China	5	3	2	1.76
Japan	6	6	6	1.72
France	7	7	8	1.7
Australia	8	9	7	1.66
Switzerland	9	12	11	1.58

<sup>7</sup> <https://www.statista.com/statistics/267369/volume-of-mergers-and-acquisitions-worldwide/>

<sup>8</sup> <https://economictimes.indiatimes.com/news/economy/indicators/cross-border-mergers-make-india-favoured-fdi-route-unctad/articleshow/59051363.cms>

<sup>9</sup> <https://www.atkearney.com/foreign-direct-investment-confidence-index/full-report>

Italy	10	13	16	1.57
<b>India</b>	<b>11</b>	<b>8</b>	<b>9</b>	<b>1.56</b>
Singapore	12	10	10	1.53
Netherland	13	14	14	1.51
Sweedden	14	15	22	1.48
Spain	15	11	13	1.48
New Zerland	16	23		1.48

Source: A.T. Kearney Foreign Direct Investment Confidence Index (2016, 2017, 2018)

India ranks 11th in this year's Index, holding its position as the second-highest ranking emerging market, but falling out of the top 10 for the first time since 2015. Investors based in the America and in the industry sector rank India the highest in terms of their intention to invest in. This confidence may be the result of the government's "Make in India" initiative, which aims to boost investment in India's manufacturing sector as well as its pursuit of closer ties with the United States.

Indian economic reforms likely contributed to the country's performance on the Index—in both positive and negative ways. As a result of government steps to improve the investment environment, India surged 30 spots to rank 100<sup>th</sup> on the World Bank's Doing Business 2018, the first time that India has broken into the top 100. Notable reforms include the elimination of the Foreign Investment Promotion Board, a government agency which was responsible for reviewing all potential foreign investment, and the liberalization of foreign investment thresholds for the retail, aviation, and biomedical industries. Prime Minister Narendra Modi stated in this year's World Economic Forum, "We have also undertaken bold FDI reforms. More than 90 percent of the FDI approvals have been put on the automatic approval route."

Some policies, however, may have deterred investors — at least in the short term. The 2017 nationwide Goods and Services Tax (GST), for example, has faced implementation challenges.

Strong economic performance and the size of the Indian market are also likely to attract investors. The IMF projects India's economy will grow by 7.4 percent in 2018, the fastest growth rate for any major economy. Inward FDI flows already increased to an estimated \$45 billion in 2017, a record high. Japan, the United States, the United Kingdom, and Singapore consistently serve as large sources of FDI for India. And the country's service sector is a target of particular interest for investors, with the government's Economic Survey 2017–2018 noting that inward FDI to the service sector will grow by 15 percent from 2017 to 2018.

 **India ranked among the top 10 host economies for FDI, according to the United Nations Conference on Trade and Development (UNCTAD) 2017-World Investment Report . Foreign Direct Investment inflows hit an all-time high of USD 60.1 billion in 2016-17, according to data by the Ministry of Commerce and Industry, Government of India.**

## SECTION-II

### COMPARING INDIA'S INBOUND FDI & OTHER ECONOMIES

#### 1. Return on Inward FDI

Historically, India has been underperforming when it comes to attracting foreign capital as compared to other developed/developing countries. However, MNCs who make it within India's borders enjoy good rates of return on their investment as the country has a wide market and cheap human resources.

**Table-5: Inward FDI rate of return, 2013-2017 (per cent)**

Region	2013	2014	2015	2016	2017
World Average	7.8	7.9	6.8	7.0	6.7
Developed Economies	6.3	6.6	5.7	6.2	5.7
Developing Economies	9.8	9.5	8.5	8.1	8.0
Africa	12.4	10.6	7.1	5.4	6.3
Asia	10.8	10.6	9.9	9.5	9.1
Transition Economies	13.9	14.6	10.2	11.1	11.8

Source: United Nations Conference on Trade and Development (UNCTAD)-World Investment Report, 2018 [based on data from IMF Balance of Payment database].

From IMF Balance of Payment database as shown in Table-5, the global rate of return on FDI has gone down to 6.7 per cent in 2017 which was 7.8 in 2013. Although rates of return remain higher on an average in developing and transition economies, most regions have not escaped the erosion. In Africa, for instance, rate of return on investment dropped from 12.3 per cent in 2013 to 6.3 per cent in 2017. Because the decline is especially strong in regions that depend on commodity-related FDI, it can be partly explained by the fall in commodity prices during the period.

In Developing Economies which include India, though the return of Inward FDI dropped from 9.8 per cent in 2013 to 8.0 percent in 2017 still the performance is better compared to developed Economies.

#### 2. Inbound Stock as a Percentage of GDP

The effect of Liberalisation era of 1991, to secure and encourage foreign investors to invest in the nation, the Government of India has made various efforts to strengthen the situation of world's second most populous nation. FDI inflows to India grew significantly over the years and assumed significant proportions by the Financial Year (FY) 2018. India has been ranked among the top 10 attractive destinations for inbound investments. In the 2013's, India's inbound FDI accounted for less than 0.89% of global accumulated FDI (FDI stock). As of 2017 India accounted for 1.21% of global accumulated FDI (FDI stock) of world GDP and less than 1% (0.6%) of world FDI.

**Table 6: Inbound FDI Stock in India from 2013 to 2017**

2013	2014	2015	2016	2017
12.20155	13.06077	13.52323	14.06874	15.48513
226548.8	265838	282617.4	318487	377683.5

Source: Compiled from OECD FDI Regulatory Index

As % of GDP	Billions of USD
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Table 6 shows contribution of FDI stock as percent of GDP in accumulated GDP of India is increased from 12.20 percent to 15.48 percent during the period 2013 to 2017. Here GDP (Gross Domestic Product) signifies the total market value of all final goods and services produced in a country in a given year. In Nominal method, market exchange rates are used for conversion. To make

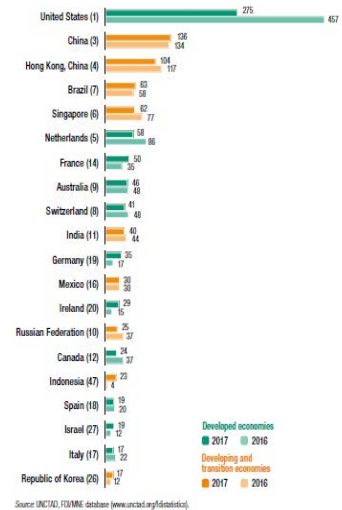
meaningful comparison, Purchasing Power Parity (PPP) is used to compare economies and incomes of people by adjusting for differences in prices in different countries.<sup>10</sup>

#### 3. Share of India in World Inbound FDI Stock<sup>11</sup>

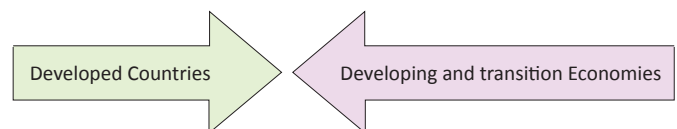
Looking at the percentage share of major countries in the net FDI inflows in the total net FDI inflows of World in 2016-17, it is clear that the countries ranked within six accounts for more than 60 per cent of the total net FDI inflows of the World (See- Table-7).

**Table-7: FDI Inflow Top 20 Host Economies, 2016 and 2017 (Billions of Dollars)**

Country with World Ranking	2017	2016
United States(1)	275	457
China(3)	136	134
Hong Kong, China(4)	104	117
Brazil(7)	63	58
Singapore(6)	62	77
Netherlands(5)	58	86
France(14)	50	35
Australia(9)	46	48
Switzerland(8)	41	48
<b>India(11)</b>	<b>40</b>	<b>44</b>
Germany(19)	35	17
Mexico(16)	30	30
Ireland(20)	29	15
Russian Federation(10)	25	37
Canada(12)	24	37
Indonesia(47)	23	4
Spain(18)	19	20
Israel(27)	19	12
Italy(17)	17	22
Republic of Korea(26)	17	12



Source: World Investment Report (WIR)-2018



United States receives the highest net FDI inflows in the world followed by the United Kingdom and China. The share of inflows of these countries has increased from 2013 to 2016. Hong Kong had the share of 5 per cent in 2016 while Brazil witnessed inflows of 4 per cent of the World's net FDI inflows. India received 1 per cent of the total net FDI inflows of the world in 2013. In 2016-17, however, the share increased to 2 per cent in the total net FDI inflows, indicating investor's increased preference for India as an investment destination. However, the share is very low compared with the other peers. It is necessary to mention here that the overall trend of FDI flow remained little negative globally for several factors (as per World Bank Investment Report-2018). The Asset-light forms of overseas operations are causing a structural Shift in FDI pattern. Another major factor is a significant decline in rate of return on FDI over the past few years.

<sup>10</sup> <http://statisticstimes.com/economy/countries-by-projected-gdp.php>

<sup>11</sup> [http://unctad.org/en/PublicationsLibrary/wir2018\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2018_en.pdf)

**India's global ranking in ease of doing business improved due to recent reforms. However, its high score in the OECD regulatory restrictiveness index should also be a cause for concern. The Index, which focuses on restrictions such as screening and approval requirements for FDI, restrictions on foreign key personnel, restrictions on repatriation of profits and capital etc., shows that lot remains to be done by India to become the most preferred destination for inbound FDI.**

### SECTION-III DETERRENENTS TO INDIA'S INWARD FDI

#### Overall Determinants

It is the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. Despite policy changes and efforts by different governments to boost FDI over the years, India's inbound Foreign Direct Investment remains on an average at 1318.29 Million USD from 1995 until 2018.<sup>12</sup> While there is no definitive answer for this, observers are of the opinion that the Indian market is filled with a host of deterrents for foreign investors some of which are as under:

#### 1. Corruption

One has to accept that India is still affected by the crisis of corruption. Despite the steps by government in recent times to simplify the norms for foreign investment, the position of India is far below so far the International Report of Transparency is concerned. A combination of legal hurdles, lack of institutional reforms and decision-making adversely affect the foreign investors.

#### 2. Taxation

Empirical literature and business perception surveys have consistently shown that taxation is only one of the many aspects of the business environment that investors consider when making their locational decisions. In fact, government support cannot easily compensate for the negative effects of other factors on investment location decisions OECD, 2014a).<sup>13</sup> Local taxation and capital are major considerations for MNCs investing overseas. Governments that offer attractive credit and tax packages to MNCs are given more serious consideration even if other conditions are not ideal. The report of UNCTAD said that "Although new liberalisation efforts continue to improve the investment climate in India, tax-related concerns remain a deterrent for some foreign investors". The World Bank has included a new criterion "post filing index" under the header "paying taxes". Paying Taxes has historically measured the Total Tax and Contribution Rate (the cost of all taxes borne, as a % of commercial profit), the time needed to comply with the major taxes (profit taxes, labour taxes and mandatory contributions, and consumption taxes), and the number of tax payments.<sup>14</sup> Therefore, the report to measure the efficiency of "processes that occur after a firm complies with its regular tax obligations", the post-filing index is a criterion in which India finds itself fourth from the bottom. The

2017 edition of the World Bank **Ease of doing business** survey indicates that India ranked 172<sup>nd</sup> out of 190 countries on the ease of paying taxes. Government's efforts should thus be pursued to help boosting investment and growth.

#### 3. Dispute Settlement

Though India's legal system is considered by many legal experts to be superior to that of many other emerging economies, in practice, it is often found to be an obstacle to investment. One of the reasons for this is the inordinate delay in the interlocutory procedures that characterise the judicial procedures. According to the World Bank's, Report on Ease of Doing Business, it takes nearly four years on an average to resolve a commercial dispute in India, the third longest average rate in the world.<sup>15</sup>

As a result, the 'Rule of law' which has often been cited as one of the attractive features of the Indian economy for foreign investors, is often found to be a major impediment in disputes by a large number of investors.

#### 4. Miscellaneous

As far as Inbound FDI in India is concerned, all new investments require a number of industrial approvals and clearances from different authorities such as the Pollution Control Board, Chief Inspector of Factories, Electricity Board, and Municipal Corporation (locally elected entities), etc. The U.S. Department of State's Investment Climate Statements provide country-specific information on the business climates of more than 170 countries. The report of Investment Climate Statement<sup>16</sup> – India, 2015 reflects that to fast track the approval process for investments greater than USD 200 million, the previous government established a Cabinet Committee on Investment (CCI) in December 2012, chaired by the then Prime Minister. The CCI approved over 100 projects worth more than USD 60 billion, but foreign investors and many economists complained that these projects nonetheless stalled in central and state-levels. Finally, India's global ranking in ease of doing business<sup>17</sup> improved due to recent reforms. However, its high score in the OECD regulatory restrictiveness index should also be a cause for concern. The Index, which focuses on restrictions such as screening and approval requirements for FDI, restrictions on foreign key personnel, restrictions on repatriation of profits and capital etc., shows that lot remains to be done by India to become the most preferred destination for inbound FDI.

### SECTION-IV MEASURING A NATION'S ATTRACTIVENESS AS FDI DESTINATION

There are indices that assess the business and investment atmosphere in countries worldwide and this data gives an indication of how attractive countries are for companies looking to invest. Many of these indices were created by non-profit International Organizations that seek to foster better social and economic conditions globally. Essentially countries are given scores for selected factors and the composite scores determine a country's global ranking on each Index.

In this section, two such indices related to investment and trade to determine India's perception overseas and its competitiveness as a host country for FDI have been examined.



<sup>12</sup> <https://tradingeconomics.com/india/foreign-direct-investment>

<sup>13</sup> <https://www.oecd.org/eo/surveys/India-2014-Overview.pdf>

<sup>14</sup> <http://www.doingbusiness.org/reports/thematic-reports/paying-taxes>

<sup>15</sup> <https://www.state.gov/e/eb/rls/othr/ics/2015/241595.htm>

<sup>16</sup> <https://www.state.gov/e/eb/rls/othr/ics/2015/241595.htm#1>

<sup>17</sup> <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf>

### 1. The OECD FDI Restrictiveness Index<sup>18</sup> (The FDI Index)

FDI Restrictiveness is an OECD index gauging the restrictiveness of a country's foreign direct investment (FDI) rules by looking at four main types of restrictions:

- Foreign Equity Restrictions
- Discriminatory screening or approval mechanisms
- Restrictions on key foreign personnel; and
- Operational Restrictions.

Implementation issues are not addressed and factors such as the degree of transparency or discretion in granting approvals are not taken into account. The index does not assess the actual enforcement of restrictions nor does it consider perceptions of the business climate or the implementation of trade related issues too. Irrespective of this the FDI Index still offers assessment of how a country's policies towards FDI affect their attractiveness to foreign investors and helps to explain variations in different country's ability to attract FDI.

The index here shows the total and nine component sectors taking values between 0 for open and 1 for closed.

**Table- 8Dataset: OECD FDI Regulatory Restrictiveness Index<sup>19</sup>**

Series	Index total										
Year	2017										
Type of restriction	All types of restrictions										
Country	Germany	Israel	Korea	Mexico	United Kingdom	United States	OECD - Average	Non-OECD Economies			
							Brazil	China (People's Republic of)	India	Russia	
Sector / Industry											
Total FDI Index	0.023	0.118	0.135	0.188	0.040	0.089	0.066	0.092	0.316	0.212	0.182

Data extracted on 23 Jul 2018 07:11 UTC (GMT) from OECD.Stat

From the complete country wise data set available with Organisation for Economic Co-operation and Development (OECD)<sup>20</sup> reference to FDI Regulatory Index, it has been observed that India's score between 1997 and 2010 averaged 0.291, more than double the world average of 0.12. It scored significantly higher than the OECD average of 0.09 in being relatively closed to foreign investment, and had among the most restrictive foreign equity regime among all G20 countries. This high level of restrictiveness is partly driven by the persistence of significant foreign equity limits placed on MNCs. India has managed to significantly improve its score on the FDI Index since 2014 onwards even though it is still lagging in attracting incoming FDI. As of 2017, India (0.212) has received a more favourable score than China (0.316) but lagging as compared to countries such as United States (0.089), U.K (0.040) even Non OECD Countries like Brazil (0.092) [ Table-8].

Ensuring free flow of inbound and outbound capital is an important aspect of economic openness that can yield significant benefits to an economy. This type of liberal investment atmosphere is only one of many elements that shape a country's overall investment climate. However, based on data collected over the years, it can be

concluded that higher a country's restrictiveness score, the lower is its level of accumulated FDI.

### 2. Ease of Doing Business Ranking

The Ease of Doing Business Index<sup>21</sup> was created by the World Bank Group and ranks 190 countries between 1, the best and 190, the worst on how easy it is to conduct business within their borders. The study assigns numerical values measures to regulations that relate to starting and conducting a business, such as employing workers, registering property, getting credit, tax filing procedures, protecting investors, taxes, trading across borders and enforcing contracts [ The World Bank, 2018.

**Table-9: Ease of doing Business Ranking-2018 (World Bank)**

Ease of doing Business Rank	India (100)	China (78)	Germany (20)	Israel (54)	Mexico (49)	U.K (7)	USA (6)
Starting Business	156	93	113	37	90	14	49
Dealing with Construction Permits	181	172	24	65	87	14	36
Getting Electricity	29	98	5	77	92	9	9
Registering Property	154	41	77	130	99	47	37
Getting Credit	29	64	42	55	6	29	2
Protection Minority Investors	4	119	62	16	62	10	42
Paying Tax	119	130	41	99	115	23	36
Trading across borders	146	97	39	60	63	28	36
Enforcing Contracts	164	5	22	92	41	31	16
Resolving Insolvency	103	56	4	29	31	14	3

Source: Compiled from World Bank's Global Report, 2018.

Table-9 shows "Ease of doing business" ranking for 2018 [The World Bank, 2018]. India's current overall ranking is 100<sup>th</sup> among 190 countries. It is ranked well below other major economies such as United Kingdom [7<sup>th</sup>], United States [6<sup>th</sup>], and Germany [20<sup>th</sup>], etc. Although India had significantly improved its ranking from 130<sup>th</sup> to 100<sup>th</sup> in 2017-18 still it is lagging far behind the countries like China (78<sup>th</sup>) Israel (54<sup>th</sup>) and other smaller Asian economies on the ease of doing business scale.

In other words, from the point of view of an MNC seeking international expansion it is challenging to do business in India and its neighbour, i.e., China seems to have more attractive investment climates. It is interesting to note that although China is perceived to be a more difficult country to do business in, it still has a GDP/FDI ratio that is over six times higher than India.

### 3. Corruption Perceptions Index (CPI)<sup>22</sup>

Corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. Corruption corrodes the fabric of society. It undermines people's trust in political and economic systems, institutions and leaders.

"CPI results correlate not only with the attacks on press freedom and the reduction of space for Civil Society Organisations. In fact, what is at stake is the very essence of democracy and freedom"-

**Delia Ferreira Rubio**  
Chair, Transparency International

<sup>18</sup> <https://data.oecd.org/fdi/fdi-restrictiveness.htm#indicator-chart>

<sup>19</sup> <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>

<sup>20</sup> <http://www.oecd.org/about/>

<sup>21</sup> <http://www.doingbusiness.org/rankings>

<sup>22</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)

Transparency International<sup>23</sup> conducts study on ranking of countries of the globe according to the level of corruption lying on individual country.

Table-10: Corruption Perceptions Index

Country	Rank	2013 Index Score	2014 Index Score	2015 Index Score	2016 Index Score	2017 Index Score
India	81	36	36	38	38	40
China	77	40	36	37	40	41
Germany	12	81	81	81	79	78
Israel	32	62	64	61	60	61
Mexico	135	29	30	31	35	34
U.K	8	82	81	81	78	76
USA	16	75	74	76	74	73

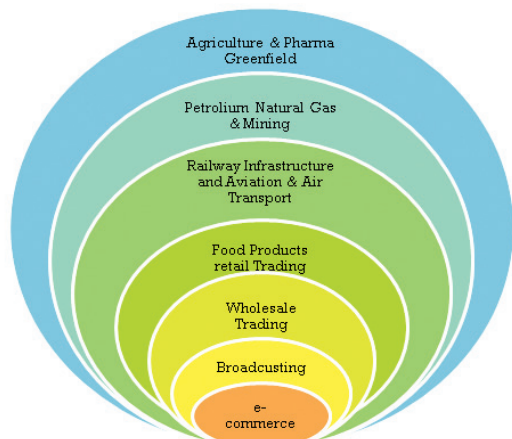
Source: Compiled from Data available with Transparency International, 2017

Since 2013, several countries significantly improved their index score. Still, Corruption Perceptions Index -2017 shows high corruption burden in more than two-third of the countries round the globe. The rank of India as per the report is 81 in 2017 where as all other countries including China where there are high level concentration of Inbound FDI investment occupies higher position except Mexico. Though the report of this organisation does not have direct relation on the FDI in a particular country, yet, the foreign investors definitely consider the same before taking valuable investment decision.

## SECTION-V

### CURRENT INITIATIVES TO INCREASE INWARD FDI

In the past few years, the government has taken proactive measures to attract foreign direct investment in India. Consolidated FDI policy was introduced in June 2016 opening various sectors for FDI in India. Taking into consideration the importance of foreign investment in the country, the government undertook major FDI reforms such as opening up multi-brand retail up to 51 per cent FDI, hiking FDI in single brand to 100 per cent from the then 51 per cent, allowing foreign airlines to pick up 49 per cent stake in domestic airlines, bringing clarity to FDI in power trading exchanges, etc. Diagram-1 placed below reflects 100 percent investment of Inbound Stake in the form of FDI in sectors via Automatic Route in India.<sup>24</sup>



<sup>23</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017)

<sup>24</sup> <http://www.businessworld.in/article/India-Received-2-Percent-Of-Global-FDI-Inflows-In-2016-Still-Long-Way-To-Go-Report/04-01-2018-136360/#>

### 1. Initiative to make India the Best Business Centre

Under this initiative the government is seeking to increase its profile among its regional competitors and get noticed as a potential host for FDI.

As a part of this program the Government set up, "Invest India" a National Investment Promotion and Facilitation Agency of India<sup>25</sup> a non profit venture under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industries, Government of India, which acts as the first point of reference for investors in India. The Government of India (GoI) with intent to attract and promote Foreign Direct Investment has put in place a policy framework on Foreign Direct Investment (FDI) which is transparent, predictable and easily comprehensible. The GoI through Department of Industrial Policy & Promotion (DIPP) formulates a consolidated FDI Policy on a yearly basis which is a defined framework for FDI. The FDI Policy Document released by the government has given a full-fledged clarity to the Global investors.

### 2. Ease of Establishing Businesses

Enabling firms, especially new entrants, to experiment with new technologies and business models is key to promoting productivity (OECD, 2015b). In 2015, insolvency procedures took 4.3 years in India, more than twice the time on an average in China and South Africa, while the recovery rate of assets from bankrupt firms was significantly below many other emerging economies.

In 2016, the government overhauled the multiple laws dealing with insolvency and replaced them with a Code to facilitate time-bound closure of businesses. In the event of a default, the Code sets a time limit of 180 days (plus 90 days for exceptional cases) for resolution. The Code also creates a new institutional structure, with insolvency professionals and agencies, information utilities that will collate information about debtors and a bankruptcy board. Cross-country evidence suggests that some specialisation in expertise of judges and bankruptcy practitioners can lead to faster and cheaper procedures, and therefore higher recovery rates (OECD, 2013; McGowan and Andrews, 2016).

As a major pillar of *Make in India* initiative, the Central Government has taken many measures to improve the ease of starting and operating a business – including an online system for GST registration and payment for various taxes, self-certification schemes, online submission of applications for environmental clearances and construction permits – and reduced registration fees. The *Start-up India* initiative launched in August 2015 has further simplified administrative processes and provided financial support and tax relief for newly-created enterprises. Simplifying regulations and administrative process also contributes to reducing corruption. Overall, India's ranking in the World Economic Forum Global Competitiveness Index for 2016 improved 16 places to 39 while in the 2017 edition of the World Bank *Doing Business*, India's ranking improved to 100, from 130, on a group of 190.

### 3. More Opportunities for M&A

Any initiative to increase Inbound/Outbound FDI will not be successful without addressing issues that prevent M&A. Bearing this in mind, the Government of India clarified Entry Routes for Investment in India. As per the Consolidated FDI Policy<sup>26</sup> of Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, announced and made effective from 28<sup>th</sup> August, 2017, the Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and

<sup>25</sup> <https://www.investindia.gov.in/foreign-direct-investment>

<sup>26</sup> [http://dipp.nic.in/sites/default/files/FDI\\_Circular\\_2015.pdf](http://dipp.nic.in/sites/default/files/FDI_Circular_2015.pdf)



mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required.

#### 4. Corporate Taxation

Creating a business-friendly tax environment is key to promoting investment, to raising India's competitiveness and to creating more employment. The statutory corporate income tax (CIT) rate, 30% plus surcharges adding to 34.6% for resident companies, is high by international standards. The corporate tax rates for 2015-16 fiscal, international business organizations working in India and earning more than 10 million rupees need to pay a corporate tax rate of 42.024 percent. This includes a basic tax of 40%, an education cess of 3 percent and a surcharge of 2%. If their aggregate income is less than INR 10 million then they have to pay a corporate tax of 41.2 percent. This includes a basic tax of 40 percent along with an education cess of 3%. If the net income for a foreign company exceeds Rs 10 crores then the surcharge that it will have to pay is 5%.

As per the "Reforms Update- 2019 on Paying Taxes"<sup>27</sup> the Corporate tax rate has been cut down from 30% to 25% for mid-sized companies. The reduction in corporate tax rate shall reduce effective 'total tax and contribution rate' calculated as a percentage of profit. With effect from 1<sup>st</sup> July, 2017 Goods and Services Tax (GST) law replaces and subsumes all indirect taxes such as Central Sales Tax (CST), Central VAT (CENVAT), State VAT (VAT), Service Tax (ST), Octroi/Entry Tax, etc. GST introduced as one nation one tax having Common procedures for registration, return filing and payment of taxes - seamless flow of credit from manufacturer/supplier to user/retailer, thereby eliminating cascading effect of taxes and now, one commodity has same rate pan-India. The reform document also mentioned that under GST regime total time required for preparation, filing and payment of taxes reduces from 105 hours to 36 hours, annually.

#### 5. Industrial Corridor and Smart Industrial Cities

The Government of India launched five industrial corridor projects across India for overall economic development of the country and to attract Inbound FDI in these Zones.<sup>28</sup> These corridors are spread across India, with strategic focus on inclusive development to provide an impetus to industrialization and planned urbanization. In each of these corridors, manufacturing will be a key economic driver and these projects are seen as critical in raising the share of manufacturing in India's Gross Domestic Product (GDP) from the current levels of 15% to 25% by 2025.

Smart Industrial Cities are being developed along the Corridors. These cities are being developed to integrate the new workforce that will power manufacturing and will lead to planned urbanization. As per the policy of the Government, investors making investment in these Zones will get special investment allowance (additional depreciation) at the rate of 15 percent to manufacturing companies that invest more than INR 1 billion in plant and machinery available till 31.3.2015. Incentives are available to unit's set-up in Special Economic Zones (SEZ), National Investment & Manufacturing Zones (NIMZ) etc. and Export Oriented Units (EOUs). The Government also provides Export incentives like duty drawback, duty exemption/remission schemes, focus products & market schemes, etc.

Apart from the initiatives at the Central Level each state government

has its own incentive policy, which offers various types of benefits to investors based on the amount of investments, project location, employment generation, etc. The incentives differ from state to state and are generally laid down in each state's industrial policy. The broad categories of state incentives include: stamp duty exemption for land acquisition, refund or exemption of tax, exemption from payment of electricity duty, etc.

#### 6. Business Reform Action Plan (BRAP) 2017<sup>29</sup>

Beyond the national level, local governments too have become convinced of the benefits of attracting foreign capital to boost their local economy. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, in partnership with the World Bank Group, released on April 13, 2017, the Business Reform Action Plan (BRAP) 2017, for implementation by States/ Union Territories.

The BRAP includes 405 recommendations for reforms on regulatory processes, policies, practices and procedures spread across 12 reform areas, that is, labour regulation enablers; contract enforcement; registering property; inspection reform enablers; single window system; land availability and allotment; construction permit enablers; environmental registration enablers; obtaining utility permits; paying taxes; access to information and transparency enablers and sector specific reforms spanning the lifecycle of a typical business.

Many of the States in India have been creating their own incentives and policy changes to encourage foreign firms to give them a closer look as potential investment sites. These incentives include making direct contact with prospective foreign investors, offering business start-up support services, etc. The Ministry of Commerce and Industry, Government of India through the specific portal<sup>30</sup> display the state wise ranking as well maintaining highest level of transparency.

#### 7. OECD Recommendations

Going for Growth<sup>31</sup> is the OECD flagship report analysing structural policy settings and economic performance to provide policy makers with concrete reform recommendations to boost growth and ensure that the gains are shared by all. The 2018 Interim Report reviews the main growth challenges and takes stock of reforms enacted over the past year -- in both advanced and emerging economies -- on policy priorities identified in the previous issue of Going for Growth. Based on a broad set of internationally comparable indicators, it identifies structural reform priorities for each country and feeds into the G20 Framework for Strong, Sustainable and Balanced Growth. The 2017 edition of OECD report outlined five priorities for India:

- Reducing administrative and regulatory burdens on companies
- Simplifying and modernising labour laws to create more and better jobs for all
- Enhancing access to, and quality of, the education system
- Improving infrastructure and easing land acquisition
- Undertaking wide-ranging financial sector reforms.

As per OECD Report of 2018, India has made advances in integrating in global value chains and developing a competitive advantage in fields such as information and communication technology. It emphasizes the importance of securing continued progress by boosting competition and further lowering barriers to trade and investment. Administrative burdens have been significantly reduced with the implementation of the Goods and Services Tax. Banks' portfolio restrictions have been eased as

<sup>27</sup> <http://dipp.nic.in/ease-doing-business-reforms/reform-update-india>

<sup>28</sup> <http://www.makeinindia.com/web/mii/live-projects-industrial-corridor>

<sup>29</sup> <http://eodcb.dipp.gov.in/Press%20Release%20BRAP%202017.pdf>

<sup>30</sup> <http://eodcb.dipp.gov.in/AboutUs.aspx>

<sup>31</sup> <http://www.oecd.org/india/publicationsdocuments/reports/>

the statutory liquidity ratio, requiring banks to hold a share of their portfolio in government bonds, has been reduced from 20.75% at the end of 2016 to 20% in July 2017. Therefore a positive outlook has been revealed from the report of OECD which will definitely have a positive impact on FDI in India.

## SECTION- VI WAY FORWARD GLOBAL TRENDS AND LOCAL OPPORTUNITIES

The Indian Government's favourable policy regime and robust business environment have ensured that foreign capital keeps flowing into the country at high pace. The Government has taken many initiatives in recent years, such as, relaxing FDI norms across sectors like Defence, PSU Oil Refineries, Telecom, Power Exchanges, etc.

**"I want to tell the people of the whole world: Come, make in India. Come and manufacture in India. Go and sell in any country of the world, but manufacture here. We have skill, talent, discipline and the desire to do something. We want to give the world an opportunity that come make in India,"**

**Narendra Modi, Prime Minister of India**

According to Department of Industrial Policy and Promotion (DIPP), the total FDI investments in India during 2017-18 stood at US\$ 44.86 billion. The figure indicates that Government's effort to improve ease of doing business and relaxation in FDI norms is yielding results. Data for 2017-18 also indicates that the services sector attracted the highest FDI equity inflow of US\$ 6.71 billion, followed by telecommunication – US\$ 6.21 billion and computer software and hardware – US\$ 6.15 billion.

Most recently, the total FDI equity inflows for the month of March 2018 touched US\$ 3.31 billion.

**India is world's Second Largest Telecommunication Market, with 1.2 Billion subscribers as on March, 2018**

During 2017-18, India received the maximum FDI equity inflows from Mauritius (US\$ 15.94 billion), followed by Singapore (US\$ 12.18 billion), Netherlands (US\$ 2.80 billion), USA (US\$ 2.10 billion), and Japan (US\$ 1.61 billion).

The Ministry of Commerce and Industry, Government of India has eased the approval mechanism for foreign direct investment (FDI) proposals by doing away with the approval of Department of Revenue and mandating clearance of all proposals requiring approval within 10 weeks after the receipt of application. The Government of India through a consultative process proposes to further ease foreign direct investment (FDI) in defence under the automatic route to 51 per cent from the current 49 per cent, in order to give a boost to the Make in India initiative and to generate employment. The government is also considering allowing 100 per cent foreign direct investment (FDI) in insurance intermediaries with a view to give a boost to the sector and attracting more funds. German auto major Volkswagen Group announced investment of 1 billion euro (around Rs 7,900 crore) between 2019 and 2021 as part of its latest strategy to enhance presence in India which will be led by a group firm Skoda Auto.

International Finance Corporation (IFC), the investment arm of the World Bank Group, is planning to invest about US\$ 6 billion through 2022 in several sustainable and renewable energy programmes in India.<sup>32</sup> India emerged as the top recipient of Greenfield FDI Inflows from the Commonwealth, as per a trade review released by The

Commonwealth in 2018. Annual FDI inflows in the country are expected to rise to US\$ 75 billion over the next five years, as per a report India Brand Equity Foundation (IBEF).<sup>33</sup>

## OECD'S COMPOSITE LEADING INDICATORS & BUSINESS TENDENCY SURVEY

The OECD system of Composite Leading Indicators (CLIs) is designed to provide early signals of turning points in business cycles - fluctuation in the output gap, i.e. fluctuation of the economic activity around its long term potential level. This approach, focusing on turning points (peaks and troughs), results in CLIs that provide qualitative rather than quantitative information on short-term economic movements. The Gross Domestic Product (GDP) is used as the reference for identification of turning points in the growth cycle for all countries.

Therefore, the CLIs is designed to anticipate turning points in economic activity relative to trend six to nine months ahead and continue to anticipate stable growth momentum in the OECD area as a whole.

As per the CLI report released on 9<sup>th</sup> July, 2018<sup>34</sup> India is among major emerging economies having in the phase of Growth Gaining Momentum. Hence, the Global report shows that the country is moving towards further growth in coming days.

OECD is conducting the analysis of Business Tendency on monthly / Quarterly basis for individual countries to find the growth of this segment. Compiling the data available as on date the following results may be ascertained:

**Table 10: Dataset: Business Tendency and Consumer Opinion Surveys (MEI)**

Country		India					
Frequency		Quarterly					
Measure		Balance, s.a.					
Unit		Percentage					
Time		Q1-2017	Q2-2017	Q3-2017	Q4-2017	Q1-2018	
Subject							
Manu- facturing	Production	Tendency	16.00	16.00	22.00	27.00	..
		Future tendency	30.00	30.00	34.00	34.00	30.00
	Finished goods stocks	Level	-8.00	-9.00	-8.00	-7.00	..
		Order books	Level	14.00	12.00	19.00	25.00
	Selling prices	Future tendency	12.50	7.90	7.00	7.90	..
	Employment	Future tendency	9.00	9.00	10.00	12.00	..
	Capacity utilisation	Rate of capacity utilisation	8.40	9.70	10.30	..	..
	Confidence indicators		17.33	17.00	20.33	22.00	..

Data extracted on 31 Jul 2018 08:31 UTC (GMT) from OECD.Stat

As shown in Table 10 more or less all the parameters of tendency measurement are giving positive results and overall confidence indicator for the investors are gradually increasing. Therefore, Business Tendency Survey of OECD depicts a positive outlook as far as Investment in India is concerned.

## DEREGULATING FOREIGN DIRECT INVESTMENT<sup>35</sup>

India has already introduced several measures to promote foreign



<sup>32</sup> <https://www.ibef.org/economy/foreign-direct-investment.aspx>

<sup>33</sup> <https://www.ibef.org/economy/foreign-direct-investment.aspx>

<sup>34</sup> <http://www.oecd.org/sdd/leading-indicators/OECD-CLI-07-2018.pdf>

investment (FDI) in the country. The OECD FDI restrictiveness index reveals that India is among the top reformers. In the context of the Make in India initiative launched in 2014, FDI reforms have focused on civil aviation, defence, agriculture, pension and insurance funds, air transport, railways and construction (Diagram-1). Caps on FDI have been raised and more sectors have been brought under the automatic route avoiding the administrative burden associated with the government approval route. Combined with measures to improve the ease of doing business, FDI deregulation has supported FDI inflows, with particular buoyancy in construction and services. Yet, the OECD FDI regulatory restrictiveness suggests that restrictions remained relatively high in 2015 compared with many emerging economies and OECD countries,<sup>36</sup> in particular in services such as media, financial and business services, holding back potential economy-wide productivity gains. Therefore the Government has to further look into these segments.

### INDIAN INVESTMENT ABROAD<sup>37</sup>

Outbound investments from India have undergone a considerable change not only in terms of magnitude but also in terms of geographical spread and sectorial composition. Indian firms invest in foreign shores primarily through Mergers and Acquisition (M&A) transactions. With rising M&A activity, companies will get direct access to newer and more extensive markets, and better technologies, which would enable them to increase their customer base and achieve a global reach. India has emerged as one of the strongest performers in the deal-street across the world in mergers and acquisitions. M&A deal volume in India increased 14 per cent to 1,022 transactions, worth US\$ 46.8 billion, in 2017. According to the data provided by Reserve Bank of India (RBI), India's outward Foreign Direct Investment (OFDI) in equity, loan and guaranteed issue stood at US\$ 784.28 million in the month of February 2018 as against US\$ 866 million in January 2018 and US\$ 1.35 billion in February 2017. Some of the major overseas investments by Indian companies were: Indian IT services provider Tech Mahindra is going to invest Rs 5.1 billion (US\$ 78.54 million) in Canada over the next five years for setting up of a centre of excellence which will operate on major technologies such as block chain application and Artificial Intelligence (AI). Indian firms have employed a total of 113,423 people and made investments over US\$ 17.9 billion in the US. India has taken necessary steps to make its presence felt in the global arena. Investment outlook in some of the overseas market looks positive. For instance, the Indian industry is projected to increase its revenue from Africa. IT services, infrastructure, agriculture, pharmaceuticals and consumer goods are vital to India boosting Africa revenues to US\$ 160 billion by 2025, as per McKinsey & Co.<sup>38</sup> In another development, the Ministry of External Affairs has initiated a move to set up a direct sea and air link between India and the Latin American region, as Indian Corporates plan significant investments in the mining, oil, IT and pharmaceutical sectors in that region.

### CONCLUSION

Among Non-OECD and G20 member countries, India in present times is one of the best destinations for Inbound FDI after China. The present Government is committed through its current initiatives,

to create an increasingly open and investor-friendly business environment for foreign capital. This includes the establishment of "Industrial Corridor and Smart Industrial Cities" "Business Reform Action Plan 2017", major FDI reforms to promote economic growth in specific areas such as insurance, agriculture, and tourism and transportation sectors. These policies and initiatives will certainly make a difference in improving India's investment climate and in the long term lead to improvements in India's position both on the FDI Index and on Ease of Doing Business Ranking. However, given that other developed nations and economies such as China are aggressively improving their investment environments, and already rank higher on both these indices, India needs to make gradual and effective changes in its FDI Policy looking at the Global Business Environment to experience equally or more than significant shift in its inbound FDI status. Overall, consistent policy changes that produce meaningful net results is what matters most in attracting FDI in India. We have to keep in mind, that apart from its role as an engine for economic growth, FDI has also served as a major source of non-debt finance for India's economic development. The Indian government's pro-business philosophy and a robust economy have ensured that foreign capital continue to flow into the country.<sup>39</sup>

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<sup>36</sup> <http://www.oecd.org/eco/surveys/INDIA-2017-OECD-economic-survey-overview.pdf>

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goal, this activity is also designed keeping some objectives in mind.

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# 3

## LEGAL WORLD



- BALKRISHAN GUPTA & ORS v. SWADESHI POLYTEX LTD & ANR [SC]
- EXECUTIVE ENGINEER, PWD & ORS v. COMMISSIONER WORKMEN'S COMPENSATION [J&K]
- M/S. B. HIMMATLAL AGRAWAL PARTNER v. COMPETENT COMMISSION OF INDIA & ANR [SC]
- STARLIGHT BRUCHEM LTD v. FLORA AND FAUNA HOUSING & LAND DEVELOPMENTS PVT LTD & ORS [CCI]
- XYZ v. INDIAN OIL CORPORATION LTD. & ORS [CCI]
- UNITED INDIA INSURANCE CO. LTD. v. INDIRO DEVI & ORS [SC]
- SHYAM SUNDER AGARWAL v. P. NAROTHAM RAO [SC]
- NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY v. CHIEF COMMISSIONER OF INCOME TAX [SC]
- LALLY AUTOMOBILES PVT. LTD. v. COMMISSIONER (ADJUDICATION) CENTRAL EXCISE [DEL]



## Corporate Laws

**LMJ: 08:08:2018**

**BALKRISHAN GUPTA & ORS V. SWADESHI POLYTEX LTD & ANR [SC]**

Civil Appeal No. 4803 of 19

E.S.Venkataramiah, Sabyasachi Mukharji, JJ. [Decided on 12/02/1985]

Equivalent citations: 1985 AIR 520, 1985 SCR (2) 854 ;( 1985) 2 SCC 167; 1985 SCALE (1) 236.

Companies Act, 1956- section 169- member's right to vote- requisitionists' meeting- shares of one of the requisitionists were attached by collector and receiver was also appointed – whether such shareholder's shares could be considered for the eligibility criteria – whether such requisitionist could participate in the meeting- Held, Yes.

### Brief facts:

The dispute involved in this case relates to the validity of an extraordinary general meeting of the Swadeshi Polytex Ltd. (hereinafter referred to as 'the Polytex Company'), held pursuant to a notice issued under Section 169 of the Act by some of its members.

The principal ground urged on behalf of the appellants is that the extraordinary general meeting had not been validly called since the Cotton Mills Company had ceased to enjoy the privileges of a member of the Polytex Company by reason of the appointment of a Receiver by the Collector of Kanpur in respect of the ten lakhs shares in the Polytex Company held by the Cotton Mills Company, the attachment of the 9 lakhs shares out of the said 10 lakhs shares and also the pledge of 3,50,000 shares out of the said 10 lakhs shares with the Government of Uttar Pradesh as security for the loans advanced by it. The total paid-up equity share capital of the Polytex Company is Rs. 3,90,00,000 (39,00,000 shares of Rs. 10 each) and it is not disputed that if the 10 lakhs shares held by the Cotton Mills Company are omitted from consideration, the remaining requisitionists would not have sufficient voting strength to issue a notice under Section 169 of the Act. The appellants contend that the Cotton Mills Company could not, therefore, join the other requisitionists in issuing the notice under section 169 of the Act calling upon the Polytex Company to call the extraordinary general meeting and without the support of the shares held by the Cotton Mills Company, the remaining requisitionists would not have been eligible to requisition the meeting.

### Decision: Appeal dismissed.

### Reason:

We have already referred to the order of the Collector appointing the Receiver in respect of the shares in question, attaching them and ordering that 3,50,000 shares be pledged in favour of the

Government of Uttar Pradesh.

It is clear from the relevant provisions of the Act which are referred to hereafter that a member can participate and exercise his vote at the meetings of a company in accordance with the Act and the articles of association of the company. Section 41 of the Act defines the expression "member" of a company. The subscribers of the memorandum of association of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members. A subscriber of the memorandum is liable as the holder of shares which he has undertaken to subscribe for. Any other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company. In his case the two conditions namely that there is an agreement to become a member and that his name is entered in the register of members of the company are cumulative. Both the conditions have to be satisfied to enable him to exercise the rights of a member. Subject to Section 42 of the Act, a company or a body corporate may also become a member. When once a person becomes a member, he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act.

The voting rights of a member of a company are governed by Section 87 of the Act. Section 87 of the Act says that subject to the provisions of Section 89 and sub-section (2) of Section 92 of the Act every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company and his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the company.

We shall first consider the effect of appointment of a Receiver in respect of the shares in question. A perusal of the provisions of Section 182-A of the Land Revenue Act shows that there is no provision in it which states that on the appointment of a person as a Receiver the property in respect of which he is so appointed vests in him similar to the provision in Section 17 of the Presidency Towns Insolvency Act, 1909 where on the making of an order of adjudication the property of the insolvent wherever situate would vest in the official assignee, or in Section 28 (2) of the Provincial Insolvency Act, 1920 which states that on the making of an order of adjudication, the whole of the property of the insolvent would vest in the court or in the Official Receiver. Sub-section (4) of Section 182-A of the Land Revenue Act provides that Rules 2 to 4 of order XL of the Code of Civil Procedure, 1908 shall apply in relation to a Receiver appointed under that Section. A Receiver appointed under Order XL of the Code of Civil Procedure only holds the property committed to his control under the order of the court but the property does not vest in him. The privileges of a member can be exercised by only that person whose name is entered in the Register of Members. A Receiver whose name is not entered in the Register of Members cannot exercise any of those rights unless in a proceeding to which the company concerned is a party and an order is made therein.

Under Section 51 of the Code of Civil Procedure, 1908 a Receiver may be appointed by a civil court on the application of a decree-holder in execution of a decree for purposes of realising the decree-debt. This is only a mode of equitable relief granted ordinarily when other modes of realization or the decretal amount



are impracticable. A Receiver appointed under that Section will be able to realise the amounts due from a garnishee and his powers are taking to the powers of a Receiver appointed under order 40 rule 1 of the Code of Civil Procedure, 1908. But he would not have any beneficial interest in the assets of the judgment-debtor. He collects the debts not as his own but as an officer of the court.

Mere appointment of a Receiver in respect of certain shares of a company without more cannot, therefore, deprive the holder of the shares whose name is entered in the Register of Members of the company the right to vote at the meetings of the company or to issue a notice under Section 169 of the Act.

The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under Section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the, time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of E property mentioned in its proviso, lands, houses, or other buildings, goods money, banknotes, cheques, bills of exchange, hands, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, movable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908 states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation of which the attachment is effected. A private transfer under section 64 of the Code of Civil Procedure is not absolutely void, that is, void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold, the judgment-debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a Corporation which reattached may sold through a broker. In the alternative such shares may be sold in public auction under Rule 7 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment-debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment-debtor or on the company concerned.

An order of attachment cannot, therefore, have the effect of depriving the holder of the shares of his title to the shares. We are of the view that the attachment of the shares in the Polytex Company held by the Cotton Mills Company had not deprived the

Cotton Mills Company of its right to vote at the meeting or to issue the notice under Section 169 of the Act.



## Labour Laws

### LW 56:08:2018

EXECUTIVE ENGINEER, PWD & ORS v. COMMISSIONER WORKMEN'S COMPENSATION [J&K]

M.A. No. 187 of 2009

Sanjeev Kumar, J. [Decided on 04/06/2018]

Workmen's Compensation Act, 1923- injury to contract labour- permanent disablement- whether principal employer is liable to pay compensation-Held, Yes.

#### Brief facts:

The respondent No. 2, an iron smith by profession, engaged by respondent No. 3 as labour for construction of road for Appellant, while working with respondent No. 3 sustained grievous injuries in an accident. Respondent No. 2 was immediately shifted to District Hospital, Doda, where owing to his injuries, his right forearm below elbow was amputated. As a result of these injuries, respondent No. 2 was rendered permanently disabled. He preferred a claim petition before respondent No. 1, which was allowed.

The appellant appealed to the High Court challenging the award passed by respondent No. 1 on the following grounds:—

- That in the absence of the privity of contract between the appellant and respondent No. 2, the liability to pay compensation could not have been fastened on the appellant.
- That the accident had not occurred during or in the course of employment and, therefore, the appellant was not liable to pay any compensation.

#### Decision: Appeal dismissed.

#### Reason:

Having heard learned counsel for the petitioner, I find no substance in the submissions made on behalf of the appellant. Admittedly, respondent No. 3 was working as a contractor with the appellant and was executing the work allotted to him by none other than the appellant. It is also not in dispute that respondent No. 2 was engaged as labourer by respondent No. 3 for execution of the work of the appellant. From the evidence led by the parties before respondent No. 1, it is further evident that the job of repairing the compressor rod was assigned to respondent No. 2 by the Junior Engineer of the appellant and not by respondent No. 3.

Viewed from any angle, the appellant cannot avoid its liability to compensate the respondent No. 2. The appellant being a principal employer was liable to pay the compensation to the respondent No. 2 on account of permanent disablement suffered by him during

and in the course of his employment with the appellant. Even on facts, the job of repairing the compressor rod was entrusted to respondent No. 2 by the appellant.

That being the position, the plea of the appellant that there was no privity of contract between the respondent No. 2 and the appellant is misconceived and is noticed to be rejected only. Both the pleas raised by the appellant to challenge the award, therefore, fail. Accordingly, this appeal is dismissed.



## Competition Laws

### LW 57:08:2018

M/S. B. HIMMATLAL AGRAWAL PARTNER V. COMPETENT COMMISSION OF INDIA & ANR [SC]

Civil Appeal No. 5029 of 2018

A.K.Sikri & Ashok Bushan, JJ. [Decided on 18/05/2018]

Competition Act, 2002- section 53B- appeal to tribunal against the order of CCI- conditional stay granted- petitioner could not make the deposit- main appeal dismissed on tis ground - whether correct- Held, No.

#### Brief facts:

A neat question of law which arises for consideration in this appeal is as to whether the order of the National Company Law Appellate Tribunal ("NCLAT") dismissing the main appeal itself of the appellant herein for non-compliance of the direction to deposit the amount as a condition for grant of stay, is justified and legal.

A complaint was filed against the appellant firm before the Competition Commission of India ("CCI") alleging that the appellant firm was involved in anti-competitive and unfair trade practices in collusion with nine other firms. The appellant firm filed its reply. The CCI after considering the same imposed penalties on the appellant firm as well as nine parties. Insofar as appellant is concerned, penalty of Rs.3.61 crores has been imposed.

The appellant filed the statutory appeal against the above order before NCLAT along with a stay application. NCLAT admitted the appeal. NCLAT granted stay with a condition that 10% of the penalty should be deposited. The appellant could not fulfil the said condition of deposit. NCLAT dismissed the appeal for non-fulfilment of deposit.

#### Decision:Appeal allowed.

#### Reason:

A pure legal submission which is advanced by the learned counsel for the appellant is that even if the appellant could not comply with orders dated December 4, 2017 vide which conditional stay

was granted directing the appellant to deposit 10% of the penalty amount, the maximum effect thereof was to vacate the stay granted and the Appellate Tribunal was not legally justified in dismissing the appeal itself. This submission of the appellant commends acceptance, having due force and substance in law.

From the facts narrated above, it is apparent that order of the CCI was challenged by filing appeal under Section 53B of the Act. Along with this appeal, the appellant had also filed application for stay of the operation of the order of the CCI during the pendency of the appeal. Appeal was admitted insofar as stay is concerned, which was granted subject to the condition that the appellant deposits 10% of the amount of penalty imposed by the CCI. It needs to be understood, in this context, that the condition of deposit was attached to the order of stay. In case of non-compliance of the said condition, the consequence would be that stay has ceased to operate as the condition for stay is not fulfilled. However, non-compliance of the conditional order of stay would have no bearing insofar as the main appeal is concerned.

The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Sub-section (3) of Section 53B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself.

Accordingly, we allow this appeal and set aside that part of the impugned order whereby the appeal of the appellant is dismissed and restore the appeal which shall be decided by the Appellate Tribunal on merits. We, however, make it clear that as far as stay of the penalty order is concerned, that stood vacated for non-compliance of the condition of deposit of 10% of the penalty and, thus, there is no stay of the CCI order in favour of the appellant.

### LW 58:08:2018

STARLIGHT BRUCHEM LTD V. FLORA AND FAUNA HOUSING & LAND DEVELOPMENTS PVT LTD & ORS [CCI]

Case No. 53 of 2017

D.K.Sikri, Sudhir Mital, Augustine Peter & U.C.Nahatra. [Decided on 09/07/2018]

Competition act, 2002- section 4 – abuse of dominance-procurement of liquor-preferential purchase by OP firms specific manufacturers- whether an act of abuse of dominance requiring investigation - Held, yes.

### Brief facts:

The Informant has alleged that OP-1 to OP-4 have been following a non-transparent policy of procurement, based on an arrangement, agreement or understanding to buy from only certain manufacturers who belong to the same group, or from some 'favoured' manufacturers. Since the manufacturers/ distillers cannot sell liquor directly to the retailer or end- consumer, such conduct of denial of market access to the other manufacturers from selling their produce has resulted in the other manufacturers facing severe losses and in many cases shutting down their units.

Further, it is alleged that OP-5, which owns or controls OP-1 to OP-4, has used its dominant position in wholesale of liquor to enter into and enhance its market share for manufacturing country liquor by setting up/ acquiring Wave Distilleries and Breweries Ltd. and Lords Distilleries Ltd., from which OP-1 to OP-4 buy bulk of their requirements.

### Decision: Investigation ordered.

#### Reason:

The Commission has noted the rival arguments of the parties and also perused the material on record.

With respect to allegations made about contravention of Section 3 of the Act, the Commission notes that the same are based merely on conjectures. There is no credible evidence on record, which shows existence of any agreement amongst OP-1 to OP-4 in support of the contentions made by the Informant. Accordingly, such allegations are found to be devoid of merit.

The Commission now proceeds to examine the allegation of discrimination and denial of market access in procurement of country liquor. It is observed that each of OP-1 to OP-4 have been procuring country liquor from more than one distillery; however, significant percentage i.e. around 25 to 55%, of the procurement by OP-1, OP-3 and OP-4 in this period was from two distilleries, namely, Wave Distilleries and Breweries Limited and Lords Distilleries Limited, which are group companies of OP-5. It is further observed that in the years 2015-16 and 2016-17, OP-2 procured more than 50% from these distilleries and OP-1, OP-2 and OP-4 procured between 30 to 55% from them. Such trend of procurement by OP-1 to OP-4 shows that they are giving preference to these two distilleries over other distillers/ manufacturers. The OPs have not been able to provide any plausible justification for according such preferential treatment.

With respect to the contention of the OPs that a distillery is required to place request for indent on an OP which is the wholesale license holder of that zone, it is observed that the data provided by the OPs regarding their procurement of country liquor from various distilleries itself contradicts their argument. Thus, in light of foregoing facts, the Commission is of the view that the reasons given by the OPs appear to be merely an attempt to subvert the fact that procurement from various distillers/ manufacturers was being made by them in an arbitrary and discriminatory manner, resulting in denial of market access to certain distillers/ manufacturers like the Informant.

Based on above, the Commission is of the opinion that the conduct of the OPs is prima facie in contravention of the provisions of Section 4, particularly Section 4(2) (a) (i) and 4(2) (c) of the Act.

Accordingly, the DG is directed to cause an investigation into the matter and submit this report within a period of 60 days from the receipt of this order. The DG is also directed to investigate into the allegation of the Informant regarding OP-1 to OP-5 being a group and contravening the provisions of Section 4 of the Act as such.

### LW 59:08:2018

XYZ v. INDIAN OIL CORPORATION LTD. & ORS [CC]

Case No. 05 of 2018

D.K.Sikri, Sudhir Mital & Augustine Peter. [Decided on 04/07/2018]

Competition Act, 2002- sections 3 & 4 – service of oil tank trucks- joint tendering by oil marketing companies - whether an act of anti- competitive restriction and abuse of dominance - Held, No.

### Brief facts:

The case pertains to alleged joint tendering/collusive tendering by the OPs i.e. the Oil Marketing Companies (IOCL, BPCL and HPCL) while procuring the services of the Tank Trucks for transportation of the LPG Cylinders. The Informants have alleged these to be in the nature of price fixing, limitation/restriction of output/services and market allocation thereby in contravention of Section 3 of the Act. Further, the Informants have also alleged abuse of dominant position collectively by the OPs.

### Decision: Dismissed.

#### Reason:

At the outset, it may be highlighted that collective dominance is not recognised by the Act. Rather the existence of two strong players in the market is indicative of competition between them, unless they have agreed not to compete, which also can be only be looked into under Section 3 of the Act, not Section 4. Thus, the Commission notes that the allegation of the Informants related to collective dominance does not hold good under the provisions of Section 4 of the Act and requires no further deliberation.

With regard to Section 3 of the Act, the Commission notes that in the present case the Informants have alleged an existence of a buyer/purchase cartel. However, generally cartels are comprised of the sellers who agree to fix prices and/or output and since such agreement is to raise the price above the competitive levels or bring the output below the competitive levels, the same is considered to be anti-competitive. It needs to be recognised that the creation of 'buyer power' through joint purchasing agreements may rather lead to direct benefits for consumers in the form of lower prices bargained by the buyers. Thus, though the Act covers buyers' cartel within the purview of Section 3(1) read with Section 3(3) of the Act, treating buyers' arrangement/cartel at par with sellers' cartel may not be appropriate. For assessment of such cases, it is imperative to first, look at the potential theories of harm and then the conditions necessary for infliction of competitive harm need to be examined.

The Commission has, accordingly, analysed the allegations of the Informants in order to ascertain whether a case of anti-competitive cartel conduct is made out.

As pointed out by the OPs that they have not fixed the prices but only prescribed a price band within which the bidders can compete. Such price band is calculated upon incorporation of cost of various

necessary components and includes a profit margin. The bidders get a window of around ten percent to give their quotations. The OPs clarified that they suggest a price floor to ensure that the bidders do not unnecessarily quote an unviable quotation which may lead to delay or irregular services in future. The OPs have also submitted that it is the prerogative of bidder to quote within the said price band which gives them enough margin to compete with other bidders. The Commission finds merit in the justification offered by the OPs.

With regard to the fleet/loyalty card, the Commission notes that the issuance of such cards comes with commercial justification as well as advantages, not only for the OPs but also for the TT owners/drivers. Further, such fleet/loyalty cards come with various benefits e.g. secured parking, cooking facilities, rest room and accommodation facilities, laundry and drying facilities, health check-ups including eye check-ups, loyalty rewards, accident insurance etc. Also, such cards deal with the problem of the substantial lapse of time between the fuel cost incurred by transporter and the final receipt of reimbursement. Thus, the facts or material on record does not suggest any anti-competitive element involved in the issuance of such fleet/loyalty cards by the OPs.

Further, the Commission finds no merit in the allegation regarding a preference given to tank trucks registered in a particular State for participating in tenders in that State. Under the impugned tenders, there is no bar on quoting bids for TTs that are registered in a State other than the State for which tender is floated, i.e. the location of the bottling plant. It only states that TTs registered in the State where the tender is floated will be given preference provided bids are in the lower rate of price band for that State. Such condition does not appear to be arbitrary as long as registration in one State does not restrict from participation in the tender process in other States. The OPs have clarified that no such restriction has been placed on the bidders and the only objective of the preferential treatment accorded to State registered TTs is to discourage registrations clustered in a particular State like Nagaland. Based on these considerations, the conduct of the OPs is not found to have any adverse bearing on competition.



## General Laws

### LW 60:08:2018

UNITED INDIA INSURANCE CO. LTD. v. INDIRO DEVI & ORS [SC]

S.L.P (CIVIL) Nos. 7104-7105 of 2016

S Bobde & L.Nageshwar Rao, JJ. [Decided on 03/07/2018]

Motor accident- payment of compensation- compensation awarded to the deceased based on income declared in income-tax returns- income based on salary rejected- whether correct- Held, Yes.

#### Brief facts:

The issue in this case revolves around the income of the deceased.

The deceased was employed with the Food Corporation of India. He met with an accident and died. MACT awarded compensation based on the salary certificate of the deceased showing Rs.8,848/-, without taking into consideration of the Income Tax Returns of the deceased showed an income of Rs. 2,42,606/- per annum for the assessment year 2004-05 and Rs. 2,17,130 for the assessment year 2003-04.

In a revision carried to the High Court by the Insurance Company and appeal by the claimants, the High Court took the income of the deceased as found in the income tax assessment and provided for 50% increase as future prospect and increased the compensation to Rs. 44,03,980/- with interest @ 7.5% per annum from the date of petition till the date of payment.

The insurance company is in appeal before the Supreme Court.

#### Decision: Petition dismissed.

#### Reason:

It was argued before us on behalf of the petitioner that the High Court has committed a gross error and perversity in taking into account the income of the deceased as per the income tax returns. According to the petitioner, the income of the deceased was Rs. 8848 per month, i.e. the amount according to the salary certificate of the deceased and the High Court ought to have relied upon the salary certificate for the calculation of the compensation.

We have given our anxious consideration to this contention. There is no doubt that if the salary certificate is taken into account the salary of the deceased should be taken as Rs. 1,06,176/- since the gross salary was Rs.8,848 per month. That, however, in our view does not mean that the income of the deceased as stated in the Income Tax return should be totally ignored. It is not possible to agree with the observation of the Tribunal that it was necessary for the claimants to “explain the said contradiction” between two figures of income. The claimants had led reliable evidence that the deceased had returned an income of Rs. 2,42,606/- for the assessment year 2004-05. This piece of evidence has not been discredited. Indeed, it was possible that the deceased had income from other sources also. There is nothing in the law which requires the Tribunal to assess the income of the deceased only on the basis of a salary certificate for arriving at a just and fair compensation to be paid to the claimants for the loss of life.

In the circumstances, we see no reason to interfere with the judgment of the High Court. The SLPs are accordingly dismissed.

### LW 61:08:2018

SHYAM SUNDER AGARWAL v. P. NAROTHAM RAO [SC]

Civil Appeal No. 6872 of 2018 (Arising out of SLP (Civil) No. 34591/2012)

R. F. Nariman & Indu Malhotra, JJ. [Decided on 23/07/2018]

Arbitration and Conciliation Act, 1996- section 7- arbitration agreement- dispute resolution clause in MoU used words “Mediators/Arbitrators”, “any breaches” and “decision to be final”- whether such clause is as arbitration clause/agreement- Held, No.

#### Brief facts:

The present dispute arises out of a Memorandum of Understanding (MoU)/Agreement executed between the parties for sale and purchase of shares of a Company called M/s Mancheril Cement Company Private Limited of which all the parties are Directors. The bone of contention in the present proceedings is as to whether Clause 12 of the said Agreement can be stated to be an arbitration clause, as in the said clause the word “decision” is used; the word “Mediators/Arbitrators” is used; the expression “any breaches” is used; and the “decision” is to be final and binding on all parties to the said Agreement.

### Decision: Appeal dismissed.

#### Reason:

What emerges on a conspectus of reading of these clauses is that Mr. Sudhakar Rao and Mr. Gone Prakash Rao, though styled as Mediators/Arbitrators, are without doubt escrow agents who have been appointed to keep certain vital documents in escrow, and to ensure a successful completion of the transaction contained in the MOU. Indeed, the very fact that they have been referred to as “Mediators/Arbitrators” and as “Mediators and Arbitrators” would show that the language used is loose – the idea really is that the two named persons do all things necessary during the implementation of the transaction between the parties to see that the transaction gets successfully completed. This becomes even clearer when Clauses 8 and 11 are seen minutely. Clause 8 expressly declares and confirms “that for successful completion of this transaction in order to avoid any further unforeseen litigations”, the two escrow agents have been appointed. Clause 11 further makes it clear that these two gentlemen are escrow agents but shall not handover certain documents till the total transaction is satisfactorily completed.

We agree that Clause 12 has to be read in the light of these Clauses of the MOU, and that, therefore, the expression “decision” used in Clause 12 is only a pro tem decision – namely, that the two escrow agents are to make decisions only during the period of the transaction and not thereafter. He has correctly contended that, to use a well-known latin expression, they are “functus officio” after the transaction gets completed. Further, the “breaches” that are referred to in Clause 12 refer, *inter alia*, to an undertaking given by the party of the first part which is contained in Clause 10, which, if breached, the escrow agents have necessarily to decide on before going ahead with the transaction. Therefore, when viewed as a whole, it is clear that the two escrow agents are not persons who have to decide disputes that may arise between the parties, whether before or after the transaction is completed, after hearing the parties and observing the principles of natural justice, in order to arrive at their decision. A reading of the MOU as a whole leaves no manner of doubt that the said MOU only invests the two gentlemen named therein with powers as escrow agents to smoothly implement the transaction mentioned in the MOU and not even remotely to decide the disputes between the parties as Arbitrators.

In the present case, it is clear that the wording of the Agreement, as has been held by us above, is clearly inconsistent with the view that the Agreement intended that disputes be decided by arbitration. Indeed, three of the four purchasers did not read Clause 12 as an arbitration clause, but approached the Civil Court instead, strengthening our conclusion that the subsequent conduct of the parties to the Agreement also showed that they understood that Clause 12 was not an arbitration clause in the Agreement.



## Tax Laws

### LW 62:08:2018

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY V. CHIEF COMMISSIONER OF INCOME TAX [SC]

Civil Appeal Nos.792-793 of 2014

A Sikri & A Bhushan, JJ. [Decided on 02/07/2018]

Income tax Act, 1961- section 10(20) - exemption to local authorities- NOIDA- whether a local authority-Held, No.

#### Brief facts:

The appellant-New Okhla Industrial Development Authority (hereinafter referred to as the “Authority”) has been constituted under Section 3 of the U.P. Industrial Area Development Act, 1976 (hereinafter referred to as the ‘Act, 1976’). Notices under Section 142 of the Income Tax Act were issued to the appellant. The appellant has claimed that it is exempted under Section 10(20) as it is as good as a local authority, which was rejected by the Revenue.

### Decision: Appeals dismissed.

#### Reason:

The only issue which needs to be considered in these appeals is as to whether the appellant is a local authority within the meaning of Section 10(20) as amended by Finance Act, 2002 w.e.f. 01.04.2003. The constitutional provisions as contained in Part IXA delineate that the Constitution itself provided for constitution of Municipalities, duration of Municipalities, powers of Authorities and responsibilities of the Municipalities. Proviso to Article 243 Q (1) does not contemplate constitution of an industrial establishment as a Municipality rather clarifies an exception where Municipality under clause (1) of Article 243Q may not be constituted in an urban area. The proviso is an exception to the constitution of Municipality as contemplated by sub-clause (1) of Article 243Q. No other interpretation of the proviso conforms to the constitution scheme.

Applying rules of interpretation as laid down by this Court, it is clear that proviso is an exception to the constitutional provisions which provide that there shall be constituted in every State a Nagar Panchayat, a Municipal Council and a Municipal Corporation. Exception is covered by proviso that where an industrial township is providing municipal services the Governor having regard to the size of the area and the municipal services either being provided or proposed to be provided by an industrial establishment specify it to be an industrial township. The words ‘industrial township’ have been used in contradiction of a Nagar Panchayat, a Municipal Council and a Municipal Corporation.

It may be noted that various High Courts had taken the view prior to the Finance Act, 2002 that AMC(s) is a “local authority”. That was

because there was no definition of the word “local authority” in the 1961 Act.

We have already noticed that by the Finance Act, 2002 an Explanation has been added to Section 10(20) of the I.T. Act, 1961 and Section 10(20A) has been omitted. Prior to Finance Act, 2002 there being no definition of ‘local authority’ under the I.T. Act, the provisions of Section 3(31) of the General Clauses Act, 1897 were pressed into service while interpreting the extent and meaning of local authority. The Explanation having now contained the exhaustive definition of local authority, the definition of local authority as contained in Section 3(31) of General Clauses Act, 1892 is no more applicable.

After omission of Section 10(20A) only provision under which a Body or Authority can claim exemption is Section 10(20). Local authority having been exhaustively defined in the Explanation to Section 10(20) an entity has to fall under Section 10(20) to claim exemption. It is also useful to notice that this Court laid down in *State of Gujarat and others vs. ESSAR Oil Limited* and another, 2012 (3) SCC 522, that a person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision.

Now, reverting back to Explanation to Section 10(20), these are entities which mean the local authority. The submission of the appellant is that the appellant is covered by Clause (ii) of the Explanation i.e. “Municipality as referred to in clause (e) of Article 243P of the Constitution”. We, while discussing above provisions, have already held that the appellant is not covered by the word/ expression of “Municipality” in clause (e) of Article 243P. Thus, the appellant is not clearly included in sub-clause (ii) of Explanation. It is not even the case of the appellant that the appellant is covered by Section 10(20) except clause (ii).

Thus, we are of the considered opinion that the appellant is not covered by the definition of local authority as contained in Explanation to Section 10(20).

## LW 63:08:2018

[LALLY AUTOMOBILES PVT. LTD. v. COMMISSIONER \(ADJUDICATION\) CENTRAL EXCISE \[DEL.\]](#)

SERTA 7 of 2018

S. Ravindra Bhat & A.K.Chawla, JJ. [Decided on 25/07/2018]

Service tax- provision of multiple service- trading activity- input credit for all kind of services availed- revenue allowed proportionate credit leaving out trading activity- whether correct-Held, Yes.

### Brief facts:

The assessee is engaged in sales and services of Honda cars as an exclusive authorized dealer. It is registered for payment of Service Tax under the categories of “Authorized Service Station” and “Business Auxiliary Service” under the Finance Act, 1994. It availed Cenvat credit of duty paid on various inputs and tax paid on better services in terms of Cenvat Credit Rules, 2004 (hereafter “the Rules”). Alleging that the assessee had trading activities which was not liable to service tax and that credit availed on input services attributable to trading activities was sought to be denied on proportionate basis. Proceedings were initiated which resulted in the impugned order.

### Decision: Appeal dismissed.

### Reason:

Therefore, the issue is whether the assessee could claim the credit on input which were not services. Input credits can be used for payment of service on output service provided such services are used to provide output services. Undoubtedly, there cannot be an exact correlation between one kind of input and corresponding. That is the reason the Rules cover situations where assessee provide both exempted and taxable services. Wherever someone undertakes activities that cannot be called a service or which is not “manufacture”, that activity goes out of the purview of both Central Excise Act as well as Finance Act, 1994. In such cases, an assessee would be ineligible for claiming input-service tax credit on an output which is neither a service nor excisable goods. There is no provision to cover situations where an assessee is providing a taxable service and is undertaking another activity which is neither a service nor manufacture. In such a situation, the only correct legal position appears to be that it is for the assessee to segregate the quantum of input service attributable to trading activity and exclude the same from the records maintained for availing credit. This cannot be done in advance as it may not be possible to foretell the quantum of trading activity as compared with taxable activity. The obvious solution would be to ensure that once in a quarter or once in a six months, the quantum of input service tax credit attributed to trading activities according to standard accounting principles is deducted and the balance only availed for the purpose of payment of service tax of output service.

In the present case, the assessee's argument that there is no mechanism to reverse credit, once taken, in the opinion of this Court, cannot be accepted. The assessee was well aware of the exact nature and extent of its service tax liability. It was also aware of the eligible service tax inputs. Therefore, when it did claim-successfully and unchallenged input credits in respect of activities that were not subjected to service tax levy, it was aware that the claim was excessive and could not be justified. If, for instance, input credits were claimed in respect of goods or rents, attributable to retail business, those credits were clearly impermissible. In these circumstances, this Court finds no infirmity with the concurrent findings of the lower authority and the CESTAT, which concluded that Show Cause Notice and recoveries were in order.

As regards the method of calculation and invocation of extended period of penalty, the assessee's contentions again, to the Court's mind, are groundless. The assessee concededly did not maintain regular separate accounts in respect of non-service tax leviable activities. Therefore, the adjudicating authority adopted the method of proportionate turnover based attribution to the assessee's liability.

This Court is of opinion that the lack of any method in the rules in such cases, would only mean that a reasonable and logical principle should be applied, not concededly that what should and could not be claimed as input credit, (but was in fact so claimed) ought to be “left alone” because of the composite nature of the assessee's business. While any assessee has a right to organize its business in the most convenient and efficient manner, it cannot claim that that such organization is so structured that its tax liabilities cannot be clearly discerned. In this case, the adjudicating authority adopted the proportionate percentage to the turnover method approach, which in this Court's opinion, is reasonable.

In the light of the above findings, all the questions framed are answered in favour of the Revenue and against the assessee. The appeal is, therefore, dismissed.

# 4

## FROM THE GOVERNMENT



- COMPANIES (REGISTRATION OFFICES AND FEES) THIRD AMENDMENT RULES, 2018
- COMPANIES (REGISTRATION OF CHARGES) AMENDMENT RULES, 2018
- COMPANIES (AUTHORISED TO REGISTER) SECOND AMENDMENT RULES, 2018
- COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) FOURTH AMENDMENT RULES, 2018
- COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2018
- COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2018
- COMPANIES (ACCOUNTS) AMENDMENT RULES, 2018
- DATE OF COMING INTO FORCE OF THE PROVISIONS OF SECTION 20 OF COMPANIES (AMENDMENT) ACT, 2017
- DATE OF COMING INTO FORCE OF THE PROVISIONS OF CERTAIN SECTIONS OF COMPANIES (AMENDMENT) ACT, 2017
- DATE OF COMING INTO FORCE OF THE PROVISIONS OF CERTAIN SECTIONS OF COMPANIES (AMENDMENT) ACT, 2017
- DATE OF COMING INTO FORCE OF THE PROVISIONS OF SECTION 36 OF COMPANIES (AMENDMENT) ACT, 2017
- CONSTITUTION OF COMMITTEE TO REVIEW THE OFFENCES UNDER THE COMPANIES ACT, 2013
- REVIEW OF ADJUSTMENT OF CORPORATE ACTIONS FOR STOCK OPTIONS
- CORE SGF AND STANDARDISED STRESS TESTING FOR CREDIT RISK FOR COMMODITY DERIVATIVES
- DISCONTINUATION OF ACCEPTANCE OF CASH BY STOCK BROKERS
- INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) THROUGH PRIMARY MARKET ISSUANCES
- STRENGTHENING THE GUIDELINES AND RAISING INDUSTRY STANDARDS FOR RTAS, ISSUER COMPANIES AND BANKER TO AN ISSUE - CLARIFICATION



## Corporate Laws

# 01

### Companies (Registration Offices and Fees) Third Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/16/2013 CL-V (Pt-I) dated 05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 616(E) dated 06.07.2018]

In exercise of the powers conferred by Sections 396,398,399, 403 and 404 read with sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—

- (1) These rules may be called the Companies (Registration Offices and Fees) **Third** Amendment Rules, 2018.  
(2) Save as otherwise provided in these rules, they shall come into force with effect from 10.07.2018.
- In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, after item VI relating to Fees for Removal of Names of Companies from the Registrar of Companies under Section 248 (2) of the Act, in the Annexure, the following item shall inserted, namely:—  
“VII. FEE FOR FILING e- Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.

i) Fee payable till the 30th April of every financial year in respect of e-form DIR-3 KYC as at the 31st March of immediate previous year.	----
ii) Fee payable (in delayed case).	Rs.5000

Note : For the current financial (2018-2019), no fee shall be chargeable till the 31st August, 2018 and fee of Rs.5000 shall be payable on or after the 1st September, 2018”

**K V R MURTY**

Joint Secretary

# 02

### Companies (Registration of Charges) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/10/2013 CL-V dated 05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 614(E) dated 06.07.2018]

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 (Registration of Charges) Rules, 2014, namely:—

- (1) These rules may be called the Companies (Registration of Charges) Amendment Rules, 2018.  
(2) They shall come into force from the date of their publication in the Official Gazette.
- In the Companies (Registration of Charges) Rules, 2014,

(i) in rule 3, in sub-rule (1), for the words “and filed”, the words “shall be filed” shall be substituted;

(ii) for sub-rule (1) of rule 8, the following shall be substituted namely:-

“8. “(1) A company or charge holder shall within a period of **three hundred days** from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee.” ;

(iii) in rule 12, in sub-rule (1), for the words “within thirty days” the words “**within a period of three hundred days**” shall be substituted.

**K V R MURTY**

Joint Secretary

# 03

### Companies (Authorised to Register) Second Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/04/2016 CLV dated 05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 613(E) dated 06.07.2018]

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 (Authorised to Register) Rules, 2014, namely:—

- Short title and commencement.—(1)** These rules may be called the Companies (Authorised to Register) Second Amendment Rules, 2018.  
(2) They shall come into force **with effect from 15th August 2018.**
- In the Companies (Authorised to Register) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in subrule (1), after clause (g), the following clauses shall be inserted, namely:-  
“(h) “society” means a society registered under the Societies Registration Act, 1860 (21 of 1860) and includes a society registered under or deemed to be registered under any other law for the time being in force;  
(i) “trust” means an irrevocable public charitable or religious trust registered under any law for the time being in force and represented by its trustees, in whom the trust property is vested, as members;  
(j) “Registrar of Firms” means the Registrar appointed under Section 57 of the Indian Partnership Act, 1932 (9 of 1932);  
(k) “Registrar of Trusts” includes a Charity Commissioner, an Inspector-General of Registration or such other authority having the duty of registering trusts in a State.”.
- In the said rules, for rule 3, the following rule shall be substituted, namely:-

“3. (1) For the purposes of sub-section (2) of section 366 of the Act, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable *mutatis mutandis* for such registration: Provided that there shall be two or more members for the purposes of registration of a company under this sub-rule: Provided further that a company with less than seven members shall register as a private company.

(2) A company shall attach and provide the required documents and information to the Registrar along with Form No. URC. 1 in the following manner, namely:-

(2) A company shall attach and provide the required documents and information to the Registrar along with Form No. URC. 1 in the following manner, namely:-



- (a) In case of an application by a Limited Liability Partnership or firm for registration as a company limited by shares -
- (i) a list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm as the case may be;
  - (ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith Director Identification Number (DIN), passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
  - (iii) in case of a firm, deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;
  - (iv) written consent or No Objection Certificate from all the secured creditors of the applicant;
  - (v) written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;
  - (vi) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;
  - (vii) a copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.
- (b) In case of an application by a Limited Liability Partnership or firm for registration as a company limited by guarantee or as an unlimited company-
- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm, as the case may be with proof of membership;
  - (ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
  - (iii) in case of a firm, deed of partnership, bye laws or other instrument constituting or regulating the company and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;
  - (iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of guarantee;
  - (v) written consent or No Objection Certificate from all the secured creditors of the applicant;
  - (vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration;
  - (vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899), as applicable;
  - (viii) a copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.
- (c) In case of an application by a society for registration as a company limited by guarantee under Section 8-
- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the society with proof of membership;
  - (ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith DIN, passport number, if any, with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;
  - (iii) a list containing the names and addresses of the members of the governing body of the society;
  - (iv) a certified copy of the certificate of registration of the society;
  - (v) written consent or No Objection Certificate from all the secured creditors of the applicant;
  - (vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration, and the resolution shall also provide for declaration of the amount of guarantee;
  - (vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;
  - (viii) a copy of the latest income tax return of the society;
  - (ix) details of the objects of the company alongwith a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Act shall be complied.
- (d) In case of an application by a trust for registration as a company limited by guarantee under Section 8-
- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were trustees of the trust with proof thereof;
  - (ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
  - (iii) a certified copy of the certificate of registration of the trust and the trust deed;
  - (iv) written consent or No Objection Certificate from all the secured creditors of the applicant;
  - (v) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration, and the

resolution shall also provide for declaration of the amount of guarantee;

- (vi) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;
- (vii) a copy of the latest income tax return of the trust;
- (viii) details of the objects of the company along with a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Act shall be complied.

(3) Where an application is made by a society or trust for registration as a company limited by guarantee and it has been proved to the satisfaction of the Registrar that the proposed company has its objects in accordance with clause (a) of subsection (1) of section 8 of the Act and it intends to comply with the restrictions and prohibitions as mentioned respectively in clause (b) and clause (c) of that sub-section, the Registrar shall issue a license in Form No. INC. 16 to allow such society or trust to be registered as a limited company without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" and thereupon issue a certificate of incorporation in terms of sub-rule(4) of rule 4 on an application submitted under Chapter II of the Act for incorporation of a company:

Provided further that a society which has not filed the annual or other returns, statutorily required to be filed with the Registrar of Societies, shall not be eligible to apply for registration under Section 366 of the Act.

(4) An undertaking from all the members or partners or trustees providing that in the event of registration as a company under Part I of Chapter XXI of the Act, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution:

Provided that no such undertaking shall be required to be submitted in case the application for registration under Part I of Chapter XXI of the Act has been made by a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009).

(5) The list of members and directors and any other particulars relating to the company which are required to be delivered to the Registrar shall be duly verified by the declaration of any two or more proposed directors."

4. (i) In the said rules, in rule 4,-
  - (a) in sub-rule (1), for the words "Limited Liability Partnership or the firm as the case may be is situate" the words "Limited Liability Partnership, firm, society or trust, as the case may be, is situated" shall be substituted;
  - (b) in sub-rule (2), after the words, brackets and letters "Registrar (LLP)", the words "Registrar of Firms, Registrar of Societies or Registrar of Trust, as the case may be", shall be inserted.
5. In the said rules, in rule 5,
  - (a) for clause (i), the following clause shall be substituted, namely:-
 

"(i) where a firm, society or trust has obtained a certificate of registration under section 367 of the Act, an intimation to this effect shall be given within fifteen days of such registration to the concerned Registrar of Firms, Registrar of Societies or Registrar of Trusts, as the case may be, under which it was originally registered, along with documents for its dissolution as a firm, society or

trust as the case may be;

- (b) in clause (iii), after the words "Registrar of Firms", at both the places, where they occur, the words, "Registrar of Societies or Registrar of Trusts, as the case may be" shall be inserted;
- (c) in clause (v), for the words "Limited Liability Partnership or the firm", the words "Limited Liability Partnership, firm, society or trust" shall be substituted;
- (d) after clause (v), the following clauses shall be inserted, namely:-

"(vi) in case a society or trust intending to register as a company under section 366 of the Act is registered under section 12A of the Income Tax Act, 1961 (43 of 1961) for claiming exemption on its income, an intimation in this regard shall be sent to the Income-tax authorities and proof of its service shall be attached with Form No. URC. 1.;

(vii) upon registration of a society or trust as a company under the Act, no application for conversion into a company of any other kind, except conversion from a private company to a public company or vice-versa, shall be made till the expiry of a period of ten years from the date of incorporation under the Act.

(viii) no application for registration as a company under the Act shall be made by a trust during the pendency of any proceedings under section 92 of the Code of Civil Procedure (5 of 1908)."

6. In the said rules, for Form No.URC-1 and URC-2, the following forms shall be substituted, namely:-

**K V R MURTY**

Joint Secretary

**Form No. URC-1, URC-2 not published here for want of space. Readers may log on to [mca.gov.in](http://mca.gov.in).**

## 04

### Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018

**[Issued by the Ministry of Corporate Affairs vide F. No. 01/22/2013 CL-V (Pt-III) dated 05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 615(E) dated 06.07.2018]**

In exercise of the powers conferred under second proviso to sub-section (1), sub-section (4), clause ( ) of sub-section (6) of section 149, sub-section (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 of 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) fourth Amendment Rules, 2018.
- (2) They shall come into force from **10th July, 2018**.
2. In the Companies (Appointment and Qualification of Directors) Rules, 2014,
3. (i) The rule 11 shall be renumbered as sub-rule (1) thereof and after sub-rule(1) as so renumbered, the following sub-rules shall be inserted, namely:-
 

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the

Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

(ii) after rule 12, the following shall be inserted, namely:- "12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.”;

(iii) In the Annexure after Form DIR-3 the following Form shall be inserted:-

**K V R MURTY**  
Joint Secretary

<b>FORM NO.DIR-3-KYC</b> [Pursuant to rule 12A of The Companies (Appointment and Qualification of Directors) Rules, 2014]	 <b>KYC of Directors</b> सत्यमेव जयते
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Form Language  English  Hindi

Note-

- All fields marked in \* are mandatory fields

- In case of Indian nationals, Income-tax Permanent Account Number (Income-tax PAN) is mandatory in all cases even if there is no change in Income-tax PAN. In such cases, director details should be as per Income-tax PAN. In case the details as per Income-tax PAN are incorrect, director/designated partner is advised to first correct the details in Income-tax PAN. Refer instruction kit for details.

1. (a) \*Director Identification Number(DIN)  Pre-fill

(b) Name

2. \* Director's use abbreviations) name (Enter full name and do not use abbreviations)

(a) First name

(b) Last name

(c) Middle name

3. \*Father's Name (Even married women must give father's Name)

(a) First name

(b) Last name

(c) Middle name

4. \* Whether a citizen of India  Yes  No

5. \* Nationality

6. \* Whether resident in India  Yes  No

7. \* Date of birth (DD/MM/YYYY)

8. \* Gender  Male  Female  Transgender

9. Income tax PAN  Verify Income-tax PAN Details

10. Voter's Identity

11. \*Do You have a valid passport  Yes  No card number

#Passport number

12. Driving license number

13. Aadhaar number

14. \* Personal Mobile Number  Send OTP

Country Code  Mobile Number

15. \* Personal Email ID

16. \*Enter OTP for Mobile  Verify OTP

17. \*Enter OTP for Email ID

18. Permanent residential address

\* Line I

Line II

\* City

\*State  \*Pin  code

ISO country code  Fax

Phone

\*Country

19. Whether present residential address is same as permanent residential address  Yes  No

20. Present residential address

\*Line I

Line II

\* City

\*State

ISO Country code  Fax

Phone

\*Country

Attachments:

1. \* Proof of permanent address
2. Copy of Aadhaar Card
3. Copy of Passport
4. Proof of present address
5. Optional attachments, if any

List of Attachments

Verification

I, hereby confirm and verify that the particulars given in the Form herein above are true and also are in agreement with the documents being attached to this form.

- (i) The documents being attached to the Form DIR-3KYC belong to me. I further confirm that all required documents have been duly issued by the respective government authority and are being attached to the Form DIR-3 KYC and
- (ii) I further confirm that the Mobile No and email ID belong personally to me and
- (iii) I have not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court, and
- (iv) I have no other allotted DIN other than DIN in which changes are intimated under section 154 of the Companies Act, 2013 or a Designated Partner Identification Number under section 7 of the Limited Liability Partnership Act, 2008.
- (v) I shall be 000000liable under section 448 of the Act and under relevant provisions of the Indian Penal Code, 1860 and any other law as applicable, if any statement in this application is found to be false or any material fact is found to be have been omitted.

\*To be digitally signed by Applicant

Certification

I declare that I have been duly engaged for the purpose of certification/verification of this form. It is hereby certified that:

- \* I have satisfied myself about the identity of the applicant and his address based on the 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 verified and attested the documents of the applicant based on the Originals documents produced before me.
- \* All required attachments have been completely attached to this application
- \* 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 Company/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:
  - \* Mobile No and email ID belong to the applicant / Director signing the form.
  - \* All the required attachments have been completely and legibly attached to this form;
  - \* I have kept a copy of this form and attachments thereto, in my records for further reference.
  - \* It is understood that I shall be liable for action under section 448 of The Companies Act, 2013 for wrong certifications, if any found at any stage.

\*To be digitally signed by

\*Category

\*Whether Associate or Fellow  Associate  Fellow

\*Membership Number

\*Certificate of Practice Number

Note: Attention is drawn to provisions of Section 448 and 449 which provide for punishment for false statement / certificate and punishment for false evidence respectively.

This e-Form has been taken on file maintained by the register of companies through electronic mode and on the basis of statement of correctness given by the Director and professional.

## 05 Companies (Acceptance of Deposits) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F.No 1/8/2013-CL-V dated 05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No.G.S.R. 612(E) dated 06.07.2018]

In exercise of the powers conferred by section 73 and section 74 read with sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government in consultation with the Reserve Bank of India, hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2018.  
(2) They shall come into force on **15th August, 2018**
2. In the Companies (Acceptance of Deposits) Rules, 2014
  - (a) in rule 4, in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:—  
“Provided further that a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after the commencement of the Act and in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.”;
  - (b) rule 5 shall be omitted;
  - (c) in rule 13, for the proviso, the following shall be substituted, namely:-  
“Provided that the amount remaining deposited shall not at any time fall below twenty per cent. of the amount of deposits maturing during the financial year.”;
  - (d) in rule 14, in sub-rule (1), clause (k) shall be omitted;
  - (e) in the Annexure,-
    - i) for Form DPT-1, the following Form shall be substituted, namely:-

### “FORM DPT-I

### CIRCULAR OR CIRCULAR IN THE FORM OF ADVERTISEMENT INVITING DEPOSITS

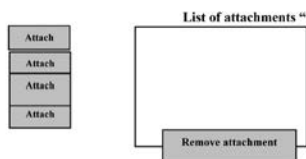
[Pursuant to section 73 (2)(a) and section 76 and rule 4(1) and 4(2) of the Companies (Acceptance of Deposits) Rules, 2014 ]

The circular or circular in the form of advertisement shall contain the following:

1. GENERAL INFORMATION
  - (a) Name, address, website and other contact details of the company;
  - (b) Date of incorporation of the company;
  - (c) Business carried on by the company and its subsidiaries with the details of branches or units, if any;
  - (d) Brief particulars of the management of the company;
  - (e) Names, addresses, DIN and occupations of the directors;
  - (f) Management's perception of risk factors;
  - (g) Details of default, including the amount involved, duration of default and present status, in repayment of
    - (i) statutory dues;
    - (ii) debentures and interest thereon;
    - (iii) loan from any bank or financial institution and interest thereon.
2. PARTICULARS OF THE DEPOSIT SCHEME
  - (a) Date of passing of board resolution;
  - (b) Date of passing of resolution in the general meeting authorizing the invitation of such deposits;
  - (c) Type of deposits, i.e., whether secured or unsecured;
  - (d) Amount which the company can raise by way of deposits as per the Act and the rules made thereunder, and the aggregate of deposits actually held on the last day of the immediately preceding financial year and on the date of issue of the Circular or advertisement and amount of deposit proposed to be raised and amount of deposit repayable within the next twelve months;
  - (e) Terms of raising of deposits : Duration, Rate of interest, mode of payment and repayment;
  - (f) Proposed time schedule mentioning the date of opening of the Scheme and the time period for which the circular or advertisement is valid;
  - (g) Reasons or objects of raising the deposits;
  - (h) Credit rating obtained; Name of the Credit Rating Agencies, Rating obtained, Meaning of the rating obtained, Date on which rating was obtained;
  - (i) Short particulars of the charge created or to be created for securing such deposits, if any;
  - (j) Any financial or other material interest of the directors, promoters or key managerial personnel in such deposits and the effect of such interest in so far as it is different from the interests of other persons.
3. DETAILS OF ANY OUTSTANDING DEPOSITS
  - (a) Amount Outstanding;
  - (b) Date of acceptance;
  - (c) Total amount accepted;
  - (d) Rate of interest;
  - (e) Total number of depositors;
  - (f) Default, if any, in repayment of deposits and payment of interest thereon, if any, including number of depositors, amount and duration of default involved;
  - (g) Any waiver by the depositors, of interest accrued on deposits.
4. FINANCIAL POSITION OF THE COMPANY
  - (a) Profits of the company, before and after making provision for tax, for the three financial years immediately preceding the date of issue of circular or advertisement;
  - (b) Dividends declared by the company in respect of the said three financial years; interest coverage ratio for last three years (Cash profit after tax plus interest paid or interest paid) ;

- (c) A summary of the financial position of the company as in the three audited balance sheets immediately preceding the date of issue of circular or advertisement;
  - (d) Audited Cash Flow Statement for the three years immediately preceding the date of issue of circular or advertisement;
  - (e) Any change in accounting policies during the last three years and their effect on the profits and the reserves of the company.
5. A DECLARATION BY THE DIRECTORS THAT-
- (a) the company has not defaulted in the repayment of deposits accepted either before or after the commencement of the Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;
  - (b) the board of directors have satisfied themselves fully with respect to the affairs and prospects of the company and that they are of the opinion that having regard to the estimated future financial position of the company, the company will be able to meet its liabilities as and when, they become due and that the company will not become insolvent within a period of one year from the date of issue of the circular or advertisement;
  - (c) the company has complied with the provisions of the Act and the rules made thereunder;
  - (d) the compliance with the Act and the rules does not imply that repayment of deposits is guaranteed by the Central Government;
  - (e) the deposits accepted by the company before the commencement of the Act have been repaid (or will be repaid along with interest within \_\_\_ days (days to be specified) and until they are repaid, they shall be treated as unsecured and ranking pari passu with other unsecured liabilities);
  - (f) in case of any adverse change in credit rating, depositors will be given a chance to withdraw deposits without any penalty;
  - (g) the deposits shall be used only for the purposes indicated in the Circular or circular in the form of advertisement;
  - (h) the deposits accepted by the company (other than the secured deposits, if any, aggregate amount of which to be indicated) are unsecured and rank pari passu with other unsecured liabilities of the company.

- Attachments
1. \*Auditor's certificate;
  2. Optional attachment, if any.



- (ii) for Form DPT-3, the following Form shall be substituted, namely:-

**K V R MURTY**  
Joint Secretary

**Form DPT-3 not published here for want of space. Readers may log on to [mca.gov.in](http://mca.gov.in).**

## 06

### Companies (Incorporation) Third Amendment Rules, 2018

**[Issued by the Ministry of Corporate Affairs vide F. No. 1/13/2013 CL-V, part-I, Vol. II dated 27.07.2018. To be published in the Gazette of India Extraordinary, Part - II,**

### Section - 3, Sub Section (i)]

In exercise of the powers conferred by section 3, sub-section (1) of section 7 and 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) Third Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the official Gazette.
2. In the Companies (Incorporation) Rules, 2014,
  - (a) in rule 3, for Explanation to sub-rule (1), the following shall be substituted, namely:-  
"Explanation I. -For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year.  
Explanation II.- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted";
  - (b) for rule 15, the following shall be substituted, namely:-  
"**15. Declaration from Subscribers and First Directors.**- For the purposes of clause (c) of sub-section (1) of section 7, the declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9." ;
  - (c) in Form No. INC-9, for the word 'Affidavit', the word 'Declaration' shall be substituted;
  - (d) in Form No. INC-32, (SPICe), in the List of Attachments, in item number 3, for the words and brackets "Affidavit and declaration by first subscriber(s) and director(s)" the words and brackets "Declaration by first subscriber(s) and director(s)" shall be substituted.

**K V R MURTY**  
Joint Secretary

## 07

### Companies (Accounts) Amendment Rules, 2018

**[Issued by the Ministry of Corporate Affairs vide F. No. 1/ 19/ 2013-CL-V- Part dated 31.07.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]**

In exercise of the powers conferred by section 134 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 (Accounts) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Accounts) Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Accounts) Rules, 2014, in rule 8,
  - (i) In sub-rule (5), after clause (viii) the following clauses shall be inserted, namely:-  
"(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are

made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [14 of 2013];

(ii) after sub-rule (5), the following rule shall be inserted, namely:-

“(6) This rule shall not apply to One Person Company or Small Company”.

(iii) after rule 8, the following rule shall be inserted, namely:-

“8A. **Matters to be included in Board’s Report for One Person Company and Small Company.**-(1) The Board’s Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

- (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
  - (b) number of meetings of the Board;
  - (c) Directors’ Responsibility Statement as referred to in sub-section (5) of section 134;
  - (d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
  - (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
  - (f) the state of the company’s affairs;
  - (g) the financial summary or highlights;
  - (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
  - (i) the details of directors who were appointed or have resigned during the year;
  - (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2”.

**K V R MURTY**  
Joint Secretary

## 08 Date of coming into force of the provisions of Section 20 of Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide F. No. 1/1/2018-CL.I dated 05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No.S.O. 3299(E) dated 06.07.2018]

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 5th July, 2018 as the date on which the provisions of Section 20 of the said Act shall come into force.

**K V R MURTY**  
Joint Secretary

## 09 Date of coming into force of the provisions of Certain Sections of Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide F. No. 1/1/2018-CL.I-part dated

05.07.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 3300(E) dated 06.07.2018]

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 15th August, 2018 as the date on which the following provisions of the said Act shall come into force, namely :-

Sl. No.	Section
(1)	Section 15;
(2)	Section 16;
(3)	Section 75; and
(4)	Section 76.

**K V R MURTY**  
Joint Secretary

## 10 Date of coming into force of the provisions of Certain Sections of Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide F. No. 1/1/2018-CL.I dated 27.07.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) ]

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the day of 27th July, 2018 as the date on which the following provisions of the said Act shall come into force, namely :-

Sl. No.	Section
(1)	Section 5; and
(2)	Section 6

**K V R MURTY**  
Joint Secretary

## 11 Date of coming into force of the provisions of Section 36 of Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide File No. 1/1/2018- CL.I dated 31.07.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii)]

In exercise of the powers conferred by subsection (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the day of 31st July, 2018 as the date on which the provisions of Section 36 of the said Act shall come into force.

**K V R MURTY**  
Joint Secretary

## 12 Constitution of Committee to review the offences under the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide F. No. 2/1/2018-CL.V dated 13.07.2018. ]

The Government hereby constitutes a Committee to review the offences under the Companies Act, 2013, consisting of the following:-

S. No.	Name of Person/Institution	Position
1.	Secretary, MCA	Chairperson
2.	Shri T.K. Vishwanathan, Ex-Secretary General, Lok Sabha	Member
3.	Shri Shardul S Shroff, Executive Chairman Shardul Amarchand Mangaldas & Co.	Member

4.	Shri Ajay Bahl, Founder Managing Partner, AZB & Partners	Member
5.	Shri Amarjit Chopra, Senior Partner, GSA Associate	Member
6.	Shri Uday Kotak, MD, Kotak Mahindra Bank	Member
7.	Shri Arghya Sengupta, Vidhi Centre for Legal Policy	Member
8.	Shri Sidharth Birla, Past President, FICCI	Member
9.	Ms. Preeti Malhotra, Partner and Executive Director of Smart Group	
10.	Joint Secretary (Policy)	Member Secretary

2. The Committee may invite or co-opt subject matter experts relating to corporate law or any other subject matter, as well as experts from SEBI, RBI, C&AG as needed. The committee may also invite any other person or body in the interest of broad based consultation.
3. The terms of reference of the Committee would be as follows :
  - (i) To examine the nature of all 'acts' categorized as compoundable offences viz. offences punishable with fine only or punishable with fine or imprisonment or both under the CA-13 and recommend if any of such 'acts' may be re-categorized as 'acts' which attract civil liabilities wherein the company and its 'officers in default' are liable for penalty;
  - (ii) To review the provisions relating to non-compoundable offences and recommend whether any such provisions need to be re-categorized as compoundable offence;
  - (iii) To examine the existing mechanism of levy of penalty under the CA-13 and suggest any improvements thereon;
  - (iv) To lay down the broad contours of an in-house adjudicatory mechanism where penalty may be levied in a MCA21 system driven manner so that discretion is minimized;
  - (v) To take necessary steps in formulation of draft changes in the law;
  - (vi) Any other matter which may be relevant in this regard.
4. Non-official members of the Committee will be eligible for travelling, conveyance and other allowances as per extant Government instructions, wherever the sponsoring agency is unable to bear their expenditure. Secretarial support to the Committee will be given by the Ministry of Corporate Affairs.
5. The Committee shall submit its recommendations within thirty days of its first meeting.

**PRANAY CHATURVEDI**  
Deputy Director

## 13 Review of Adjustment of corporate actions for Stock Options

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DoP-1/P/00108/2018 dated 05.07.2018.]

1. SEBI, vide Circular No. SMDRP/DC/CIR- 8/01 dated June 21, 2001, prescribed a framework for adjustment of corporate actions for stock option contracts. Further, SEBI, vide Circular No. SMDRP/DC/CIR-15/02 dated December 18, 2002, set out principles for adjustment in derivative contracts at the time of corporate actions.
2. SEBI has been receiving representations from various stakeholders requesting to review the dividend adjustment framework for stock options. The suggestions were examined

and placed before the Secondary Market Advisory Committee (SMAC) for deliberations. Based on the recommendations of SMAC, it has been decided to review the mechanism of dividend adjustment for stock options.

3. The adjustment in strike price shall be carried out in the following cases of declaration of dividends:
  - a. Dividends declared at and above 5% of the market value of the underlying stock ; or
  - b. All cases of dividends, where the listed entity has sought exemption from the timeline prescribed under the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
4. All other conditions stated in Circular No. SMDRP/DC/CIR-8/01 dated June 21, 2001 and Circular No. SMDRP/DC/CIR-15/02 dated December 18, 2002 shall remain unchanged.
5. Stock Exchanges are advised to:
  - 5.1. take necessary steps and put in place necessary systems for implementation of the above.
  - 5.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
  - 5.3. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website.
6. 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.

**AMIT TANDON**  
Deputy General Manager

## 14 Core SGF and standardised stress testing for credit risk for commodity derivatives

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2018/111 dated 11.07.2018.]

1. Vide circular SEBI/HO/CDMRD/DRMP/CIP/P/2016/86 dated September 16, 2016, SEBI had continued norms related to, *inter-alia*, Settlement Guarantee Fund (SGF) and Stress test to determine adequacy of SGF prescribed by erstwhile Forward Markets Commission for National Commodity Derivatives Exchanges.
2. Vide circular SEBI/HO/CDMRD/DRMP/CIR/P/2018/52 dated March 21, 2018 SEBI had *inter-alia* prescribed that post transfer of clearing and settlement functions from commodity derivatives exchanges to Clearing Corporations, Clearing Corporations shall be required to comply with the risk management norms prescribed by SEBI for commodity derivatives exchanges.
3. Vide circular CIR/MRD/DRMNP/25/2014 dated August 27, 2014 SEBI had issued norms related to Core Settlement Guarantee Fund, default waterfall, stress testing, back testing etc. for recognised Clearing Corporations and Stock Exchanges.
4. It has been decided that Clearing Corporations clearing commodity derivatives transactions shall comply with the provisions of SEBI circular dated August 27, 2014. The said circular *inter-alia* stipulated norms for Minimum Required Corpus of Core SGF (MRC) for each segment of each stock exchange at para 7 of the circular. In addition to those norms, minimum threshold value of MRC for commodity derivatives segment of any stock exchange shall be INR 10 Crores.

5. Further, in light of the different features and concerns of commodity derivatives markets, it has also been decided to prescribe modified standardized stress testing scenarios and methodology (as given in Annexure) for carrying out daily stress testing for credit risk for commodity derivatives. Clearing Corporations shall use the same for carrying out daily stress testing for credit risk in commodity derivatives within three months from the date of issuance of this circular. Till that time, Clearing Corporations may continue using the stress testing norms specified vide circular dated September 16, 2016 for commodity derivatives.
6. 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.
7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

**SHASHI KUMAR**  
General Manager

## Annexure

### Standardised Stress Testing for commodity derivatives

#### Part A. Scenarios

##### Historical Scenarios

#### 1 **Peak Historical Return**

Price movement in respect of each underlying over the MPOR period during the last 15 years to be considered:

**Scenario 1A:** Maximum percentage rise over MPOR period

**Scenario 1B:** Maximum percentage fall over MPOR period

#### 2 **Peak historical price volatility**

Historical price volatility (EWMA volatility) in respect of each commodity during the previous 15 years is to be considered. Percentage price movement equal to 3.5 times the peak historical volatility adjusted for applicable MPOR period of the commodity shall be considered (subject to a maximum of 110% of the price movement considered for the commodity under the peak historical return scenario): **Scenario 2A:** Percentage price rise

**Scenario 2B:** Percentage price fall

#### 3 **Augmented historical**

Exchange shall identify top 10 days during the previous 15 years based on average of absolute percentage price change across all commodities witnessed over the MPOR period. For each of the day, exchange shall identify percentage price change in each commodity (in case of unavailability of prices in any of the commodity on any of the identified days, price change equal to applicable initial margin in the commodity to be considered). All the price movements to be scaled up by 10%. Thus, one scenario corresponding to each of the 10 identified days shall be generated.

##### Hypothetical scenarios

#### 4 **Stressed MPOR**

It shall be assumed that liquidation of open positions would require 5 days and percentage price movement equal to 3.5 times current volatility adjusted for 5 day period (i.e., scaling up by square root of 5) shall be considered. **Scenario 4A:** Percentage rise over 5 day period

**Scenario 4B:** Percentage fall over 5 day period

#### 5 **Stressed PSR and VSR**

Price movement in respect of each underlying to the extent of 1.5 times the normal price scan range (PSR) over the MPOR period and change in implied volatility equal to 1.5 times the normal volatility scan range shall be considered.

**Scenario 5A:** Underlying price increasing by 1.5 PSR adjusted for MPOR period, volatility increasing by 1.5 VSR.

**Scenario 5B:** Underlying price decreasing by 1.5 PSR adjusted for MPOR period, volatility increasing by 1.5 VSR.

**Exchanges shall carry out stress tests using each of the scenarios given in Part A as follows -**

- a. **By stressing positions in all commodities simultaneously**
- b. **By first identifying top 10 commodities based on OJ and stressing 1 commodity at a time (ignoring positions in other commodities and the corresponding margins)**

#### Part B. Methodology

The percentage price movements identified in each of the above scenarios shall be applied to the commodity price on the day for which the stress test is being done. All open positions shall be assumed to be squared up at the theoretical price corresponding to the revised prices/volatility of the underlying in each of the scenarios. For each clearing member, the credit exposure to Clearing Corporation shall be calculated as follows:

- a) The time of stress test shall be end of day
- b) It shall be assumed that clearing member will default in paying the settlement obligations and all outstanding positions will be squared off at the theoretical price corresponding to the revised price/volatility of the underlying in the scenario.
- c) Loss shall be calculated at client portfolio level.
- d) For each client, residual loss shall be equal to-> (loss due to close-out of client positions- margin supporting that specific client's positions)
- e) All residual losses (residual profits to be ignored) for all clients shall be grossed to compute total residual losses due to client positions.
- f) Loss due to close-out of proprietary positions shall be considered.
- g) Loss at (e) and loss at (f) and the net pay-in/pay-out requirement of the clearing member shall be assessed against required margins (excluding margin supporting client positions and excess collateral, if any) and other mandatory deposits of defaulting member to calculate credit exposure of Clearing Corporation to the member. Equity scrips as collateral, if any, shall be valued with minimum 20% haircut.

#### Part C. Coverage

To begin with, for each of the scenarios in Part A, Clearing Corporations shall calculate-

- A. Credit exposure due to simultaneous default of at least 2 clearing members (and their associates) causing highest credit exposure.
- B. 25% of the credit exposure due to simultaneous default of all clearing members.

However, within a year from the deadline of implementation of the circular, for each of the scenarios in Part A, Clearing Corporations shall calculate -

- A. Credit exposure due to simultaneous default of at least 2 clearing members (and their associates) causing highest credit exposure.
- B. 50% of the credit exposure due to simultaneous default of all clearing members.



# 15

## Discontinuation of acceptance of cash by Stock Brokers

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2018/113 dated 12.07.2018.]

1. Please refer to SEBI circular SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003, regarding Mode of Payment and Delivery.
2. Government of India has promoted various means for transfer / receipt of funds through digital mode for encouraging a cashless economy. Financial institutions/ Banks have introduced various modes of electronic payment facility including mobile banking, Unified Payment Interface (UPI) etc.
3. In view of the various modes of payment through electronic means available today, it is directed that Stock Brokers shall not accept cash from their clients either directly or by way of cash deposit to the bank account of stock broker. Accordingly, paragraph 3 of the SEBI circular dated August 27, 2003 is modified as under:  
All payments shall be received / made by the stock brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through electronic fund transfer, or any other mode permitted by the Reserve Bank of India. The stock brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. Stock Brokers shall not accept cash from their clients either directly or by way of cash deposit to the bank account of stock broker.
4. All other conditions specified in the SEBI circular dated August 27, 2003 shall continue to remain in force.
5. Stock Exchanges are directed to
  - a) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above direction immediately;
  - b) bring the provisions of this circular to the notice of their members and also disseminate the same on their websites; and
  - c) communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Report.
6. 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.

**D RAJESH KUMAR**  
General Manager

# 16

## Investment by Foreign Portfolio Investors (FPI) through primary market issuances

[Issued by the Securities and Exchange Board of India vide Circular No. IMD/FPIC/CIR/P/2018/114 dated 13.07.2018.]

1. Regulation 21(7) of SEBI (Foreign Portfolio Investors) Regulations, 2014 ('FPI Regulations') mandates that the purchase of equity shares of each company by a single foreign portfolio investor or an investor group shall be below ten percent of the total issued capital of the company.
2. Further, Regulation 23(3) of FPI Regulations requires that in case the same set of ultimate beneficial owner(s) invest through multiple entities, such entities shall be treated as part of same investor group

- and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.
3. As prescribed in reply to FAQ No. 58 for FPIs, for the purpose of identifying the investor group, the Designated Depository Participant (DDP) shall obtain the details provided by the FPI under clause 2.2 of the FPI Application form (Form A) specified in First Schedule of FPI Regulations. The monitoring of investment limits at the level of investor group shall be performed by the depositories based on the information provided by DDPs.
  4. To ensure compliance of the above, at the time of finalization of basis of allotment during primary market issuances, Registrar and Transfer Agents ('RTAs') shall:
    - a) Use Permanent Account Number (PAN) issued by Income Tax Department of India for checking compliance for a single foreign portfolio investor; and
    - b) Obtain validation from Depositories for the foreign portfolio investors who have invested in the particular primary market issuance to ensure there is no breach of investment limit within the timelines for issue procedure, as prescribed by SEBI from time to time.
  5. The depositories shall put in place the necessary systems for sharing of information with RTAs within the timelines for issue procedure, as prescribed by SEBI from time to time.

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](http://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

# 17

## Strengthening the Guidelines and Raising Industry standards for RTAs, Issuer Companies and Banker to an Issue - Clarification

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2018/115 dated 16.07.2018.]

1. SEBI, vide circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, inter-alia, mandated RTAs to send a letter under Registered / Speed post seeking PAN and bank details within 90 days of the said circular and two reminders thereof after the gap of 30 days.
2. In this regard SEBI has received several representations to extend the timelines of first letter so as to bunch it up with annual reports/notices of AGM. Further, clarifications have been sought to send the reminders by way of modes other than Registered / Speed post, citing huge cost involved and the efficacy of sending reminders by way of other modes; especially in cases where first letter sent by Registered / Speed Post returned undelivered.
3. Accordingly, in respect of para II (12)(ii) of Annexure to the aforementioned circular, it is clarified that:
  - a. The timeline for sending the initial letter by Registered / Speed Post to physical shareholders has been extended to September 30, 2018 to enable companies to send the initial letter along with Annual Reports/notice of AGM.
  - b. Subsequently, two reminders may be sent by other modes including ordinary post / courier.

**SURABHI GUPTA**  
Deputy General Manager



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## **ANNOUNCEMENT**

### **Quality Review Board of ICSI invites applications for Empanelment of “Quality Reviewers”**

The Ministry of Corporate Affairs has constituted the Quality Review Board of ICSI to make recommendations to the Council with regard to the quality of services provided by the members of the Institute; to review the quality of services provided by the members of the Institute including secretarial services; and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

With a view to carry out the abovementioned functions, the Quality Review Board contemplates to avail the services of senior members of the profession to assess the quality of services being rendered by Company Secretaries both in practice and in employment.

#### **Eligibility criterion for Quality Reviewers-**

A Quality Reviewer shall fulfil the criteria mentioned in para I or para II:-

- I. An individual desiring to be empanelled shall:
  - a) Be a Fellow member of ICSI; and
  - b) Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
  - c) Be currently in practice of the profession of company secretaries.”
- II. An individual desiring to be empanelled
  - a) Shall be empanelled as Peer Reviewer in terms of the Guidelines for Peer Review of Attestation Services by PCS and has completed minimum 2 assignments of Peer Review.

Provided that the term of Quality Reviewer shall be three years subject to maximum six (6) months from the date of surrender of Certificate of Practice.

The Quality Review Board shall pay to the Quality Reviewer a consolidated fee of Rs. 25,000/- per quality review assignment to cover the cost of travel, local transport, accommodation and food, taxes, communications, printing, cost of submission of report etc. subject to submission of Final Report to the satisfaction of the Board.

Interested persons may kindly apply in the format available at <https://goo.gl/TJQVsd> and send it to Director, Professional Development, Perspective Planning & Studies, The Institute of Company Secretaries of India, C-36, Sector-62, Noida-201 309.

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## NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF JUNE 2018
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF JUNE 2018
- COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018
- EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP FEE FOR THE YEAR 2018-19
- EXTENSION OF LAST DATE OF PAYMENT OF THE ANNUAL SUBSCRIPTION FOR LICENTIATE FOR 2018-19
- ICSI CONVOCATION – 2018



## Institute News

### MEMBERS RESTORED DURING THE MONTH OF JUNE 2018

S. NO.	A/F	MEM. NO.	MEM. NAME	REGN.
1	A	2352	CS G JAGANNATHAN	SIRC
2	A	16870	CS RUPA RADHAKRISHNAN	NIRC
3	A	45680	CS SRINIVAS PALLAPU	SIRC
4	A	32284	CS DIPIKA SAHU	EIRC
5	A	30703	CS CHANDRAMOULI BANERJEE	EIRC
6	F	2891	CS NAYAN PRAKASH BHANSALI	NIRC
7	F	8274	CS HARNATHARAM CHOUDHARY	WIRC
8	A	39202	CS SURABHI SINGH	NIRC
9	A	46817	CS AVDHESH KUMAR GUPTA	NIRC
10	A	12934	CS ANANYA GANGULY	SIRC
11	A	25634	CS MEENAKSHI JAYESH BHANSALI	WIRC
12	A	40611	CS RIDDHI SUDHIR SURTI	WIRC
13	A	41114	CS ANAMIKA	NIRC
14	F	2693	CS MANOJ VASANT DESHMUKH	WIRC
15	A	26751	CS SANJEEV BHATLI	NIRC
16	A	5556	CS R P KOOLWAL	NIRC
17	A	35767	CS UDITA MUNDHRA	EIRC
18	A	26697	CS HONEY AGARWAL	NIRC
19	A	16192	CS RANJAN KUMAR	EIRC
20	A	11732	CS SRIPRIYA BALASUBRAMANIAN	SIRC
21	A	32881	CS G SAIRAM	SIRC
22	A	11792	CS NAVIN SINHA	NIRC
23	A	40887	CS SURYA J RAMANI	SIRC
24	A	43205	CS ARADHANA SINGH	SIRC
25	A	32375	CS SANDHYA LAKSHMANAN	WIRC
26	A	5692	CS HOSHANG F FRAMROZE	WIRC
27	F	2561	CS BALASUBRAMANIAN N. IYER	WIRC
28	F	6186	CS CHARANDEEP KAUR CHANDHOK	NIRC
29	A	34671	CS SNEHA BANKA	EIRC
30	A	25545	CS KURUBA HARISH ADITYA	SIRC
31	A	13255	CS V C MOULIESWARAN	SIRC
32	A	32066	CS YASHVI KUMAR SANCHETI	WIRC
33	A	30100	CS SIMPY BHATIA	WIRC
34	F	4235	CS CHANDRA SHEKHAR VERMA	NIRC
35	F	3105	CS J J SAMPAT	WIRC
36	A	16984	CS ANAND V SUBRAMANIAM	SIRC
37	A	29566	CS DINESH LOHIA	EIRC
38	A	23315	CS ANURADHA TANDON	NIRC
39	A	15928	CS MANISHA GUPTA	NIRC
40	A	28960	CS NUZHAT FATIMA	EIRC
41	F	4904	CS DIWAKAR RAMKRISHNA PARANJPE	NIRC
42	F	1217	CS JAG MOHAN CHHABRA	NIRC

### CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF JUNE 2018

S. NO.	NAME	ACS/FCS NO.	COP NO.	REGN.
1	MS.SYSHA KUMAR	F - 8150	7441	WIRC
2	SH.MANO HAR LAL CHANDOK	F - 1012	5122	NIRC
3	MR.PRAKASH RAWAT	A - 35324	13724	NIRC
4	MS.SALONI AJAY SHARMA	A - 32243	13769	NIRC
5	MS.SHOBHA SUDHAKAR ACHARYA	A - 23262	13833	SIRC
6	MS.MONIKA KEDIA	A - 26726	13961	EIRC
7	MS.VARSHA SINGH	A - 36911	14380	EIRC
8	MS.PARVINDER KAUR	A - 39081	14613	NIRC
9	MR.HUSAIN SHAHBUDDIN	A - 29738	14746	WIRC
10	MS.SHUBHANGI GARG	A - 23042	14761	NIRC
11	MR.KUSHANG SURENDRAKUMAR THAKKAR	A - 39908	14810	WIRC
12	SH.JANAK SACHDEVA	F - 2905	14860	NIRC
13	SH.HEMANT RAJNIKANT KOTHARI	A - 20872	15005	WIRC
14	MR.GAURAV SINGH JADON	A - 39216	15144	NIRC
15	MR.SATISH PATEL	A - 32519	15156	WIRC
16	MS.APARNA RAI	A - 36060	15217	SIRC
17	MS.NEHA JOSHI	A - 41736	15514	NIRC
18	MR.RAJAT GUPTA	A - 38615	15810	WIRC
19	MR.SAURABH NAVINCHANDRA VYAS	A - 42684	16015	WIRC
20	MS.ANGEE RAJENDRAKUMAR SHAH	A - 43464	16098	WIRC
21	MS.POONAM CHHIKARA	F - 6362	16104	NIRC
22	MS.THENKURUSSI NANDITHA	A - 43148	16128	SIRC
23	MRS.SIMPAL KUMARI	A - 20798	16502	NIRC
24	MS.SHELLY GUPTA	A - 45369	16607	SIRC
25	MS.TRISHA AMAR ROOPCHANDANI	A - 45099	16645	WIRC
26	MS.KHUSHBOO GUPTA	A - 45609	16992	EIRC
27	MS.KIRAN MAHESHWARI	A - 44491	17086	WIRC
28	MS.MADHURI NICONKUMAR MISTRY	A - 37347	17137	WIRC
29	MS.AYUSHI GUPTA	A - 44634	17620	NIRC
30	MR.RAHUL BANGIA	A - 48345	17880	NIRC
31	MR.ANURAG GUPTA	A - 49293	17887	NIRC
32	MS.AANAL BHARATBHAI PATEL	A - 47690	17940	WIRC
33	MS.SONAL BAJAJ	A - 49653	18009	NIRC
34	MS.DIPANJALI NAGPAL	A - 39288	18021	WIRC
35	MS.DEEP GUPTA	A - 49470	18092	NIRC
36	MS.NEEMA BISHT	A - 48937	18103	NIRC
37	MS.SAPNA JAIN	A - 48571	18158	WIRC
38	MS.PAYAL SURESHKUMAR JEERAWALA	A - 44991	18369	WIRC
39	MR.HARISH KUMAR S	A - 50028	18375	SIRC
40	MS.SULAKXI AGARWAL	A - 41771	18515	NIRC
41	MS.NISHI TALWAR	A - 24056	18578	NIRC
42	MS.SHARVARI ANIL JOSHI	A - 50292	18717	WIRC
43	MS.PRIYANKA GARG	A - 50926	18718	WIRC
44	MS.KAJAL ANEJA	A - 48514	18751	NIRC
45	MS.DHANALAKSHMI DURGASA MAGAJI	A - 50414	18831	SIRC
46	MS.NISHA CHHAJER	A - 48635	19141	EIRC
47	MS.SEEMA	A - 48534	19240	NIRC

48	MR.RAHUL GUPTA	A - 33780	19359	NIRC
49	MS.BHAWNA SHARMA	A - 37849	19374	NIRC
50	MS.PRIYA CHHABRA	A - 51094	19447	NIRC
51	MS.JYOTI KUMARI	A - 52704	19462	NIRC
52	MS.DIVYA MUNDRA	A - 49537	19481	NIRC
53	MR.CHIRAG SHETH	A - 49353	19486	EIRC
54	MR.PRASHANT JAIN	A - 37559	19555	NIRC
55	MS.ASHU BANSAL	A - 45671	19616	NIRC
56	MR.TUSHAR MALHOTRA	A - 48917	19620	NIRC
57	MS.ANKITA DAMANI	A - 35190	19837	SIRC
58	MS.SRISHTI NARANG	A - 45898	19851	NIRC
59	MR.GANDHARV KHANDELWAL	A - 46534	19962	WIRC
60	MR.YOGESH SAHU	A - 44945	20129	NIRC
61	MR.SOURAV	A - 46883	20160	NIRC
62	MS.RANJANA	A - 51332	20512	NIRC
63	MR.YOGESH RAWAT	A - 55454	20583	NIRC
64	MR.JIGAR PRATAP MANGE	A - 52382	20583	WIRC
65	MS.JAINY PRADIP SHAH	A - 55478	20577	WIRC

66	SH.PANKAJ KUMAR CHOUDHARY	F - 6642	5417	NIRC
67	SH.MUDAMBAI VENKATAVARADA IYENGAR SANTHANAM	A - 2098	4788	SIRC
68	MS.ANSHU CHADHA	F - 5688	7624	NIRC
69	SH.C V MATHRANI	F - 737	2916	WIRC
70	MS.ANITA KAUSHIK VYAS	F - 3213	1288	WIRC
71	SH.D I KRISHNAMURTHY	F - 480	1710	SIRC
72	MS.BAIJAYANTI DAS	F - 9676	9152	EIRC
73	MS.NUZHAT FATIMA	A - 28960	10489	EIRC
74	SH.KUNAL DESAI	A - 22751	10681	WIRC
75	SH.BALAKRISHNAN UNNIKRISHNAN NAIR	F - 5546	10778	EIRC
76	MS.JAYASHREE MISHRA	A - 31853	11730	WIRC
77	MR.HASSAN SRIDHAR NARASIMHA	A - 31238	11802	SIRC
78	MRS.POONAM SETHI	A - 33856	13252	NIRC
79	MRS.PRIYA GARG	A - 22866	13499	SIRC
80	MS.SWETA MISHRA	A - 34970	13571	EIRC
81	MS.NEELU DASLANA	A - 35566	13606	NIRC
82	MS.PREMA PARTHASARATHI	F - 2363	13630	SIRC
83	MR.KAPIL SUBHASH CHAAND	A - 36673	13654	NIRC

## COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018

### Payment of annual membership fee for FY 2018-19 and uploading of photograph and signature on the portal of the Institute

The term of the existing Council and the Regional Councils will expire on 18th January 2019 and the elections for the new Council / Regional Councils will be held during the month of December 2018. In accordance with Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006, a member, whose name is borne on the Register of Members on the 1st day of April 2018 shall be eligible to vote in the election from the Regional constituencies within whose territorial jurisdiction his/her professional address falls on the 1st day of April 2018, provided that on the date of publication of the list of voters, his/her name has not been removed from the Register in terms of Section 20 of the Company Secretaries Act, 1980. If the professional address is not borne on the Register on the 1st day of April 2018, the residential address borne on the Register on the 1st day of April 2018 shall be determining his/her Regional constituency. In the case of members having their professional address outside India and eligible to vote, their Regional Constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register on the relevant date, whichever is later.

The members who have not yet applied for the issue of the identity cards may apply for the same at [kedar.singh@icsi.edu](mailto:kedar.singh@icsi.edu). Members should also ensure that their scanned photograph and signature in .jpg format are uploaded on the online portal of the Institute.

#### Online Steps for Uploading of photo image:

- Login to portal [www.icsi.edu](http://www.icsi.edu)
- Click Online services on the right top corner and then click Member Login
- Fill the User name which is the membership number (e.g. A1234) and then the Password.
- (In case a member does not have/remember his/her password, he/she can get the password by clicking on to the Retrieve option. The password will be sent to his/her email registered with the Institute. Alternately, he/she may email at [jitendra.kumar@icsi.edu](mailto:jitendra.kumar@icsi.edu) from his/her email registered with the Institute to get the password on the said email id)
- After login, go to Members Option (from top menu) then click on Manage Account and then click on Manage Image
- Then upload Photo (passport size) and Signature and click on Upload button

In case members face any problem in uploading, they may send their scanned photo / signature in .jpg format at the email id – [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu)

**(Dinesh Chandra Arora)**  
Secretary, ICSI

## EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP FEE FOR THE YEAR 2018-19

The annual membership fee for the year 2018-2019 has become due for payment w.e.f. 1<sup>st</sup> April, 2018. The last date for the payment of fee was 30<sup>th</sup> June, 2018 which has now been extended upto 31<sup>st</sup> August, 2018.

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

Particulars	Associate (admitted till 31.03.2015)	Associate (admitted on or after 01.04.2015)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

\* Fee inclusive of applicable GST @ 18%.

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. Please note the members possessing the Certificate of Practice can not avail the benefit of concession in annual membership fee.

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](http://www.icsi.edu)

### MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

- Online (through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu)))
- 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. The members are requested to ensure that their cheque/DD reaches us latest by 25-08-2018.
- At ICSI HQ at Delhi or Noida in person by cash/cheque at par/DD at the reception counter from 9:00 am to 4:00 pm.

For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id [jitendra.kumar@icsi.edu](mailto:jitendra.kumar@icsi.edu)

Advisory: The members are advised to pay the annual fee before the last date to avoid the last minute rush. The Institute will not be responsible for any unforeseen last minute technical problem arising due to heavy rush.

PS: Non receipt of annual membership fee in full by 31-08-2018 will lead to removal of name from the Register of Members w.e.f. 01-09-2018 without any further notice.

## EXTENSION OF LAST DATE OF PAYMENT OF THE ANNUAL SUBSCRIPTION FOR LICENTIATE FOR 2018-19

The payment of Licentiate Subscription for the year 2018-19 became due for payment w.e.f. 1<sup>st</sup> April, 2018. The last date for payment of the same was 30<sup>th</sup> June, 2018 which has now been extended upto 31<sup>st</sup> August, 2018. The Licentiate subscription payable is Rs.1180/- per year inclusive of applicable GST@18%.

You are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1180/- by way of Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating your name and Licentiate number on the reverse of the Demand Draft/ Cheque. The details of remittance may please be intimated at email id [licentiate@icsi.edu](mailto:licentiate@icsi.edu). The payment may please be made so as to reach the Institute on or before 31<sup>st</sup> August, 2018.

In case the Licentiate subscription for 2018-19 has already been remitted, please send the particulars of the remittance at email id [licentiate@icsi.edu](mailto:licentiate@icsi.edu) to link up the same and update the records.

For queries, if any, please write at email id [licentiate@icsi.edu](mailto:licentiate@icsi.edu) or contact at telephone No. 0120-4082134

## ATTENTION!

The CD containing List of Members of ICSI as on 1st April, 2018 is available in the Institute on payment of Rs. 280/-\* for members and Rs. 560/-\* for non-members (\*inclusive of GST@12%). Request letter along with payment may please be sent to the Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries, if any, please email at saurabh.bansal@icsi.edu

## ATTENTION!

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>

## ATTENTION

### MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2018. The CDs are available at Noida office of the Institute and will be provided free of cost to the members holding Certificate of Practice on receipt of request. Request may please be sent to the Directorate of Membership at e-mail id: saurabh.bansal@icsi.edu

## KNOW YOUR MEMBER (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: [https://www.icsi.in/student/Portals/0/Manual/KYM\\_Usermanual.pdf](https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf)

## ADDENDUM

In the CD containing the List of Members of the ICSI as on 1st April, 2018, two Associate members from the Union Territory of Andaman and Nicobar Island (Port Blair) have been inadvertently included under EIRC and are to be read under SIRC with consequent changes thereupon in the regionwise number of members in page IV of the List of Members, 2018.

## ICSI CONVOCATION – 2018

The first of the bi-annual region-wise Convocation in 2018 of the southern and northern regions were successfully held at Hyderabad and New Delhi respectively for awarding certificate of membership to the Associate members admitted during the period from 1st October, 2017 till 31st March, 2018, to the Fellow member admitted during the period from 6th September, 2017 till 31st March, 2018 and to award prizes/medals to meritorious students (National) and winner students of national level competitions. The details are mentioned below.

Region	Convocation Held On	Venue	Chief Guest / Special Guest / Guest of Honour	Number of Associate & Fellow members & students present to receive the award
Southern	2 <sup>nd</sup> July, 2018	Tagore Auditorium, Osmania University, Tarnaka, Hyderabad	Chief Guest Prof. S. Ramachandram Vice Chancellor Osmania University, Hyderabad	ACS-98 FCS-2 Student Awardee-2
Northern	15 <sup>th</sup> July, 2018	Sirifort Auditorium, New Delhi in Two Sessions	Morning Session <b>Chief Guest</b> Shri Birender Singh Chaudhary Hon'ble Union Minister of Steel <b>Special Guest</b> Shri Vijay Goel Hon'ble Union Minister of State of Parliamentary Affairs	ACS-248 FCS-12 Student Awardee-5
			Afternoon Session <b>Chief Guest</b> Shri Sunil V. Deodhar National Executive Member, BJP <b>Guest of Honour</b> Dr. P R Trivedi President, Confederation of Indian Universities	ACS-281



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## COMPETITION ON SECRETARIAL STANDARDS

Dear Members,

As you are aware, the Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) specified by the ICSI and approved by the Central Government under Section 118(10) of the Companies Act, 2013 are effective from July 1, 2015 (the revised version is effective from 1st October 2017) and Secretarial Standard on Dividend (SS-3) is effective from 1st January 2018 for voluntary adoption by the corporates.

Simultaneously, with a view to facilitate compliance and smooth implementation of the SS-1 and SS-2, Guidance Notes thereon were brought out. The Guidance Notes, besides explaining the procedural and practical aspects, integrate the responses to various issues/queries raised by the stakeholders. However, improvement is a continuous process and equally applicable to the Secretarial Standards and the Guidance Notes.

**Keeping that in view, the Institute of Company Secretaries of India (ICSI) has decided to compile the various situations/issues which require clarification or need to be addressed while bringing out the next revised version. For this purpose, the Institute is organising a “Competition on Secretarial Standards” for Members. The objective is to test the applicability of the Secretarial Standards under various situations that the corporates experience in their functioning. This will bring out issues which need to be addressed /clarified in the Secretarial Standards/Guidance Notes to facilitate their compliance in true letter and spirit.**

### How to Participate

1. Login to ICSI web application: <http://www.icsi.in/CIC/MemberLogin.aspx>
2. Login credentials: Membership No. and date of birth in format (DD/MM/YYYY).
3. Select the Secretarial Standard (SS-1/SS-2/SS-3).
4. Select the paragraph/sub-paragraph of the respective Secretarial Standards for submission of feedback/Issues.
5. Give your suggestion, if any, along with rationale. A Member may give feedback on multiple issues.
6. After login, a Member may check the suggestion/issues already submitted in respect of the selected paragraph of SS.

*(Note: Before submission of queries/ situations/issues on SS-1 & SS-2, the Members are advised to refer to the Guidance Notes available at <https://www.icsi.edu/ssb/Home.aspx>, as many aspects are already clarified in the respective Guidance Note)*

**Recognition:** Selected situations/queries with their answers will be published in Chartered Secretary along with the name of the contributor.

### Last Date

The Competition shall remain open from 1st August, 2018 to 31st August, 2018.

Warm regards,

**(CS Dinesh C. Arora)**

Secretary, ICSI



# 6

## MISCELLANEOUS CORNER



- ETHICS & SUSTAINABILITY CORNER
- ANNOUNCEMENT
- GST CORNER
- CG CORNER
- ICSI GLOBAL CONNECT
- FOUNDATION PROGRAMME [SYLLABUS – 2017] DECEMBER, 2018, TIME-TABLE
- COMPANY SECRETARIES EXAMINATIONS, DECEMBER, 2018
- NOTICE UNDER RULES 6 AND 21 READ WITH CLAUSE (3) OF SCHEDULE 2 OF THE COMPANY SECRETARIES (ELECTION TO THE COUNCIL) RULES, 2006.
- IMMEDIATE AND URGENT ELECTION MATTER
- NATIONAL CONVENTION OF COMPANY SECRETARIES (46TH EDITION)

# 'ETHICS' - the Foundation of a LEADER- Part II

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

'Leader' - it is a word, a position, a label, a responsibility and much more. Last month, we had seen some important aspects of leadership. However, as it takes a lot more to be a leader, let us discuss on some more characteristics of a leader.

## > Always a Learner, always an Innovator

A good leader is in a constant growth mode and learning is the bedrock of progressing. He never repeats the same day twice! He strives to seek new experiences and he is in a constant self-introspection mode.

A leader is always open to new ideas and ways to do things. It doesn't mean that a leader is a copier, but he always notices and learns from the specialities of others, those who are ahead of him and those who are lagging behind.

## > Mature in dealing with criticism and praise

A leader doesn't work for praise and so is not affected whether he receives it or not. Praise is not his destination. So even if he receives it, he doesn't rest there and deals with it with maturity. He takes criticism as a means to improve and praise as responsibility to sustain. More than a sense of appreciation, it is this sense of responsibility that makes him achieve more and sustain what has already been achieved.

## > Master Consciousness & Leading by Example

Leadership is synonymous to Master Consciousness, but the way it is perceived is different. A leader is sometimes mistaken as a master who instructs. But a leader is someone who leads by example and transforms the 'saying' into 'doing'. He is a master of his thinking, his words and actions. He can never blame the situation or people for his actions or reactions as doing so is a victim consciousness. He sets the trend right by being a master and not a victim. For this, a leader needs rock- strong determination that cannot be shaken by circumstances, people, failures etc.

## > Inner Powers

Certain powers are required by a leader to execute leadership.

### ● Catching Power

A leader requires the powers to execute the task or get it executed, but before that he needs the power to identify the right opportunity, the right resource to accomplish the opportunity and the right time to do so. This power of a leader can be understood as a 'catching power'. Just like in a cricket match, a lost catch can lead to a serious loss of victory, similarly, every situation is like an opportunity to catch for a leader and a lost catch can be irreplaceable.

### ● Decision- making Power

After the opportunity is taken, a leader has to make a right decision so as to encash the opportunity. In this regard, it is important to exercise the judgment power or decision- making power. Consider, that you are travelling on a highway and instead of taking a right turn, you continue to go further on the highway. After a while, you realize that you have gone further ahead by not taking the right turn. You may ask someone about the right way to your destination, but it is not necessary that the person you are consulting knows the right way. After a few iterations, you might find a person who is well aware about the place you seek to land and tells you the point on highway from where you can take a 'U'-turn or follow another route. Thank God it was a highway! Even though much of time has been wasted in going wrong without realizing that you have gone wrong, then in realizing that you have gone wrong, then finding the right person who can guide us on the right path, and then going to the point from where we can come on track to reach the right destination and then finally coming and proceeding on the right track. However, in life, there might not be a 'U'-turn or chance to go back. Therefore, a decision taken by a leader could be a decision for a lifetime.

Usually, we look for immediate or short term benefits while taking a decision or making a judgement and either don't look for, or understand/ realize the long term benefits. This 'myopia' can cause leadership hazards in real life situations. Thus, in order to take this right decision, a leader must have great foresight that understands the difference between short term and long term benefits and makes a judgement by proper evaluation of both.

### ● Power to Face

Along with the power to take the right decision, a leader requires enormous power to face the result of the decision or sustaining on the right decision too, which requires much more power than to just take a decision at once.

### ● Controlling Power



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More than a sense of appreciation, it is this sense of responsibility that makes him achieve more and sustain what has already been achieved.

A leader transforms the 'saying' into 'doing'.

A leader understands the difference between short term and long term benefits and makes a judgement by proper evaluation of both.

It is desired by a leader that the team remains in order or control not only when he is present to look after the order, but also in his absentia- which can only be brought in action when self-control is infused in every individual. And to so, a leader must know what it takes to earn this self-control. Thus, a leader must have enough controlling power. Controlling power doesn't have much to do with controlling others than it has to do with controlling the self and enabling others to learn and exercise this self-control. Using this power, he can control his thoughts, his perceptions, his feelings, his words, his actions and reactions. Only when he knows how to deal with himself, can he deal with the rest of the world and bring it order.

Moreover, every external authority, which comes naturally to a leader, has to be supplemented with a balance of inner power. If authority or power isn't executed with inner powers, it might lead to development of ego, resulting in a roadblock for the success of a leader.

➤ **Open minded and Intuitive**

While a leader must have a learning attitude and excellent listening skills, through which he is able to listen and understand what the words and minds of his people or team mean; he must also have a great intuition. A leader always believes in creating more leaders and thus gives equal opportunity to everyone in the team to share their views and give opinions. Also, being open minded makes a leader available to all and soon earns trust and respect of his team. However, it is of utmost importance for the leader to develop a strong and sharp intuition, which always guides the leader and helps him choose the right opinion. While he is open to new ideas and ways to doing things, his intuition always guides him and warns against any wrong intentions or decisions.

➤ **Integrity**

Integrity for a leader is like water for life. It is not just essential for a leader, but also indicative of true leadership. It has been a common trait to all the great leaders that the world has seen. Integrity can be understood as:

The state of being whole and undivided- Sometimes we are unable to understand ourselves completely and hence become dependent on the images/ labels/ perceptions of what others hold for us. We start believing in what they believe of us. Due to this, much of our identity remains unexplored. Under such circumstances, we start comparing, hiding, proving our identity- that we are better than others, without even realizing that this is an incomplete as well as adulterated identity. This makes us become dependent on short term achievements and materialism to remain 'on the top' while the depths of our identity still remain unexplored. For a leader, it is thus important to know, believe and become his true and whole self so that he is not left at the mercy of illusions of short term success and the opinions of others about him, and can be secure of his identity, which is not as temporary as this body or name/ fame/ position/ materials acquired by this temporary identity; but as permanent as the energy which is the driving force within this body, which is intrinsically pure, powerful and complete, if understood and manifested in its true sense. The quality of being uncompromisingly honest and having strong moral principles- We all have a certain code of conduct and value system which we believe is right. But sometimes because we fail to recognize the strength of that value or fail to use it as our power or feel that no one else values those values, we tend to give up and adopt unethical means as shorter ways to reach our destination. But it is also true, as we approach nearer to our destination by following these unethical means, we are either hallucinated by the illusion of success or the real destination seems drifting farther away. Undoubtedly, a leader must always support what is right, whether or not others are supporting it. Here, we must remember that we chose our values because we liked them and wanted to abide by them; not because we wanted others to praise us for that value or follow the same. So, why should we give up those values now if others are not abiding by them or following them. They are 'my' values and to sustain them is 'my' responsibility.

It is said that initially you have to support your values and ethics so that later in life they may emerge strong to support you at the time of crisis or tests of life. For instance, if one has remained honest for his whole lifetime, under any and every circumstance, then during the hard phase of life, his image of being an honest person, which has helped him earn the trust of all, will safeguard him from any undue allegations and gather the support of those who have secured their trust in him. And at that point of life, it feels as if it was truly worth living by that value throughout life.

➤ **Detached involvement**

As a leader, one has to be aware of each and every proceeding in the team, has to have the knowledge of whatever is going on in the team. Only then will he be able to understand and develop better means to do the same task and also solve the issues, if any, in the team. But along with this ability comes the necessity of remaining unaffected by the ups and downs. This quality of value of a leader is known as 'detached involvement'. If the leader starts getting mentally and



Initially you have to support your values and ethics so that later in life they may emerge strong to support you at the time of crisis or tests of life.



Spirituality is a natural way to deepen our understanding of ourselves and others, which includes knowing our strengths and short-comings.

emotional affected by issues within the team, loses his nerves out of anger or fear, feels the pressure of the problem, then much of his time and energy will be lost bearing the mental and emotional burden and further more time and energy will be needed in coming back to the normal level; while during the time of such crisis, demonstration of extra-ordinary skills was required.

Thus, this value reflects the compassionate, sensible, responsible and humane side of the leader, who is strong enough to support his team by remaining mentally and emotionally detached or unaffected by the effect and pressure of people and situations.

It is certain that not all of us who are leaders or aspire to become one, have all of these and other qualities that make a person a leader. But it is equally certain that we do have some or the other combination of these. If only we have a means to build up on these values or qualities, it would not be difficult for us to acquire the others, as these values or qualities are complementary to each other. More-so, they are our intrinsic virtues, locked deep within the layers of acquired personality, which we have chosen to adopt to suit the external environment and ensure the survival of the fittest, giving rise to never ending competition. Whereas, a big question remains unanswered- whether we are holistically fit enough? And is our purpose merely to survive or to excel?

Spirituality provides us a way to explore answers to many of such questions. It is a natural way to deepen our understanding of ourselves and others, which includes knowing our strengths and short-comings. If while walking on a road, we are aware of the route, it will help us to reach our destination without mistake, in the shortest and easiest way. Also, when we know the route and condition of the road well, we are also aware of the potholes on the road. This knowledge helps us avoid those potholes until they are filled and repaired, and we may reach our destination safely. Similar is the boon that spirituality provides us. It not only helps us sharpen our qualities to achieve excellence in whatever we do, while otherwise we would have been busy in trying to acquire those qualities not knowing that we had ourselves locked them up within, but also makes us aware of our limitations, so that we don't end up triggering them in situations where they could lead to our serious loss. Meanwhile, practise of Rajyoga Meditation allows us to fill- up or repair our inner defects and convert them into our strengths, sculpting a good and able leader.



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## APPOINTMENT



### PASUPATI ACRYLON LIMITED

We require following personnel for our Corporate Office New Delhi.

#### **COMPANAY SECRETARY CUM A.G.M. (ACCOUNTS & FINANCE):-**

Candidate should be Company Secretary and Chartered Accountant, having experience of around 10 years in the field of Accounts/Finance/Taxation (Direct/Indirect) and Secretarial/Legal (Deal's with the MCA /Stock Exchange/Company Law Matters).

Interested Candidates may send their resume along with Current CTC through email or by post:-

**HEAD CORPORATE-HR  
PASUPATI ACRYLON LIMITED  
M-14, CONNAUGHT CIRCUS,  
(MIDDLE CIRCLE), NEW DELHI-110 001  
E-mail : hrd@pasupatiacrylon.com  
http : / / www . pasupatiacrylon . com**

PASUPATI ACRYLON LTD.

1. **On GST Day, PM Narendra Modi lauds Unified Tax for bringing 'Growth and Simplicity'**
  - On the first anniversary of the Goods and Services Tax (GST) regime, Prime Minister Narendra Modi hailed the tax as a tool that has brought growth, simplicity and transparency.
  - "It is boosting formalisation, enhancing productivity, furthering 'Ease of Doing Business', benefiting small and medium enterprises," the prime minister tweeted.
2. **With GST turning one, collections to top Rs 13 trillion in Financial Year' 19: Piyush Goyal**
  - Finance Minister Piyush Goyal on GST Day celebration exuded confidence that GST collections will exceed Rs 13 trillion in the current fiscal (i.e. average monthly GST collection will cross Rs 1.10 trillion) and with increased revenues there will be further scope to rationalise the tax rates.
  - He said with more number of people coming under the tax net, and successful implementation of e-way bill system, there will be scope for rationalization of tax slabs.
3. **Piyush Goyal advises consumers to ask for bills to check tax evasion; helpline for complaints in the works**
  - Seeking consumers' participation in curbing tax evasion, Finance Minister Piyush Goyal on the eve of completion of one year of GST rollout appealed to them to insist on bill for every purchase saying it would help the government check evasion and reduce tax rate on each item by as much as 4-5 percent.
  - He further said the government would start a three-digit consumer helpline number to enable them to lodge complaint against erring traders or any other kind of tax evasion.
  - He also assured small businesses; if they face any trouble, then they can write to him and it would be resolved.
  - He said amendments would be introduced to the GST law in monsoon session to increase composition scheme threshold from the current Rs 1 crore.
4. **GST will have a long-term impact on country's economy, says Arun Jaitley**
  - Stressing that India has been able to implement the major indirect tax reform GST in the least disruptive manner, Union Minister Arun Jaitley on the eve of completion of one year of GST rollout said best of the new regime in terms of contribution to the society is yet to come.
  - The smooth manner in which the changeover has taken place is almost unprecedented anywhere in the world. I'm sure we have seen the first year where we have seen effective gains this is only the short-term or at best medium term of GST that the best of GST in terms of its contribution to society is yet to come.
  - Look at the GST performance in the first nine months from July, 2017 to March, 2018, and add the entire amount collected - the CGST, SGST, IGST and the compensation cess, to get the sum total of the GST collection. In the very first nine months, the total amount collected is Rs. 8.2 lakh crore - Rs.11 lakh crores if annualised, yielding a revenue growth of 11.9 percent i.e. a tax buoyancy of 1.22, which has historically been achieved very rarely for indirect taxes and this inspite rates being lowered for consumers. As more and more anti-evasion steps will be put in place, the tax buoyancy will increase further. The GST will strengthen the country's tax base for the medium term, adding up to an additional 1.5 percentage points of GDP.
5. **GST led to improved efficiency, moderated Retail Inflation: CII Survey**
  - A survey of over 200 businesses on the one year of GST has said 83 per cent respondents see the new indirect tax regime a step in the right direction and 65 per cent are satisfied with its overall implementation, despite some teething problems'.
  - According to a CII report on the transition to the Goods and Services Tax (GST), its implementation led to increased efficiency for businesses by reducing their transportation time, on account of absence of state barriers.
  - Significantly, one-third of the respondents witnessed a downward movement in the wholesale prices of their supplies, whereas nearly 30 per cent witnessed a fall in the retail prices of supplies, amid concerns that the tax regime may lead to a spike in inflation.
  - A majority of respondents witnessed no change in their supply prices.
6. **'Mercedes and Milk cannot have same tax': PM Modi rules out single rate under GST.**
  - Prime Minister Narendra Modi ruled out a single tax rate under the GST, saying Mercedes car and milk cannot be taxed at the same rate, saying the Congress' demand for a uniform 18 per cent rate would lead to a spike in food and essential items' taxation.
  - "It would have been very simple to have just one slab but it would have meant we could not have food items at zero per cent tax rate. Can we have milk and Mercedes at the same rate? So, when our friends in Congress say that they will have just one GST rate, they are effectively saying they will tax food items and commodities, which are currently at zero or 5 per cent, at 18 per cent".
7. **GST is not all that bad, say small businesses**
  - India's over 7 crore micro, small and medium enterprises were expected to be hit the hardest when the Goods and Services Tax was implemented on July 1, 2017. A year later, some of them are not as pessimistic. Businesses say that while the new indirect tax regime took some time getting used too, its benefits cannot be ignored.
  - SMEs don't have the manpower. It was difficult for them to visit different offices - VAT, excise, service tax etc - in the pre-GST regime. Now they are smoothly running their businesses. It has also helped them improve their turnover since all transactions are coming on their books says Chandrakant Salunkhe, President, SME Development Chamber of India.
  - They are also able to attract capital with improved balance sheets, he added.
8. **Maharashtra to increase E-Way Bill threshold to Rs 1 Lac from Rs 50,000**
  - "It is a day of celebration and I have good news for traders. The intra-state transport e-way bill limit will be revised (from the current Rs 50,000) to Rs 1 lakh," state Finance Minister Sudhir Mungantiwar said at a function organized to commemorate the first anniversary of the implementation of the Goods and Services Tax across the country.

### 9. Fuels to be under GST if revenue collections at Rs 1 Lakh Crore: Sushil Modi

- Bihar Deputy Chief Minister Sushil Kumar Modi has said that commodities such as petrol and diesel may be considered for bringing under the ambit of the GST, once the revenue collections stabilise beyond Rs 1 lakh crore per month.
- "I think that the time has not come (to consider the inclusion of petrol and diesel under the GST purview). It will take time," he said on the occasion of the Good and Service Tax implementation completing one year.

### 10. Bringing Petrol, Diesel Under GST Won't Lower Prices, Says Hasmukh Adhia

- Bringing petrol and diesel under the Goods and Services Tax won't reduce prices if the tax rates are kept revenue neutral and governments don't sacrifice revenues, said Finance and Revenue Secretary Hasmukh Adhia.
- "We must delink crude oil price increase from GST. GST isn't necessarily the solution to that," Adhia told.
- According to Adhia, taxing petrol and diesel and giving states the power to levy additional taxes may not have real benefits. "These are some options that can be discussed when the GST Council desires to include petrol and diesel under GST."

### 11. 'GST Revenues to stabilise by Year-end', Adhia.

- Adhia said GST collections will stabilise by the year-end and that GST monthly revenues will be below the Rs 1-lakh-crore-mark in the first few months of the current financial year. He expects revenues to rise significantly in the subsequent months. The reason, according to him, would be the rise in consumption during the festive season, which will bring average monthly GST collection to Rs 1 lakh crore.
- Adhia said although there's a need to further rationalize GST rates, it isn't immediate. The government must look into costs involved and rationalize when revenues stabilise, he said. Currently, there are no major tax rate reduction proposals the government is planning, he added.

### 12. UP cement traders demand cut in GST rate; hike in e-way bill threshold

- Uttar Pradesh cement traders have demanded that the GST on cement be cut from existing 28% to 18% to boost the housing sector by making the commodity more affordable.
- UP Cement Dealers Association (UPCDA) has written to GST Council to cut the tax rate with immediate effect.
- Besides, it has also demanded that the newly introduced e-way bill threshold be hiked from Rs 50,000 to Rs 100,000 to allow easy movement of goods.

### 13. Cineplex owners may move SC over subsuming of entertainment tax into GST

- The players had moved the high court in July 2017. "It has been a year now, but the issue is being dragged with no final order coming. We are planning to move the Supreme Court now," Abhishek Rastogi, who argued the case in the high court, said.
- The cineplex owners had gone to the high court on the ground that the Uttar Pradesh government promised to allow multiplexes and cine malls retain a portion of entertainment tax for five years, on the basis of investments they make, but that was broken after the tax

was subsumed into GST.

### 14. Exporters get Delhi HC relief over integrated goods and services tax (IGST)

- Abhishek Rastogi, partner, Khaitan & Co, who argued the case in the court, said a petition was filed, challenging the move to impose IGST on advance authorisation scheme for exporters.
- An advance authorisation is issued to allow duty-free import of inputs, which are physically incorporated in export product.
- While upfront exemption was extended only to basic Customs duty, exporters were required to pay IGST on imports.
- Hearing the case, the court had issued an interim order to prohibit charging of IGST on imports under the scheme.
- Following this, the GST Council had amended the rules in October to this effect.
- However, an issue still remained as to what happened to those who had not paid IGST on imports between July and October.
- Various petitions came up for final hearing before the court. The court upheld the eligibility of the benefit with retrospective effect from July, said Rastogi. The court observed the most appropriate course of action for the authorities would be to verify fulfilment of obligations under advance authorisation licences and assess cases accordingly, instead of charging IGST on imports, he said.

### 15. GST on international air tickets wrong, breaches global agreements: IATA

- Under the GST regime, tax at the rate of 5% and 12% is levied on economy and business class air tickets, respectively
- Global airlines' body IATA has strongly opposed levying of GST on international air tickets, dubbing the taxation as "wrong" as it contravenes many global agreements to which India is a party.
- The International Air Transport Association (IATA) represents more than 280 airlines in different parts of the world. Its members include Air India, Jet Airways and Vistara.

### 16. Government looking at proposal to include mining royalty as input cost under GST

- The mines ministry is looking at the industry's proposal to classify royalties from mines as input cost under the Goods and Services Tax, a top official said.
- Once royalties are considered as input cost, then entities would be able to claim the benefit of input tax credit under the indirect tax regime.

### 17. GST E-Way Bill: a glitch, a penalty, and the Truckers' strike

- Recently, Gati Kintetsu Express Pvt. Ltd., a leading transport and courier company had failed to upload mandatory information (Part B) in the Goods and Services Tax e-way bills at the time of inter-state movement of goods, on account of an alleged technical error on the e-way bill portal.
- Due to this, the authorities in Madhya Pradesh initiated penalty proceedings of approximately Rs 1.32 crore against the company, alleging non-compliance with requirements of the e-way bill legislation.
- Desiring relief against the penalty, the company filed a

writ petition with the Madhya Pradesh High Court.

- The company pleaded that there was no ill-intention on its part to defy the law and placed reliance on the Division Bench decision of the Allahabad High Court in the case of VSL Alloys (India) Pvt. Ltd. vs. State of U.P. & others. In that case, the petitioner was provided relief from a penalty on the non-filing of Part B of the e-way bill.
  - The Madhya Pradesh High Court dismissed Gati Kintetsu's writ petition of the company stating that the facts of both cases differ extensively since the distance was within 50 kilometres (which would not require the filing of Part B) for VSL as against 1,200 kilometres in the Gati Kintetsu case.
  - As a result of the dismissal of the writ petition by the Madhya Pradesh High Court, the All India Motor Transport Congress has initiated an indefinite pan-India transportation strike from July 20, 2018.
- 18. Key decisions taken by the GST Council in its 28th Meeting held on July 21, 2018 at New Delhi, chaired by Shri Piyush Goyal**
- Rates for 17 white goods including -- Washing machine, Refrigerators, TV, Video games, Vacuum cleaners, Trailers, Juicer mixer, Grinders, Shavers & Hair driers, water cooler, water heaters, Lithium iron batteries, electric iron -- cut by 10 per cent from 28 per cent to 18 per cent. GST rate of 18% will be applicable to TVs up to 68 cm (27 inch) in size.
  - Sanitary napkins to get cheaper as it has been put under exempted category. Napkins were taxed at 12 per cent earlier.
  - Simpler return filing process approved. Quarterly returns for business turnover up to Rs 5 crore instead of monthly filings. However, tax payment would be monthly. Nearly 93 per cent traders and small business will get benefited from this.
  - Exemption limit for traders in Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand to be increased from Rs 10 lakh to 20 lakh .
  - Hotels to be taxed on actual tariff basis not on declared tariff.
  - Rates on paints, wall putty and Varnish down to 18 per cent from 28 per cent.
  - Footwears having retail price upto Rs 1,000 per pair to be taxed at 5 per cent.
  - Ethanol oil for oil companies to be taxed at 5 per cent in place of 18 per cent earlier.
  - GST rates for all leather items reduced to 18 per cent from 28 per cent.
  - GST rates cut to 18% for special purpose vehicles, work truck, trailers.
  - Rates on scents, toilet spray now under 18 per cent slab.
  - Marbles, stone and wood deities get exemption. Rakhis, fortified milk also exempted.
  - No decision on sugar cess, to be decided in next meeting.
  - GST on bamboo flooring put under 12 per cent category.
  - Handicraft items to now be taxed at 12 per cent.
  - GST on handbags, jewellery box, wooden box for paintings, artware of glass, stone endeavour, ornamental framed mirrors, handmade lamps etc reduced to 12%
  - Goods and Services Tax on imported urea reduced to

5%.

- GST council has cleared about 46 amendments which will be passed in Parliament.
- Soon RFID tags will be introduced with Goods and Services Tax Network (GSTN) for transporters to reduce harassment of transporters

**19. GST Council Meet: Now, only 35 Goods in 28% bracket**

- The GST Council has pruned the 28 per cent slab by cutting tax rates on 191 goods over the last one year, leaving just 35 items, including AC, digital camera, video recorders, dish washing machine and automobiles, in the highest tax bracket. There were around 226 goods in the 28 per cent category when Goods and Services Tax (GST) was implemented on July 1, 2017. Over the last one year, the Council, chaired by Union Finance Minister and comprising state ministers, has slashed rates in 191 items.
- The 35 goods left in highest slab include cement, automobile parts, tyres, automobile equipment, motor vehicles, yachts, aircraft, aerated drinks, betting and demerit items like tobacco, cigarette and pan masala. Experts said going forward as the revenues stabilise, the Council may look at further rationalisation of the 28 per cent slab, to restrict the highest tax slab to super luxury and sin goods.

**20. Online retailers face audit on extra GST collected after rate cut**

- The taxman will audit all major e-commerce companies to check if they collected extra goods and services tax even after the GST Council cut rates on a range of products.
- The National Anti-Profitteering Authority—constituted under the GST—in a recent judgment directed the Director General of Audit at the CBIC to conduct the audit. It will have to submit the findings to the authority, according to an order uploaded on its website.
- A recent complaint filed with the authority against Flipkart said India's largest online retailer had charged 28 percent GST on an almirah. At the time the product was delivered, the levy on it was reduced to 18 percent in November, and the invoice had the lower tax rate.
- The extra GST collected on the item was refunded by the supplier of the almirah, Godrej and Boyce, to the buyer. The authority gave Flipkart a clean chit.
- The online retailer, however, informed it that there were 7,254 such cases in which GST collected was higher at the time of booking but was reduced when the item was delivered. Flipkart said it has started refunding the differential amount as per instructions of the sellers.
- The authority's order asks Flipkart to refund the excess tax collected without delay.

**21. Recent GST rate cut is credit negative, revenue may take 0.08% hit: Moody's**

- Rating agency Moody's said the recent GST rate cuts on 88 items will weigh on government's revenue collection and is credit negative as it will put pressure on efforts of fiscal consolidation.
- Moody's estimate revenue loss from the most recent tax cuts to be about 0.04 per cent-0.08 per cent of GDP annually.

**22. MNCs cite vague reasons for not passing on GST rate cut benefits**

- MNCs which were pulled up for not cutting prices post GST implementation have argued before the anti-profiteering authority that prices of some products could not be lowered as there was difficulty in adjusting them to decimal points.
- The authority, in turn, has asked these MNCs why they could not adjust the quantity so that the benefit of GST rate cut could be passed on to the consumers.
- The authority, sources said, asked the Multinational Companies (MNCs) to follow the rules laid down in The Legal Metrology Act while fixing the price to the nearest decimal point.

### 23. J&K High Court notices to Centre, GST Council and State Govt. over refunds

- The Jammu and Kashmir High Court issued notices to the Centre, the state government and the GST Council over reduction in refunds of the taxes paid after the new indirect tax system was rolled out.
- Companies such as Jindal Drugs have moved court saying there are less refunds under the GST system for inter-state movement of goods than was under the previous regime.
- An order in the case may have ramifications for other states such as Himachal Pradesh, Uttarakhand and Sikkim which have incentives schemes. J&K had come out with its industrial policy in 2002, promising 100 per cent refunds on excise duty paid for 10 years to companies setting up manufacturing units in the state. This was reduced to 75 per cent, against which petitions were filed in courts. The case is pending in the Supreme Court. However, under the GST regime, refunds for intra-state movement of goods were reduced to 29 per cent of the integrated GST (IGST) paid.

### 24. AAR of Maharashtra rules out GST refund for post-sales discounts

- In a setback to the common market practice of trade discounts, the Authority for Advance Rulings (AAR) of Maharashtra has ruled out a goods and services tax (GST) refund in the case of post-sales discounts offered by manufacturers to dealers.
- The case pertains to UltraTech Cement, which sought clarity over the possibility of GST refund in the case of discount offered to its dealers after sale. The move is expected to result in a slew of litigation and prompt the industry to re-examine the discount schemes offered to liquidate old inventories or on bulk sales.
- The applicant, UltraTech Cement, cites an example where a dealer has to sell a 50 kg cement bag to the final customer at Rs 295, against the original purchase price of Rs 300. The Rs 5 rate difference is compensated for the dealer by the manufacturer.
- “Based on the trade practice and past history, the dealer is aware that there will be compensation in the form of rate difference or trade discount in case of significant correction of prices,” it said. However, AAR ruled that according to GST law, the discount given after the goods have been sold has to be established in terms of agreement signed before or at the time of sale of goods.
- This means that the discount to be given has to be mentioned in the terms of the agreement entered into at the time of sale. “The wordings of section 15 (3) (b) (i) of the CGST Act clearly states that the quantum of discount

given after the supply of goods has taken place has to be there in the agreement. It cannot be open ended,” said AAR.

### 25. Anti-profiteering authority asks inputs from Airtel, Indigo on GST benefits

- The GST anti-profiteering authority has sought inputs from telecom operator Bharti Airtel and budget airline Indigo on whether the goods and services tax (GST) or credit allowed on inputs in the new regime has created room for reduction in prices.
- Taking suo-moto cognisance of the impact of GST on prices in telecom and aviation sector, the National Anti-Profiteering Authority (NAA) has asked the market leaders in the sectors to calculate the input tax credit (ITC) benefits that have accrued to them and whether it was enough to pass on to end-consumers, a source told PTI.

### 26. CBIC issues GST refunds to the tune of Rs 543 billion up to July

- By the end of July 31, the total amount of IGST refund claims disposed of stood at Rs 298.29 billion. During the third refund fortnight alone, IGST refunds to the tune of Rs 33.91 billion were sanctioned.

### 27. GST collections rise to Rs 964.83 billion in July, 6.6 million GSTR 3B forms filed

- The revenue collection figures do not reflect the impact of the recent tax rate cuts on 88 items.
- GST collections rose to Rs 964.83 billion in July from Rs 956.1 billion mopped up in the previous month.
- Of this, collection on account or Central GST is Rs 158.77 billion, State GST is Rs 222.93 billion, Integrated GST is Rs 499.51 billion and Cess is Rs 83.62 billion (including Rs 7.94 billion collected on imports).
- The total number of sales return GSTR 3B filed for the month of July is 6.6 million compared to 6.46 million filed in June.

### 28. GST evasion worth Rs 30 billion detected in 1 year: Govt. informs Parliament

- In a written reply, Minister of State for Finance Shiv Pratap Shukla said between July 2017 and June 2018, a total of 1,205 cases of tax evasion were detected involving Rs 30.26 billion.
- “Nature of cases include misuse of Input Tax credit, misdeclaration in the GST returns, tax declared in GST returns and not paid and cases where GST returns not filed and tax not paid,” he said.
- In a separate reply, Shukla said a total of 487 cases involving an amount of Rs 13.2 billion have been detected in the months of May and June this year.
- As many as 3.67 per cent of the registered tax payers contribute about 79.52 per cent of total tax collected.
- Businesses with turnover of over Rs 5 billion account for 79.53 per cent of the total taxes collected by the government, he said.

### 29. Govt. unveils new draft GST returns forms, seeks public comments

- The GST Council has approved the key features & new formats of the GST Returns in its 28th meeting held on 21st July, 2018 and put the same in public domain for seeking feedback & suggestions from stakeholders till 31st August, 2018.



## CORPORATE GOVERNANCE CORNER

### Developments – August, 2018

#### United Kingdom: Financial Reporting Council publishes new edition of the UK Corporate Governance Code

The Financial Reporting Council (FRC) released the 2018 UK Corporate Governance Code. An updated edition of the FRC's Guidance on Board Effectiveness has also been published.

This Code puts the relationships between companies and stakeholders at the heart of long-term sustainable growth in the UK economy. The new, shorter and sharper Code is the product of extensive consultation.

This Code places emphasis on businesses building trust by forging strong relationships with key stakeholders and providing meaningful reporting to the stakeholders. It recommends the companies to establish a corporate culture that is aligned with the company's purpose, business strategy, promotes integrity and values diversity.

A summary of the key changes made in this new edition include:

- **Workforce and stakeholders:** There is a new provision to enable greater board engagement with the workforce to understand their views. The Code asks boards to describe how they have considered the interests of stakeholders when performing their duty.
- **Culture:** Boards are asked to create a culture which aligns to company's values with strategy and to assess how they preserve value over the long-term.
- **Succession and diversity:** To ensure that the boards have the right mix of skills and experience, constructive challenge and to promote diversity, the new Code emphasises the need to refresh boards and undertake succession planning. The new Code strengthens the role of the nomination committee on succession planning and establishing a diverse board. It identifies the importance of external board evaluation for all companies. Nomination committee reports should include details of the contact the external board evaluator has had with the board and individual directors.
- **Remuneration:** To address public concern over executive remuneration, the new Code emphasises that remuneration committees should take into account workforce remuneration and related policies when setting director remuneration. Importantly formulaic calculations of performance-related pay should be rejected. Remuneration committees should apply discretion when the resulting outcome is not justified.

The new Code is available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF>

#### Nigeria: Financial Reporting Council consultation on the Nigerian Code of Corporate Governance

The Financial Reporting Council of Nigeria has released the exposure draft of the Nigerian Code of Corporate Governance for consultation. The Code will operate on the basis of 'apply and explain' and replaces the Code published earlier but subsequently withdrawn in 2017. The new Code contains 28 Principles, the application of which by companies is assumed, together with the practices recommended for implementing the Principles. The Council has invited comments on the Code.

The Code is available at: [https://drive.google.com/file/d/1Cprp-wyrcGCe\\_-cM08azdrp1659yw9aN/view](https://drive.google.com/file/d/1Cprp-wyrcGCe_-cM08azdrp1659yw9aN/view)

### APPOINTMENT



#### Naini Aerospace Limited Naini, Allahabad

Naini Aerospace Limited having its registered office at 15/1, Cubbon Road, Bangalore-56001 with its factory at UPSIDC Industrial Area, Post-TSL, Naini, Allahabad- 211010 (UP), requires a result-oriented Company Secretary.

The candidate should be a qualified Company Secretary with minimum 5 years of experience preferably as a Company Secretary in a Company. The place of posting will be the factory premises at Naini,

Allahabad. The appointment is on contract basis for a period of two years which may be extended for further period at mutually agreed terms and conditions.

Interested candidates can email their CVs to: [nael10naini@gmail.com](mailto:nael10naini@gmail.com)

HR Head

## APPOINTMENTS

Advertisement for Post of  
**Company Secretary**

Last Date of Submission of Applications:

**25 August, 2018**

**Reqd. Whole time  
 Company Secretary  
 Pref. married female & 3 yrs exp.  
 Shri Radhey Intermediaries at Delhi**

[sripl2012@gmail.com](mailto:sripl2012@gmail.com)

Mob. : 8979779783

Advertisement for Post of  
**Company Secretary**

Last Date of Submission of Applications:

**25 August, 2018**

**Reqd. Whole time  
 Company Secretary  
 Pref. married female & 3 yrs exp.  
 Kanha Enterprises at Delhi**

[kanha.enter01@gmail.com](mailto:kanha.enter01@gmail.com)

Mob. : 9837775112

**AEI Power India Private Limited having its registered office at Sr. No 61/1/2, Kohinoor Estate, Office No. C-3, Mula Road, Khadki, Pune MH 411003 requires dynamic, diligent and results oriented Company Secretary.**

**The Candidate should be a qualified Company Secretary with 3 Years of experience preferably in a Company or similar industry.**

**Candidate should be capable of liaising with various Government Authorities and shall have flair for writing, drafting and vetting of legal documents, agreements, contracts, MOU. Drafting and filing of various returns with different Government Authorities.**

**Interested candidates fulfilling the above criteria can email their CVs in English to Cindy.pitrat@aei.com**

**Fischer Building Materials India Private Limited having its registered office at Level IV, Unit No. 401, Prestige Garnet, Ulsoor Road, Bangalore - 560042 requires dynamic, diligent & result oriented Company Secretary.**

**The Candidate should be a qualified Company Secretary with 3 Years of experience preferably worked in Company or similar industry.**

**Candidate should be capable of liaising with various Government Authorities and shall have flair for writing, drafting and vetting of legal documents, agreements, contracts, MOU. Drafting and filing of various returns with different Government Authorities.**

**Interested candidates fulfilling the above criteria can email their CVs @Sumanta.Brahmachari@fischer.in.**

## APPOINTMENT

### ARE YOU AN ACS & LLB WITH EXPERIENCE IN LAW, INTERPRETATION AND DRAFTING? DO YOU HAVE A FLAIR FOR ACADEMICS?

A renowned PCS firm based in South Mumbai is looking for a Knowledge Associate. The firm currently specializes in Companies Act since 1980 and IBC since 2016 and is looking to expand its offering in SEBI matters to a level of specialization.

#### ➤ Work profile:-

- Audit of firm's outputs and feedback reporting to PCS
- Resolving law and interpretation-based queries from clients
- Problem-solving
- Making presentations on latest amendments
- Similar assignments in the firm's area of practice

#### ➤ Candidate profile:-

- CS and LLB must. Preference given to merit listers and / or ACS with relevant experience.
- 0-3 years of experience. Freshers with desired skill set can apply.
- Command over company law and legal interpretation
- Exemplary knowledge of both, the Companies Act and SEBI and excellent drafting skills. S/he will have to hone her / his knowledge of IBC within six months of appointment.
- Team player

#### ➤ Remuneration:- Upto INR 6 lakhs p.a.

#### ➤ How to apply:- Please email your resume along with a statement explaining your suitability for this post to [ketan@sldco.in](mailto:ketan@sldco.in) and [admin@sldco.in](mailto:admin@sldco.in).



## Institute of Actuaries of India

# Actuarial Common Entrance Test

# ACET

## DECEMBER 2018

### Who is an Actuary?

An Actuary is a business professional who analyzes the financial consequences of risk. This is a niche profession with strict standards for qualifying and is also a global profession as it is recognized in most of the countries. The actuaries attract competitive salaries globally.

### Who can Apply?

- Have a degree in or are studying for **Mathematical Sciences: Maths, Statistics, Econometrics** or any other
- An **Engineer** or studying for it
- A **Management Graduate** or studying for it
- A **Chartered Accountant, Cost Accountant** or a **Company Secretary** or studying for any of these
- Have a degree in **Finance** or studying for it, or any other, but you have love for Mathematics and skills in Numeracy
- With minimum of **10+2** or even a maximum of a **Phd** in **Maths** or **Stats** or any other

### How to Apply?

Register online for ACET at  
[www.actuariesindia.org](http://www.actuariesindia.org)

### Exam Centres in 24 Cities of India

#### REGISTRATIONS START

16<sup>th</sup> August 2018

#### REGISTRATIONS CLOSE

31<sup>st</sup> October 2018

#### EXAMINATION DATE

15<sup>th</sup> December 2018

#### DATE OF RESULT

04<sup>th</sup> January 2019

#### NOTE:

On successful registration you will get one sample Question Paper and Solution under your login. After passing the ACET you can take admission as student member of IAI and pursue the actuarial course. The Institute also offers the Student Support Scheme to its student members.

Contact: 022 - 62433333/3337 Email: [acet@actuariesindia.org](mailto:acet@actuariesindia.org)

# ICSI Global Connect

ICSI, the largest body of Company Secretaries in the world, is playing a significant role in international cooperation amongst the professional bodies representing the profession of Company/Corporate Secretaries and Corporate Governance and which share common purpose and aspirations. The ICSI interface with Global bodies is summarized below:

Institute is member/linkage with the following International Bodies:

- a. Corporate Secretaries International Association (CSIA)
- b. International Corporate Governance Network (ICGN)
- c. Global Reporting Initiative (GRI)
- d. OECD
- e. Institute of Chartered Secretaries and Administrators
- f. Chartered Institute for Securities and Investment (CISI)
- g. Malaysian Association of Company Secretaries (MACS)

## a) Corporate Secretaries International Association (CSIA)

ICSI is one of the founding members of Corporate Secretaries International Association (CSIA). CSIA is a Global Body of Institutes engaged in development and regulation of the continuously growing profession of corporate secretaries, company secretaries, chartered secretaries, board secretaries and other governance professionals.

All CSIA members share a common interest in the promotion of good governance practices and enhancing the profile of professionals who serve as corporate secretaries and governance professionals. CSIA is also actively engaged in creating a global professional association enabling industry professionals globally to work more effectively towards shaping corporate governance and developing unified best practices. CSIA creates platform for governance professionals to promote best practices in Corporate Secretarial, Corporate Governance and Compliance Services with a vision to be 'The Global Voice of Corporate Secretaries and Governance Professionals'.

CS Makarand Lele, President ICSI has been elected as the Secretary of the Corporate Secretaries International Association (CSIA) in its Council Meeting held on April 20, 2018 at Hong Kong.

## b) International Corporate Governance Network (ICGN)

ICSI is actively participating in the activities of International Corporate Governance Network (ICGN) being a member. ICGN's mission is to promote effective standards of corporate

governance and investor stewardship to advance efficient markets and sustainable economies worldwide.

## c) Global Reporting Initiative (GRI)

The Global Reporting Initiative (GRI) is a non-profit organization that promotes economic, environmental and social sustainability. GRI provides all companies and organizations with a comprehensive sustainability reporting framework that is widely used around the world.

ICSI is an Organizational Stakeholders (OS) of Global Reporting Initiative (GRI). Organizational Stakeholders (OS) are at the core of the GRI network. The OS network includes representation from civil society, business, mediating institutions, academia, labor, public agencies and intergovernmental agencies.

## d) Organisation for Economic Co-operation and Development (OECD)

ICSI has been closely associated in the activities of OECD and had also co-hosted the OECD Asian Roundtable on Corporate Governance on "Fighting Abusive Related Party Transactions in Asia – Workshop on Implementation" in the year 2010 at New Delhi. The Institute representatives also regularly participate in the OECD Annual Asian Roundtable on Corporate Governance. Participation in OECD meeting improved the ties between ICSI and OECD and it helped create greater visibility about ICSI, its various activities and about the profession of Company Secretaries amongst International community.

## e) Institute of Chartered Secretaries and Administrators

The Institute of Chartered Secretaries and Administrators (ICSA) is a global qualifying organisation for Chartered Secretaries and Chartered Governance Professionals, whose broad skill set includes law, finance, governance, strategy development, risk management and compliance. With over 30,000 members working in over 80 countries, ICSA is having nine divisions worldwide.

## ICSI-ICSA London

The ICSI and ICSA-UK after satisfying the high standards of examination and appreciating each other's activities in promoting excellence in professional education entered into an arrangement of mutual benefit by signing an MOU in year 1998 which provides for the reciprocal exemptions of subjects as well as training requirements to the members of each other Institutes.

An ICSA-UK member may transfer his membership inter se its various divisions (Australia, Canada, Hong Kong, Malaysia, New Zealand, South Africa, Zimbabwe, Singapore) without clearing any additional examination. ICSI member securing the membership of

ICSA-UK and desires to shift base to another division, is now eligible to transfer ICSA-UK membership to the other division.

ICSI and ICSA is in the process of extending this MOU to its all divisions, to provide platform for ICSI members to directly interact with respective division of ICSA.

**f) Chartered Institute for Securities and Investment (CISI)**  
ICSI entered into an MOU with the Chartered Institute for Securities and Investment (CISI) - a professional body, offering progressive qualifications, training and membership for individuals in the securities and investment industry across all international markets. As the principal provider of qualifications, CISI offers individuals the opportunity to achieve core competence and foster strong careers. As a not-for-profit membership body, CISI's mission is to help individuals attain and maintain high level of competence and to promote the highest levels of professional behaviours and integrity.

**g) Malaysian Association of Company Secretaries (MACS)**  
Malaysian Association of Company Secretaries (MACS) is a Malaysian professional body of Company Secretaries whose core objective is to improve and advance the professional competence and status of practicing Company Secretaries in Malaysia. MACS is a prescribed body under Section 139A(a) of the Companies Act 1965 (Malaysia) and a scheduled professional body under Fourth Schedule of the Companies Act, 2016 (Malaysia). ICSI and MACS have agreed to enter into an MoU for reciprocal paper-wise exemption.

### Adoption of Secretarial Standards by MACS

MACS had expressed its desire to adopt the Secretarial Standards formulated by ICSI, and approved by the Government of India under sub-section (10) of Section 118 of the Companies Act, 2013, for the purpose of benchmarking MACS's own Standards. The Ministry of Corporate Affairs has approved the adoption of the ICSI's Secretarial Standards by MACS.

### Recognition of Corporate Governance, Compliances and Secretarial Advisory Services (CGCSAS) in the form of updating the WTO Services Sectoral Classification list

ICSI is pursuing with the Ministry of Commerce, Government of India for its recommendation to the WTO Secretariat for inclusion of a new Head of Corporate Governance, Compliances and Secretarial Advisory Services (CGCSAS) in the Services Sectoral Classification of WTO and submitted the copy of Corporate Secretaries of International Association (CSIA) proposal to the WTO for the recognition of CGCSAS. Recognition of the proposed CGCSAS classification would result in a significant increase in trade in such services, facilitate the sharing of best practices globally, and foster continuous improvement in

global corporate governance standards and outcomes

### Support to Foreign Investors for setting up business in India

The Institute is dedicated to the service of the Nation while establishing, promoting and sustaining the global parameters of governance at par. With this, Institute is persistently supporting the Government of India in its pursuits towards nation building. In line to our whole hearted support for "Vision New India", the Institute is extending its association to persons/companies overseas with the guidance and facilitation on setting up business in India. Consequent upon the Institutes standing at the official website of Indian overseas mission at Kenya, Malaysia, St. Petersburg, Russia, Melbourne, Australia, has placed the link of ICSI's website along with ICSI logo at their website to apprise the populace in respective countries with the ease and information on setting up business in India. Other Indian overseas mission also assured for placing of ICSI link at their website.

### Afro-Asian Federation of Company Secretaries

This is with reference to initiative of Government of India towards enhancing the competitiveness of India's service sectors through the implementation of focused and monitored Action Plans, thereby promoting GDP growth, creating more jobs and promoting exports to global markets. To support this initiative, ICSI propose to form Afro-Asian Federation of Company Secretaries which will promote the profession of company secretaries in these regions.

Institute of Company Secretaries of India (ICSI) has been making constant efforts towards spreading the wings of profession of Company Secretaries beyond national boundaries. A need was felt for closer and regular cooperation to enable the profession of Company Secretaries to withstand the challenges of globalization of professional services.

With a view to focus on development of profession of company secretary in South Asian/African countries, ICSI proposes to constitute formation of Afro-Asian Federation of Company Secretaries as multilateral platform to discuss and deliberate on profession of company secretary.

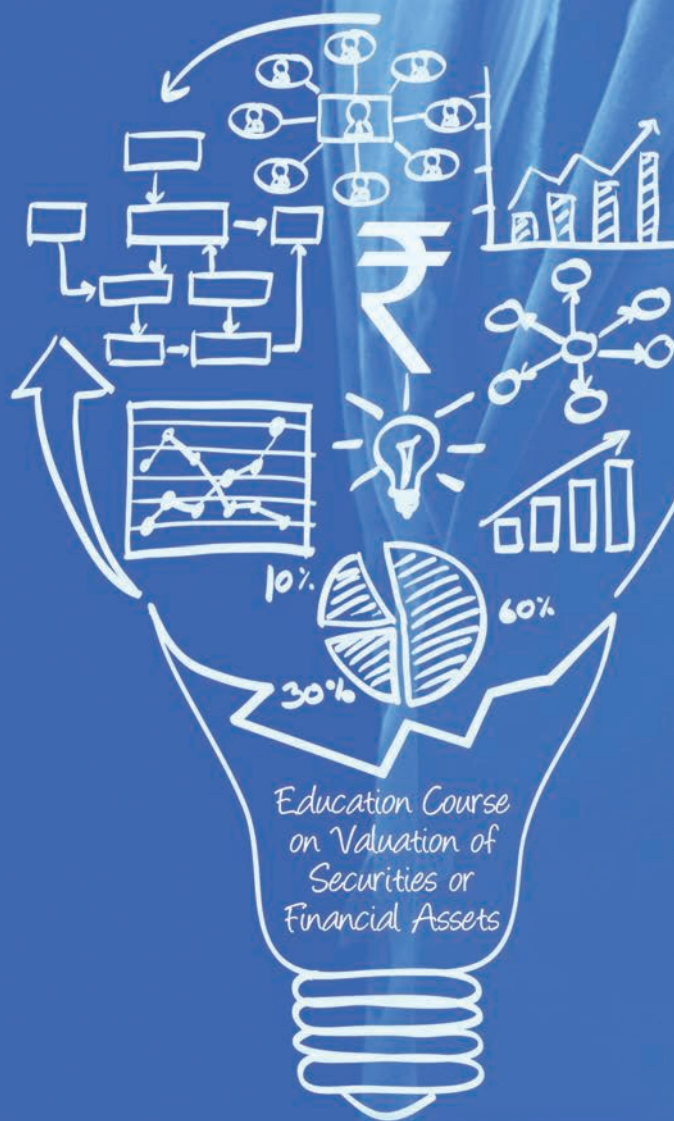
### ICSI Groups - Members' Meet

ICSI has initiated informal meetings amongst its members in their respective areas of locations to inculcate togetherness and sense of belongingness.

### Initiatives of ICSI in spreading Corporate Governance across the globe:

1. International Conferences on Corporate Governance.
2. Joint Programmes with OECD, GCGF (IFC - Washington), INSOL International, CASS Business School (London), ICSA Singapore, ICSA Malaysia, CISI, CMDA (Maldives), etc. for furthering the cause of corporate governance.

*Unveiling value  
through valuation*



*Education Course  
on Valuation of  
Securities or  
Financial Assets*



**REGISTERED VALUERS ORGANISATION**

A wholly owned subsidiary of ICSI and registered with IBBI

## About ICSI RVO

The field of valuation, as an area of activity is still untapped, demanding the presence of experts possessing the right knowledge and capabilities which brings upon the realisation that we Company Secretaries as professionals in India can provide the much needed support both as members of ICSI as well as by forming a significantly strong army of Valuation members.

In order to enable the members of ICSI, as well as other professionals and eligible persons to register as Registered Valuers, the ICSI on November 22, 2017 incorporated a not-for-profit private limited company under Section 8 of the Companies Act, 2013, by the name **ICSI Registered Valuers Organisation (ICSI RVO)**.

ICSI RVO intends to enrol, educate, train and promote the profession of Registered Valuers as per the Companies (Registered Valuers and Valuation) Rules, 2017.



**"You cannot connect dots looking forward, but you can connect dots looking backwards."**

~ Steve Jobs

The concept of 'Registered Valuer' was introduced under section 247 of the Companies Act, 2013 to carry out valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, as per the Companies (Registered Valuers and Valuation) Rules, 2017 notified by MCA on 18<sup>th</sup> October, 2017. The Rules will lead to setting-up of Valuation Standards which will further improve transparency and governance and, while bringing about a clarity regarding various aspect of valuation will have a major impact on the industry, professionals, stakeholders and the government as well. Needless to say, the requirement of Registered Valuers will definitely enhance professional opportunities for both the Company Secretaries as well as other professionals.

Some of the areas under Companies Act, 2013 requiring valuation include:



### About the Institute of Company Secretaries of India (ICSI):

ICSI is a statutory body constituted under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries. The Institute has been contributing in all initiatives of Govt. of India having potential to excel socio-economic growth of the nation and in one such initiative has delved into developing Registered Valuers by establishing its wholly owned subsidiary **ICSI Registered Valuers Organisation (ICSI RVO)**.



## SYLLABUS FOR VALUATION OF SECURITIES OR FINANCIAL ASSETS

### S.NO. COVERAGE

1. Macro Economics
3. Professional Ethics and Standards
5. General laws and Judicial Pronouncements
7. Valuation Approaches and Methodologies
9. Laws and Regulations relevant to Financial Assets Valuation

### S.NO. COVERAGE

2. Finance
4. Financial Statement Analysis
6. Overview of Valuation
8. Valuation Application
10. Case Studies

## EDUCATIONAL QUALIFICATION & EXPERIENCE

**Graduate Level**  
Graduate  
in any stream

**Post Graduate level**  
(1) Member of the The ICSI or ICAI or The ICMAI or;  
(2) MBA/PGDBM specialisation in finance or;  
(3) Post Graduate Degree in Finance

3 years of experience  
in the discipline  
after completing  
graduation

## REGISTRATION

Any individual willing to register himself as a Valuer Member may send an application in the form available at the website : [www.icsirvo.in](http://www.icsirvo.in)

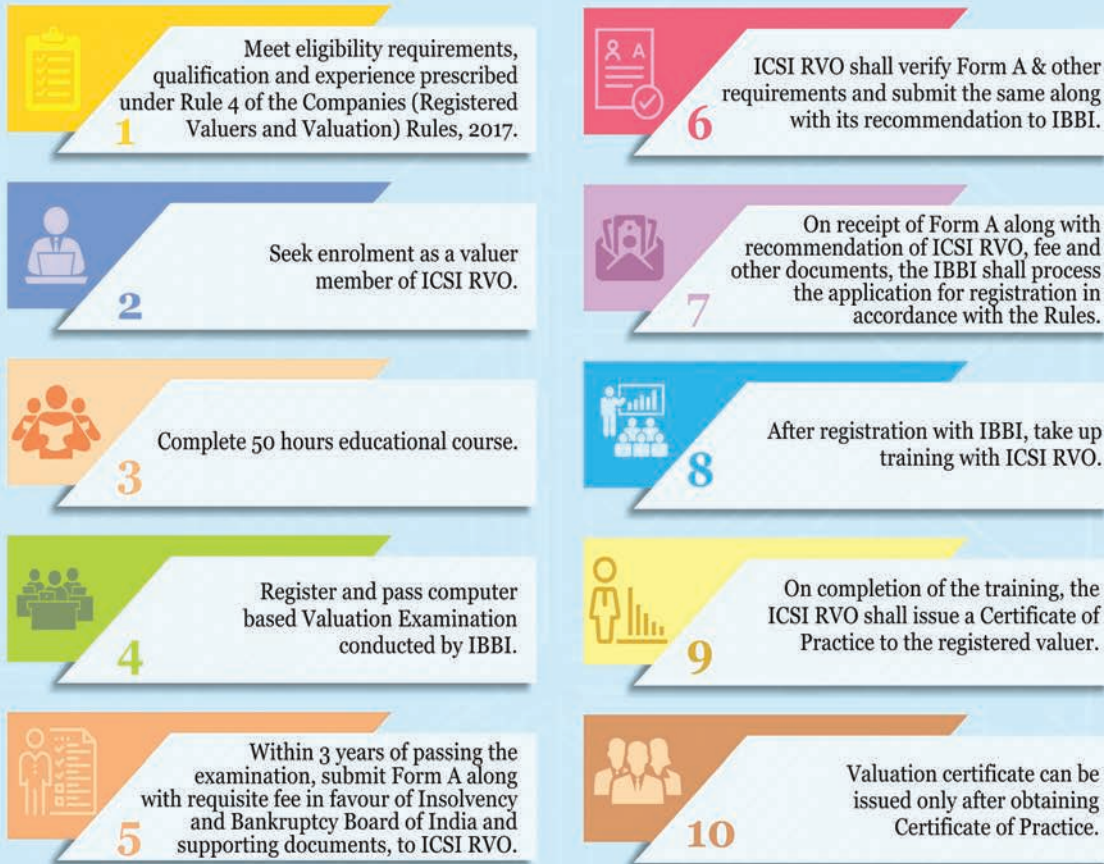
The form shall be accompanied by a Demand Draft favouring ICSI Registered Valuers Organisation payable at New Delhi.

### FEE FOR THE COURSE:

- Enrolment Fee : Rs. 8,850/- (Rs. 7,500 + GST @ 18%)
- Course Fee : Rs. 26,550/- (Rs. 22,500 + GST @ 18%)



## PROCEDURE TO BE FOLLOWED



### IBBI EXAMINATION REQUIREMENTS

- The examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions by IBBI
- The duration of the examination is 2 hours
- A candidate is required to answer all questions
- Wrong answer attracts a negative mark of 25% of the marks assigned for the question
- A candidate needs to secure 60% of marks for passing

**FEE FOR THE IBBI EXAMINATION:** Rs. 1500/- for every enrolment.

#### For further information contact:

CS Samir Raheja, CEO (Designate), ICSI RVO  
4th Floor, ICSI-House, 22, Institutional Area, Lodi Road, New Delhi-110 003,  
Phone : +91-11-45341028, E-mail : rvo@icsi.edu, Website : www.icsirvo.in



**REGISTERED VALUERS ORGANISATION**

A wholly owned subsidiary of ICSI and registered with IBBI



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

[www.icsi.edu](http://www.icsi.edu)



**COMPUTER - BASED EXAMINATION  
FOR  
FOUNDATION PROGRAMME [SYLLABUS – 2017]**

**DECEMBER, 2018**

**TIME-TABLE**

Day and Date of Examination	Subjects		Batch No.	Examination Timings	
				From	To
Saturday, 29 <sup>th</sup> December, 2018	Paper-1	Business Environment and Law <b>AND</b>	I	9.30A.M.	11.00A.M.
			II	12.00Noon	1.30P.M.
	Paper-2	Business Management, Ethics and Entrepreneurship	III	2.30P.M.	4.00P.M.
			IV	5.00P.M.	6.30P.M.
Sunday 30 <sup>th</sup> December, 2018	Paper-3	Business Economics <b>AND</b>	I	9.30A.M.	11.00A.M.
			II	12.00Noon	1.30P.M.
	Paper-4	Fundamentals of Accounting and Auditing	III	2.30P.M.	4.00P.M.
			IV	5.00P.M.	6.30P.M.



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**COMPANY SECRETARIES EXAMINATIONS, DECEMBER, 2018**

**TIME - TABLE**

**EXAMINATION TIMING : 2:00 P.M. TO 5:00 P.M.**

<b>Date and Day</b>	<b>Executive Programme (Old Syllabus)</b>	<b>Executive Programme (New Syllabus)</b>	<b>Professional Programme</b>
20.12.2018 Thursday	Cost and Management Accounting (Module-I) (OMR Based)	Jurisprudence, Interpretation and General Laws (Module-I)	Advanced Company Law and Practice (Module-I)
21.12.2018 Friday	Tax Laws and Practice (Module-I) (OMR Based)	Company Law (Module-I)	Secretarial Audit, Compliance Management and Due Diligence (Module-I)
22.12.2018 Saturday	Industrial, Labour and General Laws (Module-II) (OMR Based)	Setting up of Business Entities and Closure (Module-I)	Corporate Restructuring, Valuation and Insolvency (Module-I)
23.12.2018 Sunday	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>
24.12.2018 Monday	Company Law (Module-I)	Tax Laws (Module-I)	Information Technology and Systems Audit (Module-II)
25.12.2018 Tuesday	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>
26.12.2018 Wednesday	Economic and Commercial Laws (Module-I)	Corporate and Management Accounting (Module-II)	Financial, Treasury and Forex Management (Module-II)
27.12.2018 Thursday	Company Accounts and Auditing Practices (Module-II)	Securities Laws and Capital Markets (Module-II)	Ethics, Governance and Sustainability (Module-II)
28.12.2018 Friday	Capital Markets and Securities Laws (Module-II)	Economic, Business and Commercial Laws (Module-II)	Advanced Tax Laws and Practice (Module-III)
29.12.2018 Saturday	<b>NO EXAMINATION</b>	Financial and Strategic Management (Module-II)	Drafting, Appearances and Pleadings (Module-III)
30.12.2018 Sunday	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	<b>Elective: 1 out of below 5 subjects (Module-III)</b>
			(i) Banking Law and Practice
			(ii) Capital, Commodity and Money Market
			(iii) Insurance Law and Practice
			(iv) Intellectual Property Rights—Law and Practice
(v) International Business—Laws and Practices			



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5<sup>th</sup> July, 2018

**NOTICE UNDER RULES 6 AND 21 READ WITH CLAUSE (3) OF SCHEDULE 2 OF THE COMPANY SECRETARIES (ELECTION TO THE COUNCIL) RULES, 2006.**

As you are aware, the duration of the 12<sup>th</sup> Council and Four Regional Councils shall expire on 18<sup>th</sup> January, 2019. The election for constitution of a new Council and Regional Councils are tentatively scheduled on 14<sup>th</sup> December, 2018 at all places except Delhi, Mumbai and Kolkata. The elections at Delhi, Mumbai and Kolkata are tentatively scheduled on two days, i.e., on 14<sup>th</sup> and 15<sup>th</sup> December, 2018.

2. In pursuance of Rule (3) (i) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006, it is proposed to have polling booths at addresses given in Column 3 of the following table at places which would have more than one polling booth:

**Table: Addresses of Polling Booths**

Column 1	Column 2	Column 3
PLACE	BOOTH NO.	ADDRESS
Kolkata	E-1	Eastern India Regional Office of the ICSI ICSI-EIRC House, 3A, AHIRIPUKUR, 1st Lane, Kolkata - 700019
	E-2	The Park Institution 12, Mohanlal street, Shyambazar, Kolkata – 700004
	E-3	The Calcutta Stock Exchange Ltd. 7, Lyons Range, Kolkata – 700001
	E-4	Khalsa High School 73, Paddapukur Road, Bhowanipur, Kolkata – 700020
	E-5	Sarada Prasad Institution 108/18, Bidhan Nagar Road, Kolkata – 700067
Delhi/New Delhi	N-1	Northern India Regional Office of the ICSI ICSI-NIRC Building, Plot No. 4, Prasad Nagar Institutional Area, New Delhi – 110005
	N-2	Banga Sanskriti Bhawan 18 - 19, Bhai Veer Singh Marg, Gole Market, New Delhi – 110001
	N-3	Delhi Tuberculosis Association 9, Institutional Area, Lodhi Road, New Delhi – 110003
	N-4	College of Vocational Studies (University of Delhi) Triveni Nagar, Sheikh Sarai, Phase -II, New Delhi – 110017
	N-5	Jagan Institute of Management Studies 3, Institutional Area, Sector-5, Rohini, Near Rithala Metro Station, Delhi – 110085

	N-6	AVB Public School Near Bathla Apartments, I.P Extension, Patparganj, Delhi – 110092
	N-7	Presidium School Plot No. 18, Sector 22, Dwarka, Delhi – 110077
	N-8	Kasturba Balika Vidyalaya Mathura Road, Ishwar Nagar, New Delhi – 110065 (Near to Allahabad Bank)
Faridabad	N-9	Faridabad Chapter of NIRC of the ICSI 'ICSI House', Institutional Area Plot No. 1A, Sector -16A, Faridabad – 121002
	N-10	Aggarwal College Near Ambedkar Chowk, Tigaon Road, Ballabgarh, Faridabad – 121004
Gurgaon	N-11	Gurgaon Chapter of NIRC of the ICSI First Floor, Deenbandhu Sir Chhotu Ram Bhawan, Jharsa Road, Behind Shiv Mandir, Sector-32, Gurugram – 122002
	N-12	Alpine Convent School Jalvayu Towers Road, Block B, Sector 56, Gurugram – 122001
	N-13	Alpine Convent School Main Road, Near Civil Hospital, Sector – 10, Gurugram – 122001
	N-14	HUDA Gymkhana Club* Sector 29, Gurugram – 122022
Jaipur	N-15	Jaipur Chapter of NIRC of the ICSI 'ICSI House', A-5/A, Institutional Area, Jhalana Doongri, Jaipur – 302004
	N-16	Lal Bahadur Shastri PG College Pt. Devi Shankar Tiwari Marg, Tilak Nagar, Near Raja Park, Jaipur – 302004
	N-17	Malviya Convent School 2, Malviya Institutional Area, Near Sudha Sagar Colony, Block A, Malviya Nagar, Jaipur – 302017
	N-18	SS Jain Subodh PG College Bhawani Singh Road, Rambagh Circle, Jaipur – 302015
Ghaziabad	N-19	Ghaziabad Chapter of NIRC of the ICSI 23-B, Nehru Apartment, Nehru Nagar, Near Nasirpur Railway Crossing, Ghaziabad – 201001
	N-20	Vaishali Public School 3A-216, Rachna, Vaishali, Ghaziabad – 201010, (opposite- Shopprix Mall )
Noida	N-21	Jaipuria Institute of Management A-32A, Sector – 62, Opposite IBM, Noida – 201309
	N-22	Rockwood School B-67, Sector-33, C Block, Near NTPC Township, Noida – 201307
Chennai	S-1	MAC Hall, The Southern India Chamber of Commerce and Industry, Indian Chamber Buildings, Esplanade, Chennai – 600108
	S-2	Southern India Regional Office of the ICSI 'ICSI House', No. 9, Wheat Crofts Road, Nungambakkam, Chennai – 600034

	S-3	Shanmugasundaram Hall, Gokhale Shastri Institute 16, Karpagambal Nagar, Mylapore, Chennai – 600004
	S-4	The Industrial Estate Manufacturers' Association No 10, R V Towers, Ground Floor, GST Road, (Adjunct to SBI SISI), Guindy, Chennai – 600032
	S-5	Dhanraj Baid Jain College (Autonomous) Rajiv Gandhi Salai, Jyothi Nagar, Okkiyam, Thoraipakkam, Chennai – 600097
Hyderabad	S-6	Hyderabad Chapter of SIRC of the ICSI #6-3-609/5, Anandnagar, Khairatabad, Hyderabad – 500004
	S-7	The Institute of Cost Accountants of India – Hyderabad Chapter CMA Bhavan, Beside Dena Bank, Opposite Police Station, Sanathnagar, Hyderabad – 500018
	S-8	ICSI Centre of Excellence Survey No. 1, IDA Uppal, Genpact Road, (Near Mallikarjuna Swamy Temple), Uppal, Hyderabad – 500039
	S-9	YMCA Sardar Patel Road, Near Clock Tower, Secunderabad, Telangana – 500003
Bangalore	S-10	Bengaluru Chapter of SIRC of the ICSI No-5, 1st Main Road, KSSIDC Industrial Estate, 6th Block, Rajajinagar, West of Chord Road, Bengaluru – 560010
	S-11	Institution of Agricultural Technologists No. 15, Queens Road, Bengaluru – 560052
	S-12	The Institute of Cost Accountants of India – Bangalore Chapter No. 81, Mallikarjuna Temple Street, Basavanagudi, Bengaluru – 560004
	S-13	Rotary Bangalore Indiranagar Rotary House of Service 2143, 16th E Main, HAL 2nd Stage, (Opposite BDA Park & Near Lohit Hospital), Indiranagar, Bengaluru – 560008
	S-14	Alumni Association University of Agricultural Sciences Hebbal, Bengaluru – 560024
Mumbai	W-1	Western India Regional Office of the ICSI 13, Jolly Maker Chambers No II, First Floor and Nos. 56 & 57 (5th Floor), Nariman Point, Mumbai – 400021
	W-2	Indian Merchants' Chamber IMC Building, Churchgate, Mumbai – 400020
	W-3	Maharashtra Chambers of Commerce & Industries Oricon House, 6th Floor, 12, K. Dubhas Marg, Kala Goda, Opposite Lion Gate, Fort, Mumbai – 400001
	W-4	Century Bhawan* Dr. Annie Besant Road, Worli, Mumbai – 400018

	W-5	Pinge's Classes Pvt. Ltd Janardhan Building, Near Ideal Book Depot, Opposite Chhablidas School, Near Shri Krishna Wada Center, Dadar (West), Mumbai – 400028
	W-6	Mehta Institute 202, B-Laram Centre, M A Road, Near Andheri Railway Station, Andheri (West), Mumbai – 400058
	W-7	S. K. Somaiya College of Arts, Science & Commerce, Aurobindo Building, Somaiya Vidyavihar Campus, Vidya Vihar (East), Mumbai – 400077
	W-8	Mulund College of Commerce Sarojini Naidu Road, Mulund (West), Mumbai – 400080
	W-9	Kandivli Education Society's Annexe (First Floor), Bhulabhai Desai Road, Kandivli (West), Mumbai – 400067
Ahmedabad	W-10	Ahmedabad Chapter of WIRC of the ICSI Maneklal Mills Complex, S-2, B-Tower, Chinubhai Towers, Opposite Handloom House, B/S H.K. College of Arts, Ashram Road, Ahmedabad – 380009
	W-11	Shree Swaminarayan Arts College Geeta Mandir Road, Shahalam Tolnaka, Kankaria, Behrampura, Ahmedabad – 380022
	W-12	Xavier Research Foundation; Loyola Centre for Research & Development St. Xavier's College Campus, Navarangpura, Ahmedabad – 380009
	W-13	Prakash Higher Secondary School Aurobindo Society Road, Near Sandesh Press, Bodakdev/Ahmedabad – 380054
Indore	W-14	Devi Ahilya Arts & Commerce College (Jagdale) 8/1, Chhawani Road, Ushaganj, Jaora Compound, Indore – 452001
	W-15	Shri Vaishnav College of Commerce, Footi Kothi Rd, Sector B, Gumasta Nagar, Scheme 71, Indore - 452002
Pune	W-16	Pune Chapter of WIRC of the ICSI 23, Mukund Nagar, Corner of Lane No. 1, Gupte Market , Above Dr. Joshi Hospital, Pune – 411037
	W-17	MIT-WPU Campus Saraswati Vishwa, "A" Wing, Gymnasium, Paud Road, Kothrud, Pune – 411038
	W-18	Mahratta Chamber of Commerce, Industries & Agriculture (MCCIA) Navalmal Firodia Centre for Excellence, MCCIA Bhosari Branch, J-462, MIDC, TELCO Road, Ganesh Nagar, Pune – 411026
	W-19	Yashwantrao Chavan Academy of Development Administration (YASHADA) Raj Bhavan Complex, Baner Road, Near Armament Colony, Ganeshkhind, Pune – 411007

Thane	W-20	Thane Chapter of WIRC of the ICSI 201-202, Sai Plaza Complex, Above Vijay Sales Kapurbavdi Junction, Ghodbunder Road, Thane (West) – 400607
	W-21	Rajendra Pal Mangla School Station Road, Opposite Bank of Maharashtra, Near Railway Station, Thane East

\*Confirmation awaited.

3. In pursuance to clause (3) (ii) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006, a voter in any of the places (city) listed in Column 1 of the above table wishing to vote at a particular polling booth at that place(city) listed in Column 2 of the said table against that place (city), may send a request in writing to the Returning Officer, at the Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003 or by e-mail at e-mail ID [election2018@icsi.edu](mailto:election2018@icsi.edu) on or before 5<sup>th</sup> August, 2018 indicating his / her option for preferred polling booth in that city in the following format:

Place	Preferred Booth No.	Membership No.	Name

**(CS Dinesh Chandra Arora)**  
Secretary and Returning Officer

13<sup>th</sup> July, 2018

### Corrigendum

#### **NOTICE UNDER RULES 6 AND 21 READ WITH CLAUSE (3) OF SCHEDULE 2 OF THE COMPANY SECRETARIES (ELECTION TO THE COUNCIL) RULES, 2006**

In pursuance to clause (3) (ii) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006 notice dated 5<sup>th</sup> July 2018 has been hosted on the website of the ICSI.

Members are request to take note of the following corrections in the notice dated 5th July 2018

1. Address of polling booth W-15 at Indore be read as :

W-15	INDORE CHAPTER OF WIRC OF ICSI, B/1-2-3 ASHRAY APARTMENT, 2/1 MANORAMAGANJ (NEAR MAYANK HOSPITAL PALASIA), INDORE - 452001
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2. Only one polling booth **“ICSI Thane Chapter, 201-202 Sai Plaza complex, Kapurbavdi Junction Ghodbunder Road , Thane West”** is proposed to be set up at Thane and there is no polling at **Rajendra Pal Mangla School, Station Road, Opposite Bank of Maharashtra, Near Railway Station, Thane East (W-21)** at Thane. Hence, request for option for allocation of preferred polling booth is not applicable for the members having their address in terms of Rule 5 at Thane.

**(CS Dinesh Chandra Arora)**  
Secretary and Returning Officer

Note: Typographical errors rectified and additional particulars to addresses of polling booths inserted for the convenience of voters.





**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

[www.icsi.edu](http://www.icsi.edu)



## IMMEDIATE AND URGENT ELECTION MATTER

31<sup>st</sup> July, 2018

### Eligibility of Members to Vote

1. The duration of the 12<sup>th</sup> Council and the Regional Councils shall expire on 18<sup>th</sup> January, 2019. The elections for constitution of a new Council and Regional Councils are tentatively scheduled on 14<sup>th</sup> December, 2018 at all places except Delhi, Mumbai and Kolkata. The elections at Delhi, Mumbai and Kolkata are tentatively scheduled for two days i.e. on 14<sup>th</sup> and 15<sup>th</sup> December, 2018.
2. Rules 5 of the Company Secretaries (Election to the Council) Rules, 2006 provides that a member, whose name is borne on the Register of Members on 1<sup>st</sup> day of April, 2018 shall be eligible to vote in 2018 elections from the regional constituencies within whose territorial jurisdiction his/her professional address falls on the said date provided that his/her name has not been removed from the Register on the date of publication of the list of voters. If the professional address is not borne on the Register on the relevant date, the residential address borne on the register shall determine his/her regional constituency.
3. In the case of members having their professional addresses outside India and eligible to vote, their regional constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register of Members on the relevant date, whichever is later.
4. The professional address of the members whose names are borne on the register as on date are available on the Website of the Institute at <https://www.icsi.edu/Member/MembersDirectory.aspx>
5. A CD containing the list of members as on 1<sup>st</sup> April, 2018 is available for members on payment of Rs. 280/- (Rupees two hundred and eighty only including GST). A member interested in purchasing a copy of the CD may remit Rs. 280/- by way of cheque at par or demand draft payable at New Delhi favouring "The Institute of Company Secretaries of India", to the Directorate of Membership, 'ICSI House', C-36, Institutional Area, Sector -62, Noida -201309 (UP).
6. The annual membership fee for the year 2018-19 became due on 1<sup>st</sup> April, 2018. The last date for payment of fee has been extended upto 31<sup>st</sup> August, 2018. The names of members, who do not pay the annual membership fee for the FY 2018-19 by 31<sup>st</sup> August, 2018, shall stand removed from the Register of Members w.e.f. 1<sup>st</sup> September, 2018 and such members will not be eligible to vote or stand for election even though their names appeared on the Register of Members as on 1<sup>st</sup> April, 2018. In order to exercise their franchise, the members are advised to pay the annual membership fee for FY 2018-19, if not already paid, by 31<sup>st</sup> August, 2018.
7. Members whose photo and/or signature are not uploaded on the ICSI portal may ensure that the same is duly uploaded on the portal, as it would be required at the polling booths for verification by the polling officials. In case of any difficulty in uploading, member may send his/her scanned photo/signature in .jpeg format indicating his/her name and membership number at email id: [mohd.aabid@icsi.edu](mailto:mohd.aabid@icsi.edu).
8. A member who has not yet obtained Identity Card may apply for the same by sending a scanned image of his/her latest photograph in .jpeg format indicating his/her name and membership number at email id: [saurabh.bansal@icsi.edu](mailto:saurabh.bansal@icsi.edu).

**(CS Dinesh Chandra Arora)  
Secretary & Returning Officer**

## Golden Jubilee Year

# NATIONAL CONVENTION OF COMPANY SECRETARIES (46<sup>th</sup> Edition) AND INTERNATIONAL CONFERENCE (6<sup>th</sup> Edition)

*A Journey of 50 Glorious years - Connecting from Grassroots to Global*

**MAYFAIR Convention, Mayfair Hotels & Resorts, Bhubaneswar**  
**August 30-31 and September 1, 2018**



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament





Golden Jubilee Year  
**NATIONAL CONVENTION  
 OF COMPANY SECRETARIES (46th Edition)  
 AND INTERNATIONAL CONFERENCE (6th Edition)**  
 August 30-31 and September 1, 2018

## INVITATION

Dear Professional Colleagues,

We are pleased to inform you that the Institute is organising **Golden Jubilee Year National Convention of Company Secretaries (46<sup>th</sup> Edition) and International Conference (6<sup>th</sup> Edition)**, from Thursday, August 30, 2018 to Saturday, September 1, 2018 at MAYFAIR CONVENTION, MAYFAIR Hotels & Resorts Limited, Bhubaneswar on the theme '**A Journey of 50 Glorious Years- Connecting from Grassroots to Global**'. The Convention seeks to ponder upon the following sub-themes as under:

1. CS as Corporate Saviour-Professional DNA
2. CS in New Age Legislative Paradigm
3. CS in Economic Growth and Nation Building
4. Governance, Risk Management and Compliances- Global Perspective
5. ICSI Vision 2022- A path from dream to success
6. Transforming Profession to New Opportunities

The Convention will be venerated with the commencement of Opening Plenary at 12:00 Noon on August 30, 2018 and conclude with Closing Plenary at 1:00 PM onwards on September 1, 2018.

Eminent Persons, Doyens of Industry and Experts from the Government, Regulators, Profession, Academia, Corporate Sector across the country and abroad will address the participants in their respective fields.

In this annual congregation, converging the exchange of professional knowhow, your participation will surely contribute pinnacle of intellectual deliberations and professional savoir faire. Moreover, the participants will also experience an appropriate platform for the mutual sharing of professional views and experience with their peers who are participating from all around India and overseas.

We are pleased to call upon you to register yourself along with other executives of your organization as delegate(s) for this Convention. Delegates may register online at the link <https://goo.gl/HQPMCM>

Your spouse and family members are also welcome for the National Convention, sight-seeing, cultural programme and other attractions.

A Souvenir containing theme articles, programme details, messages of good wishes and other interesting features will be brought out to commemorate this annual mega event. We request you to use your good offices in obtaining advertisement for the proposed Souvenir. We also look forward to your support by way of sponsorships.

The details of National Convention and International Conference are covered in this brochure.

Looking forward to your valuable contribution to Golden Jubilee Year National Convention of Company Secretaries and International Conference.

With best regards,

Yours' sincerely,

QR Code  
for Delegate  
Registration



**CS Makarand Lele**  
President ICSI

**CS S K Agrawala**  
Council Member, ICSI & Chairman,  
National Convention Organising  
Sub-Committee

**CS Dinesh C. Arora**  
Secretary, ICSI



## A Journey of 50 Glorious years - Connecting from Grassroots to Global

**August 30-31 and September 01, 2018**

**Venue: MAYFAIR Convention, Mayfair Hotels & Resorts Limited, Bhubaneswar**

Half a century ago, the Institute of Company Secretaries of India was founded with an objective to develop and regulate the profession of Company Secretaries. In these fifty golden years of its journey with heaps of milestones, the Institute has developed as a Premier National Professional Body.

This enriching journey which started in year 1968 with the small infrastructure, has now expanded to length and width of the country.

In addition, the Institute has developed close association with Company Secretaries and Governance Institutes from around the world. It has also association with multilateral agencies engaged in Governance and Sustainability. The Institute is a founder member of Corporate Secretaries International Association (CSIA) which is an International Body of Institute of Company Secretaries and Governance Professionals, engaged in the development of the profession of corporate secretaries, company secretaries, chartered secretaries, board secretaries and other governance professionals.

Today the Institute is hill-walking with professional excellence towards success as a global leader in Governance. Captivating glorious contribution towards the culture of good governance, it is proud to proclaim that from a role limited to the erstwhile Companies Act, 1956 in initial days, today the triumph of professional excellence in the service of nation is ranging in progressive laws of the country including Companies Act, 2013, Insolvency and Bankruptcy Code, GST, Taxation laws, Securities Laws, Intellectual Property Rights, Due Diligence, Capital Market and many others, where we are leading in shaping the corporate culture of the nation. The Institute is also working towards the segment wise role of Company Secretaries championing the various services.

The tale of success is multiplying day by day, year by year and decade by decade in ensuring its honoured appellation throughout the world. Taking the niche of professional excellence in serving the best practices of governance at the panchayat level to the adoption of Secretarial Standards by a sister foreign institute in Malaysia speaks loud of its flying colours connecting from Grassroots to Global.

At such a juncture, when we are celebrating 50 years of an enriching journey marking global fame, it would be perfectly pertinent to venerate this Golden Jubilee Year – National Convention of Company Secretaries (46th Edition) and International Conference (6th Edition) with rejoicing a theme '**A Journey of 50 Glorious Years-Connecting from Grassroots to Global**'.

In order to make the most of this germane theme, this Golden Jubilee Year Convention and International Conference is all set to observe intellectual deliberations on contemporary Sub-Themes as under:

1. CS as Corporate Saviour-Professional DNA
2. CS in New Age Legislative Paradigm
3. CS in Economic Growth and Nation Building
4. Governance, Risk Management and Compliances - Global Perspective
5. ICSI Vision 2022- A path from dream to success
6. Transforming Profession to New Opportunities



## Tentative Programme Schedule

### DAY 1 - Thursday, August 30, 2018

10:00 AM - onwards.....	Registration of Delegates
12:00 Noon- 2:00 PM .....	Opening Plenary
2:00 PM – 3:00 PM .....	Lunch
3:00 PM – 4:30 PM .....	Technical Session-I
4:30 PM – 5:00 PM .....	Tea Break
5:00 PM – 6:00 PM .....	Special Session (B2B)
7:30 PM onwards.....	Cultural Programme and Dinner

### DAY 2- Friday, August 31, 2018

8.30 AM to 9.30 AM .....	Women’s Power Breakfast (Special Session)
10.00 AM to 11.30 AM .....	Technical Session-II
11.30 PM - 12.00 Noon.....	Tea Break
12.00 Noon to 1.30 PM.....	Technical Session –III
1.30 PM to 2.30 PM .....	Lunch
2.30 PM to 4.00 PM .....	Technical Session- IV
4.00 PM to 4.30 PM.....	Tea Break
4.30 PM to 6.00 PM .....	Technical Session- V (Special Session)
7.30 PM onwards.....	Cultural Programme and Dinner

### DAY 3 – Saturday, September 01, 2018

10.00 AM to 11.30 AM .....	Technical Session VI
11.30 AM to 12.00 Noon.....	Tea Break
12.00 Noon to 01.00 PM .....	Technical Session VII
01.00 PM to 02.00PM.....	Closing Plenary
2.00 PM to 03.00 PM.....	Lunch
03.00 PM onwards .....	Interactive Session (for ICSI Members)

### Participants

Company Secretaries, Chartered Accountants, Cost and Management Accountants, Directors and other Senior Management Executives in the Corporate and Service Sector, Senior Officers from Government and Academics and other Professional working in Secretarial, Financial, Legal, Management, and Academic Disciplines would benefit from participating in the Convention.

### Faculties

Eminent persons from the Government and Industry, including Professional and Management Experts will address the participants and there would be brainstorming sessions and interactions.

### Papers for Discussion

Members who wish to contribute papers for publication in the Souvenir are requested to send the same through email (conference@icsi.edu) on or before July 25, 2018. The paper should not normally exceed 15 typed pages (font size Arial 11 point – single space / single column and without any diagrams / sketches / downloaded pictures from internet). The Articles Screening Committee will consider the Articles so received and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects. An honorarium of Rs.2,500/- will kindly be paid by the Institute for each paper selected for publication in the Souvenir. Esteemed Members are requested to mention their Income Tax PAN and GSTN (if obtained) while submitting the Articles, in order to enable us to expedite the payment of Honorarium.



## Registration Procedure

### *Delegate Fee\** (Non-Residential)

Type of Delegate	Early Bird Delegate fee (Discounted fee paid upto July 31, 2018)	Delegate Fee to be paid on or after August 01, 2018
Members of ICSI/ICAI/ICoAI	INR 6500	INR 7500
Company Secretaries in Practice	INR 6000	INR 7000
Accompanying Spouse/Guest/Children/ Senior Members (60 years & above)	INR 5700	INR 6500
Students of ICSI	INR 4500	INR 5000
Non-Members	INR 7000	INR 8000
Foreign delegates	USD 200	USD 250

\*Above fees is inclusive of GST @ 18 %

The above fee covers Lunch (3), Dinner (2), Morning / Evening Tea / Coffee / High Tea / Convention Kit and Backgrounder.

The Delegate Fee is payable in advance and is not refundable once the nomination is received.

**Delegate Registration: Delegates are requested to register for the Convention by visiting the link <https://goo.gl/HQPMCM>**



Golden Jubilee Year  
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### Programme Credit Hours

Members of the Institute attending the National Convention on all three days will be entitled for 10 (Ten) Programme Credit Hours.

Students attending the National Convention on all three days would be deemed to have completed 24 (Twenty Four) hours of Professional Development Programmes.

### Accompanying Guests, Spouse and Children

Accompanying Guests, Spouse and Children registered for the Convention will be eligible to participate in Lunch, Dinner, Sight Seeing, Cultural Evening Programme(s) and other attractions of the Convention.

### Venue of the Convention

MAYFAIR Convention, Mayfair Hotels & Resorts Limited

Jaydev Vihar, Bhubaneswar, Orissa, 751013

**Phone:** +91 (674) 2360111/+91 (674) 2360136

**Website:** [convention@mayfairhotels.com](mailto:convention@mayfairhotels.com)

**Email:** [reservations@mayfairhotels.com](mailto:reservations@mayfairhotels.com)

### How to Reach

Bhubaneswar, also spelt as Bhubaneshwar or Bhuvanēśvar, is the capital of the Indian state of Odisha. It is the largest city in Odisha and is a centre of economic and religious importance in Eastern India.

Along with the old town, the region, historically was often depicted as Ekamra Khetra (Temple City). With the diverse ranges of heritage resources, it showcases significant sacred cultural landscape components which have evolved with the support of available natural resource base and cultural trigger.

With Konark and Puri, the city forms the Swarna Tribhuj (Golden Triangle), one of eastern India's most visited travel destinations. Some of the most famous tourist attractions of the city include Lingaraja Temple, Udayagiri Caves, Raja Rani Temple, Ashokan Rock Edict, Biju Patnaik Park and Vaital Deul Temple.

When it comes to connectivity, Bhubaneswar is well-connected to all other major Indian cities by air, road and rail.

### By Air

Located around 6 km away from the city-centre, the Bhubaneswar Airport or Biju Patnaik International Airport connects the city with rest of the country by air. There are daily flights for Bhubaneswar from cities like New Delhi, Chennai, Mumbai, Kolkata, Hyderabad, Bangalore and Visakhapatnam.

### By Rail

Bhubaneswar Railway Station is the main railhead connecting the city with several Indian cities. There are regular super fast trains available from Kolkata, Mumbai, Delhi, Chennai, Hyderabad, Bangalore etc.

### By Road

Bhubaneswar has good infrastructure and is well connected with National/State Highways with the other cities of the country.



**Tourist Attractions at Bhubaneswar<sup>1</sup>**

**Lingaraj Temple** - The Lingaraj Temple is an ancient temple with great religious importance. Dedicated to Lord Shiva as the name suggests, it is visited by huge number of devotees throughout the year.

**Chilika Lake** - Just south of Puri, the sea mixes in with the 1100 sq.km inland Chilika Lake to create the largest brackish water lake in Asia. These shallow waters enclose an immense area of marshes, lowlands, and islands. There are more than 160 varieties of fish, and, in the winter season (from November through March), the area is home to hundreds of thousands of migratory birds as well. There is Dolphin watching at chilika Lake.

**Jagannath Puri** - The temple of Lord Jagannath ('Lord of the Universe') at Puri is one of the most sacred pilgrimage spots in India, one of the four abodes (dharmas) of the divine that lie on the four directions of the compass. The present temple structure was built in the twelfth century by the Ganga king, Chodagangadeva, replacing an earlier structure which probably dated to the tenth century. Puri is 62 km from Bhubaneswar. With its flatbed golden white sand beach and countless waves is perfect spot for holidaying. Sea facing hotels and guest houses, at the Puri beach is an ideal holiday spot where you can easily hang out. The beach hosts sand art displays, including work by international award-winning local sand artists.

**Konark Sun Temple** - The magnificent Sun Temple at Konark is the culmination of Odishan temple architecture, and one of the most stunning monuments of religious architecture in the world. Konark is 65 km from Bhubaneswar and 35 Km from Puri. The temple is attributed to king Narasimhadeva I of the Eastern Ganga Dynasty.

**ISKON Temple** - Built by the ISKCON (International Society for Krishna Consciousness) in 1991, this temple serves as an alternative to Lord Jagannath temple of Puri as that temple is restricted to Indians.

**Parsurameshwara Temple** - Constructed in 650 A.D. this temple is a unique specimen of Oriyan style of architecture. The most special feature of this temple is the presence of one thousand lingas in the north-west corner of the complex.

**Mukteswara Temple** - Mukteswara Temple dedicated to Lord Shiva is a 10th century temple and presents a quintessential example of the longevity of the Kalinga style of architecture.

**Pipli** - A small village enveloped in a blaze of colour, 15 km South of Bhubaneswar, on the highway to Puri, is home of applique work. The craft originated to serve temples, providing intricately stitched coloured awnings and covers for deities and hangings for festival days, details on the craft.

**Nandankanan** - About 20 km from city centre is a Zoo and a botanical garden surrounded by dense forest, famous for breeding of various endangered species, safaris and white tigers.

Apart from the above, there are lots of tourist attractions at Bhubaneswar like Bindu Sarovar, Rajarani Temple, Orissa State Museum, Tikarpada Wildlife Sanctuary, Brahmeshwara Temple, Pathani Samanta Planetarium and many more.

**In case you are facing any difficulty or want any clarification  
the following could be contacted:**

Query / Clarification	Name of the Concerned ICSI Official	e-mail ID	Contact No.
Delegate Registration	Mr. Niranjan Sarkar	niranjan.sarkar@icsi.edu	0120-4522087
Research Paper related	Mr. Akinchan B. Sinha	akinchan.sinha@icsi.edu	0120-4082141
Sponsorship/Advertisement	Ms. Arti J. Shailendar	arti.shailendar@icsi.edu	0120-4522077
Hotel Accommodation	Mr. Amit Kumar Ghosal	amit.ghosal@icsi.edu	0120-4522008

<sup>1</sup> Compile from various tourism websites.





## HOTEL ACCOMMODATION

### Special arrangements made by the Institute

The delegates are requested to plan their itinerary in advance to avoid inconvenience at a later stage.  
The Institute has finalised packages from the under-mentioned hotels wherein arrangements have been made for accommodation for delegates at special tariff.

### TARIFF

Sl. No.	Name and Address of the Hotels & distance from the venue	Star Category	Distance from Bhubaneswar Airport	Distance from Bhubaneswar Railway Station	Rooms available on first come first serve basis	Tariff + GST Single / double occupancy	Contact person
1	<b>Mayfair Lagoon</b> (Across the Convention Centre) 8B, Jaydev Vihar, Bhubaneswar – 751013 Odisha	5 star	7 KM	6 KM	37 Executive Rooms 03 Suites  04 Deluxe Cottage  01 Villa	Rs.8,000/- + GST 28% (Single/Double) Rs.16,000/- + GST 28% (Single/Double) Rs.20,000/- + GST 28% (Single/Double) Rs.45,000/- + GST 28% (Single/Double) (Extra Person/Bed : Rs.2000 + GST 28%)	Mr. Manas Panda, Manager, Sales Mobile No. 9238400930 Phone: +91 674 6660 101 Fax: +91 674 2360 129 Email : corporatesales2@mayfairhotels.com reservations_lagoon@mayfairhotels.com Website : www.mayfairhotels.com
2	<b>Trident</b> (About 350 metres from the venue on same street) Mayfair Road, Jayadev Vihar, Bhubaneswar – 751013, Odisha	5 star	7 KM	6 KM	40 Deluxe Rooms	Rs. 8,000/- + GST 28% (Single) Rs. 9,000/- + GST 28% (Double)	Mr. Vijay Sahani Mobile No. 9937222220 Phone: +91 674 2301 010 Email : vijay.sahani@tridenthotels.com Website : www.tridenthotels.com
3	<b>Swosti Premium</b> (About 600 metres from the venue on same street) P-1, Jaydev Vihar, Nandankanan Rd, Bhubaneswar - 751013, Odisha	4 Star	6 KM	7 KM	60 Deluxe Rooms  40 Premium Rooms	Rs. 4,500/- + GST 18% Single Rs. 5,000/- + GST 18% (Double) Rs. 5,500/- + GST 18% (Single) Rs. 6,000/- + GST 18% (Double)	Mr. Hemanta Sahoo, Sr. Relationship Manager Mobile No. 9337223587 Email : sales@swostipremium.com OR Mr. Debaseesh Mohanty, Manager Sales Mobile No. 9338089752 Email : sales.swosti@swosti.com Website : www.swostihotels.com Telephone: +91 674 3017 000 Toll Free: 1800 1231 414 Fax: +91 674 230 1800
4	<b>Sandy Tower</b> (About 1 KM from the venue) P-1 & P-1/A, Jaydev Vihar, Nandankanan Rd, Bhubaneswar - 751013, Odisha	4 Star	7.5 KM	7 KM	50 Deluxe Rooms	Rs. 4,000/- + GST 18% (Single) Rs. 4,500/- + GST 18% (Double)	Mr. Swarup Samantaray, Asstt Manager, Sales Mobile No. 7205088997 Phone: +91 674 6665 555 Email : sales@sandystower.com Website: www.sandystower.com
5	<b>The Ginger</b> (About 550 metres from the venue) Opposite Nalco Headquarters, Joydev Vihar, Nandankanan Road, Nayapalli, Bhubaneswar – 751013 Odisha	3 Star	7.5 KM	7.5 KM	70 Standard Rooms  30 Superior Rooms	Rs. 2199/- + GST 18% (Single) Rs. 2,599/- + GST 18% (Double) Rs. 2,999/- + GST 18% (Single) Rs. 3,499/- + GST 18% (Double)	Mr. Shaikh Sajid Ali, Executive Sales & Marketing Mobile No. 9776957271, Phone: +91 674 6663 333 Email : sales.bhubaneshwar1@gingerhotels.com Website: www.gingerhotels.com

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Sl. No.	Name and Address of the Hotels & distance from the venue	Star Category	Distance from Bhubaneswar Airport	Distance from Bhubaneswar Railway Station	Rooms available on first come first serve basis	Tariff + GST Single / double occupancy	Contact person
6	<b>Pal Heights</b> (About 800 metres from the venue) J-7, Jayadev Vihar Rd, Block N5, Jayadev Vihar, Bhubaneswar - 751013 Odisha	3 Star	6 KM	5 KM	74 Deluxe Rooms	Rs. 3,400/- + GST 18% (Single) Rs. 4,200/- + GST 18% (Double)	Ms. Samita Patro, Sr. Sales & Marketing Mobile No. 7504426942 Phone: +91 674 2360 156 / 2361 106 Fax: +91 674 2361 156 Email : sales1@palheights.com Website: www.palheights.com
7	<b>The Crown</b> (About 1 KM from the venue) A1/(a), IRC Village, Nayapalli, Bhubaneswar – 751015, Odisha	3 Star	7 KM	7 KM	30 Executive Rooms  10 Premium Rooms	Rs. 3,600/- + GST 18% (Single) Rs. 4,100/- + GST 18% (Double) Rs. 4,100/- + GST 18% (Single) Rs. 4,600/- + GST 18% (Double)	Mr. Ranjan Satapathy, Manager, Sales Mobile No. 9861003074 / 9861884137 Phone: +91 674 3000 000 Fax: +91 674 2362 001 Email: ranjan@thecrown.in/sales@thecrown.in Website: www.thecrown.in
8	<b>Suryansh</b> (About 3 KMS from the venue) P-1, Jayadev vihar, Near Kalinga Hospital Nandan Kanan Road, Bhubaneswar - 751023 Odisha	3 Star	8 KM	7 KM	40 Standard Rooms	Rs. 2,232/- + GST 12 % (Single) Rs. 2,800/- + GST 18 % (Double) Rs. 3,000/- + GST 18 % (Triple)	Mr. Tapas Mohapatra, Executive-Sales & Marketing Mobile No. 7381035666 / 7008795978 Phone: +91 674 2303 300 Email : tapas@suryanshhotels.com website: - www.suryanshhotels.com
9	<b>Hotel Siddhartha</b> (About 1.5 KMS from the venue) A1/2, NH16, Indradhanu Market, IRC Village, Nayapalli, Bhubaneswar - 751015 Odisha	3 Star	6.5 KM	6 KM	Deluxe Room   30 Rooms Super Deluxe   Junior Suite Room	Rs. 2,500/- + GST 18 % (Single) Rs. 3,000/- + GST 18 % (Double) Rs. 3,000/- + GST 18 % (Single) Rs. 3,500/- + GST 18 % (Double) Rs. 5,500/- + GST 18 % (Double)	Mr. S.C Patnaik (General Manager) Mobile No. 9853088104 Phone: +91 674 2551 122 Email Id:hotelsidharth@rediffmail.com Website: - www.hotelsidharth.com
10	<b>The New Marrion</b> (About 5 KMS from the Venue) 6, Janpath, Bhubaneswar - 751001 Odisha	3 Star	5 KM	2 KM	35 Standard Rooms	Rs. 3,500/- + GST 18 % (Single) Rs. 4,000/- + GST 18 % (Double)	Mr. Pradeep Singh, Manager Sales & Marketing Mobile No. 9238022019 / 9776020304 Phone: +91 674 2380 850 Email : sales@hotelnewmarrion.com Visit us: www.hotelnewmarrion.com
11	<b>The HHI</b> (About 5 KM from the venue) A-112, Shriya Talkies Street, Unit - 3, Kharvel Nagar, Janpath Bhubaneswar - 751001	3 Star	4.5 KM	1 KM	70 Standard Rooms	Rs. 3,400/- + GST 18% (Single) Rs. 3,900/- + GST 18 % (Double)	Mr. Jyoti Prakash, Asst Manager, Sales Marketing Mobile No. 9937286925 / 9853317881 Phone: +91 674 6677 000 E-mail : salesbbsr@hindusthan.com Website: www.hhihotels.com
12	<b>La Frankin Hotel</b> (About 5 KMS from the venue) Plot-328/1110, Rasulgarh Square, N.H- 5, Bhubaneswar - 751010 Odisha	3 Star	9 KM	6KM	35 Standard Rooms	Rs. 3,000/- + GST 18 % (Single) Rs. 3,000/- + GST 18 % (Double)	Mr. Tapas Ranjan Adhikari, Manager Sales & Mrkt Mobile No. 8093088108 / 09439631851 Phone: +91 674 7177 777 E-mail : reservations@lafranklin.com Website : www.lafranklin.com

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Sl. No.	Name and Address of the Hotels & distance from the venue	Star Category	Distance from Bhubaneswar Airport	Distance from Bhubaneswar Railway Station	Rooms available on first come first serve basis	Tariff + GST Single / double occupancy	Contact person
13	<b>VITS</b> (About 8 KMS from the venue) A/19, Cuttack-Puri Road, Laxmi Sagar Bhubaneswar - 751006 Odisha	3 Star	5 KM	4 KM	Executive Room  Deluxe Room  Superior Room  Suite Room	Rs. 4,000/- + GST 18 % (Single) Rs. 4,500/- + GST 18 % (Double) Rs. 5,500/- + GST 18 % (Single) Rs. 6,000/- + GST 18 % (Double)	Mr. Rati Ranjan Sahoo, Sales Manager Mobile No. 8093099972 / 9438620828 Phone: +91 674 6601 075 E-mail: asmbhubaneswar@vitshotels.com Website : www.vitshotels.com
14	<b>OTDC</b> (About 7 KMS from the venue) Lewis Road, Bhubaneswar - 751014 Odisha	2 Star	3 KM	3 KM	38 AC DR Deluxe Room 16 AC DR Room	Rs. 2,100/- + GST 18 % Rs. 1,600/- + GST 18 %	Mr. Alok Mishra, Marketing Manager Tel. No. : +91 674 2435618 Email: mkt.section@gmail.com Toll Free: 1800 208 1414 Tel. No. +91 674 2430 764 E-mail: otdc@panthanivas.com Website: www.otdc.in

Please visit the link  
[https://www.icsi.edu/Webmodules/46NC/Announcement\\_HotelBooking\\_46thNC.pdf](https://www.icsi.edu/Webmodules/46NC/Announcement_HotelBooking_46thNC.pdf)  
 for downloading the form for Hotel booking and other details.



QR Code  
for Hotel  
Booking

### Important Instructions regarding Booking of Accommodation

- All delegates may kindly note that Bhubaneswar is a tourist destination due to its proximity to the heavenly abode of Lord Jagannath and nearly several sea beaches which are among few finest in India. Therefore, air tickets, train tickets and Hotel rooms will get exhausted quickly. Hence, the delegates who are waiting for last minutes planning may face difficulty in getting confirmed reservations in flight/train and hotels. Of late, Bhubaneswar has been in news being the top rated smart city of the country and Bhubaneswar will be hosting FIH Hockey World Cup to be held in 2018.
- In view of the above, all delegates are advised to plan their travel program at the earliest and book their flight/train tickets quickly. It is advisable to book hotels quickly before it gets exhausted. Ideally the hotel rooms must be booked latest by July 30th, 2018. After that delegates may face crisis of confirmed room reservations.
- ICSI has taken the best efforts to negotiate rates for room in some of the hotels at Bhubaneswar. In spite of that over internet some hotel booking sites may offer further better rate than which ICSI has negotiated. Even the hotels have no control over the rates offered by the hotel booking sites which are purely driven by supply and demand situation on real time basis. Hence, delegates may check once those hotel booking sites before booking rooms directly with the hotels at price negotiated by ICSI. Delegates are requested to avail this opportunity quickly. Otherwise delegates may have to book rooms at very higher price due to huge tourist influx in the city.
- For booking rooms in hotels, members/students/others (as the case may be) are required to first get themselves registered as delegate for the convention by paying the delegate fees online at following ICSI weblink:  
<https://www.icsi.in/student/DelegateRegistration/tabid/137/ctl/DelegateRegistration/mid/454/EventId/54/Default.aspx>  
 While booking the rooms, delegate registration is compulsorily required to be mentioned on hotel room booking application form without which the hotel authorities may not entertain room booking request from delegates.
- For booking of rooms in hotel, delegates may select the hotel as per their choice from the list of hotels given in the below mentioned table. They may download the room booking form the link given against that hotel's name. They are required to fill-up details in the form and after that scanned copy of this form are required to be sent by e-mail to respective hotel.
- All payments related to stay of delegates in Hotel are required to be settled by the delegates with the hotel directly.
- All delegates may kindly note that hotel rooms shall be booked on full room basis. If any delegate wants to share room with any other delegate, in such case it is advised to decide room partner in advance and should give details of partner (i.e. accompanying guest) in the booking form itself. Payment should be settled by either of the delegate and later on the total amount can be shared by them.
- Pick up and drop facility to the Convention venue will be provided by ICSI to delegates to and from Hotel and also to and from Airport/ railway station at certain intervals.
- Hotel authorities have been requested to allow delegates for early check-in, but the facility will be provided subject to availability of room at the time of arrival of the delegate.

For updates on hotel accommodation, please visit icsi website [www.icsi.edu](http://www.icsi.edu)



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## SPONSORSHIP / ADVERTISEMENT TARIFF

Sl. No.	Type of Sponsorship	Sponsorship Amount in Rs. and other Details
1	Principal Sponsor - One special full page advertisement in Souvenir - Delegate fee (non-residential) exemption - Display at Convention Backdrop - Special Acknowledgement	20,00,000  15 Delegates
2	Co-Sponsor - One special full page advertisement in Souvenir - Delegate fee (non-residential) exemption - Display at Convention Backdrop - Special Acknowledgement	12,00,000  10 Delegates
3	Sponsorship for Bags / Dinner Sponsor - One special full page advertisement in Souvenir - Delegate fee (non-residential) exemption - Display at the Convention Backdrop / Dinner site - Special Acknowledgement	10,00,000  8 Delegates
4	Platinum Sponsor / Lunch Sponsor - One special full page advertisement in the Souvenir - Delegate fee (non-residential) exemption - Display at Convention Backdrop / Lunch site - Special Acknowledgement	8,00,000  6 Delegates
5	Diamond Sponsor / Tea Sponsor - One special full page advertisement in the Souvenir - Delegate fee (non-residential) exemption - Display at Convention Backdrop/ Tea site - Special Acknowledgement	5,00,000  3 Delegates
6	Golden Sponsor - One special full page advertisement in the Souvenir - Delegate fee (non-residential) exemption - Display at Convention Backdrop - Special Acknowledgement	4,00,000  2 Delegates
7	Silver Sponsor - One special full page advertisement in the Souvenir - Delegate fee (non-residential) exemption - Display at Convention Backdrop - Special Acknowledgement	2,00,000  1 Delegate
8	Souvenir Sponsor - One special full page advertisement in Souvenir - Logo on the Souvenir Cover Page - Display at Convention Backdrop - Special Acknowledgement	5,00,000
9	Cultural Programme Sponsor - One special full page advertisement in Souvenir - Display at Convention Backdrop - Display at Cultural Programme site - Special Acknowledgement	5,00,000
10	ADVERTISEMENTS IN SOUVENIR - Back Cover (Display of one banner) - Third Cover (Display of one banner) - Second Cover (Display of one banner) - Special Full Page (Colour) - Full Page (B/W) - Half Page(Colour) - Half Page(B/W)	1,00,000 75,000 75,000 50,000 30,000 30,000 15,000

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Sl. No.	Type of Sponsorship	Sponsorship Amount in Rs. and other Details
11	Banner - 8' x 3' + Spl. Full Page Advertisement in Souvenir (Colour) - 8' x 3' - 6' x 3'	1,00,000 50,000 35,000
12	Stalls - 6' x 6'	50,000
13	Distribution of Publicity Material, literature, Pen/Pad etc.	1,00,000
14	Sponsorship of Pen, Pad	1,00,000
15	Miscellaneous (10 to 14) - For any member who procures advertisements in Souvenir above Rs.2,00,000 – Delegate fee (non-residential) exemption for 2 delegates - For any member who procures advertisements in Souvenir above Rs.1,00,000 – Delegate fee (non-residential) exemption for 1 delegate - 10% Incentive to the Chapter for procuring any of above sponsorships/advertisements	



## SPONSORSHIP / ADVERTISEMENT FORM

The Secretary  
 The Institute of Company Secretaries of India  
 ICSI House, 22, Institutional Area  
 Lodi Road, New Delhi – 110 003

Dear Sir,

Kindly accept Principal / Co-sponsorship / Sponsorship for Bags / Sponsorship for Dinner / Platinum / Lunch / Diamond/ Tea / Golden / Silver sponsorship /Souvenir Sponsorship/ Cultural Sponsorship / Back Cover / 2nd Cover / 3rd Cover / Special Full Page (Colour)/Full Page (B/W)/ Half page (Colour)/ Half Page (B/W) advertisement for the proposed Souvenir/ Banner (8'x3'+Special Full Page Colour Advertisement in Souvenir)/ 8'x3' Banner / 6'x3' Banner / Distribution of Publicity material, Literature, Pen / Pad etc., /Sponsorship of Pen, Pad/ booking of Stall on the occasion of Golden Jubilee Year National Convention of Company Secretaries (46th Edition) and International Conference (6th Edition) to be held from Thursday, August 30, 2018 to Saturday, September 1, 2018 at MAYFAIR Convention, Mayfair Hotels & Resorts Limited, Bhubaneswar on the theme '**A Journey of 50 Glorious Years – Connecting from Grassroots to Global**'.

We are forwarding herewith bank draft / Cheque / NEFT Mandate for Rs. \_\_\_\_\_ in favour of "The Institute of Company Secretaries of India" payable at New Delhi.

The Advertisement Matter / Art Work /Logo/ CD is / are enclosed / being sent separately.

Yours sincerely,

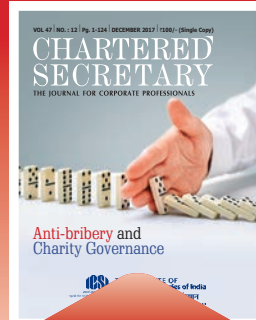
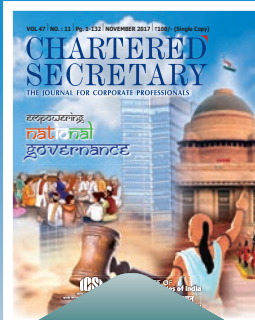
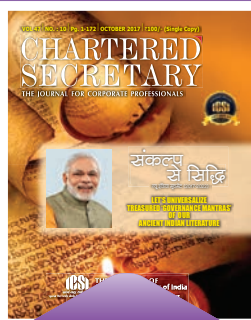
(Signature)  
 Sponsoring Authority  
 Date \_\_\_\_\_

Name of Organisation \_\_\_\_\_  
 \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ Pincode \_\_\_\_\_  
 Contact Person \_\_\_\_\_  
 Designation \_\_\_\_\_  
 Email \_\_\_\_\_  
 Tel. / Mobile no. \_\_\_\_\_

# CHARTERED SECRETARY

Advertisement

## Tariff



(With Effect from 1<sup>st</sup> April 2012)

BACK COVER (COLOURED)			COVER II/III (COLOURED)		
Non – Appointment			Non – Appointment		
Per Insertion		₹75,000	Per Insertion		₹ 50,000
4 Insertions		₹2,70,000	4 Insertions		₹ 1,80,000
6 Insertions		₹3,96,000	6 Insertions		₹ 2,64,000
12 Insertions		₹7,65,000	12 Insertions		₹ 5,10,000
FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 40,000	₹10,000	Per Insertion	₹ 20,000	₹ 5,000
4 Insertions	₹1,44,000	₹ 36,000	4 Insertions	₹ 72,000	₹ 18,000
6 Insertions	₹2,11,000	₹ 52,800	6 Insertions	₹1,05,600	₹26,400
12 Insertions	₹4,08,000	₹1,02,000	12 Insertions	₹2,04,000	₹51,000
PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES		
Per Insertion	₹ 10,000	₹ 3,000	For 'Situation Wanted' ads	₹ 50	
(Subject to availability of space)			For Others	₹ 100	

### MECHANICAL DATA

Full Page - 18X24 cm

Half Page - 9X24 cm or 18X12 cm

Quarter Page - 9X12 cm

- ◆ The Institute reserves the right not to accept order for any particular advertisement.
- ◆ The Journal is published in the 1<sup>st</sup> week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20<sup>th</sup> of any month for inclusion in the next month's issue.

For further information write to:

The Editor

CHARTERED SECRETARY



सत्यं वद। धर्मं चर।  
"इष्टाकारं चेष्ट। नृणां च अर्थे चैव फलं भवेत्।"

**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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