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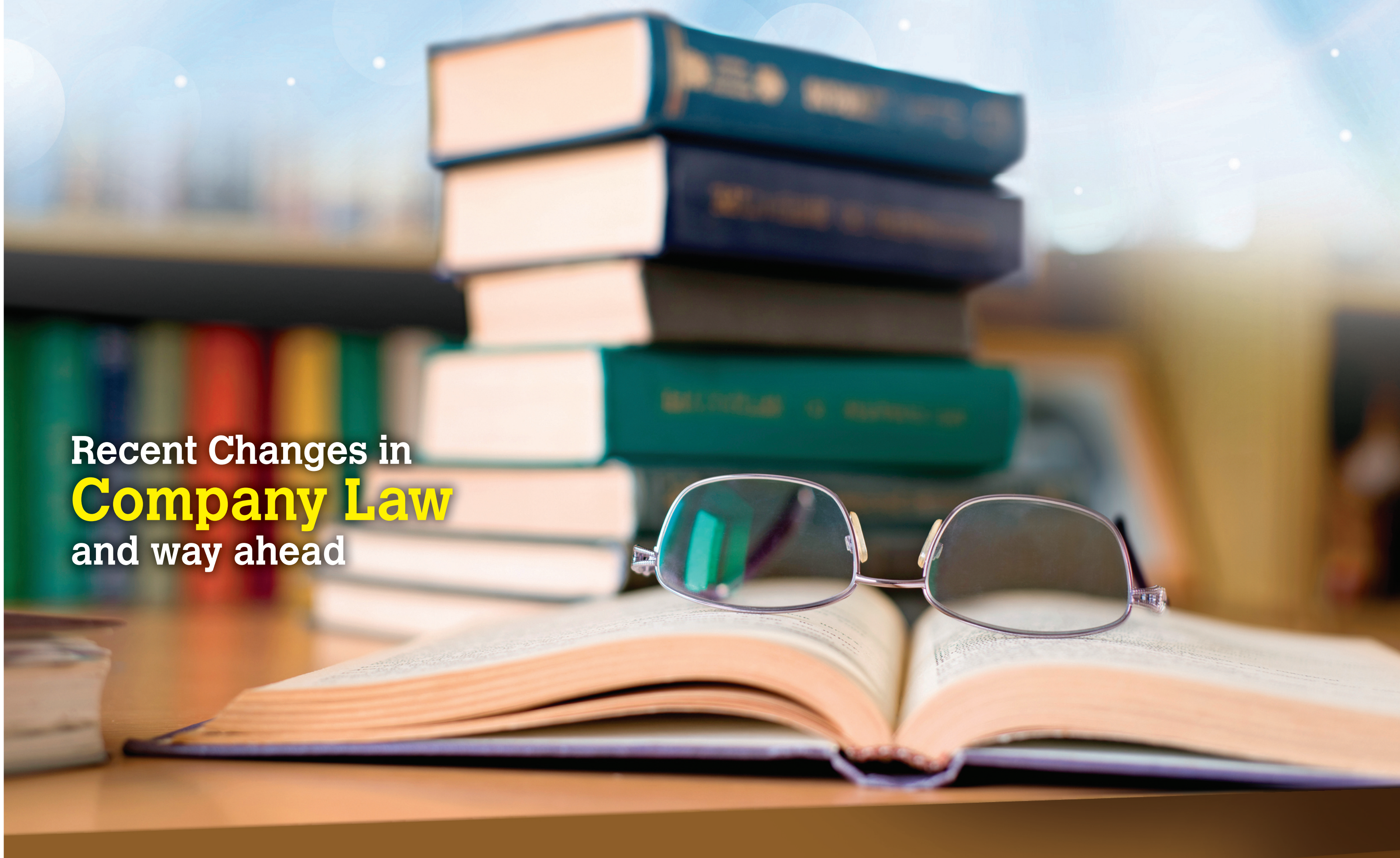

Recent Changes in **Company Law** and way ahead

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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IMAGES

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1. 18th ICSI National Awards for Excellence in Corporate Governance & 3rd ICSI CSR Excellence Awards Jury Meeting Chaired by Mr. GN Bajpai (Former Chairman, SEBI) held at New Delhi on 7th December, 2018.
2. Release of ICSI New Syllabus study material for CS Professional Programme.
3. CS Makarand Lele addressing at Certified CSR Professional Course contact programme held at Mumbai-Sitting on dais from Left: CS Ashok Kumar Dixit, Saravanan K (GM, SEBI), Abhilash Misra (CEO, NSE Academy Ltd.) & Dr. S K Jena.
4. Gopal Krishna Agrawal (Govt Nominee, Central Council of ICSI) at Interactive Session on Ease of Doing Business & Current Economic Reforms at Indore Chapter on 22nd November, 2018.
5. One day In-House Training on Financial Guidelines, Budget, DOP, Purchase Policy and Infrastructure Guidelines at NIRO, New Delhi on 24th November, 2018.

"A month of lights, snow and feasts. A time to make amends and tie up loose ends. A time to finish what you started and hope that your dreams come true."

Dear Professional Colleagues,

The month of December is defined as the twelfth and last month of the year, after November and before January, but the above definition summarises what most of the world has connoted of this month which brings us to believe that all in all, even though being the last month of the year, this month holds immense hope, positivity and an air of change under its garb which definitely hints towards progress for as George Bernard Shaw puts it, "Progress is impossible without change, and those who cannot change their mind cannot change anything".

As far as the Institute of Company Secretaries of India is concerned, all its members, and even the students too, the month of December, this year, holds way more significance than might be visible to others. Starting from the students; while the months of June and December have been ones filled with exasperation and building tensions for their life-altering nature, the **December of 2018 shall mark the beginning of the examinations under the new syllabus regime for the Executive Programme Students** developed with a 360 degree approach and perfectly aligned with the New Vision of ICSI.

I am hopeful that the students, pursuing their preparations under both the syllabus pattern shall do so with full fervour and with passion and grit. Dedication is not when you put hours into slogging and mugging up the laws or texts from the books or study material, true learning comes from keeping your eyes and ears open to the happenings in one's own surroundings and trying to bring together the knowledge of the books with the real-time circumstances prevailing in one's own environment. And that's a cue or maybe mantra one can keep for lifetime for as a professional too, continuous learning is what we all swear by.

Akin to the previous months, the Institute has had no dearth of opportunities in furtherance of its core agenda and principles in the month gone by as well. Our presence has been felt and understood both nationally and internationally. It was through this address of mine dating a few months back that I had conveyed the initiation of the 18th ICSI National Awards for Excellence in Corporate Governance and 3rd ICSI CSR Excellence Awards. The 2018 edition, too, holding up the legacy received applications from across the nation, from corporates who have strived hard to hold high the governance flag in their entities; giving us an opportunity to feel a sense of pride that the vision of this Institute is being held in high regard and being accomplished to a large extent. The CSR Awards, too, have witnessed quite some applications depicting and displaying not only a heightened sensitization amongst corporates regarding their social responsibility but a high regard for innovation in this arena of spending.

Corporate culture, akin to the Vision of the New ICSI is witnessing a 360 degree revolution. And while the Secretariat was more than pleased to place the evaluations of the gruelling questionnaires across the Jury for these awards; the Jury, too, headed by Shri G N Bajpai, Former Chairman, SEBI and comprising some of the most brilliant and experienced minds of the Industry and professional arena put in not just their valuable time but their years of expertise to select the most befitting and deserving corporates which shall prove to be the perfect role models and motivators for other members of the Industry at large and their peers in particular. And while I might have extended my thanks to each one of them at that very moment, I would again like to express my gratitude towards each and every member in individuality and to the whole Jury in its entirety for their cohesive and learned decision-making. It is not every day that you come across such brilliance and get to discuss the past, present and future of the corporate sector and the business arena which indeed was both learning and enriching.

To commemorate this grand achievement of corporates, it seems apt and befitting that a ceremony of equal fervour renders it memorable. Keeping this in mind, the presentation ceremony of the **18th ICSI National Awards for Excellence in Corporate Governance** and **3rd ICSI CSR Excellence Awards** is scheduled to be held on **Thursday, January 10, 2019** at **The Taj Mahal Palace, Colaba, Mumbai.**

With the above discussions in order, the meeting felt as the perfect moment to release the publication of the Institute, the much awaited **International Newsletter "ICSI – Global Connect" with the first edition focussing on Company Secretary – Your Gateway to Business in India.** The newsletter shall act as a perfect connecting link between professional bodies across the globe, the professionals across the globe and the corporates as well, with the Company Secretaries taking up the role of brick and mortar in cementing these relationships. Another significant moment to mark the day in the history of ICSI was the **release of the Study Material under the New Syllabus for the CS Professional Programme** at the hands of the coveted members of the Jury. I am assured that the efforts of the Secretariat as well as of the external experts shall bear fruits and the students shall reap maximum benefits from the same.

Another remarkable event of the month gone by was a move of the Institute to honour the zeal of the members and the CS fraternity in totality in the extension of their academic pursuits. The Institute signed a **Memorandum of Understanding (MoU) with one of the most respected academic institutions of the country, i.e., Lovely Professional University (LPU), Jalandhar** for mutual cooperation and the recognition of the Company Secretaries Qualification as equivalent to a Post Graduate Degree for the purpose of admission to Ph.D. in the fields of Management, Commerce, Law, etc. The move, the MoU has been signed keeping in sight the enthusiasm and passion that has been witnessed in the members, who do not want to halt their journey of learning to this degree and are forever on a hunt to expand their knowledge horizons. I hope that such fellow members shall garner advantages plentiful from this initiative.

As far as the international presence is concerned, the month gone by was dedicated to making the presence of the Institute felt in the Southern Hemisphere of the globe, the island country of Australia. Needless to say, that the latitude accorded to meet the Consul General of India in Sydney, H.E. B. Vanlalvawna, was quite enthralling. The Conference organised by the Governance Institute of Australia at Melbourne, too, was more than enriching. The honour to represent the Institute and the entire fraternity at an international forum, and more so, to share my views and opinions on the "Expansion of the Business universe and consequent challenges of governance" is beyond words.

While the Institute always and shall forever strive to open new doors for its members, I would sincerely urge all my peers to realise and relish the beauty and honour of finding and hunting opportunities for themselves and their fellow members as well. That said, I would like to sum up with the words of famous Chinese philosopher and writer, Laozi:

"Always be on the lookout for ways to turn a problem into an opportunity for success. Always be on the lookout for ways to nurture your dream."

Yours Sincerely

CS Makarand Lele
President, ICSI

Recent Initiatives Taken by ICSI

Further to the details published in the Chartered Secretary, November, 2018 issue, we are pleased to share the following initiatives taken by the Institute during the month of December, 2018:

1. ICSI observed the 'Samvidhan Divas' 2018

As you are aware that Constitution Day (National Law Day), also known as Samvidhan Divas, is celebrated in India on 26th November every year to commemorate the adoption of Constitution of India. In order to pay our tribute to the architects of the Constitution and also to honour this day of law and order, the Institute observed the Constitution Day, 2018 by organizing a Pledge Taking Ceremony in all the offices of the Institute Pan India.

2. ICSI observed Communal Harmony Week, 2018

With a view to foster and reinforce the spirit of communal harmony and advance the national integration among the stakeholders at large, the Institute observed 'Communal Harmony Week' from November 19-25, 2018.

3. ICSI Represented in National Conference of the Governance Institute of Australia, 2018

Taking forward our professional league at the international platform, President ICSI represented the Institute at the 'Governance Institute of Australia's National Conference, 2018', during November 29-30, 2018 at Melbourne, Australia. In this annual forum, which brought together over 500 leaders in Corporate Governance and risk management from across industry sectors, one dedicated session on '*The Expansion of the Business Universe and Consequent Challenges of Governance'* was addressed by CS Makarand Lele, President ICSI.

During this visit to Australia, the ICSI delegation led by President, ICSI also met His Excellency Shri B. Vanlalvawna, Consul General of India in Sydney.

4. ICSI to provide Secretarial Assistance, Logistic and Technical support to High Level Committee-2018

With the objective to review the existing framework as well as to guide and formulate a roadmap for a coherent policy on CSR, a High Level Committe on CSR-2018, (HCL-2018) has been constituted under the Chairmanship of Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs.The Institute of Company Secretaries of India and the Institute of Corporate Affairs shall render necessary secretarial assistance; logistic and technical support to the HLC-2018.

5. Committee for finalizing Business Responsibility Reporting (BRR) format for listed and unlisted companies

Ministry of Corporate Affairs has constituted a Committee under the Chairmanship of Shri Gyaneshwar Kumar Singh, Joint Secretary, MCA, for finalizing Business Responsibility Reporting (BRR) format for listed and unlisted companies based on the BRR Framework of the updated National Voluntary Guidelines. The Institute in addition to being a member of the Committee, shall also render necessary technical, secretarial and logistic support.

6. ICSI signed Memorandum of Understanding with Lovely Professional University, Jalandhar

In order to advance the understanding and expertise of members and students in the related field through pursuing doctoral degree, the Institute entered into a Memorandum of Understanding (MoU) with Lovely Professional University (LPU), Jalandhar, Punjab. The MoU was signed by CS Ashok Kumar Dixit, Officiating Secretary, ICSI and Dr. Monica Gulati, Registrar, LPU on November 28, 2018.

Through this MoU, LPU will accord necessary recognition to Company Secretary Qualification as equivalent to Post Graduate Degree for the purpose of admission to Ph.D. in Management/ Commerce/ Law along with endowing the opportunities of knowledge building via Joint Workshops, Seminars, Continuing Education and Training and similar Academic Programs for Professionals.

7. ICSI's Training Programme to Empanel Peer Reviewers

In order to ensure that the objective of the peer review is achieved in letter and spirit and the reviewers are well equipped with the thorough understanding and indulgence of the procedure, manner, prescriptions, guidelines and other related aspects of conducting Peer Review, the Institute regularly conducts training programmes to empanel Peer Reviewers. In the month of November, 2018, a Training Programme to empanel Peer Reviewers was conducted at Centre of Excellence - Hyderabad.

8. ICSI – Contact Program for Certificate Course on Certified CSR Professional

In order to create the visibility and awareness among the professionals regarding the significance of CSR in general and Certified CSR Professional in specific, the Institute has organized a One Day Contact Program for its newly launched Three (3) Months Certificate Course on Certified CSR Professional at Noida and Mumbai on November 14, 2018 and on November 16, 2018 respectively. The modules of Certified CSR Professional Course were also launched at the inauguration of the Contact Program at Noida.

9. First Batch of Certificate Course in GST launched

In addition to the various other initiatives taken by the Institute towards GST *viz.,* GST Newsletter, GST Educational Series, GST Point, GST App and various workshops, seminars & programmes on GST to keep the members and students updated on GST law, the Institute in association with BSE Institute Ltd. (BIL), launched the first batch of Online Certificate course in GST on 8th December, 2018 for its members and students of Professional Programme. The course has received an overwhelming response. The course is an advanced level course and shall test a candidate's knowledge of various concepts of GST.

10. Study material for Students of Professional Programme Syllabus - 2017

The soft copy of the study material of Professional Programme ICSI Syllabus, 2017 was released by Shri G N Bajpai, Hon'ble Chairman, Jury- ICSI National Awards for Excellence in Corporate Governance on December 7, 2018. The soft copy of the study material for the Professional Programme has been uploaded under the Academic Corner of the Institute's website at the following link:

https://www.icsi.edu/study-material-professional-programme-new-syllabus-2017

11. Felicitation of winners of Companies Act Challenge - Mumbai Region

As you are aware that for honouring 5 years of Companies Act, 2013, the Institute organised an Online Test challenge on Companies Act, 2013 on October 2, 2018 for the students across India and abroad. Students participated in great numbers and won attractive prizes in the form of cash and publications of the Institute. With a view to motivate the students for acquiring merit in the competition and the commendable participation, the cash prize winners of the Mumbai Region were felicitated during ICSI - Contact Programme for newly launched Certificate Course on Certified CSR Professional in Mumbai on November 16, 2018.

12. ICSI Study Centre Scheme

Under the Study Centre Scheme of the Institute, wherein Eighty-Five (85) Study Centres have been established so far in collaboration with reputed colleges in different locations, One more study centre has been opened at *Sharada P G College, Nizamabad District, Telangana* in the month of November 2018.

13. Preliminary enrolment status for December, 2018 Session

In order to assist the students to verify the details pertaining to their enrolment in the examination for December, 2018 Session, a direct link has been made available at the Institute's website under SMASH. The Students enrolled for Foundation (computer based), Executive & Professional programme for December, 2018 examination session can check their preliminary enrolment status at https://smash.icsi.in/Scripts/Enrollment/Admin/PreliminaryEnrStatus.aspx.

ICSI signs Memorandum of Understanding with Lovely Professional University, Jalandhar

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Through this MoU, Lovely Professional University will accord necessary recognition to Company Secretary Qualification as equivalent to Post Graduate Degree for the purpose of admission to Ph.D. in Management/ Commerce/ Law along with endowing the opportunities of knowledge building via Joint Workshops, Seminars, Continuing Education and Training programs and similar Academic Programs for Professionals.

18th ICSI National Awards for Excellence in Corporate Governance & 3rd ICSI CSR Excellence Awards Jury Meeting

Three Months Certificate Course on Certified CSR Professional

BEST BRAND AWARDS
BEST EDUCATION LEADER & INSTITUTION

It is our pride privilege to inform all the members that a National News Agency, ABP News during its Brand Excellence Awards 2018 ceremony recognized **The Institute of Company Secretaries of India** as the BEST EDUCATION LEADER & INSTITUTION and awarded the Institute with BEST BRAND AWARDS 2018 on 30/11/2018 at Hotel Taj, Chandigarh.

The Award has been presented to the Chairman of Chandigarh Chapter, CS Nitin Kumar, primarily for incessant work of Chapter towards promoting the CS Course in rural areas through Career Awareness Programmes.

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

18TH ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE & 3RD ICSI CSR EXCELLENCE AWARDS

Continuing the legacy of recognising the efforts and awarding the best performing corporates in the arena of Corporate Governance and Corporate Social Responsibility, the Institute rolled out the 18th edition of the ICSI National Awards for Excellence in Corporate Governance and 3rd edition of the ICSI CSR Excellence Awards for the year 2018.

In this momentous event of nurturing Corporate Governance and promoting extraordinary efforts in Corporate Social Responsibility, ICSI cordially invites you on **Thursday, January 10, 2019 at The Taj Mahal Palace, Colaba, Mumbai at 3:30 p.m.**

Register yourself for the presentation ceremony at: **https://goo.gl/JFYFKb**

Look forward to your gracious presence.

CS Ashok Kumar Dixit
Officiating Secretary
The ICSI

CS Makarand Lele
President
The ICSI

Articles P-17

Fraud and the Companies Act, 2013

19

K Saravanan

The Companies Act, 2013 has made an honest endeavour to bring in its ambit many concepts and provisions that were found to be absent in the Companies Act, 1956. The Companies Act, 2013 has brought in provisions in tune with the changing corporate developments, in general, and in particular taking into consideration issues such as governance culture, enhanced supervision requirement, increased roles and duties of directors, Key Managerial Personnel, roles of professionals such as chartered accountants, company secretaries etc. When a corporate form of organization approaches the public for its resources, there has to be a heightened responsibility on the corporate to the society. The company and its functionaries assume the character as the trustees to the society and other stake holders. One such an issue that required company law basis is "Fraud". Fraud as a concept remained to be formally defined in the Companies Act. The Companies Act. 2013 has bridged the gap in this regard by defining the term and adding various provisions that discuss corporate frauds, ensure accountability of Board of Directors and professionals supporting its functioning.

Registration of creation, modification and satisfaction of charges – Pathbreaking Changes unleashed by the Companies (Amendment) Ordinance, 2018

24

S. Rajendran & S. Srinivasan

In the current context of proliferation of non-performing assets of the banking sector and the far-reaching inroads made by the Insolvency and Bankruptcy Code, 2016, the Companies (Amendment) Ordinance, 2018 has further sought to strengthen the mechanism relating to registration of creation or modification of charges. Registration of charges by a corporate serves an important purpose of disclosing to the larger world the debt profile of a corporate and the securities committed by the corporate to the lenders. The website portal of the Ministry of Corporate Affairs (www.mca.gov.in) provides an immediate window to the lenders on the debts contracted by a corporate, their terms and conditions and whether such debts have been satisfied by way of repayment. Corporates were given a long rope to register the charges created or modified by them. Now, the Central Government has shown its intent clearly to restrict the window of time available and also to penalise delayed registration with an ad valorem fee.

"Recent changes in Company Law and way ahead – Governance Perspective"

31

Susheela S. Kulkarni

Suggestions for modernizing the Company Law were made before and during the meeting by various committee members and concerns were raised and discussed to a limited extent. It was agreed by the majority that the primary objective should be to consolidate the Company Law and introduce the reforms and provisions necessary to meet the needs of today's businesses, especially in terms of efficiency and competitiveness. New provisions should be introduced and enacted to simplify and improve company law, making it easier to understand and apply as well as more flexible. The members also discussed and stressed the need for safeguards against abuse. In particular, they referred to substantive changes that should be made to the law in general and new provisions which should be put in place, in particular in relation to limited liability companies, including the protection of creditors, the protection of minorities, the statutory codification of the duties of directors and secretaries, the abolishment of the ultra vires doctrine and the reconsideration of the many thresholds. The committee members agreed in a majority that the comprehensive review and eventual reform should proceed as soon as possible. Hopefully, this is the start of a new way forward for company law and governance.

Private Placement of Securities – Analysis of provisions of the Companies Act, 2013 and Rules thereunder

36

Rajesh U. Shanoy

Private placement of securities is often a preferred mode of raising of funds by the corporates. Recently, provisions of the Companies Act, 2013 and the rules thereunder relating to private placement of securities have been amended. The term 'private placement' itself is a new term referred in the Companies Act, 2013 vis-à-vis the Companies Act, 1956. The Companies Act, 2013 regulates various aspects of private placement including manner of private placement offer, limit on the number of offerees, approval of shareholders, manner of receipt of subscription money, time limit for allotment, etc. The article discusses the aforesaid provisions at length highlighting the changes as compared to the erstwhile provisions of the Companies Act, 2013 and rules thereunder. Scope of other modes of raising of funds, including rights issue, is also discussed along with provisions relating to 'preferential allotment' to get a better insight of the scope of 'private placement'.

Practical View on Journey of Companies Act, 2013 and Road Ahead

41

Chhaya Kakadia

This article highlights the journey of introduction of Companies Act, 2013 and its subsequent amendments thereof along with the practical difficulties faced by the stakeholders due to lot of anomalies, transparent grammatical errors and the ambiguities that had crept into the Companies Act, 2013. It also highlights vision and mission of new government and their approach to remove the road blocks and confusion created by the new law. Consequently due to such reformist approach, rankings of India jumped 30 notch in the World Bank's for ease of doing business Index for its stupendous performance and was well-received by the business community.

Recent Changes in Company Law and Way Ahead

45

Abhishekh Kanoi & Jyoti Bansal

Effecting amendments to the Act is a time tested and effective method compared to notifying a new Act in toto. No Act is perfect or can remain static. Even if a new Companies Act is passed, amendments may have to be made in keeping with the changing times, subject to parliamentary debate and scrutiny. As the new bill proposed does not offer any path-breaking direction with tangible and substantial benefits to the corporate sector, introduction of the same has to be reviewed. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise, the law has to be evolved in order to meet the challenges of such new situations

Change is only Constant in Company Law: A Pragmatic Analysis of recent Changes

51

Pradeep Kumar Ray

To keep in pace with the growth of economy worldwide, the corporate India indispensably needed a paramount and significant change in Company law and in consequence thereof, the year 2013 witnessed the grandeur of reform in the form of Companies Act, 2013. The crystal clear goals were set to develop Indian economy by encouraging entrepreneurship, promoting 'ease of doing business', protecting interests of stakeholders, better corporate governance, to name a few. But the significant and enormous implementation challenges imbibed with ambiguity and anomalies in the Company law has compelled the Government to take drastic steps for simplification of the Act in line with 'ease of doing business' and better corporate governance. As a result, the Corporate India witnessed a series of changes by means of amendments, rules, circulars, orders and notifications including the recent Companies (Amendment) Ordinance, 2018. Even the MCA has sought further changes to the Company law. All such changes are pragmatically analysed in this Article.

Recent changes in Company Law Critical analysis of some of the better corporate governance related amendments

56

Narendra Singh

The Companies Act, 2013 ('the Act') has many unique concepts such as CSR, appointment of Independent Director and Women Director, rotation of auditors, reporting of fraud, restriction in investments in more than two layers of subsidiaries, constitution of National Financial Reporting Authority etc. During last 4 ½ years, the MCA has not only ensured ease in compliances of some of the provisions of the Act but also amended the Company Law by enforcing or introducing better corporate governance practices such as constitution of NFRA, mandatory dematerialisation of securities of unlisted public companies, ease of restriction imposed in erstwhile section 185 of the Act, KYC of DIN holders, return for delayed payment to MSME etc. All these initiatives continue to enable India to achieve newer heights in "Ease of doing business in India".

The What, Why and How of Companies (Amendment) Ordinance, 2018

60

K. Anupriya

The history of corporate scams in India has taught us that we did not have deterrent punishments to penalize the wrongdoers. With no effective mechanism to dissuade the offenders, the scams continued to occur without any fear of punishment. The Government realized the need to introduce a speedy adjudication procedure to deal with these offences and to rationalize and levy penalties and punishments according to the amount involved in the offence and its deterrent impact on the society. For this purpose, the Government constituted a committee to review the offences under Companies Act, 2013 under the chairmanship of Mr. Injeti Srinivas in July 2018. Based on the recommendations of the committee, the Companies (Amendment) Act, 2018 was promulgated by the President in November 2018. This article discusses in detail the significance of the events that ultimately led to the promulgation of the ordinance. An attempt has been made to understand the purpose and rationale behind the amendments brought about by the ordinance.

Corporate Social Responsibility (CSR): Recent Development and Concerns

64

Gopal Chandra Mondal & Dr. Navin Shrivastava

The Companies (Amendment) Act, 2017 addressed many rule based clarifications in the Act itself for better governance and compliances of CSR provisions and to avoid the rule based clarifications to the extent where the Rules override the Act. The proposed amendments to CSR provisions in FY 2018-19 need many clarifications which it is hoped that the Government will respond to these queries through notifications in CSR Rules in the coming days. In view of this one should avoid the rule based clarifications to the extent where the Rules override the Act.

Research Corner P-69

Economic Development and Changing Employment Pattern- An Analysis 70

Dr. Prasant Sarangi

This research study explores the trend in the structure of the workforce in terms of industry, occupations, status and growth of employment and unemployment during recent period. The reviews on changing pattern of employment in the word as well as in India could be used by the researchers for multiple uses depending on the nature of study. Labour force has the capability to define the growth and development of any country. It plays the most important role in any economic activity. Continuous growth with widespread innovations in technology, economic liberalization, and the consistent structural adjustment programmes have shifted labour dependence from primary sector to manufacturing and services sectors and hence, changed the pattern of employment in India as well as in most of the economics of the world.

Legal World P-77

- **LMJ 12:12:2018** The need to protect the company from unnecessary litigation and cost have, however, to be borne in mind by the company court.[SC]
- **LW 89:12:2018** Appellants have also an independent right to move the application for oppression and mismanagement against their interest even if they are representing the company. [NCLAT]
- **LW 90:12:2018** The present case of the 1st Respondent is not only different but a reversal case where majority of the shareholders have more than 10% of shareholding except two who are less than 10% shareholding. Therefore, it cannot be held that the 1st Respondent has made out a case of exceptional circumstances for grant of waiver to maintain an application under Section 241- 242 on such ground. [NCLAT]
- **LW 91:12:2018** Admittedly, impugned order was passed by the Adjudicating Authority without notice to the 'Corporate Debtor' in violation of rules of Natural Justice, we set aside the impugned order.[NCLAT]
- **LW 92:12:2018** CCI dismisses complaint, alleging abuse of dominance in online sale/marketing, against Flipkart.
- **LW 93:12:2018** The practice of rounding off actual base fares to the next higher multiple of Rs. 5 by the Railways, prima-facie amount to an imposition of unfair condition in the market for sale of rail tickets in India, particularly for online booking of rail tickets, in contravention of provisions of Section 4 (2) (a) (i) of the Act.[CCI]
- **LW 94:12:2018** The grant of permission for construction of a family tomb in the cemetery of Cathedral does not amount to rendering services within the meaning of Section 2(1) (o) of the Consumer Protection Act.[NCDRC]
- **LW 95:12:2018** Central Excise Officers of DGCEI have all India jurisdiction and can issue notices and enquire into the matters relating to service-tax against any assessee/ person even if the said person or assessee is registered with one or multiple Commissionerates.[Del]
- **LW 96:12:2018** The Disciplinary Committee was entitled to do under Schedule I Part-IV sub- clause(2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work.[SC]

From the Government P-85

- Companies (cost records and audit) Amendment Rules, 2018
- Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018
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- Disclosures regarding commodity risks by listed entities
- Disclosure of reasons for delay in submission of financial results by listed entities
- Operating Guidelines for Alternative Investment Funds in International Financial Services Centres.
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- GST CORNER
- CG CORNER
- GLOBAL CONNECT
- NOTIFICATION ON ELECTION TO THE WIRC, 2018

1

ARTICLES

Articles in Chartered Secretary

Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
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.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to nitin.jain@icsi.edu
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor.......................... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
   a. the article titled"............" is my original contribution and no portion of it has been adopted from any other source;
   b. this article is an exclusive contribution for Chartered Secretary and has not been/nor would be sent elsewhere for publication; and
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   a. comply with the guidelines for authors,
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Signature

Fraud and the Companies Act, 2013

An attempt has been made to elucidate the concept of "fraud" and its implications in the back light of the Companies Act, 2013. The article travels through the concept and deals with the related provisions and amendments. The article also brings to light responsibilities and liabilities of "officers in default" including fiduciaries. Company Secretaries, both in employment and in service, may have to be vigilant of the activities of a company and exercise skill and diligence in discharging their professional duties and responsibilities.

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The JJ Irani Committee set up by the government in 2004 submitted its report in 2005 with far reaching recommendations. The recommendations of the committee have received shape in the new Companies Act, 2013.One of the recommendations of the committee was that there should be deterrent penalties for companies that show irresponsible behavior or conduct fraudulent activities. The relevant extract of the report is as below:-

"26. The provisions of the Companies Act relating to penalties for fraudulently inducing persons to invest money should be made more stringent. The practice relating to imposition of penalties under provisions in the present Companies Act have been found to ineffective since there are not many cases under which punishment has actually been imposed. The legal procedure associated with such prosecution should be revisited so as to make the process more effective. The offence of fraudulent inducement should be non-compoundable. The Government may also consider actions such as attachment of bank accounts in such cases subject to the orders of Judicial Magistrate First Class."

Thus, the committee felt that there should be stringent penalty for fraudulent inducement of persons to invest and also it opined that the then prevalent practice of imposing penalties was ineffective. The Committee also felt that such offences should be non – compoundable. The committee also went ahead in recommending attachment of bank accounts backed by approval of courts.

The committee also took note of the fact that corporate frauds involve serious intricacies that may not be easy for state level law enforcement agencies to deal with them effectively and the same need to be referred to the SFIO. As a consequence, vide Section 211, the Companies Act, 2013 has provided for establishment of the SFIO.

The committee further recommended that if the investigation reveals fraudulent conduct then the law should provide for lifting the corporate veil to make available access to promoters and shareholders to ascertain the role. The committee also felt that the companies should be allowed to raise capital so long as they provide true and correct information to investors and the regulators. There could be flexibility to raise capital by making adequate disclosures. However non-compliance with disclosure norms or raising money fraudulently should be subject to strict penalty regime.

Fraudulent behavior requires stringent action when compared to mere procedural violations. While the term fraud is commonly used by one and all; the meaning of which changes in a legal connotation depending on the definition, if any, contained in the respective piece of law. Fraud is distinguishable from negligence from the perspective whether the act is willful or otherwise. Fraud is certainly willful in contrast to a sheer negligence. Fraud can be broadly of two types, viz.., fraud in fact or fraud in law. Fraud with respect to facts as distinguished from construction of law leads to fraud in fact. As mentioned, fraud in law refers to frauds with respect to construction of law (*Henry Campbell Black dictionary*)

Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional (Maher v. Hibernia Inst. Co., 67 N. Y. 292)

The Hon'ble Supreme Court of India in the matter of Dr. Vimla vs Delhi Administration (29 November, 1962)citing Haycraft v. Creasy (1) LeBlanc, noted that:

"by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial."

As per Section 17 of the Indian Contracts Act, 1872, the term "fraud" means an act committed by a party to a contract with an intention to deceive another.

The term fraud has also been defined in Regulation 2(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 which reads as follows:-

"(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include— (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment; (2) a suggestion as to a fact which is not true by one who does not believe it to be true; (3) an active concealment of a fact by a person having knowledge or belief of the fact; (4) a promise made without any intention of performing it; (5) a representation made in a reckless and careless manner whether it be true or false; (6) any such act or omission as any other law specifically declares to be fraudulent, (7) deceptive behavior by a person depriving another of informed consent or full participation, (8) a false statement made without reasonable ground for believing it to be true. (9) the act of an issuer of

> corporate frauds involve serious intricacies that may not be easy for state level law enforcement agencies to deal with them effectively and the same need to be referred to the SFIO. As a consequence, vide Section 211, the Companies Act, 2013 has provided for establishment of the SFIO.

securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price. And "fraudulent" shall be construed accordingly;

In the Companies Act, 1956 frauds detected at the time of winding up are dealt with under Section 542. Though punishments were specified in various Sections in the Companies Act, 1956 there was no one unified Section that dealt with fraud or prescription of penalties.

The Companies Act, 2013 deals with the term fraud exclusively and provides an overarching Section to deal with it. The term Fraud, for the first time, has been defined in the Companies Act, 2013 by way of an explanation.

In explanation to Section 447 of the Companies Act, 2013 the term fraud has been defined as below:-

"*fraud" in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss."*

Again the terms wrongful gain or wrongful loss used as part of the definition of fraud have been defined in the second and third clauses to the explanation to Section 447. The definition of the two terms reads as follows:-

"Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

"Wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

On a close analysis of the definition of the term fraud as provided in the Companies Act, 2013, the following points emerge:-

1. The definition of the term fraud is inclusive in nature.
2. Fraud need not only in relation to a company; it may relate to any body corporate also. Thus, the horizon is larger,
3. Fraud includes any act, omission, concealment of facts or abuse of position by a person
4. The definition also extends to those persons who connive with another in committing a fraud.
5. Intention is important.
6. The targets of the fraud could be the company, it shareholders, its creditors or any other person.
7. It is not necessary that there should a wrongful gain or wrongful loss to do a fraud. Thus, gain or loss arising out of the fraud cannot be a basis for deciding the violation or handing over punishment.

On a plain reading of the definition it is amply vivid that the term has a wide encompassing coverage of the acts and also of the fraudsters.

INTENTION TO COMMIT A FRAUD:-

According to the act, intention is one of the essential ingredients to commit a fraud. In this regard it may be noted that the Hon'ble Supreme Court of India held in the matter of *Dr Vimla Vs Delhi Administration* in the year 1962, in the context of the matter that fraud has to satisfy two conditions viz., (a) deceit or injury to the person deceived (b) intention to deceive.

In the matter of *The State of Mysore Vs Padmanabhacharya etc.*, the Hon'ble Supreme Court of India held a view that the intention can be assumed. In the case under reference the matter relates to certain smuggling activities involving violation of the Sea Customs Act, 1887. In this matter the Hon'ble Supreme Court of India held considering the facts of the case that the intention to defraud continues even after the actual importation of goods and continues in the hands of the subsequent purchasers also. Thus, intention has been accorded a wider amplitude and applicability.

An unintentional and mere accidental omission or commission generally will not stand the test of legal scrutiny in establishing a fraud. Intention can be provided by looking into the attendant factors relating to the impugned fraudulent act. In this regard it is relevant to note the following decision of the Hon'ble Securities Appellate Tribunal,

> The Hon'ble SAT, in Ketan Parekh *Vs.* Securities & Exchange Board of India (Appeal No. 2 of 2004) dated July 14, 2006, observed that, *Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be*

drawn."

UNLAWFUL GAIN OR LOSS:-

Another important ingredient as per the definition of the term fraud is making unlawful gain or loss. As has been discussed earlier, in committing a fraud it is not necessary there should be a gain or a loss. Even without that ingredient getting fulfilled, a fraud can still be committed. It may not be possible to precisely understand the object of intentional frauds in each case. If gain is considered to be the object some may disprove by establishing gain was not the object whereas loss was the object. Thus, the object need not necessary to reap any direct gain or to lose a deceit has to be established.

USE OF SECTION 447 IN VARIOUS PLACES IN THE ACT:-

As has been mentioned Section 447 of the Companies Act, 2013 is an overarching Section that deals with fraud providing for definition as well as the punishment for the same. Such a cogent provision was missing in the Companies Act, 1956. The Companies Act, 2013, at different places, has invoked the provisions of Section 447. Following are the provisions wherein Section 447 has been referred to.

Table

Sl. No.	Section No.	Nature of violation
1	7	Incorporation of company
2	8	Charitable companies
3	34	Criminal liability for misstatement in prospectus
4	36	Punishment for fraudulently inducing persons to invest money
5	38	Punishment for personation for acquisition etc of securities.
6	46	Certificate of shares
7	56	Transfer and transmission of securities
8	66	Reduction of share capital
9	140	Removal, resignation of auditor and giving of special notice.
10	206	Power to call for information, inspect books and conduct inquiries
11	213	Investigation into the company's affairs in other cases
12	229	Penalty for furnishing false statement, mutilation, destruction of documents
13	251	Fraudulent application for removal of name
14	339	Liability for fraudulent conduct of business
15	448	Punishment for false statement

Though the above table brings out the specific Sections where Section 447 has been used, it is not necessary that only to those Sections it is applicable. The relevant provisions of the Sections are discussed in the subsequent paragraphs:-

1. *Section 7 : Incorporation of company*:-
   The Section deals with the documents to be filed with the concerned RoC for incorporation of a company. While dealing with the requirements, undersub-section (5) it has been stated that if a person furnishes false information or incorrect particulars or suppresses material information then the person is liable for action under Section 447.

   Further under sub Section 6 of Section 7 it has also been provided that the promoters, the first directors and the fiduciaries viz, the chartered accountant, the company secretary in practice or the cost accountant or the advocate, the managing director or the secretary of the company who have given a declaration in the prescribed format shall also be liable for action under Section 447. Thus the penal provision extends to the professionals also apart from the officers of the company. A section to be borne in mind by professionals.

2. *Section 8: Charitable companies* :-
   Sub-Section 11 of Section 8 provides for punishment for default in compliance with the requirements laid in the Section. In the proviso to sub Section 11, it has been provided that every officer in default shall be liable for action under Section 447 if it is proved that the affairs of the company were conducted fraudulently. (The term "Officer in default" discussed elsewhere in this article)

3. *Section34 : Criminal liability for mis-statement in prospectus*:-
   The Section has a parallel in terms of Section 63 of the Companies Act, 1956. Section 63 provides for punishment for mis-statements in prospectus. The current provision in Section 34 deals with a situation wherein every person who has authorized the issue of a prospectus carrying misstatement shall be liable under this provision. A proviso similar to Section 63 has been provided in Section 34 wherein the person believed the statement to be true then in such cases the person does not attract any penalty.

4. *Section 36: Punishment for fraudulently inducing persons to invest money*:-
   This Section also has a parallel provision under Section 68 of the Companies Act, 1956 providing for action for fraudulent inducement of persons to invest money.

5. *Section 38: Punishment for personation for acquisition etc. of securities* :-
   This Section is similar to Section 68A of the Companies Act, 1956. The Section provides for punishment under Section 447 of the Companies Act, 2013. Additionally, provision has been made enabling the Court to order disgorgement of gain. The power for disgorgement was not provided for in the Companies Act, 1956 and to that extent there is an improvement over the 1956 act. Also, the maximum imprisonment term could be five years under the 1956 act whereas the maximum could be 10 years under the 2013 act.

6. *Section 46: Certificate of shares:-*
   Issuance of duplicate shares with a fraudulent intent finds traces in the cases of shares held in physical form. Companies which were under trading suspension for a long time where practically no business operations are not carried out, then such companies become a wonderful tool in the hands of fraudsters. The operating part of this provision is similar to Section 84 of the Companies Act, 1956. In terms of sub Section 5 of Section 46 of the Companies Act, 2013, cases of frauds with respect of issuance of share certificate attract a punishment with fine of not less than five times the face value of the shares involved in fraudulent duplicate issue with a maximum penalty of ten times the face value of such shares or Rs. 10 crores whichever is higher. Also, the officers in default attract punishment under Section 447.

7. *Section 56: Transfer and transmission of securities-*
   The Section carries a provision for action against DP/ Depository. Sub Section 7 of the Section provides for punishment under Section 447 intentional fraudulent transfer of shares by a depository or depository participant. This is in addition to the liabilities arising out of the DepositoryAct 1996. A parallel provision is not there in the Companies Act, 1956.

8. *Section 66 : Reduction of share capital*:-
Section 66 of the Companies Act, 2013 deals with reduction of share capital of a company. The provision is similar to those contained in Sections 100 to 105 of the Companies Act, 1956. Sub Section 10 of Section 66 deals with a similar situation as provided under Section 105 of the Companies Act, 1956 and the same reads as follows:-
   a. Knowingly conceals the name of any creditor entitled to object to the reduction
   b. Knowingly misrepresents the nature of amount of the debt or claim of any creditor
   c. Abets or is privy to any such concealment or misrepresentation as aforesaid

   Section 105 provides for imprisonment for a maximum term of one year for the aforesaid violation. Apparently the magnitude of punishment is much severe under Section 447 of the Companies Act, 2013.

9. *Section140:Removal, resignation of auditor and giving of special notice*.
The second proviso to sub Section 5 of Section 140 deals with punishment for auditor of a company who has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by or in relation to the company or its directors or officers. Apart from debarring the auditor from appointment as auditor of any company for a period of five years of passing of order by the NCLT, the auditor shall also be liable under Section 447. Action under this provision is a new move considering the importance of the role played by the auditor as a fiduciary. The term auditor includes a firm of auditors.

10. *Section 206:- Power to call for information, inspect books and conduct inquiries*:-
The Section provides for the power of the RoC to call for information from a company. Such powers are accorded in Section 234 of the Companies Act, 1956 also. If the information collected by the registrar or the inspection reveals that the business of the company has been conducted for a fraudulent or unlawful purpose, then every officer of the company who is in default shall be punishable for fraud as per Section 447. This is in addition to penalties for failure to furnish information sought. It may also be noted that under Section 224 of the Companies Act, 2013, further actions including prosecution or winding up etc. may also be attracted. Thus, action under Section 447 is one of the punitive measures prescribed in the Section.

11. *Section 213 : Investigation into the company's affairs in other cases*:-
The Section corresponds to Section 237 of the Companies Act, 1956. The Section deals with a situation wherein the NCLT finds it necessary to investigate the affairs of the company if it finds that the affairs are conducted fraudulently as described in clause (b) of Section 213. If the investigation reveals that the business of the company was being conducted with an intent to defraud its credits, members or any other person or otherwise for a fraudulent or unlawful purpose, or that the company was formed for such purposes or any person involved in the formation of the company was fond to be guilty of fraud, then every officer in default or other concerned person shall be liable for punishment under Section 447.

12. *Section 229: Penalty for furnishing false statement, mutilation, destruction of documents*:-
This Section deals with falsification or mutilation of records or destroying of documents etc. by any officer of the company who is required to furnish certain information during the course of inspection, inquiry or investigation. Such acts attract punishment under Section 447. The corresponding provision under the Companies Act, 1956 is Section 424L.

13. *Section 251: Fraudulent application for removal of name*:-
This is a new provision in the Companies Act, 2013 which provides for action for fraudulent application for removal of name, made to the Registrar of Companies. An application for removal of name can be made under Section 248(2) of the Companies Act, 2013 after extinguishing all its liabilities. Whereas if such an application has been made by the company with a fraudulent intent to evade the liabilities of the company or to defraud its creditors or other persons then the person in charge of the management of the company shall be liable for action under Section 447. This liability shall accrue even if the company has been notified as dissolved.

14. *Section 339: Liability for fraudulent conduct of business*:-
This Section corresponds to Section 542 of the Companies Act, 1956. This Section casts personal responsibility without any limit on the liability of the directors, manager, or officer of the company or any other person who was knowingly a party to the carrying on the business of the company with an intention to defraud the creditors or any other person or for any fraudulent purpose. Besides Sub-Section (3) of Section 339 also invokes punishment under Section 447. It may be noted that in the explanation to this Section the term officer has been defined to include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

15. *Section 448: Punishment for false statement* :-
This Section corresponds with Section 628 of the Companies Act, 1956. The Section calls for punishment under Section 447 for making false statement that is false in respect of any material particulars or omits any material fact by a person. It may be noted that such false statement or omission could be with respect to any return, report, certificate, financial statement, prospectus, statement or other document that require submission under the act. It may be noted that individual Sections also deal with misstatements say in prospectus etc.

As mentioned earlier, Section 447 is an overarching provision that is applicable to every situation. The above mentioned provisions have direct reference to Section 447 in their application and therefore they have been discussed individually in the preceding paragraphs.

REVIEW COMMITTEE ON COMPANIES ACT, 2013

The MCA set up a committee to review the companies act, 2013. The Committee has dealt with fraud and the corresponding provision i.e., Section 447 of the Companies Act, 2013. The relevant portion of the committee report dated February 01, 2016 which is extracted as below:-

Extract from the report of the companies law committee set up by the Ministry of Corporate Affairs, report submitted in 2016.

Punishment for fraud (Section 447) 28.14 Section 447 of the Act lays down the punishment for any person found guilty of fraud to imprisonment not less than six months but which may extend to

> **Punishment for fraud (Section 447) 28.14 Section 447 of the Act lays down the punishment for any person found guilty of fraud to imprisonment not less than six months but which may extend to ten years and fine not less than the amount involved in fraud but which may extend to three time the amount involved. Further, in case the fraud involves public interest, the minimum imprisonment shall be not less than three years.**

ten years and fine not less than the amount involved in fraud but which may extend to three time the amount involved. Further, in case the fraud involves public interest, the minimum imprisonment shall be not less than three years. 28.15 The Committee received suggestions that the ambit of Section 447 was too broad and would result in minor infractions being punished with severe penalties, which are non-compoundable. However, it was also suggested during the discussions that once the offence of fraud is established, it would not be tenable to provide for a threshold for it to be punishable under Section 447. The Committee observed that the provision has a potential of being misused and may also have a negative impact on attracting professionals in the post of directors etc. and, therefore, recommends that only frauds, which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 (and non-compoundable). Frauds below the limits, which do not involve public interest, may be given a differential treatment and compoundable since the cost of prosecution may exceed the quantum involved. Compounding of certain offences (Section 441) 28.16 As per Section 441 of the Act, any offence punishable under the Act with fine only is compoundable by the Tribunal. Other offences punishable with imprisonment or fine or both are compoundable only by the special court. Previously, in the Companies Act, 1956, offences punishable with fine as well as offences punishable with imprisonment or fine or both were compoundable by the Tribunal. The compounding provision was inserted by the Companies Amendment Act, 1988 on the recommendation of the Sachar Committee, as it was felt that leniency is required in the administration of the provisions of the Act particularly penal provisions because a large number of defaults are of technical nature and arise out of ignorance on account of bewildering complexity of the provisions. The Committee observed that as per the scheme of the Act, most of the offences which are punishable with fine or imprisonment or both are technical / procedural in nature, and thus, for the leniency and ease in administration of the Act, the old provisions relating to compounding may be re-instated. Therefore, under sub-Section (1), the Tribunal should have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both.

In furtherance to the above, vide the Companies (Amendment) Act, 2017 Section 447 was amended by inserting the trigger limit for invocation of the Section for imposing larger penalty by inserting the words and phrases "involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower".

OFFICER IN DEFAULT:-

The Companies Act, 2013, has brought in various changes to the Companies Act, 1956 to make the new law more practical to the changing times and also to make more offences punishable with strict provisions. Any act of fraudulent nature would have a telling effect on the Directors / Key Managerial Personnel of a company. In this regard it is interesting to note that the term officer in default has been massively re-hauled in order to make more types of persons accountable.

As per Section 2(60) of the Companies Act, 2013, "Officer who is in default" includes, for the purpose of the any provisions of the act, the whole time director, the KMP, or the persons who were providing directions to the company etc. Also, when it comes to issue or transfer of shares, the Registrar and Share Transfer Agent or the Merchant Banker is also classified as the officer who is in default.

Again, Section 2(51) when defining the term "key Managerial Personnel" in relation to a company includes the CEO or the MD /WTD or the Manger or the Company Secretary or the CFO, such person who is one level below the Directors designated as KMP or such other officer.

Thus it becomes, even more important for directors and other professionals to act diligently in order to save themselves. As officers they may attract the penal provisions for fraudulent acts.

DUTIES OF AUDITORS OF THE COMPANY / COMPANY SECRETARY / COST ACCOUNTANT ON FRAUD REPORTING:-

Section 143 of the Companies Act, 2013 confers certain powers on the auditors of the company as well it casts certain duties on them. Section 143 (12) carries a *non-obstinate* clause casting a duty on the auditors of the company to report to the central government an offence of fraud committed by the company or by its officers or employees. The first proviso to Section 143(12) also requires the auditors of the company to report to the audit committee of the company in cases of fraud involving amounts lesser than the specified amount or to the board in other cases. The companies (Audit and Auditors) Rules, 2014 contains the operational procedures for reporting of fraud as mandated in Section 143(12). Similar obligations are cast upon the company secretary in practice (secretarial auditor) and the cost accountant in practice (cost auditor) also. On-compliance with the duties by an auditor attracts punishment up to Rs. 25 lakh.

REVIEW BY THE REVIEW COMMITTEE ON OFFENCES:-

A review committee under the chairmanship of the Secretary, MCA was constituted by the Ministry of Corporate Affairs to make recommendations to the Government, inter alia, on re-categorization of certain compoundable offences as ones with civil liabilities in the Companies Act, 2013. When examining the intent and purpose of Section 447 of the Act, the Committee did not find it appropriate to re-look into these non-compoundable offences at this stage as they relate to substantial non-compliance.

CONCLUSION:-

The government has made attempts in the Companies Act, 2013 in defining the term fraud and providing for stringent punishment for fraudsters. Also, the Companies Act, 2013 expects an higher degree of compliance. Therefore the directors, professionals and others associated with the company are duty bound to ensure due diligence in the conduct of the business and in the discharge of their duties failing which serious consequences to follow. Bearing this in mind while functioning in respective capacities would help all the stakeholders. CS

ARTICLE

Registration of creation, modification and satisfaction of charges – Pathbreaking Changes unleashed by the Companies (Amendment) Ordinance, 2018

The Companies (Amendment) Ordinance, 2018 has sought to strengthen the mechanism relating to registration of creation or modification of charges. Registration of charges by a corporate serves an important purpose of disclosing to the larger world the debt profile of a corporate and the securities committed by the corporate to the lenders. The MCA portal provides an immediate window to the lenders on the debts contracted by a corporate, their terms and conditions and whether such debts have been satisfied by way of repayment. Seen in this perspective, the article delves deeper into the extant and amended provisions relating to registration of charges, the possible thought process that has gone into the making of the amendment, etc.

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INTRODCTION

The Companies (Amendment) Ordinance, 2018 ("Ordinance") promulgated by the President of India with effect from 2nd November 2018 has ushered in quite a few significant steps in the realm of governance of the corporates. The changes vary from substantial increase in the threshold for compounding of offences by the Central Government to de-clogging the National Company Law Tribunals from run-of-the-mill applications. Besides this, a radical shift in the thinking process of the Government has come to the fore in respect of registration of charges. Set in the context of proliferation of non-performing assets of the banking sector and the far-reaching inroads made by the Insolvency and Bankruptcy Code, 2016, these changes in respect of the time-limit for registration of charges crave our attention. The seeking of registration of charges by corporates serves an important purpose of disclosing to the larger world the debt profile of the corporate and the securities committed by the corporate to the lenders. The MCA portal provides an immediate window to the lenders on the debts contracted by a corporate, their terms and conditions and whether such debts have been satisfied by way of repayment. Seen in this perspective, the authors would like to delve deeper into the extant and amended provisions relating to registration of charges, the possible thought process that has gone into the making of the amendment, etc.

The discussions are captured into the following broader contour for a better understanding of the amendments in Sections 77, 86 and 87 of the Companies Act, 2013:

A. Time available to register the creation or modification of charges prior to the Ordinance and after the Ordinance.
B. The changes in the fees levied for such registration prior to and after the Ordinance.
C. Likelihood of an anomalous situation due to the drafting of the Ordinance particularly the second proviso to Section 77.
D. What happens if the company does not register the creation or modification within the time-lines provided?
E. Whether the provisions relating to condonation of delay under Section 87 are applicable to any omission or misstatement of particulars of charge already registered?
F. How the amended Section87 restricts the ability of the Central Government to make rectification of charges
G. Changes brought about in the penalty provisions
H. When the charge-holder can make an aoplication for registration of charge?
I. Is there any change in the provisions relating to "satisfaction of charge" consequent to the Ordinance dated 2nd Nov. 2018?

The topics have now been taken up for discussion one by one.

A. Time available to register the creation or modification of charges prior to the Ordinance and after the Ordinance

Section 77 of the Companies Act, 2013 casts a duty on every company which is creating a charge within or outside India on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to seek registration of the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in Form CHG-1 or CHG-9. Form CHG-1 is specified in the case creation of securities in respect of borrowings other than debentures. Form CHG-9 is specified in the case of creation of security in respect of debentures.

Such registration of charge has to be done within thirty days of its creation. By virtue of Section79, the above said provisions of Section77 are also made applicable to a company acquiring any property subject to a charge or any modification in the terms and conditions or the extent or operation of any charge registered under Section77.

Insofar as the above provisions are concerned, there is no change by the Ordinance. The changes that have been brought

> The Registrar is empowered to allow registration of a charge created after the commencement of the Ordinance, within a period of sixty days from the date of such creation on payment of additional fees as may be prescribed. Effectively this means an additional time of thirty days after the initial period of thirty days.

in are in respect of the subsequent time-frame for registration of the charge.

BEFORE THE ORDINANCE

There were four provisos to Section77 as it stood prior to the Ordinance of 2nd Nov. 2018. The first and second provisos dealt with the additional time-frame provided to the company to register the charges if it failed to register the charges within thirty days of its creation. The third and fourth provisos have not been amended by the Ordinance.

The first proviso empowered the Registrar, on an application made by the company (in Form CHG-1 or CHG-9), to allow the registration to be made within a period of three hundred days of such creation, on payment of additional fees as prescribed. In other words, additional time-line of 270 days was permitted to file the particulars on payment of additional fees.

The second proviso to Section77 extended another olive branch to the company which failed to register the charge within three hundred days and provided that such company shall seek extension of time by the Regional Director in accordance with Section87. Section87 provided certain grounds on which the Central Government was empowered to direct that the time for the filing of such registration could be extended or any omission or misstatement could be rectified.

It is in respect of the above provisions, the Ordinance seeks to bring radical changes.

WHAT ARE THE CHANGES BROUGHT IN BY THE ORDINANCE

The first and second provisos discussed above have been replaced by fresh set of two provisos which provide different set of additional time-frames depending upon the date of creation or modification with reference to the date of the Ordinance. In other words, the Ordinance creates, by a legal fiction, two sets of charges: one that was created or modified before the Ordinance (i.e. upto 1st Nov. 2018) and the other, after the Ordinance (i.e. on or after 2nd Nov. 2018). The net effect of the new provisos can be summed up in the following lines under two major heads:

IN RESPECT OF A CHARGE CREATED PRIOR TO THE COMMENCEMENT OF THE ORDINANCE

The Registrar is empowered to allow registration of a charge created before the commencement of the Ordinance within a period of <u>three hundred days</u> from the date of such creation on payment of additional fees as may be prescribed. [First proviso to Section77(1)]. This is effectively continuation of the earlier status. However, the major change brought in by the Ordinance is in the second proviso. Let us now examine the second proviso.

The second proviso to Section77(1) specifies that in the event of such charge not being registered within the abovesaid period of three hundred days, the registration of the charge shall be made within <u>six months from the date of commencement of the Ordinance</u> on payment of such additional fees as may be prescribed. Different fees may be prescribed for different classes of companies. [Second proviso to Section77(1)]

The three stages of time-frame in respect of a charge created <u>prior to the commencement of the Ordinance</u> are depicted herein below

<u>Position before the Ordinance:</u> Registration to be done :

<u>Position after the Ordinance:</u> Registration to be done :

On the face of it, it looks fine in the sense that the Ordinance did not want to disturb the provisions that existed earlier in respect of a charge created before the Ordinance came into effect on 2nd Nov. 2018. It doesn't take away the longer period of 300 days (30+270 days) given to the corporates. On the other hand, it also gives another window of six months from the Ordinance date to register the creation or modification of a charge. However, the catch is in respect of the provision regarding seeking extension of time under Section87. This perhaps is the most important aspect of the Ordinance. We will debate on this point a little later.

Now, we will proceed to look at the provisions relating to a charge created after the commencement of the Ordinance.

i) **In respect of a charge created after the commencement of the Ordinance**

ii)

The Registrar is empowered to allow registration of a charge created after the commencement of the Ordinance, within a period of <u>sixty days</u> from the date of such creation on payment of additional fees as may be prescribed. Effectively this means an additional time of <u>thirty days</u> after the initial period of thirty days. In the event of such charge not being registered within the abovesaid period of sixty days from the date of creation, the registration of the charge shall be made within a further period of <u>sixty days after payment of such ad valorem fees</u> as may be prescribed.

The three-stage time-line in respect of a <u>charge created on or after 2nd Nov. 2018</u> is depicted here in below

For the purposes of a better understanding of the amendments brought in, it would be essential to have a comparative glimpse of the provisions that existed prior to the amendment as well as the amended provisions as per the diagrammatic presentation given below:

Changes in provisions relating to registration of Creation Modification or Satisfaction of charges Consequent to the Companies (Amendment) Act, 2018 with effect from 2nd Nov. 2018

Provisions that existed prior to the Ordinance dated 2nd Nov. 2018	Provisions as applicable after the Ordinance dated 2nd Nov. 2018	
Section77	Section77	
Creation or modification of a charge has to be registered within 30 days of such creation or modification (normal fees applicable)	Creation or modification of a charge has to be registered within 30 days of such creation or modification (normal fees applicable)	
If not registered within the said 30 days, such creation or modification can be registered	If not registered within the said 30 days, such creation or modification can be registered as per the following manner depending upon when the event of creation or modification of charge took place as shown below:	
	Date of Creation or modification prior to 2nd Nov.2018	**Date of Creation or modification prior to 2nd Nov.2018**
within a further period of 270 days, with additional fees	A further period of 270 days is allowed to register the creation or modification of charge	A further period of 30 days is allowed to register the creation or modification of charge
If not registered within the abovesaid period, then,	**If not registered within the abovesaid period, then,**	
the company may seek condonation of delay under Section87 of CA 2013	Registration has to be done within a period of 6 months from the date of the Ordinance, i.e. 2nd Nov. 2018 with such additional fees as may be prescribed.	A further period of 60 days is allowed to register the creation or modification of charge with such ***ad valorem*** fees as may be prescribed.
	No provision available for seeking condonation of delay under Section 87	

B. **The changes in the fees levied for such registration prior to and after the Ordinance**

The words used in the Ordinance in respect of additional fees for registration of creation or modification after the initial period merit closer attention, particularly in respect of charges created on or after the Ordinance dated 2nd Nov. 2018.

Particulars	**Position prior to the Ordinance**	**Position after the Ordinance dated 2nd Nov. 2018**	
	Charges created or modified prior to 2nd Nov. 2018	**Charges created or modified prior to 2nd Nov. 2018**	**Charges created or modified on or after 2nd Nov. 2018**
Fees at the time of filing Form CHG-1 or CHG-9 within 30 days of creation / modification	Normal fees for registration within 30 days of creation / modification	Normal fees for registration within 30 days of creation / modification	Normal fees for registration within 30 days of creation / modification
For the next period	Upto 270 days, with additional fees	Upto next 270 days with such additional fees as may be prescribed	Upto next 30 days with such additional fees as may be prescribed
For the subsequent period	Seek extension of time in accordance with Section87 – condonation of delay, penal provisions as per Section86	Within six months from the date of commencement of the Ordinance on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies	Within a further period of 60 days after payment of such ad valorem fees as may be prescribed

Special attention is drawn to the **"ad valorem"** fees the Government may charge in respect of charges that were not registered within the first 60 days and this window is also available only for a restricted period of 60 days.

C. **Likelihood of an anomalous situation due to the drafting of the Ordinance particularly the second proviso to Section77(1) in respect of a charge created or modified prior to the Ordinance**

What happens if the 300-days time-line falls after the six-month time-line?

This situation is quite likely to arise if a charge which has been created say during the first week of January 2018 or thereafter. An anomalous situation may arise in such an event as described below.

Situation	Scenario-1	Scenario-2
Date of creation/modification of charge	1st Nov. 2018	6th Jan. 2018
Time allowed to register the charge (30 days), i.e. upto	1st December 2018	5th Feb. 2018
Further time allowed - 270 days with additional fees	1st August 2019	1st Nov. 2018
If registration is not done within abovesaid 270 days, further time allowed is 6 months from 2nd Nov. 2018	2nd May 2019	2nd May 2019
	In this case, the company creating or modifying a charge on 1st Nov. 2018 was legitimately eligible to register the charge until 300 days of creation, i.e. upto 1st Aug. 2019. However, after the amendment of Section77, the six-month period after the amendment ends on 2nd May 2019.	In this case, the company creating or modifying a charge as early as on 6th Jan. 2018 is getting time until 2nd May 2019 whereas a charge created on 1st Nov. 2018 is apparently getting time until only 2nd May 2019.

The amended second proviso to Section77(1) does not contain the words "the company shall seek extension of time in accordance with Section87". The omission of this particular phrase is conspicuous and appears well intended because if one visits Section 87 after the Ordinance, she could see that the provisions that existed for the Central Government to approve extension of time for filing of particulars of charge have been omitted.

	It may be seen from the above that the 2nd proviso to Section77 is not specifying the period of further time allowed with a rider that whichever is later. If this anomaly is not removed, the time available to a company which created a charge prior to the amendment is cut short and it will be deprived of valuable time which was legitimately available to it as per the then existing provisions of Companies Act, 2013.	

Therefore, it is tricky to answer this question in the sense that the words used in the second proviso to Section77(1) do not use the phrase "whichever is later" or "whichever is earlier" in the context of two timelines, i.e. expiry of three hundred days of creation or six-months from the date of the Ordinance.

In the authors' humble view, such a provision introduced by an Ordinance should provide the benefit of a longer time-line to the company which has missed the bus and there won't be further window open to such company for condonation of delay. Therefore, when there is case of three hundred days of creation not getting expired but the six month from Ordinance date is falling within the period of three hundred days, the company should be provided the benefit of seeking registration of the charge until the expiry of the three hundred days of its creation or modification.

Where the period of six-months from the date of Ordinance is falling outside the expiry of three hundred days, the company should be given the opportunity to seek registration of the charge before the expiry of the six-month time-line from the date of the Ordinance.

D. **What happens if the company does not register the creation or modification within the time-lines provided, after the promulgation of the Ordinance?**

Can there be condonation of delay for failure to register a charge that was created or modified prior to the Ordinance, beyond the 300-days timeline (from the date of creation/ modification) and the six-month deadline (from the date of the commencement of Ordinance)?

To answer this question, one should have a look at the then existing second proviso to Section77(1) and compare it with the amended second proviso after the Ordinance. For the convenience of the readers, a comparison of the first and second provisos is given below before and after the Ordinance.

	Prior to the Ordinance	After the Ordinance
First Proviso to Section77	Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.	Provided that the Registrar, may on an application by the company, allow such registration to be made- a) In case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or b) In case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation on payment of such additional fees as may be prescribed.
Second Proviso to Section77	Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with Section 87.	Provided further that if the registration is not made within the period specified -- a) In clause (a) to the first proviso, the registration of the charges shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies; b) In clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such ad valorem fees as may be prescribed.

It could be clearly seen that prior to the Ordinance, the second proviso to Section77(1) was giving an exit route if a company failed to register a charge within the extended period of 300 days from the date of creation. It mandated that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with Section87.

> **On scanning the amended provisions of Section 87 with reference to the earlier contents, one can understand that the Government would like to continue with the condonation of delay in respect of filing of memorandum of satisfaction of charges and also in respect of any omission or misstatement in the particulars of charges already filed.**

Under the provisions of Section87 that existed prior to the Ordinance, it was possible to get the approval of the Central Government for extension of time for filing the particulars of charge or to rectify any omission or misstatement in the particulars of charge or modification or satisfaction of charge. In contrast to this, the amended second proviso to Section77(1) does not contain the words "the company shall seek extension of time in accordance with Section87". The omission of this particular phrase is conspicuous and appears well intended because if one visits Section 87 after the Ordinance, she could see that the provisions that existed for the Central Government to approve extension of time for filing of particulars of charge have been omitted.

A closer reading of the provisions of Section 87 prior to the Ordinance and after the Ordinance would make it abundantly clear that the Government wants to remove the provisions relating to condonation of delay in respect of creation or modification of charge whereas it wanted to retain those provisions which relate to satisfaction of charge or rectification in respect of a misstatement of the particulars of charge.

A Comparison of the provisions of Section 87 as it existed prior to the Ordinance of 2nd November 2018 and the newly substituted Section 87 is provided below in the table.

Section 87 as it existed before the Ordinance	The newly substituted Section 87 after the Ordinance
(1)The Central Government on being satisfied that -	The Central Government on being satisfied that -
(i)(a) The omission to file with the Registrar the ***particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge***; or	*(it may be noted that the provisions relating to omission to file particulars of charge created or modified by a company are dropped in the amended Section87)*
(b) The omission to register any charge within the time required under this Chapter or the omission **to give intimation to the Registrar of the payment or the satisfaction of a charge,** within the time required under this Chapter; or	(a) The omission **to give intimation to the Registrar of the payment or satisfaction of a charge,** within the time required under this Chapter; or *(it may be noted here that words "omission to register any charge within the time required under this Chapter" are dropped in the amended Section87)*
Section87 as it existed before the Ordinance	**The newly substituted Section87 after the Ordinance**
(c) the omission or misstatement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of Section 82 or Section 83,	(b) The omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of Section 82 or Section 83,
was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company,	was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company,
(ii) on any other grounds, it is just and equitable to grant relief,	*(this discretionary clause is also dropped in the amended Section 87)*
it may, on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or as the case may require, that the omission or misstatement shall be rectified.	It may, on the application of the company or any person interested and, on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or as the case may require, that the omission or misstatement shall be rectified.
(2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.	*(this clause is also omitted in the amended Section 87)*

Therefore, it is loud and clear that the provisions relating to condonation of delay are no more applicable, having been dropped by the Ordinance.

E. **Whether the provisions relating to condonation of delay under Section 87 are applicable to any omission or misstatement of particulars of charge already registered?**

On scanning the amended provisions of Section 87 with reference to the earlier contents, one can understand that the Government would like to continue with the condonation of delay in respect of filing of memorandum of satisfaction of charges and also in respect of any omission or misstatement in the particulars of charges already filed.

Another interesting observation is that a discretionary clause that "on any other grounds, it is just and equitable to grant relief" has been omitted in the amended Section 87 for approving condonation of delay by the Central Government (Regional Director).

F. **How the amended Section 87 restricts the ability of the Central Government to make rectification of charges?**

This question can be better understood with an example. Prompt Wala Private Ltd. creates a charge on its property in favour of Wise & Nice Bank. The document creating charge is dated 1st August 2017. The charge was registered by the company on 1st October 2018 paying additional fees. Some of the particulars relating to the charge were found to be omitted by Prompt Wala much later. On 10th November 2018, the Company seeks to register the modification but unable to do because of the expiry of the timelines for such registration. Then, the Company seeks to rectify the register of charges by making an application to the Central Government (Regional Director) under Section 87. Whether such an application can be considered by the Central Government to allow rectification of the omission or misstatement of particulars filed in respect of a charge.

The answer is "YES" as the provisions relating to rectification of omission or misstatement under Section 87 are retained. Therefore, the law provides for such an eventuality. On the contrary, the amended Section 87 does not allow a charge to be registered if it is time-barred under the condonation route.

The provisions of Section 78 have not been amended by the Ordinance and therefore have an over-lapping effect. Hence, a person in whose favour a charge is created, is still having a right to make an application to the Registrar, in the event of the company failing to register the charge within the period of 30 days as referred to in Section 77(1), after the expiry of the said 30 days.

G. **Changes brought about in the penalty provisions**

Punishment for contravention of the provisions of Chapter VI (Registration of Charges) of the Companies Act, 2013 (Section 86)

Section 86 of Companies Act, 2013 speaks about punishment for contravention of the provisions of Chapter VI (Section 77 to Section 85). The amendment made by the Ordinance is specifically bringing any person who wilfully furnishes false or incorrect information or knowingly suppresses any material information required to be registered in accordance with the provisions of Section 77 into the ambit of Section 447 which deals with punishment for fraud.

	Prior to the Ordinance	After the Ordinance
Contravention of any provisions of Chapter VI by the company	To the Company – Fine not less than Rs 1 Lakh but which may extend to 10 Lakh Rupees.	No change in the provisions
Every officer of the company who is in default	To every Officer in default – Imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs 25,000 but which may extend to Rs 1 Lakh or with both.	No change in the provisions
With reference to provisions of Section 77 (duty to register charges)		If **any person** wilfully furnishes any false or incorrect information or knowingly suppresses any material information required to be registered in accordance with the provisions of Section 77, he shall be liable for action under Section 447 which deals with punishment for fraud.

Therefore, if the failure to register a charge by a company has a wilful connotation, the penalty provisions have been made more severe and the long arm of the Government can reach **"any person"**, not restricted to only the officer of the company who is in default.

H. **When the charge-holder can make an application for registration of charge?**

In several cases, the borrower company does not take the pains to register the creation or modification of a charge. This puts the lender at risk in the event of liquidation of the company. Section 77(3) provides a warning to this effect.

Section 77(3): Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be, or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under Section 77(2).

Section 77(4): Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.

Therefore, an unregistered charge shall not be taken into account by the liquidator or any other creditor unless the charge is duly registered under Section 77(1) and a certificate of registration of such charge is given by the Registrar under Section 77(2).

In this context, it would be relevant to note that Section 78 provided a relief to the person in whose favour the charge is created by the company.

Section 78: Where a company fails to register the charge within the period of thirty days referred to in sub-section (1) of section 77, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed.

It could be seen here that the provisions of Section 78 have not been amended by the Ordinance and therefore have an over-lapping effect. Hence, a person in whose favour a charge is created, is still having a right to make an application to the Registrar, in the event of the company failing to register the charge within the period of 30 days as referred to in Section 77(1), after the expiry of the said 30 days.

I. **Is there any change in the provisions relating to "satisfaction of charge" consequent to the Ordinance dated 2nd Nov. 2018?**

Provisions relating to satisfaction of charge

Sections 82 and 83 of the Companies Act, 2013 deal with reporting of satisfaction of charge. These sections have not been amended by the Ordinance. Be that as it may, it would be useful to have a quick glance on the provisions in this regard.

1. Section 82 mandates that a company shall give intimation to the Registrar in the prescribed Form CHG-4 of the payment or satisfaction in full of any registered under this Chapter, within a period of 30 days from the date of such payment or satisfaction.

2. After the amendment brought in by the Companies (Amendment) Act, 2017, effective from 5th July 2018, the provisions relating to filing of satisfaction of charge have been relaxed in the sense that the Registrar, may, on an application by the company or the charge-holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.

3. If such satisfaction of charge is not intimated within the period of 300 days specified above, the provisions of Section 87 can be invoked by the company. The amended provisions of Section 87 as already dealt with in this article continue to provide shelter although the process of condonation of delay has to be applied for in Form CHG-8 along with Form CHG-4 and after obtaining the order of the Regional director, the order will have to be filed with the Registrar in Form INC-28 for registering the satisfaction of charge.

4. Section 83 empowers the Registrar to make entries of satisfaction and release in absence of intimation from the company, on evidence being given to his satisfaction with respect to a registered charge. The Registrar shall inform the affected parties within thirty days of making an entry in the register of charges.

It would be in the interest of the company to promptly intimate the Registrar of the satisfaction of a charge. Therefore, the provisions relating to giving additional time of 270 days to report satisfaction of charge have been brought in as described above in addition to retaining the condonation window for further delay beyond three hundred days.

CONCLUSION

On the whole, the intention of the Government has been made very clear that the registration of charges created or modified by a company is a matter of serious import and there cannot be indefinite time given to a corporate to disclose the security interest created by it.

- Dropping the provisions relating to condonation of delay beyond 300 days of creation (in respect of a charge created prior to the Ordinance)
- limiting the window for registration of creation or modification of charge (in respect of a charge creator after the Ordinance)
- levying ad valorem fees for charges registered after 60 days (in respect of a charge creator after the Ordinance); and
- strengthening the penal provisions for non-compliance by way of bringing "any person" into Section 86 and making him liable under Section 447 ("Punishment for fraud").

  All the more it makes profoundly visible to the corporates that they cannot get away with stating any reason for non-registration of charges.

Let us hope these provisions usher in a discipline in the mindset of the corporate executives which will give more information to the lenders for them to take a prudent decision on providing further funds or credit lines.

“Recent changes in Company Law and way ahead – Governance Perspective”

One of the most prominent legal reforms in India is the enactment of the Companies Act, 2013 (“Act”) with the objective of tuning the Indian company law with the global standards. The provisions of the Companies Act, 2013 have been notified in a phased manner.

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INTRODUCTORY BACKGROUND:

During a recent meeting of the Cyprus Bar Association’s Committee for Company Law in Nicosia on June 3 2015, its members recognized the urgent need for the comprehensive review and modernization of company law and governance. The need for reform had been recognized previously and the issue had also been raised in Parliament. However, this time the committee members recognized and stressed the urgent need for reform.

In several instances, litigators and practitioners have come across contradicting verdicts and decisions in relation to similar issues due to the gaps and ambiguities contained in the Greek version of the law. However, since the enactment of the Company Law, Cyprus has followed its own path and on several occasions has amended the law based on its own needs, considerations and assumptions. Therefore, the existing Company Law is a mixture of the UK Companies Act, Cypriot law (mainly amendments to the Company Law) and EU law, and has been amended several times.

The committee members agreed that most of the aforementioned amendments – especially those which were enacted recently. As is widely argued among professionals, and was strongly supported during the committee’s meeting, the Company Law needs considerable improvement.

A: Prominent legal reforms in India - National Company Law Tribunal (“Tribunal”)

One of the most prominent legal reforms in India is the enactment of the Companies Act, 2013 (“**Act**”) with the objective of tuning the Indian company law with the global standards. The provisions of the Companies Act, 2013 have been notified in a phased manner as out of 470 sections only 283 have been enforced by April 1, 2014 and the remaining provisions are yet to be notified. Most of the provisions which are still to be notified are dependent upon the establishment of the National Company Law Tribunal (“**Tribunal**”), which is likely to be notified shortly.

The Act introduced vital changes in the company law in India, especially in relation to accountability, disclosures, investor protection and corporate governance related provisions. However, from the very first day of the enactment of the Act, it has been noted that the amended Act has been weighed down with many drafting errors and containing a range of impractical provisions which are creating lots of obscurity in its implementation. Further, in view of the extent and scope of changes, the stakeholders took some time to come up with the new regime, with the new provisions and stagger upon some difficulties in the process. Further, the plan of the Government for ease of doing business in India would also be adversely affected due to such complexity.

Due to these difficulties the stakeholders made several representations to the Government from time to time with respect to the handy difficulties being faced by them in implementation of the new Act. The Ministry of Corporate Affairs (“**MCA**”) has introduced a few instant amendments in May, 2015, although several representations are still being received by the Government for further assessment of the Act.

B. Formation of Companies Law Committee (“CLC”/”Committee”)

Thus, to remove such convolution, the Ministry of Corporate Affairs, vide an office order dated June 4, 2015, constituted the Companies Law Committee (“**CLC**”/ “**Committee**”) under the chairmanship of the Secretary, Ministry of Corporate Affairs to examine and make recommendations on the issues relating to implementation of the Companies Act, 2013. The representatives from Reserve Bank of India (“**RBI**”) and Securities and Exchange Board of India (“**SEBI**”) have also been co-opted as members of the CLC.

The CLC constituted of a former judge of the Delhi High Court, representatives of the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India, the Institute of Company Secretaries of India and renowned persons in the industry and also coopted representatives from RBI and SEBI as members. They have recommended several changes to the Act for the proper and effective implementation of the Act.

RECOMMENDATIONS OF CLC AND IMPACT THEREOF:

The Committee after considering the suggestions received by it, through public consultation process and from all other stakeholders including professional institutions, chambers of industries, law firms and other regulatory bodies, submitted its report to the MCA on February 1, 2016 recommending changes in the Act and Rules framed therein.

About 100 amendments to the Act have been proposed by the CLC which includes changes in 78 sections and approximately 50 amendments to the Rules as well.

Almost all the significant areas of the Act have been proposed to be changed by the CLC such as definitions, acceptance of deposits, raising of capital, accounts and audit, management and administration, corporate social responsibility, provisions relating to corporate governance and offences & penalties etc. Some of the major changes recommended by the CLC are outlined herein below.

The Act introduced vital changes in the company law in India, especially in relation to accountability, disclosures, investor protection and corporate governance related provisions.

In order to remove ambiguities in the definitions and make them more objective, the CLC recommended modifications in the definitions of various terms used in the Act including but not limited to Associate Company, Debentures, Financial Year, Holding Company, Interested Director, Key managerial personnel, Net worth, Related Party, Small Company, Subsidiary Company and Turnover etc.

To make the process of incorporation simpler and to provide greater flexibility for carrying out business in India, the Committee proposed changes in the provisions relating to incorporation of companies by allowing unrestricted object clause in the memorandum of association and replacing affidavits with self-declarations from subscribers to memorandum and first directors. Consequently, changes in various forms related to these provisions would also be anticipated.

The Committee recommended changes with respect to provisions relating to raising of capital by providing simplification of the private placement process, doing away with the requirement of separate offer letter and synchronizing the provisions of the Act with the regulations issued by other sectoral regulators. Such changes would definitely help companies in raising capital slickly.

Apart from this deal with the situation of disqualifications from appointment and vacation of office of director, the Committee recommended that the vacancy of an office should be triggered only where a disqualification is incurred in a personal capacity and a disqualification under Section 164(2) be only applicable to a person who was a director at the time of the noncompliance, and in case of a continuing non-compliance, there should be a period of six months' time allowed for a new Director to make the company compliant.

With the objective of improving transparency and quality of information concerning financial position of the companies, the Committee suggested changes to the provisions relating to accounts and audit and accordingly requirement for annual ratification of appointment/continuance of auditor has been proposed to be removed.

Further, to remove ambiguities in calculation of profits for determination of a company's obligation on corporate social responsibility, the Committee also recommended certain changes viz. the term 'average net profit' to be replaced with the words 'net profit'. In addition to this, it is also proposed that companies are not required to appoint independent directors to have CSR Committee with two or more directors.

For the amplification of corporate governance in the companies by incentivizing individuals to take up positions of responsibility and reducing the cost of compliances, the Committee recommended significant changes in the provisions relating to independent directors, nomination and remuneration committee, audit committee, disclosure of interests, loans and investments, managerial remuneration, insider trading etc. The key changes proposed in this regard *inter alia* include the requirement of Government approval for managerial remuneration to be omitted, companies may be allowed to give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirements, provisions relating to forward dealing and insider trading to be omitted from the Act as listed companies are regulated by SEBI, to do away with the requirement for a managerial person to be resident in India for 12 months prior to appointment.

In addition to above, it is worth mentioning other recommendations suggested by the Committee including exclusion of convertible notes raised by startups from the definition of deposits, simplification of the procedure to convert an LLP into a company, allowing start-ups to raise deposits for its initial five years without any upper limits, allowing start-ups to issue ESOPs to promoters working as employees, increasing the limits with regard to sweat equity that can be issued by a company from 25% of paid up capital to 50%, increasing the thresholds for private companies to comply with having an Independent Director, Audit Committee, Nomination & Remuneration Committee and rules regarding availability of names are being made liberal to allow for more innovative names.

C. Report of the Insolvency Law Committee: The New Way Forward

On November 16, 2017, the Government of India constituted a committee to undertake a comprehensive review of the Insolvency and Bankruptcy Code, 2016 ('IBC') in light of the experiences of various stakeholders during the past year. The Ministry of Corporate Affairs ('MCA') constituted the Insolvency Law Committee ('ILC') which comprises representatives from across the industry. Bahram N Vakil, a founding partner of AZB & Partners ('Firm') and a member of the Bankruptcy Law Reform Committee (the committee entrusted with drafting of the IBC in 2015) is one of the members of the ILC.

The MCA released ILC's report on April 3, 2018 ('Report'). The Report proposes various amendments to the IBC and the rules and regulations thereunder. The Parliament is likely to consider the Report in the near future to make the relevant legislative changes. Some of the major changes proposed by the Report are as below:

- **Homebuyers upgraded**

The IBC does not explicitly categorize homebuyers who have paid advances towards completion of real estate projects as financial or operational creditors in the corporate insolvency resolution process ('**CIRP**') of the real estate developer. The ILC took the view that advances paid by homebuyers are effectively used by real estate developers as working capital to finance the completion of projects thereby giving it the commercial effect of a borrowing and has proposed that homebuyers be treated as financial creditors. Note that their secured status depends on the nature of their contract with the developer and the bank providing the home loan. The ILC has also proposed that a large block of creditors be allowed to participate in meetings of the committee of creditors ('**CoC**') through an authorized representative.

- **Interest clock on interim finance extended**

Under the IBC, interim finance and any interest on it is classified as insolvency resolution process cost which receives the highest priority on any payout under a resolution plan. However, in the event of liquidation, though the principal amount of interim finance still retains its highest priority, the interest stops accruing from the date of the liquidation order.The ILC felt that the clog on accrual of interest in liquidation was affecting liquidity and raising the coupon on interim finance. The ILC has proposed that interest on interim finance shall continue to accrue for up to one year from the liquidation commencement date. Note that the Insolvency and Bankruptcy Board of India ('**IBBI**') has already made necessary changes to this effect in the IBBI (Liquidation Process) Regulations, 2016.

- **Disqualification for bidders – revisited again**

Section 29A of the IBC was introduced to address concerns that persons who by their conduct had contributed to the financial distress of the corporate debtor or are otherwise deemed not to be fit and proper to gain control over distressed assets, should be disqualified from being resolution applicants. However, the market felt that the range of disqualifications and the affected persons was too large. To address this issue, the ILC has made several proposals, some of which are set out below:

i. Section 29A of the IBC lays down eligibility criteria vis-à-vis the resolution applicant as well as any person *acting jointly or in concert* with the applicant. The term 'acting jointly or in concert' is not defined in the IBC and causes market participants to rely on the definition contained in the Securities and Exchange Board of India ('**SEBI**') (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. This results in inclusion of an extremely broad range of persons, including even those who are involved in the resolution plan in an ancillary way. The ILC proposes to restrict the eligibility test only to the applicant and its connected persons. Additionally, any person acting with a common objective of acquiring voting rights or control over the company would also have to pass the eligibility test.

ii. Section 29A(c) of the IBC bars persons who have been in control of a non-performing asset ('NPA') for more than one year. However, this provision effectively disqualified several 'pure play' financial investors who are in the business of investing in companies across the credit spectrum. For instance, asset reconstruction companies, private equity and distressed debt funds are quite likely to have some distressed assets in their portfolios. The ILC has proposed that the test under Section 29A(c) of the IBC should not apply to such pure play financial entities.

iii. Section 29(A)(d) of the IBC bars persons who have been convicted of a criminal offence punishable with imprisonment for more than two years. This disqualification was thought to be very expansive and would disqualify applicants for offences, the commission of which have no nexus to the ability of the person to run the corporate debtor successfully. The ILC has proposed that the nature of offences, the commission of which will incur the disqualification should be economic in nature and a schedule listing such specific crimes be provided. Additionally, the disqualification should also not apply in case a stay against the conviction has been obtained from a higher court.

iv. Section 29A(h) of the IBC disqualifies persons who have executed an enforceable guarantee in favour of a corporate debtor currently undergoing CIRP. The ILC felt that the scope of the disqualification is overreaching since it bars guarantors solely on account of issuing an enforceable guarantee. The ILC has proposed that the disqualification should only apply against guarantors against whom the underlying guarantee has been invoked by the creditor and remains unpaid.

- **Curious case of guarantors' liability – now resolved**

Section 14 of the IBC imposes a stay on any recovery action against the corporate debtor and the enforcement of any security interest created by a corporate debtor over its assets during the CIRP period. However, a few recent judicial pronouncements have suggested that the moratorium in an ongoing CIRP will also stay enforcement of guarantees or security interest from promoters and group companies of the corporate debtor since it is not feasible to determine the liability of the relevant third party until the CIRP is concluded. The committee felt that the scope of the moratorium is very clear and should not be interpreted broadly. The intent of law could not have been to deprive creditors of contractually negotiated remedies against third parties as long as the corporate debtor's assets remain unaffected. The ILC proposes that an explanation be added to Section 14 of the IBC to clarify that the moratorium does not apply to any recovery action that does not impact the assets of the corporate debtor.

- **CoC voting thresholds reduced**

The IBC provides that all decisions by the CoC be taken by vote of 75% of the CoC, by value. The ILC felt that effectively granting minority lenders constituting 25% of the CoC a veto right to any proposed resolution plan could cause many companies to be liquidated. To ensure that there is a higher likelihood of resolving a distressed company as a going concern under the IBC, the ILC has proposed that the voting threshold for important matters during the CIRP including voting on resolution plans be reduced to 66% of the CoC. Additionally, for other routine decisions that the CoC is required to take during the CIRP, the voting threshold should be reduced to 51% to assist the resolution professional in ease of conducting day to day operations.

- **IBC trigger threshold now ten times**

To keep debt recovery actions from small operational creditors at bay, the ILC recommended that the minimum amount to trigger the IBC be raised to Rs. 10 lakh (approx. US$ 15,000). This may reduce pressure on the NCLT – as statistics suggest that many small creditors used the IBC to coerce recovery. But what of the small creditor? Back to the long queues in the debt recovery tribunals? Perhaps small creditors can accumulate their debt and then trigger IBC.

- **In and out with ninety percent**

Currently, once an IBC case is admitted, the law does not permit withdrawal of the same without the consent of all creditors. This is consistent with the philosophy that this is a collective and representative process for all creditors and settlement with the 'filing creditor' should not permit withdrawal. The Supreme Court has thought otherwise and has permitted withdrawal post admission. The ILC reiterated the aforesaid philosophy but saw merit in permitting withdrawal post admission if 90% of the committee of creditors deem fit. Would this have been of use in the Binani Cement saga ?

- **Regulatory approvals window**

An immediate issue for acquirers in the IBC process is obtaining governmental and regulatory consents, dispensations and permits. Should the bidders bear this risk or the CoC live with the uncertainty? Today, negotiations resolve this tug-of-war to some extent while bidders draft their resolution plans treating the NCLT as a single window clearance. The ILC observed that single window clearance was not the intent of the IBC. This is a critical observation for bidders. Some solutions were debated but a comprehensive solution remained elusive. Instead, the ILC has recommended that a requirement be placed to obtain consents, dispensations and permits within a maximum of one year. It's unclear how this will impact the fine balance currently trying to be achieved in practice by bidders.

- **Competition approval fast tracked**

In a welcome development, the ILC has been informed that the Competition Commission of India will clear notifications for combinations arising out of the IBC within 30 days, with an extension of 30 days for exceptional cases. This is already being borne out in practice and echoes the collaborative effort being taken by Indian regulators to make the IBC work.

- **Liquidation waterfall and priority of security**

Concerns had been raised that the language in the IBC liquidation waterfall may override *inter se* ranking of security amongst creditors; *i.e.*, in liquidation, a secured creditor with a first charge over an asset may receive the same amount as another with a second charge over such asset. After reviewing the language, related laws and relevant case law, the ILC felt confident that any such interpretation would be incorrect and valid subordination agreements should not be disregarded by the IBC and so no change has been proposed.

- **MSME promoters get a breather**

Micro, small and medium enterprises are thought to be the bed rock of the Indian economy. When such companies go through the IBC process, keeping their incumbent promoters out of the bidding process has raised concerns of mass liquidation of such companies leading to potentially significant job losses. The ILC has recommended that promoters of such companies be permitted to bid for their companies in the IBC process (despite Section 29A disqualifications) unless they are willful defaulters. In balancing the opposing forces involved, this seems to be the socially appropriate decision.

- **Limitation now uncomplicated**

Lenders benefited from judicial decisions which indicated that the Indian limitation legislation did not apply to an application under the IBC (although doctrine of laches might still apply). But this was yet to be confirmed by the Supreme Court, which had declined to comment on this issue in one matter. The ILC has recommended that limitation should apply to IBC applications other than those made by a corporate debtor itself.

- **No man's land now occupied**

A resolution plan is approved by the CoC and submitted to the NCLT for confirmation. At this stage, the role of the resolution professional ends and the CoC ceases to exist. But the NCLT order may take weeks or months. Who runs the company during this time and what duties, powers and protections apply to such person? The ILC has recommended that the resolution professional be statutorily required to continue during this period, presumably with the same duties, powers and protections as during the CIRP.

This post seeks to dissect the essential provisions of the Companies (Significant Beneficial Owners) Rules, 2018 (***SBO Rules***) and delve into one of the main ambiguities surrounding it, that being registration of beneficial ownership by foreign companies in an Indian company. Since the rules have come into force in June 2018, law firms across the country have been facing dilemma and indecision regarding the issue of registering foreign companies. This post brings to the fore the possible interpretations which might have been missed out by the Ministry of Corporate Affairs (***MCA***). It seeks to provide some clarity to propel the way forward in achieving the full objectives of the SBO Rules.

- **Registered Member v/s Beneficial Member**

The concept of ownership of shares is typically divided into two categories – registered ownership and beneficial ownership. The former includes all those shareholders whose names are registered in the register of members of the company but who do not hold the beneficial interest in such shares, and the latter includes those who own a beneficial interest in the shares but whose names do not appear in the register. Identifying beneficial ownership is of profound value as it effectively helps fight money laundering, corruption and tax evasion. This is why a plethora of jurisdictions across the world – such as Hong Kong and Macau - have made a provision for mandatory registration of beneficial ownership of shares, with India following suit on June 13, 2018

> In order to remove ambiguities in the definitions and make them more objective, the CLC recommended modifications in the definitions of various terms used in the Act including but not limited to Associate Company, Debentures, Financial Year, Holding Company, Interested Director, Key managerial personnel, Net worth, Related Party, Small Company, Subsidiary Company and Turnover etc.

by introducing the SBO Rules.

D. Key Highlights of the Rules

The SBO Rules predominantly stem from sections 89 and 90 of the Companies Act, 2013 (***Act***), and specify that a significant beneficial shareholder is one holding ultimate beneficial interest of not less than ten per cent of the paid up share capital (either equity or preference or both) of the company. Some of the important provisions under the SBO Rules include rule 3, which provides for declaration of significant beneficial ownership in shares under section 90 of Act (holding ultimate beneficial interest of not less than ten per cent), and filing of Form No. BEN-I by any significant beneficial owner with the company within ninety days of the commencement of the SBO Rules and within thirty days of change in significant beneficial ownership and Form No. BEN-I by any individual to the company within thirty days of acquiring such significant beneficial ownership or change in such ownership. Further, when a company receives a declaration under Form No. BEN-I, it is required to file a return under Form No. BEN-2 with the Registrar within a period of thirty days from the receipt of declaration by it along with the fees as prescribed in the Companies (Registration, Offices and Fees) Rules, 2014. It is also mandated to maintain a register of significant beneficial owners in Form No. BEN-3.

Companies are empowered to seek information, by way of a notice, from a person who, in their opinion, is a beneficial owner or may have knowledge of the identity of a significant beneficial owner or if such a person has been a significant benefit owner during the three years immediately preceding the date of the notice and is not registered as a beneficial owner.

THE CLARIFICATIONS STILL NEEDED

Although the SBO Rules are a positive step forward towards more accountability, there remain a few more areas of ambiguity which need clarification. This post will focus on a two-pronged interpretation regarding registration of beneficial ownership held by a foreign company. Explanation I to the definition of "significant beneficial owner" (regulation 2(e) of the SBO Rules) states where a member is a company, the significant beneficial owner is a 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 the share capital of the company or who exercises significant influence or control

therein. This does not clarify whether/how a foreign company is to be registered as a beneficial owner. The author thus highlights two possible analyses of the same:

<u>Analysis 1: The SBO Rules include a foreign company's significant beneficial shareholding.</u>

Rule 8 of the Draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 (***Draft Rules***) explicitly specified that an exemption should be made in case of foreign listed entities from rules 5, 6 and 7 of the Draft Rules, which deal with filings to be made by both the registered owner and the beneficial owner. However, these rules were not incorporated in the SBO Rules, which could signify that the intention of the legislature was not to exempt foreign entities from declaring registered/beneficial ownership. Moreover, the SBO Rules stem from section 90 of the Act, which includes declaration of registered ownership by trusts and persons resident outside India. As a principle of interpretation, in the event of contradiction/ambiguity between the rules and the parent Act, the latter would prevail.[1] This would mean that the SBO Rules apply to foreign companies as well. Additionally, rule 8 of the SBO Rules specifically mentions that the rules do not apply to mutual funds, alternative investment funds, real estate investment trusts and infrastructure investment trusts, and does not include foreign companies within its ambit. Thus, the SBO Rules read as a whole could indicate that they apply to a foreign company holding beneficial interest.

<u>Analysis 2: The SBO Rules do not include foreign company's significant beneficial shareholding.</u>

The word "company" as defined in section 2(20) of the Act means a company incorporated under the Act or under any previous company law. A separate definition of "foreign company" has been provided for in section 2(42), which explains a foreign company to be one having a place of business in India whether by itself or through an agent, physically or through electronic mode, and conducting any business activity in India in any other manner. Thus, in the absence of an explicit mention of a foreign company, one could infer that the SBO Rules refer to "company" as only Indian companies. Moreover, Form BEN-1 makes a specific mention of CIN/UIN/PAN in case the beneficial owner is a "company" which, again, is inapplicable to a foreign company as such documents could be available only with an Indian Company. Thus, the intentional lack of option for foreign entity to declare beneficial interest in the Form may imply that the SBO Rules were not meant to cover it within their ambit.

CONCLUSION:

1. The Committee has attempted well to take away the difficulties and challenges being faced by all the stakeholders in implementation of the Act. These recommendations are undoubtedly a welcome move which eventually help in smooth functioning of the Act and accomplish the Government's objective of ease of doing business and encouraging start-ups in India as well. We anticipate that the suggested changes should be finalized and adopted by the Government as soon as possible so that the corporate get relief from the burden of compliances and the Act become more amicable.

2. Although it is a welcome move by the MCA to introduce the SBO Rules to track down specific beneficial ownership, a few clarifications – one among them being ownership by foreign entities – should be dealt with by way of a clarification in this behalf by the MCA to help resolve the ambiguity with regard to the multiple plausible interpretations of the same.

Private Placement of Securities – Analysis of provisions of the Companies Act, 2013 and Rules thereunder

Recently, provisions of the Companies Act, 2013 and the Rules thereunder relating to private placement of securities have been amended. The article discusses the aforesaid provisions at length highlighting the changes as compared to the erstwhile provisions.

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INTRODUCTION

The Companies (Amendment) Act, 2017 has substituted the then Section 42 ('erstwhile Section 42') of the Companies Act, 2013 ('the Act') regarding private placement of securities with a revised Section 42 ('Section 42'). Section 42 was notified by the Ministry of Corporate Affairs (MCA) to come in force from 7 August 2018. Vide the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018, which came in force from 7 August 2018, the then Rule 14 ('erstwhile Rule 14') of the Companies (Prospectus and Allotment of Securities) Rules, 2014 ('PAS Rules') regarding private placement of securities was substituted with a revised Rule 14 ('Rule 14'). This article discusses various provisions of the Act read with Rules thereunder in respect of private placement of securities.

SCOPE OF 'PRIVATE PLACEMENT'

As per Section 42(1), a company may, subject to the provisions of Section 42, make a private placement of securities. For considering the ambit of 'private placement', it is necessary to go through Sections 23, 42 and 62 of the Act.

As per Section 23, a public company can issue securities to public by way of public offer, whereas, a public or private company can issue securities by way of rights issue, bonus issue or through private placement. There are different provisions of the Act governing public offer, rights issue, bonus issue and private placement. It can thus be inferred that private placement excludes public offer, rights issue and bonus issue.

As per Explanation I to Section 42(1), 'private placement' means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section. The explanation excludes only public offer from the scope of private placement. A question may therefore arise whether a rights issue or bonus issue, which involves issue of securities to a select group of persons (i.e. shareholders) will amount to private placement. The question can be answered in the negative when Sections 42 and 62 read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 ('SCD Rules') issued under Section 62(1)(c) which deal with issue of shares on preferential basis, are read together.

As per Section 62(1)(a) dealing with rights issue, where a company proposes to increase its subscribed capital by issue of further shares, such shares shall be offered to equity shareholders of the company in the proportion of equity shares held by them. If the shares are not so offered, the issue is not considered as rights issue. Thus, if shares are offered to a) some of the equity shareholders, or b) to person(s) other than equity shareholders or, c) a combination of a) and b), or d) all the equity shareholders but not in the proportion of equity shares held by them, the issue cannot be considered as rights issue under Section 62(1)(a). If the shares are not offered to equity shareholders in proportion to equity shares held by them, it amounts to issue of shares on preferential basis, as the company would give preference to person(s) other than its shareholders (in case of offer to persons other than shareholders) or to one or more of the shareholders as compared to other shareholders in terms of the number of shares offered (in case of offer to shareholders but not on proportionate basis). The Court of Appeals of New York had laid down the rule in *Stokes* v. *Continental Trust Co.* (1906) that 'a stockholder has an inherent right to proportionate shares of new stock issued for money only…. and while he can waive the right, he cannot be deprived of it without his consent…'. Thus, in case shares are to be issued other than as rights issue, approval of the shareholders is required. Under the Act, Section 62(1)(c) needs to be complied with in case of preferential issue, except issue of sweat equity shares or where shares are issued to employees under a scheme of employees' stock option ('ESOP') in compliance with prescribed conditions.

As per Section 62(1)(c) read with Rule 13(1) of SCD Rules, if authorised by a special resolution passed in a general meeting, shares may be issued in any manner whatsoever, including by way of a preferential offer, to any persons whether or not those persons include the equity shareholders or the employees (under ESOP) and such issue on preferential basis should also comply with conditions laid down in Section 42. 'Preferential offer' is defined in Rule 13(1) as an issue of shares or other securities by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme, or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

Thus, in case of issue of shares on preferential basis (which excludes rights issue, bonus issue and other issues mentioned in the foregoing para), Section 42 also becomes applicable. Accordingly, on harmonious interpretation of Sections 42 and 62 and Rule 13, rights issue and bonus issue would not fall within the purview of private placement though not specifically excluded under the aforesaid Explanation I.

Section 42 may not be applicable to issue of securities to a single person. However, 'Preferential Offer' as defined in Rule 13(1) of SCD Rules includes issue of shares or other securities to any select person (i.e. a single person) as well for which Section 42 needs to be complied with. Further, interpretation that Section 42 will not apply in case of issue made to a single person may give an absurd result which may not be the intention of the legislature. Hence, applying the golden rule of interpretation of statutes, it may be interpreted that issue of securities even to a single person will attract Section 42.

It may be noted that the erstwhile definition of 'private placement' referred to 'offer' or 'invitation' to subscribe securities, whereas definition in Section 42 also refers to 'issue' of securities. The term 'issue' is not defined in the Act, though 'issued capital' is defined under Section 2(50) as such capital as the company issues from time to time for subscription. Black's law dictionary considers 'issue' as a) To come forth, put out or put into circulation and b) the stocks and bonds that are offered for sale. The Supreme Court of India in *Sri Gopal Jalan & Company* v. *Calcutta Stock Exchange Association Ltd.* (1963) has, while interpreting the terms 'creation', 'issue' and 'allotment' of shares, stated that – 'When it (i.e. the new share capital) is created it may remain unissued for years, as indeed it was here; the market did not allow of a favourable opportunity of placing it. When it is issued, it may be issued on such terms as appear for the moment expedient.' It can be said that 'issue' of shares means offering of shares for subscription and does not have different meaning than 'offer' of shares, and hence inclusion of the term 'issue' in the definition in Section 42 may not have additional legal implication.

SCOPE OF 'SECURITIES'

'Securities' referred in Section 42 is defined under Section 2(81) of the Act read with 2(h) of Securities Contracts (Regulation) Act, 1956 so as to include, *inter alia*, shares, bonds, debentures and other marketable securities. However, Rule 13(1) of SCD Rules is applicable in respect of preferential issue of 'shares or other securities' which is defined to mean equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date. Thus, while Section 42 is also applicable in case of issue of non-convertible securities (e.g. non-convertible debentures), Section 62(1)(c) and Rule 13 are not applicable thereto.

APPLICABILITY IN CASE OF ISSUE OF SECURITIES TO A SINGLE PERSON

Definition of private placement refers to offer or issue of securities to a group of persons. Hence, applying rule of literal interpretation of statutes, Section 42 may not be applicable to issue of securities to a single person. However, 'Preferential Offer' as defined in Rule 13(1) of SCD Rules includes issue of shares or other securities to any select person (i.e. a single person) as well for which Section 42 needs to be complied with. Further, interpretation that Section 42 will not apply in case of issue made to a single person may give an absurd result which may not be the intention of the legislature. Hence, applying the golden rule of interpretation of statutes, it may be interpreted that issue of securities even to a single person will attract Section 42.

IDENTIFICATION OF THE OFFEREES

As per Section 42(2), the persons to whom private placement is to be made need to be identified by the Board of Directors. Erstwhile Section 42 and Rule 14 of PAS Rules issued thereunder did not include any provision requiring the Board to identify the persons. It may be noted that under Section 179(3)(c) of the Act, the power to issue securities should be exercised by the Board at its meetings. However, the Board can delegate the said power and it may also delegate the power to identify the persons to whom securities are to be issued through private placement. Further to such identification, Section 42(3) read with Rule 14(3) of PAS Rules require name and address of the identified persons to be recorded before the private placement offer cum application letter is sent to the identified person. As per Rule 14(4), a complete record of private placement offers made is required to be maintained in form PAS-5.

OFFER LETTER

As per Rule 14(3) of PAS Rules, a company making private placement is required to issue private placement offer cum application letter ('offer letter') in form PAS-4 serially numbered and addressed specifically to the identified persons within 30 days of recording names of such persons under Section 42(3). The offer letter cannot carry any right of renunciation and, accordingly, no person other than to whom the letter is addressed can apply through such offer letter.

LIMIT ON THE NUMBER OF OFFEREES

As per Section 42(2) read with Rule 14(2) of PAS Rules, the offer or invitation to subscribe securities cannot be made to more than 200 persons in the aggregate in a financial year. Qualified institutional buyers and employees of the company (in case of offer made under employees' stock options scheme) are excluded from the aforesaid limit of 200 persons. As per Explanation III to Section 42(3), 'If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment

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for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.'. Thus, any offer or invitation to subscribe or allotment of securities to more than 200 persons as aforesaid shall be deemed to be public offer. [*Sahara India Real Estate Corporation Limited & Ors.* v. *SEBI,* SC (2012)]. As per erstwhile Section 42(4), any offer or invitation not in compliance with the provisions of Section 42 (i.e. entire Section 42) shall be treated as public offer requiring compliance of applicable provisions of Securities and Exchange Board of India (SEBI) Act and the Act in case of public issue. Thus, non-compliance of any provision of erstwhile Section 42 [e.g. Section 42(3) regarding prohibition on more than one offer of securities at any time, Section 42(5) regarding prohibition on acceptance of subscription money by cash, Section 42(9) regarding filing of return of allotment] would render the offer as public offer. Probably this was not the intention which was therefore sought to be corrected in revised Section 42(11) as per which, any private placement issue not made in compliance of Section 42(2) shall be deemed to be public offer, meaning intended thereby that the issue will be treated as public offer only in case the offer or allotment is made to more than 200 persons. However, revised Section 42(2) also requires compliance with conditions as may be prescribed (i.e. Rule 14 of PAS Rules). Thus, technically, unless, in addition to meeting the limit of 200 persons, Rule 14 is not complied with in its entirety, the offer may still be construed as public offer.

As per Rule 14(7) of PAS Rules, the limit of 200 persons is not applicable to non-banking finance companies and housing finance companies registered with Reserve Bank of India (RBI) and National Housing Bank (NHB) respectively if they are complying with regulations made by the aforesaid regulator in this respect. As per explanation to Rule 14(2) of PAS Rules, the limit of 200 persons is to be considered individually for each kind of security i.e. equity share, preference share or debenture. It is not clear whether the limit will be considered individually in case of convertible securities also (e.g. preference shares or debentures convertible into equity shares). If so considered, the object behind the provision may get defeated.

MANNER OF RECEIPT OF SUBSCRIPTION MONEY

Section 42(4) read with Rule 14(5) specifies that the subscription money on issue of securities should be received by the company by cheque or demand draft or other banking channel but not by cash. The payment needs to be made from bank account of the applicant and the company needs to keep record of such bank account.

MORE THAN ONE OFFER AT THE SAME TIME

As per Section 42(5), no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company. The proviso to Section 42(5) (which was not provided in erstwhile Section 42) now permits, at any time and subject to the limit of 200 persons, more than one issue of securities to prescribed class of identified persons. MCA has not yet prescribed any class of identified persons in this respect.

MONEY TO BE KEPT IN SEPARATE BANK ACCOUNT

As per proviso to Section 42(6), the application money needs to be kept in a separate bank account with scheduled bank to be utilized only in case of adjustment against allotment of securities or repayment in case of failure to allot the securities. Where more than one offer of securities is made at any time as provided under proviso to Section 42(5), the application money received from such offers will need to be kept in separate accounts.

TIME LIMIT FOR ALLOTMENT

According to Section 42(6), the allotment of securities through private placement needs to be made within 60 days from the date of receipt of application money. Further, as per Rule 13(2) of SCD Rules, the allotment of shares or convertible securities need to be completed within 12 months from the date of passing the special resolution of the shareholders. As per Section 42(6), if the allotment is not made within 60 days, the money needs to be refunded within 15 days from the date of expiry of 60^{th} day and in case of default in such repayment, money needs to be refunded with interest of 12% per annum from the expiry of 60^{th} day.

PROHIBITION OF USAGE OF MEDIA

Section 42(7) prohibits release of any public advertisements or use of any media, marketing or distribution channels or agents to inform the public at large about the private placement offer. However, use of media, channels or agents for approaching the investor or group of investors to inform about the offer on one on one basis or in group meeting (i.e. restricting only to the persons to whom offer is made) would be permissible.

RETURN OF ALLOTMENT

Erstwhile Section 42(9) read with Rule 14(4) required filing of return of allotment of securities with the Registrar in form PAS-3 within thirty days of allotment. Section 42(8) has now reduced the aforesaid period to 15 days from the date of allotment. In case the return of allotment is not filed within 15 days, the same can be filed on payment of additional fees under Section 403 of the Act. However, in case of delay in filing, Section 42(9) now provides for a penalty on the company, its promoters and directors of Rs. 1,000 for each day of default subject to maximum of Rs. 25 lakh. The penalty can be adjudged by the adjudicating officer under Section 454 of the Act. Further, proviso to Section 42(4) has now imposed restriction on utilisation of the money received through private placement until the said return is filed with the Registrar.

PENALTY IN CASE OF VIOLATION

As per Section 42(10), in case of offer made or money accepted in contravention of Section 42, the company, its promoters and directors shall be liable for penalty up to the amount raised through private placement or Rs. 2 crore, whichever is lower. Also, the company needs to refund all money with interest as specified under Section 42(6) within 30 days of the order imposing the penalty.

APPROVAL OF SHAREHOLDERS

As per Rule 14(1) of PAS Rules, each offer or invitation for private placement needs to be previously approved by the shareholders by passing special resolution. As per proviso to Rule 14(1), resolution of the shareholders is not required in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit under Section 180(1)(c) of the Act (i.e. paid up capital, free reserves and securities premium) and in such cases Board resolution under Section 179(3)(c) of the Act would be adequate. Based on plain reading of the proviso, only the amount to be raised through the offer or invitation is to be considered for this purpose. However, since the said limit is in respect of entire borrowings (excluding temporary bank loans in the ordinary course of business) including borrowings by way of debentures, it may be harmoniously interpreted that if the aggregate of the subsisting borrowings and the amount to be raised through the proposed offer exceeds the aforesaid limit, special resolution as required under Rule 14(1) would be required. As per second proviso to Rule 14(1), in case of offer or invitation for non-convertible debentures exceeding the aforesaid limit, it is sufficient if a special resolution is passed previously for all the offers or invitations during the 'year'. The Act has not defined the term 'year'. As per General Clauses Act, 1897, unless there is anything repugnant in the subject or context, 'year' is construed as British calendar year. In the context that the limit of 200 persons is required to be considered during any financial year, it may be reasonable to interpret 'year' for the aforesaid purpose as financial year.

Rule 14(8) now provides that the offer letter can be issued only after resolution of the Board or the shareholders, as the case may be, has been filed with the Registrar. Though the form for this purpose has not prescribed in the PAS Rules, it may be inferred that the resolution needs to be filed in form MGT-14 under Section 117 of the Act.

PROVISIONS UNDER RULE 13 OF SCD RULES

In case of private placement of shares or convertible securities, following provisions need to be complied with as per Rule 13 of SCD Rules in addition to the provisions of Section 42 and Rule 14 of PAS Rules:

a) issue should be authorized by the articles of association
b) allotment should be completed within 12 months of passing the special resolution
c) price of shares or securities issued, either for cash or for consideration other than cash, shall not be less than the price determined on the basis of valuation report of a registered valuer
d) in case of issue for consideration other than cash, the valuation of such consideration should be determined on the basis of valuation report of a registered valuer
e) where the non-cash consideration for issue of securities is depreciable or amortizable asset, it shall be accounted as asset in the Balance Sheet, else the same shall be expensed out as provided in the relevant accounting standards
f) in case of convertible securities, the price of shares arising upon conversion needs to be determined either upfront when the offer of securities is made based on report of registered valuer given at the stage of such offer, or not earlier than 30 days to the date when the security-holder becomes entitled to apply for shares based on report of registered valuer given not earlier than 60 days of the aforesaid date. The aforesaid option needs to be exercised at the time of offer of securities.

APPLICABILITY VIS-A-VIS LISTED AND UNLISTED COMPANIES

Sections 42, 62(1)(c) and Rule 14 of PAS Rules are applicable for both listed and unlisted companies (including private companies) whereas Rule 13 of SCD Rules is applicable only in case of unlisted companies (including private companies).

FEW RELAXATIONS

Provision in erstwhile Rule 14(2) requiring minimum value of Rs. 20,000 of face value for offer or invitation per person does not now find place in Rule 14. Section 42 or Rule 14 does not require record of private placement offers along with offer letter to be filed with the Registrar which was required to be filed under erstwhile Section 42(7) read with proviso to erstwhile Rule 14(3). However, the said record needs to be filed with the Registrar with the return of allotment as mandatory attachment to form PAS-3.

APPLICABILITY OF RULE 13 IN CASE OF ISSUE OF SHARES TO MEMBERS

As per the first proviso to Rule 13(1) of SCD Rules, in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-Rule (1) and proviso to sub-Rule (3) of Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply.

While interpreting this proviso, it is important to refer the view taken by SEBI in its order dated 12 July 2018 in the matter of The Canning Industries Cochin Limited (CAICO). In this case, CAICO had made an offer of fully convertible debentures (FCDs) to its existing members and raised certain amount from 335 allottees. The said offer of FCDs was alleged to be deemed public issue under the then Section 42(2) (Explanation-I) and Rule 14(2)(b) of PAS Rules since the offer was made to

ARTICLE

more than 200 persons. The Explanation I is the same as the present Explanation III to Section 42(3) mentioned in foregoing paragraph.

Accordingly, the relevant provisions of the Act, SEBI Act and Regulations in respect of public issue were alleged to be not complied with by CAICO. SEBI observed that –

'Rule 13(1) of Companies (Share Capital and Debentures) Rules, 2014, provides that the preferential offer has to comply with the requirements of section 42 of the Companies Act, 2013. One of such requirements under Section 42 of Companies Act, 2013 read with Rule 14(2)(b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 is the limit of 200 allottees. However, the proviso to the aforesaid Rule 13, stipulates that if such preferential offer is made by a company to its existing members only, the provisions of sub-Rule (1) of Rule 13 need not be complied with. In other words, for a preferential offer of shares and securities to the existing members, the prescribed limit of 200 persons is not applicable. The aforesaid provisions when read in conjunction with each other, in effect means that if a Company, being authorized by a Special Resolution, has made preferential offer of fully convertible debentures to its existing members and shareholders, then the company need not fulfil the conditions laid down in section 42 of the Companies Act, 2013. With respect to Rule 14(2)(b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, prescribing 200 persons in a financial year as the limit to the number of allottees, is applicable to private placements under section 42 of the Companies Act, 2013. Under Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014, the limit of 200 persons in a financial year and other requirements under section 42 is applicable for preferential allotment also. However, as discussed earlier in the case of a preferential allotment of FCDs to one or more of the existing members of a company the requirement of section 42 of Companies Act, 2013 is not required to be complied with.'

By plain reading of the proviso to Rule 13(1), it may be reasonable to interpret that Rule 14(1) and proviso to Rule 14(3) of PAS Rules are not applicable to preferential offer made to existing member(s). Had the intention of the legislature in using the words 'provisions of sub-Rule (1)' been to refer to Rule 13(1) of SCD Rules, it would not have used the words 'proviso to sub-Rule (3) of Rule 14' in the proviso since it is clear that Rule 13(1) itself requires such issue of shares to comply with Section 42 of the Act and Rule 14 of PAS Rules. So, if Rule 13(1) of SCD Rules is not applicable to any issue, then entire Rule 14 of PAS Rules, leave apart proviso to Rule 14(3), will not be applicable for such issue, and there would not have been any requirement of using the words 'proviso to sub-Rule (3) of Rule 14' additionally in the proviso. If the words 'provisions of sub-Rule (1)' are interpreted to mean Rule 13(1) of SCD Rules, then the words 'proviso to sub-Rule (3) of Rule 14' become redundant which should be avoided while interpreting statutes. The Supreme Court has stated in its order in *Grasim Industries Limited* v. *Collector of Customs, Bombay* (2002) that - 'No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words.'

> **As per explanation to Rule 14(2) of PAS Rules, the limit of 200 persons is to be considered individually for each kind of security i.e. equity share, preference share or debenture. It is not clear whether the limit will be considered individually in case of convertible securities also (e.g. preference shares or debentures convertible into equity shares). If so considered, the object behind the provision may get defeated.**

At the time of passing the aforesaid order by SEBI (i.e. as stood before the amendment effective from 7 August 2018), Rule 14(1) specified the form of private placement offer letter and manner of circulation thereof along with application form whereas proviso to Rule 14(3) prescribed the requirement of filing record of private placement offers along with copy of private placement offer letter with the Registrar of Companies or SEBI. Considering that the offer is made to the existing member(s), it could be the intent behind the first proviso to Rule 13(1) to make the aforesaid requirements not applicable to such an offer as they become irrelevant or unnecessary in their context. However, Section 42 and remaining provisions of erstwhile Rule 14 would continue to remain applicable to such an offer.

If Rule 13(1) (and hence Section 42 read with Rule 14 of PAS Rules) is not applicable to preferential offer made to existing member(s), following provisions need not be complied with in respect of such an offer:

a) Requirement of passing special resolution [Rule 13(1) of SCD Rules and Rule 14(1) of PAS Rules]
b) Limiting the number of offerees to 200 [Rule 14(2)]
c) Prohibition on right of renunciation [Proviso to Section 42(3)]
d) Prohibition on acceptance of subscription money by cash [Section 42(4)]
e) Subscription money to be received from bank account of applicant of which record to be kept by the company [Rule 14(5)]
f) Filing of return of allotment and prohibition on utilization of subscription money before filing the said return [Rule 14(6) and proviso to Section 42(4)]
g) Prohibition on more than one issue to be kept open at any time [Section 42(5)]
h) Provision to make the allotment within 60 days [Section 42(6)]
i) Provision to maintain record of private placement offers [Rule 14(4)]

However, it may be noted that the view taken by SEBI in the said order may not be *ex facie* applicable in case of unlisted companies as SEBI's power to administer the provisions relating to issue and transfer of securities is limited to listed companies.

NEED TO AMEND PROVISO TO RULE 13(1)

The present Rule 14(1) of PAS Rules, *inter alia*, provides for approval of shareholders for the private placement offer whereas proviso to Rule 14(3) provides for prohibition on a person, other than the person to whom the offer letter is issued, to subscribe for the securities. It can be seen that, post substitution of erstwhile Rule 14, there is need for corresponding amendment in the first proviso to Rule 13(1) of SCD Rules for providing proper reference to the provisions of Rule 14. CS

Practical View on Journey of Companies Act, 2013 and Road Ahead

In the wake of new governments mission to simplify government procedures with a core policy of "Minimum Government, Maximum Governance" there has been transition from Companies Act, 1956 to Companies Act, 2013. However concern is about its implementation which has been facing teething problems and therefore needed constant tweaks as indeed all new laws do.

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INTRODUCTION

In the recent years, India has witnessed a flurry of new legislations considering growing economy of our country where development is attributable to number of factors of which one of the main factor for development is encouragement of entrepreneurship in India. The Government therefore on the ground that Companies Act of 1956 had become antiquated and outlived its usefulness had enforced the Companies Act, 2013 to provide more opportunities for new entrepreneurs and enable wide application of information technology in the conduct of the affairs by the corporate world in order to monitor the affairs of the companies in India.

Therefore the Companies Act, 2013, ('2013 Act') which was notified on 29th August, 2013.However it was far cry from expectation and therefore implementation of the Act have been facing teething problems because of the transition from the old to the new regime, and therefore needed constant tweaks as indeed all new laws do. Though the Act is the principal piece of legislation, most of the gap-fillings in the Act were left in the hands of a subordinate legislation which was supposed to be introduced in the form of Rules, empowering the MCA to mould the law of the land at its discretion. With most of the determining factors left to be decided by way of Rules, in spirit, the Act itself became a subordinated law. There were many loopholes and ambiguous provisions remained unattended, which created massive difficulties and interpretational issues for the corporate world. The Rules created various inconsistencies with the provisions of the Act which left the business environment baffled with the thought of how to cope up with new piece of poor legislation. The Act, instead of facilitating the ease of doing business, created more restraints and ambiguity. India's position in the World Bank's Report of 'Doing Business 2015' slipped to 142 spot from 140 in 2014, out of 189 countries assessed.

Consequently looking at the practical difficulties in complying with some of the requirements laid down in the Act and upon issues and suggestions made by various stakeholders, the new Government with a focus to ease the restrictions and promote business had decided to amend certain provisions of the Act. Below is the glimpse of the journey, of suitably amendments undertaken in the Companies Act 2013 to become an Act:

1) First Phase - Companies (Amendment) Act, 2015;
2) Second Phase - Companies (Amendment) Act, 2017, and
3) Third Phase - Companies (Amendment) Ordinance, 2018

FIRST PHASE - COMPANIES (AMENDMENT) ACT, 2015

The Government had introduced the Companies (Amendment) Bill, 2014 which was placed before the lower house of the Parliament. This Bill received the approval of both Houses of Parliament and finally received the assent of the President of India on 25th of May, 2015 and became Companies (Amendment) Act, 2015.

LET US NOW TAKE A QUICK VIEW ON THE CHANGES INTRODUCED UNDER THE COMPANIES (AMENDMENT) ACT, 2015.

(a) Requirement of having a common seal of the company upon incorporation has been made non-mandatory.
(b) Minimum paid up capital requirement for public and private companies has been done away with.
(c) Requiring only ordinary resolutions for approval of related party transactions at general meetings instead of special resolution;
(d) Related Party Transactions between holding company and its wholly owned subsidiary would no longer require members' approval, even of the holding company.
(e) Allowing omnibus approvals by the Audit Committee for Related Party Transactions;
(f) Providing a 'material' limit for reporting of frauds to the Central Government.
(g) Adding penal provisions for non-compliance with deposit provisions, which were absent from the existing provisions;
(h) Writing off past losses/depreciation before declaring dividend for the year;
(i) Incorporating the exemptions under the rules to Section 185 in the Act itself as a precautionary measure;
(j) Special courts to try only offences carrying imprisonment of two years or more;
(k) Winding up cases to be heard by 2-member Bench instead of a 3-member Bench;
(l) While laying any draft notification before each House of Parliament, the explicit mention of number of sessions in which the same may be approved/ disapproved has been done away with.

OUTCOME OF FIRST PHASE

Although the Companies Amendment Act, 2015 was in the right direction, however inspite of so many suggestions and representations drawn from various bodies and organizations such as industry people, professionals and company law experts, the MCA found only a handful of areas to mend the new law. The amendment in the Act required a serious rejig so as to straighten the tangles created by it and make amendment to the ill-drafting and misplaced provisions so as to provide clarity and better the corporate governance structure. The amendments, as it stands, was a piecemeal approach to fix the inherent flaws in the Act.

SECOND PHASE - COMPANIES (AMENDMENT) ACT, 2017

The Companies Law Committee had therefore had submitted its

> Looking at the practical difficulties in complying with some of the requirements laid down in the Act and upon issues and suggestions made by various stakeholders, the new Government with a focus to ease the restrictions and promote business had decided to amend certain provisions of the Act.

recommendations to the government on the changes to be made in Companies Act, 2013. And based on the recommendations and deliberations, the Companies (Amendment) Act received the President assent on 3rd January, 2017.

The amendments under the Companies (Amendment) Act, 2017 (2017 Amendment Act), are broadly aimed at:

a) **Addressing the difficulties being faced in genuine transactions due to the complete embargo owing to stringent compliance requirements.**

For Instance, with the very introduction of Companies Act, 2013, Section 185, being a prohibitory section, was of great importance. There was no scope of any carve out or any route to apply to Central Government's approval for non-applicability of such restrictions, unlike Section 295 of the Companies Act, 1956. Further, the said section was applicable to both pubic as well as private companies, which was totally unacceptable by private companies. Then MCA vide exemption notification dated June 5, 2015 exempted private companies subject to certain conditions from the provisions of Section 185 which brought great relief to the private companies, however, such relief is subject to stipulated conditions which cannot be fulfilled by companies under genuine transactions. Therefore, to promote ease of doing business, the entire section has been substituted Section 185, wherein now the companies are permitted to give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirements. This would give big relief to the companies.

The amended provisions are partly prohibitive and partly restrictive. The intent of the current provisions of Section 185 is to ensure that directors who hold a fiduciary position with respect to shareholders do not utilize the funds of the company for their own benefit. However, the company laws over the world do not provide for a complete blanket prohibition on advancement of such loans/guarantee/security to directors and their related entities. It is pertinent to note that where the shareholders of the company, being the ultimate owners, themselves approve the utilization of the funds of the company in the specified manner, the law need not create a bar on the same.

b) **Harmonisation with the Accounting Standards (AS), the Securities and Exchange Board of India Act, 1992 (SEBI), Reserve Bank of India Act, 1934 (RBI) and the regulations made there under**

Perhaps for the first time, several provisions have been amended to align the Act with various rules and regulations of the AS, SEBI and the RBI.

For instance, Section 129(3) have been amended by inserting associate companies in addition to subsidiaries for preparing consolidated financial statements which is in accordance with the applicable accounting standards. Whereas under 2013 Act while preparing the consolidated financial statements, the main concern was whether to include associate companies or not.

Sections 194 and 195 of the Act, which dealt with insider trading and forward dealing, have now been omitted since the SEBI regulations are wide enough to cover all instances of such frauds. Further disclosures to be made in the prospectus have also been aligned with the SEBI's power to regulate IPOs.

The definition of 'debenture' has also been amended to allow RBI to disqualify certain instruments as debentures.

c) **Further clarification on ambiguous provisions**

Under the previous 2013 Act an independent director was defined as a person who has or has had no 'pecuniary' relationship with the company, its holding, subsidiary, or associate company, or their promoters, or directors during the two immediately preceding financial years or during the current financial year. However there was no clarity on what is pecuniary relationship. Therefore the amendment clarifies that this pecuniary relationship excludes the remuneration to such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed. Also the requirement to deposit Rs. 1,00,000 (rupees one lakh) with respect to nomination of directors as provided under section 160 of the Act shall also not be applicable now in case of appointment of independent directors or directors nominated by nomination and remuneration committee.

d) **Rectifying omissions and inconsistencies in the Act**

The amendments made in the 2017 Amendment Act to remove the inconsistency in the Act by doing away with the requirement of ratification of appointment of auditors at every Annual General Meeting, as under the 2013 Act this was defeating the very objective of appointment of auditor for the term of five year. Further there was no clarity in case the shareholders choose not to ratify the auditor's appointment as per Section 139 (1).

Further, in case the shareholders take decision not to ratify any appointment during the period of five-years, as this would be similar to removal of the auditor and provisions of Section 140(1) should come into play. Whereas, explanation to Rule 3 of Companies (Audit and Auditors) Rules, 2014, provides for such a situation and requires that the Board shall appoint another individual or firm as the auditor (s) after following the procedure laid down in this behalf under the Act.

Accordingly, this is an inconsistency in these two provisions, wherein removal would require a special resolution and approval of the Central Government while removal through non-ratification would need only a Board resolution.

e) **Rationalisation of Penalties**

One of the most applauded amendments made in the 2017 Amendment Act is the quantum of penalty will now be levied taking into consideration the size of company, class of company, nature of business, injury to public interest, nature and gravity of default, repetition of default, etc.

Two new sections with respect to factors for determining the level of punishment and for lesser penalties for one person companies and small companies are inserted.

Penal provisions for small companies and one person companies are reduced.

f) **Private Placement process made easier**

The private placement process is by doing away with separate offer letter details to be kept by company and reducing number of filings to Registrar.

Further, the company has been restricted from utilising the money raised through private placement unless allotment has been made and return of allotment has been filed with the Registrar.

In order to ensure that investor gets adequate information about the company, the disclosures are made under Explanatory Statement referred to in Rule 13(2)(d) of Companies (Share Capital and Debenture) Rules, 2014, embodied in the Private Placement Application Form.

g) **Other Major Amendments**

The major other official amendments subsequently introduced include continuing with the provisions relating to layers of subsidiaries, continuing with the earlier provisions with respect of memorandum, making offence for contravention of provisions relating to deposits as non-compoundable, stringent additional fees of Rs 100 per day in case of delay in filing of annual return and financial statement etc.

OUTCOME OF SECOND PHASE

This is the second round of amendments made to the Companies Act, 2013, with the first one being made in 2015 which broadly seeks to strengthen corporate governance standards, initiate strict action against defaulting companies and help improve ease of doing business in the country. Due to such reformist approach, India jumped 30 notch in the World Bank's rankings for ease of doing business and was well-received by the business community. Also the introduction of nation-wide Goods and Services Tax, and the developments regarding the Insolvency and Bankruptcy Code were additional backbone.

THIRD PHASE - COMPANIES (AMENDMENT) ORDINANCE, 2018

Recently, the government have promulgate an ordinance to make changes to the Companies Act with an aim to decentralise power to regional directors and set up an in-house e-adjudication mechanism to deal with minor offences, which will free up the already overburdened NCLT and special courts. Consequently that will help speed up the resolution of banks' bad loans as the tribunals are central to the Insolvency and Bankruptcy Code process. And therefore based on the recommendations of the Committee to Review Offences under the Companies Act, 2013, the Companies (Amendment) Ordinance, 2018 (Ordinance) was passed on November 2, 2018, to effect certain changes in the Companies Act, 2013. The changes include easing of various penal provisions in the Act and introduction of measures to unclog National Company Law Tribunal (NCLT) and special courts.

BELOW ARE THE KEY TAKEAWAYS OF THE ORDINANCE ENFORCED

a) **Reduction of Burden:** Shifting of jurisdiction of 16 types of corporate offences from the special courts to in-house adjudication, which is expected to reduce the case load of Special Courts by over 60%, thereby enabling them to concentrate on serious corporate offences.

b) **Easing Penal Provisions:** The penalty for small companies and one-person companies has been reduced to half of that applicable to normal company.

c) **E-adjudication:** Instituting a transparent and technology driven in-house adjudication mechanism on an online platform and publication of the orders on the website.

d) **Strong Regulation:** Strengthening in-house adjudication mechanism by necessitating a concomitant order for making good the default at the time of levying penalty, to achieve the ultimate aim of achieving better compliance.

e) **Unclogging of NCLT:** To administer the legal affairs in respect to a company, the Government has provided the National Company Law Tribunal ("NCLT") established for resolution of civil as well as criminal disputes thereto. Minimizing the burden on NCLT shall aid its focus on serious corporate offenses. Some of the measures taken to de-clog NCLT are:

i. enlarging the pecuniary jurisdiction of Regional Director by enhancing the limit up to INR 25,00,000 as against earlier limit of INR 5,00,000 under Section 441 of the Act;

ii. vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41); and

iii. vesting the Central Government, the power to approve cases of conversion of public companies into private companies.

f) **Curbing Shell Companies:** Shell companies are the non-trading entities incorporated under the multiple layers of subsidiary companies which be used as device to effectuate illegal transactions such as tax evasion, money laundering etc. Declaration of commencement of business provision has been re-introduced to better tackle the menace of shell companies.

g) **Better Corporate Management:** Recommendations related to corporate compliance and corporate governance include greater disclosures with respect to public deposits; greater accountability to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; and holding of directorships beyond permissible limits to trigger disqualification of such directors.

Fostering better compliance for effective management of the company's affairs, the Government has promulgated the ordinance of modifications in the prevalent company law provisions. No doubt the new enactment is the refreshing change which corporate India needed it for long. It has tried to remove the bureaucracy in its implementation at ground level and the government is expected to continue such liberalisation with a view to bring Indian regulations in line with the best international practices.

EFFECTS OF OTHER LEGISLATIONS

Apart from Companies Act, 2013 the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC or Code) with effect from 15th November 2016 has played a vital role to overhaul the existing bankruptcy laws and replace them with one that will facilitate easy and time-bound closure of businesses. This path breaking legislations have been key in significantly changing India's perception globally as a business-friendly environment.

Prior to the enactment there were multiplicity of laws and adjudicating authorities for Insolvency and bankruptcy of various entities which were a hindrance towards resolution of recovery problems of creditors and declaration of insolvency, their revival plan and liquidation of corporate entities. The objective of IBC is to consolidate multiple laws and adjudicating authorities dealing with insolvency, bankruptcy, revival and/or liquidation of various entities including individual, partnership firms, corporate entities etc.

Earlier laws pertaining to DRT and SARFAESI were the exclusive forums for banks/financial institutions while BIFR and Companies Act had limited application for sick companies, their revival and/or liquidation. It was envisaged that the IBC will overcome these kinds of problems. The IBC offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms).

BELOW IS THE IMPACT ON COMPANIES ACT, 2013 IN THE WAKE OF THE NEW INSOLVENCY LAW

1. The entire Chapter XIX pertaining to Revival and Rehabilitation of Sick Companies and Voluntary Winding Up under Part II of Chapter XXof 2013 Actstands omitted by the Code.
2. The ambit of resolution plan under the Code is very similar in nature to the revival and rehabilitation scheme under Chapter XIX of 2013 Act. Similarly, any stay that would have been granted by the Tribunal to give suitable opportunity for the revival to take place under section 289 has also been omitted in view of the automatic moratorium under section 14 of the Code.
3. The resolution process will have to be completed within a maximum period of 180 days from the date of registration of the case. This period may be extended by 90 days if 75% of the financial creditors agree. The process will involve negotiations between the debtor and creditors to draft a resolution plan which finally needs an accord from Adjudicating Authority. In the event that such corporate insolvency plan is not executed within the aforesaid timeline, the adjudicating authority may pass an order for liquidation of the corporate person in relation to whom the application was made.
4. The circumstances under which a company can be wound up by Tribunal, other than inability to pay debts, have been enlisted under Section 271 of 2013 Act therefore the winding up applications on any of the such grounds mentioned in Section 271 will be made to the Tribunal in accordance with the provisions of 2013 Act.
5. Section 255 of the Code has effectively omitted the application of the insolvency procedure under the 2013 Act and replaced it with Sections 7 to 9 of the Code, being initiation of Corporate Insolvency Resolution Process by financial and operational creditors. An application to the Adjudication Authority for initiation of Corporate Insolvency Resolution Process can be made only when there is an occurrence of "default" in payment of debt by a corporate debtor. The Code creates a deeming fiction such that a corporate debtor which defaults in payment shall be considered insolvent for the purpose of the Code. The legal effect of such deeming provision is that the treatment of 'inability to pay' and 'failure to pay' is alike. This a hallmark difference from the erstwhile regime wherein 'inability to pay debts' stood for commercial insolvency.
6. Proceedings pending before the High Courts on December 15, 2016, and the notice of which have not been served on the respondent, for both winding up on inability to pay debts and winding up on grounds other than inability to pay debts will be transferred to Tribunal. Although the former category will be governed by the provisions of the Code, the latter category will be governed by the provisions of 2013 Act. The proceedings shall be transferred to the respective Bench of the Tribunal exercising territorial jurisdiction over the concerned State and shall be dealt in accordance with the provisions of the Code. MCA on December 15, 2016 i.e. on the same date issued the Companies (Transfer of Pending Proceedings) Rules, 2016 ("Rules") for clarifying the ambiguities relating to transfer of pending proceedings from a High Court to the Tribunal.
7. In case of any conflict between winding up under the 2013 Act and an application under the Code, the Code shall prevail.
8. The Code also introduced a new definition of "winding up" in section 2 (94A) whereby winding up means winding up under the Act or liquidation under the Code, thus harmonising both statutes.

ROAD AHEAD

On a concluding note we can say that as time passes & corporate sector becomes more & more integrated with the society there is need to incorporate necessary changes in corporate laws governing every sector of the companies. No doubt the introduction of a very comprehensive Companies Act, 2013 is a milestone but the concern is about its implementation. No act is helpful if it is not implemented in its spirit; similarly there is also a need to have unified laws for corporate sectors to remove ambiguities due the existence of multiple acts & statutes. Companies Act, 2013 overcomes some of the major loopholes of Companies Act, 1956 but there are many loopholes with Companies Act 2013 itself specially when in the areas where it does not provide for punitive or penal actions like in the case of Section 135. So there is a need to have a re look at some of the parts of the newly introduced Act. The transition from Companies Act, 1956 to Companies Act, 2013 has been an eventful one as several bills and committees have deliberated on the impact of global corporate law jurisprudence on Indian corporate houses. The new Companies Act has incorporated guidelines from across jurisdictions such as the US, Australia, UK and the European Commission. In terms of global competitiveness, the new Companies Act has important provisions that are unique to India. Some of the game-changing provisions include mandatory women directors, corporate social responsibility (CSR), audit reporting requirements and One Person Company. Ministry of Corporate Affairs, true to its mission of simplifying government procedures and the core policy of "Minimum Government, Maximum Governance", has moved towards a disclosure and self-regulation based corporate law, away from the one based on checks, controls and approvals. The New Act envisages an efficacious corporate governance regime based on enhanced self-regulations and with corporate democracy.

Overall, there was a concerted effort from market participants, the government, courts and the regulators, to make sure that the 2013 Act facilitate the global competitiveness and are likely to help our nation secure a more prominent role for growth of India in the global economy.

Recent Changes in Company Law and Way Ahead

The provisions of the Companies Act, 2013 ("Act"), came in to force with effect from 12.09.2013, and with other provisions notified in a phased manner from April 1, 2014.
With the intention of ease of doing business in India, and to overcome various difficulties as to implementation of the provisions, some amendments were proposed to the Act within a period of 15 months of its commencement, and accordingly, the Companies Amendment Act, 2015, and the provisions of the same were made effective from 29.05.2015.

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Even after the above amendment, there were lot of provisions which required amendments/relaxations, and accordingly the Ministry had come with 4 notifications dated June 5, 2015, giving exemptions/relaxation from the applicability of various provisions of the Act to Government Companies, Private Companies, Section 8 Companies and Nidhi Companies.

To sort out any further difficulties, the Ministry had constituted a Corporate Law Committee, to obtain opinion from the various sections in the industry and recommend amendments to the Act, and the Companies Amendment Bill, 2016, was introduced in the parliament for its consideration. After taking their own sweet time, finally the Companies Amendment Bill, 2016, become Companies Amendment Act, 2017, and noticed effect from January 26, 2018.

Within a span of 4 years of its notification, the Act, has got amended two times, and don't even talk about the plethora of notifications, circulars, exemption notifications.

Now again, the policy makers had felt it appropriate to amendment the Companies Act, 2013, and as the parliament is not in session, the same has been done through an Ordinance. The Union Cabinet has approved proposal for promulgation ordinance to amend the Act.

Union Government-appointed Committee (headed by Corporate Affairs Secretary InjetiSrinivas) had suggested various changes to Act, including restructuring of corporate offences under company's law and in-house adjudication mechanism to ensure that courts get more time to deal with serious violations.

Apart from restructuring of corporate offences to relieve special courts from adjudicating routine offences, the committee had mooted re-categorisation of 16 out of 81 compoundable offences under the Act. This move was recommended to bring down NCLT's load as it looks at insolvency and bankruptcy cases as well.

It also recommended disqualification of directors in case they have directorships beyond permissible limits and capping an independent director's remuneration. It also had suggested that remuneration any independent director gets from company should be capped at 20% of his gross income in year to prevent any material pecuniary relationship, which could impair their independence on the board.

The President Mr. Ram Nath Kovind has given his assent to the Companies (Amendment) Ordinance, 2018 ("Ordinance") on November 2, 2018 under Article 123 of the Constitution of India and brining into force further amendments to certain provisions of the Companies Act, 2013 with effect fromNovember 2, 2018. The Ordinance has been promulgated based on the **'Report of the Committee to review offences under the Companies Act, 2013'** submitted by the Committee constituted under the Chairmanship of Secretary, Ministry of Corporate Affairs to give their recommendation related to de-clogging the National Company Law Tribunal ("NCLT") from dealing with the offences that are essentially procedural and related to technical lapses, which can be handled effectively through a separate adjudication mechanism, decriminalise minor offences by the companies, improvement in the Corporate Governance Norms and to fix the loopholes/ exemptions provided under the Act.

The twin objectives of the Ordinance are the promotion of Ease of Doing Business along with better corporate compliance. The key aim of the amendments is as follows:

a. Re-categorisation of certain offences, which are in the category of compoundable offences to an inhouse adjudication framework, wherein defaults would be subject to the penalty levied by an adjudicating officer.

b. Instituting a transparent and technology driven in-house adjudication mechanism on an online platform and publication of the orders on the website

c. De-clogging the National Company Law Tribunal (NCLT) by introducing certain amendments and enhancing the role of the Regional Director (RD).

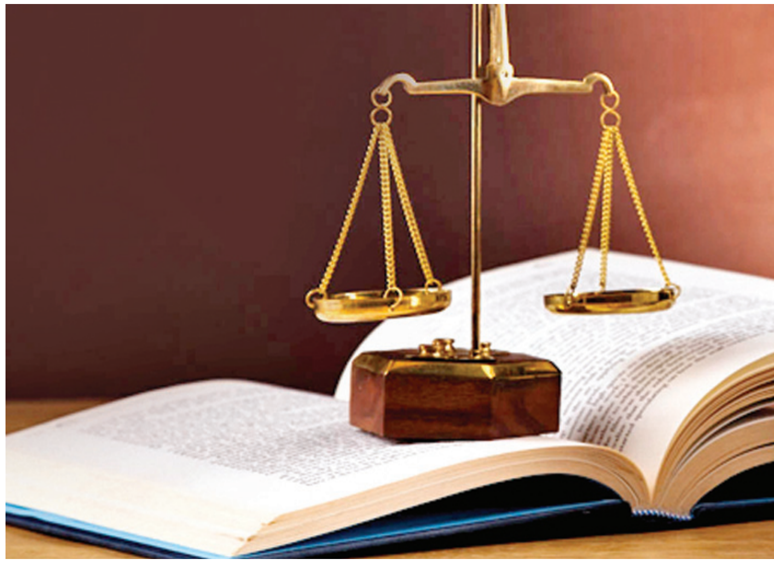
d. Tackling the larger issue of "shell companies," enhancing accountability with respect to filing documents related to charges, non-maintenance of registered office, etc.

> **Union Government-appointed Committee (headed by Corporate Affairs Secretary Injeti Srinivas) had suggested various changes to Act, including restructuring of corporate offences under company's law and in-house adjudication mechanism to ensure that courts get more time to deal with serious violations.**

The Ordinance while reducing the legislative burden of NCLT, seeks to empower Registrar of Companies ("ROC") to adjudicate penalty on large number of defaults, the said power, if effectively utilized, will lead to timely compliance of various provisions of the Act.

Some of the key amendments are analysed below:

Section No. of the Ordinance	Corresponding section of the Companies Act, 2013	Amendments
DECLOGGING THE NCLT		
Section 2	**Section 2(41)- Definition of 'Financial year'**	• The power to dispose the application for change of financial year and pass suitable orders thereon has been vested with the Central Government, which may delegate the same to any other authority; Earlier the said power was with NCLT • Further, any application pending before NCLT as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by NCLT in accordance with the provisions applicable to it before such commencement.
Section 5	**Section 14- Alteration of articles**	• The power to approve the conversion of public company into a private companyhas been vested with the Central Government, which may delegate the same to any other authority;Earlier the said power was with NCLT • Further, any application pending before NCLT as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by NCLT in accordance with the provisions applicable to it before such commencement.
Section 28	**Section 441- Compounding of certain offences**	• The pecuniary jurisdiction of RD for compounding of offences has been enhanced to Rs 25 lakhs from Rs 5 lakhs, which will reduce the number of compounding applications filed with NCLT; • Section 441(6)(a), which requires the permission of the Special Court for compounding of offences, has been omitted. RD and NCLT, as the case may be, can compound offence which is punishable with imprisonment or fine or both, or with fine or imprisonment.
Related to Corporate Compliance		
Section 3	**Section 10A- Commencement of business, etc. (new section)**	• **Re-introduction of Commencement of Business:** A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless: a. a declaration is filed by a director within a period of 180 days of the date of incorporation of the company, with RoC that every subscriber to MOA has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and b. the company has filed with RoC a verification of its registered office as provided in section 12. • **Penal Provision:** If default is made in complying with the requirements of this section, the company shall be liable to a penalty of Rs 50,000 and every officer who is in default shall be liable to a penalty of Rs 1,000 for each day during such default continues but not exceeding and amount of Rs one lakh; • **Removal of name of company:** Where no declaration has been filed with ROC within 180 days of the date of incorporation of the company and ROC has reasonable cause to believe that the company is not carrying on any business or operations, he may, initiate action for the removal of the name of the company from the register of companies under section 248.
Section 4	**Section 12- Registered office of company**	ROC may cause a physical verification of the registered office of the company and the ROC has reason to believe that the Company is not carrying into business/ operation after physical verification, he may initiate action to strike off the name of the Company.



Section 8	**Section 77- Duty to register charges, etc.**	• The period of 300 days for creation and modification of charge has been reduced to 60 days, i.e. 30 days of normal filing period and 30 days with additional fees. • ROC may, on an application, allow such registration to be made within a further period of 60 days after payment of such *advalorem* fees as may be prescribed. **Note:** After 120 days, creation/ modification of charge shall not be registered. • Charges created before the commencement of the Ordinance can be registered within 6 months of commencement of the Ordinance.	
Section 21	**Section 164- Disqualifications for appointment of director**	**New ground of disqualification has been added:** If a person has not complied with the number of directorship u/s 165(1) i.e. maximum number of directorship.	
Re-categorising of offences from compoundable offences to an in-house adjudication framework			
Section 6	**Section 53- Prohibition on issue of shares at discount**	Old Penal Provision	New Penal Provision
		Company: ***Fine:*** Rs 1 lakh to Rs 5 lakhs; and **Officer in default:** *Imprisonment:*Upto 6 months; or ***Fine:*** Rs 1 lakh to Rs 5 lakhs; or *with both*	**Company** and **Officer in default** shall be liable to a **penalty** which may extend to an amount equal to the amount raised through the issue of shares at a discount or Rs 5 lakhs, whichever is less and the company shall also be liable to refund all monies received with interest @ 12% per annum from the date of issue of such shares to the persons to whom such shares have been issued.

Section 7	**Section 64- Notice to be given to Registrar for alteration of share capital**	Old Penal Provision	New Penal Provision
		Companyand **Officer in default:** ***Fine:*** Upto Rs 1,000 for each day during which such default continues, or Rs 5 lakhs, whichever is less	**Company** and **Officer in default** shall be liable to a **penalty** of Rs 1,000 for each day during which such default continues, or Rs 5 lakhs, whichever is less.
Section 12	**Section 92- Annual return**	**Old Penal Provision**	New Penal Provision
		Company: ***Fine:*** Rs 50,000 to Rs 5 lakhs; and **Officer in default:** *Imprisonment:*Upto 6 months; or ***Fine:*** Rs 50,000 to Rs 5 lakhs; or *with both*	**Company** and **Officer in default** shall be liable to a **penalty** of Rs 50,000 and in case of continuing failure, with further penalty of Rs 100 for each day during such failure continues, subject to a maximum of Rs 5 lakhs.
Section 13	**Section 102- Statement to be annexed to notice**	Old Penal Provision	New Penal Provision
		Every promoter, director, manager or other KMP who is in default: ***Fine:***Upto Rs 50,000 or five times the amount of benefit accruing to the promoter, director, manager or other KMP or any of his relatives, whichever is more.	**Every promoter, director, manager or other KMP who is in default** shall be liable to a **penalty** of Rs 50,000 or five times the amount of benefit accruing to the promoter, director, manager or other KMP or any of his relatives, whichever is higher.
Section 14	**Section 105- Proxies**	**Old Penal Provision**	**New Penal Provision**
		Officer who is in default: ***Fine:*** Upto Rs 5,000.	**Officer who is in default** shall be liable to a **penalty** of Rs 5,000.
Section 15	**Section 117- Resolutions and agreements to be filed**	**Old Penal Provision**	**New Penal Provision**
		Company: ***Fine:*** Rs 1 lakh to Rs 25 lakhs; and **Officer in default including liquidator:** ***Fine:*** Rs 50,000 to Rs 5 lakhs	**Company** shall be liable to a **penalty** of Rs 1 lakh and in case of continuing failure, with further **penalty** of Rs 500 for each day after the first during which such failure continues, subject to a maximum of Rs 25 lakhs; and **Officer who is in default including liquidator** shall be liable to a **penalty**of Rs 50,000 and in case of continuing failure, with further **penalty** of Rs 500 for each day after the first during which such failure continues, subject to a maximum of Rs 5 lakhs.

Section 16	**Section 121- Report on annual general meeting**	**Old Penal Provision** **Company:** ***Fine:*** Rs 1 lakh to Rs 25 lakhs; and **Officer in default:** ***Fine:*** Rs 25,000 to Rs one lakh.	**New Penal Provision** **Company** shall be liable to a **penalty** of Rs one lakh and in case of continuing failure, with further **penalty** of Rs 500 for each day after the first during which such failure continues, subject to a maximum of Rs 5 lakhs; and **Officer who is in default** shall be liable to a **penalty** which shall not be less than Rs 25,000 and in case of continuing failure, with further **penalty**of Rs 500 for each day after the first during which such failure continues, subject to a maximum of Rs one lakh.
Section 17	**Section 137- Copy of financial statement to be filed with Registrar**	**Old Penal Provision** **Company:** ***Fine:*** Rs 1,000 for every day during which the failure continues but which shall not be more than Rs 10 lakhs; and **Defaulted MD and CFO or any other director:** *Imprisonment:* Upto 6 months; or ***Fine:*** Rs 1 lakh to Rs 5 lakhs; or *with both*	**New Penal Provision** **Company** shall be liable to a **penalty** of Rs 1,000 for every day during which the failure continues but which shall not be more than Rs 10 lakhs; and **Defaulted MD and CFO or any other director** shall be liable to a **penalty** of Rs 100 for each day after the first during which such failure continues, subject to a maximum of Rs 5 lakhs
Section 18	**Section 140- Removal, resignation of auditor and giving of special notice**	**Old Penal Provision** **Auditor in default:** ***Fine***: not less than Rs 50,000 or the remuneration of the auditor, which ever is less but which may extend to Rs 5 lakhs.	**New Penal Provision** **Auditor in default** shall be liable to a **penalty** of Rs 50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further **penalty**of Rs 500 for each day after the first during which such failure continues, subject to a maximum of Rs 5 lakhs.
Section 19	**Section 157- Company to inform Director Identification Number to Registrar**	**Old Penal Provision** **Company:** ***Fine***: Rs 25,000 to Rs one lakh; and **Officer in default:** ***Fine***: Rs 25,000 to Rs one lakh.	**New Penal Provision** **Company** shall be liable to a **penalty** of Rs 25,000 and in case of continuing failure, with further **penalty** of Rs 100 for each day after the first during which such failure continues, subject to a maximum of Rs one lakh; and **Officer who is in default** shall be liable to a **penalty** of not less than Rs 25,000 and in case of continuing failure, with further **penalty** of Rs 1,000 for each day after the first during which such failure continues, subject to a maximum of Rs one lakh.
Section 20	**Section 159- Penalty for default of certain provisions**	**Old Penal Provision** **Person in default:** *Imprisonment:* Upto 6 months; or ***Fine***: Upto Rs 50,000 and where the contravention is a continuing one, with a further fine which may extend to Rs 5,000 for every day after the first during which the contravention continues.	**New Penal Provision** **Person in default** shall be liable to a **penalty**which may extend to Rs 50,000 and where the default is a continuing one, with a further penalty which may extend to Rs 500 for each day after the first during which such default continues.
Section 22	**Section 165- Number of directorships**	**Old Penal Provision** **Person in default:** ***Fine***: Rs 5,000 to Rs 25,000 for every day after the first during which the contravention continues.	**New Penal Provision** **Person in default** shall be liable to a **penalty** of Rs 5,000 for each day after the first during which the contravention continues.
Section 23	**Section 191- Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares**	**Old Penal Provision** **Director in default:** ***Fine***: Rs 25,000 to Rs one lakh.	**New Penal Provision** **Director in default** shall be liable to a **penalty** of Rs one lakh.
Section 24	**Section 197- Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits**	**Old Penal Provision** **Person in default:** ***Fine***: Rs one lakh to Rs 5 lakhs.	**New Penal Provision** **Person in default** shall be liable to a **penalty** of Rs one lakh and where any default has been made by a company, the company shall be liable to a **penalty** of Rs 5 lakhs.

Section 25	**Section 203- Appointment of key managerial personnel**	**Old Penal Provision**	**New Penal Provision**
		Company: ***Fine:*** Rs 1 lakh to Rs 5 lakhs; and **Officer in default:** ***Fine:*** Upto Rs 50,000 and where the contravention is a continuing one, with a further **fine** which may extend to Rs 1,000 for every day after the first during the contravention continues.	**Company** shall be liable to a **penalty** Rs 5 lakhs; and **Every director and KMP who is in default** shall be liable to a **penalty** of Rs 50,000 and where the default is a continuing one, with a further **penalty**of Rs 1,000 for every day after the first during which such default continues but not exceeding Rs 5 lakhs.
Section 26	**Section 238- Registration of offer of schemes involving transfer of shares**	**Old Penal Provision**	**New Penal Provision**
		Director in default: ***Fine:*** Rs 25,000 to Rs five lakhs.	**Director in default** shall beliable to a **penalty** of Rs one lakh.
Adjudication of Penalties			
Section 31	**Section 454- Adjudication of penalties**	Now, apart from levying penalty in case of default, the Adjudicating officer has also been empowered to direct rectification of the default.	
Section 32	**Section 454A- Penalty for repeated default (new section)**	A new section 454A has been inserted to provide that where a penalty in relation to a default has been imposed on a person under the Act, and the person commits the same default within a period of 3 years from the date of order imposing such penalty, passing by the adjudicating officer or RD, as the case may be, it or he shall be liable for the second and every subsequent defaults for an amount equal to twice the amount provided for such default under the relevant provision of the Act.	
Others			
Section 9	**Section 86- Punishment for contravention**	**New sub-section (2) has been added:** If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77 (Registration of Charge), he shall be liable for action under section 447.	
Section 10	**Section 87- Rectification by Central Government in register of charges**	Due to amendments in the provision of section 77, the power of the Central Government to condone delay in respect of registration/modification of charge has been omitted.	
Section 11	**Section 90- Register of significant beneficial owners in a company**	• If no person files an application before NCLT for lifting of the restrictions on the exercise of rights attached to the shares within a period of one year, such shares shall be transferred to IEPF without any restrictions. • The punishment for contravention of section 90(1) has been enhanced to include imprisonment for a term which may extend to one year or with fine which shall not be less than Rs one lakh but which may extend to Rs 10 Lakhs or with both.	

Section 27	**Section 248- Power of Registrar to remove name of company from register of companies**	Due to insertion of section 10A and amendment in section 12, the following two new grounds has been added for removal of name of companies from the register of companies: • the subscribers to the memorandum have not paid the subscription which they has undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 days of its incorporation under section 10A(1); or • the company is not carrying on any business or operations, as revealed after the physical verification carried out under section 12(9).
Section 29	**Section 446B- Lesser penalties for One Person Companies or small companies**	Due to amendments in the penal provisions of sections 92, 117 and 137, the word 'fine' has been substituted with 'penalty'.
Section 30	**Section 447- Punishment for fraud**	The maximum fine has been increased from Rs 20 lakhs to Rs 50 lakhs.

From the above, it can be seen that major amendments relate to change of wordings in the section, relating to de-criminalization of offences, i.e., change of terminology from "**punishable with fine**" to "**Liable to a penalty**", replacing the provisions as to imprisonment with only to fines, and in some extreme offences, the imprisonment provision areretained.

The Companies (Amendment) Ordinance, 2018 is definitely an act which has in many ways tried to reduce the challenges, practical issues, complex areas which were there in the Companies Act, 2013. It has also directed for heavy penalties in terms of non-compliance of some of the sections of the Act and Frauds which will definitely increased the importance of compliance in corporate overall. Similarly, the approach for ease in doing business,

> The Ordinance while reducing the legislative burden of NCLT, seeks to empower Registrar of Companies ("ROC") to adjudicate penalty on large number of defaults, the said power, if effectively utilized, will lead to timely compliance of various provisions of the Act.

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harmonization with other acts will show its results soon. The article encompasses the overview of key changes brought by the Companies (Amendment) Ordinance, 2018.

Even after the above ordinance, the Ministry of Corporate affairs has noted that certain 20 other amendments of urgent nature would be required to strengthen the corporate governance and enforcement framework, and has sought for /comments recommendations from the public at large, and such comments/recommendations are to be submitted on or before 20.11.2018. So, there is every possibility of another amendment to the Act.

PROPOSED AMENDMENTS IN THE COMPANIES ACT, 2013

To strengthen the corporate governance & enforcement framework, the Ministry of Corporate Affairs (MCA) has proposed amendments in the Companies Act, 2013 and invited comments on it. The key highlights of the proposed amendment are as follows:

1. Provision for conversion of section 8 Company into any other kind is omitted.
2. Only intimation is required Instead of approval from Registrar (ROC) for prospectus.
3. Company is now required to take all necessary steps to find out individual who is Significant Beneficial Owner (SBO) and if there is any, make such SBO comply with the provisions.
4. A Company who has not completed 3 financial years since inception, is now required spend as per Corporate Social Responsibility(CSR) policy.
5. Any amount remaining unspent on CSR is required to be transferred to special account within 30 days from the date of end of that financial year and such amount is required to be spent by the company in pursuance of CSR policy within a period of 3 financials years from the date of such transfer.
6. The sitting fees and expenses incurred for participation in the meetings of Boardand Committees shall not be considered for the purpose of assessing pecuniaryrelationship of an Independent Director (ID).
7. Pecuniary relationship of an ID is restricted to 25 % of total income of ID out of which professional or any other services rendered by an ID shall not account for more than 10% of the total income.
8. ID is required to file return with ROC containing particulars of Declaration of Independence u/s 149.
9. ID is mandatorily required to file DIR-11 with ROC u/s 168.
10. The effective date of resignation of ID will be 30th day from the date of receipt of such notice by the company or any other date as specified in the notice whichever is latter.
11. Central Government may prescribe rules for merger or amalgamation between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other companies as may be prescribed.
12. In case of oppression and mismanagement (fraud, misfeasance, breach of trust etc.), if tribunal passes order specifying that the respondent is not a fit and proper person, he will be disqualified to act as director in that company and other companies for a period of 5 years from the date of said order.
13. In case of struck off Companies, all the property and rights held by such Company or held in trust for such Company before the date of strike off, shall vest absolutely in the Central Govt., which shall be free from all encumbrances for the Central Govt.

CONCLUSION :

In Companies Act, 2013, New Amendments and Recent Changes will have less number of Sections and Schedules but will be flooded with a number of Rules, akin to the SEBI Act, which contains less Sections but more rules and regulations. If one considers the total bulk of the legislation, including the Act and the relevant rules and regulations there under, the total reduction will be minimal. This cannot be construed to be proper rationalisation and simplification. The Act may remain comparatively sleek but one may have to refer to the various Rules to understand the legal provision correctly at any point of time. The Companies Act has met the myriad 284 requirements of the corporate sector, corporate professionals and other interested persons, including investors and the general public. It is also familiar to everyone concerned.

Hence, effecting amendments to the Act is a time tested and effective method compared to notifying a new Act in toto. No Act is perfect or can remain static. Even if a new Companies Act is passed, amendments may have to be made in keeping with the changing times, subject to parliamentary debate and scrutiny. As the new bill proposed does not offer any path-breaking direction with tangible and substantial benefits to the corporate sector, introduction of the same has to be reviewed.

In fine, law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise, the law has to be evolved in order to meet the challenges of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy.

Change is only Constant in Company Law: A Pragmatic Analysis of recent Changes

In 2013, the Corporate India took a respite from the draconian erstwhile Companies Act, 1956 with great expectations, when the much awaited reform took place in the form of Companies Act, 2013 with twin objectives - empowering business and protecting investors. Since then the Change has become only constant in Company law. This Article analyses such Changes.

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There is nothing permanent except Change.

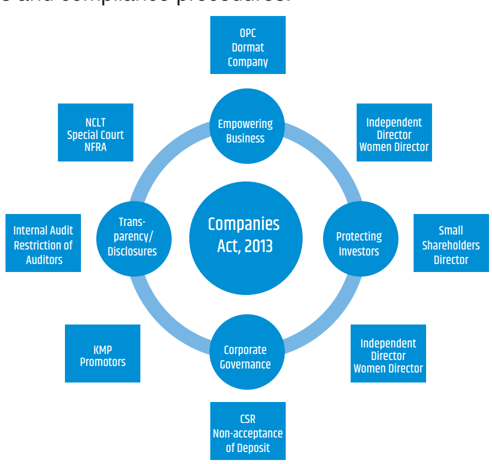
...Heraclitus

INTRODUCTION

With the passage of time, the Companies Act, 1956 became incompatible and redundant both at national and global scenario and the corporate India vehemently required a gigantic change to remain relevant and equipoise. On many fronts the stakeholders faced significant and enormous implementation challenges. The Government continued to receive anomalies of such draconian law from various quarters with a demand for review and simplification of the Act. Keeping in view of the international best practices as well as the economic environment in the country, the Ministry of Corporate Affairs introduced the much needed Companies Act, 2013.

THE COMPANIES ACT, 2013

The Companies Act, 2013, one of the most significant legal reforms in India, aimed at bringing Indian company law in line with the global standards. It has brought paradigm changes in company law, especially to develop Indian economy by encouraging entrepreneurship, create flexibility and simplicity in formation and maintenance of companies, encourage transparency and high standard of corporate governance. recognise new concepts and procedures to facilitate ease of doing business while protecting interests of stakeholders, enforce stringent actions against fraud, set up institutional structures in the form of authorities and build a mechanism for more effective and time bound approvals and compliance procedures.



(Salient features of the Companies Act, 2013)

THE COMPANIES (AMENDMENT) ACT, 2015

Again change was felt imperative in order to reduce the rigors of procedures for compliance of provisions and moreover the drafting anomalies that has crept unwittingly in the original version of the Companies Act, 2013.The Indian Government which was actively working to improve ease of doing business in India and make the economy more business or investor friendly further introduced the Companies (Amendment) Act 2015. The significant amendments were scrapping of the minimum paid-up capital for private limited companies and the requirement for commencement of business certificate. Further the use of common seal becomes optional. Stringent penalties were introduced for companies inviting or accepting deposits. Board resolutions become confidential. Dividend was not required to be declared by company having losses. Loan could be provided by holding company to subsidiary company, etc.

THE COMPANIES (AMENDMENT) ACT, 2017

The cycle of changes rolled over while confronting with lacunas surfaced in handling business operations with the passage of time. This time the Government brought The Companies (Amendment) Act, 2017 having the objectives of simplification of Compliances and doing away with unnecessary procedures; lesser regulatory interference and greater self-regulation; clarity in the provisions of the Act; encouragement for start-ups; strengthen Corporate Governance standards, strict action against defaulting Companies and ensure disclosures and transparency.

The Amendment Act, 2017 addressed difficulties in implementations. facilitated ease of doing business, helped achieving better harmonisation with other statutes like Reserve Bank of India Act, 1934 and regulations made thereunder and rectified inconsistencies in the Companies act, 2013.

RECENT CHANGES IN COMPANY LAW AND WAY AHEAD

The changes brought in the Companies Act, 2013 ("Act") vide the Companies (Amendment) Act, 2017 were not sufficient enough and so the Ministry of Law and Justice ("MLJ"), based on the recommendations made by the Committee appointed by the Government to review offences under the Act., has promulgated an Ordinance dated 2nd November, 2018 named as Companies (Amendment) Ordinance, 2018 ("Ordinance") bringing amendment in 31 sections of the Act being enforced from the even date. The Ministry of Corporate Affairs have also brought a series of general circulars, rules, orders and notifications to achieve the objectives of the Company law. These are elucidated herein below:

COMPANIES (AMENDMENT) ORDINANCE, 2018

The objectives of the Companies (Amendment) Ordinance, 2018 are aplenty and multi-fold. That start from full and fair disclosure of all reasonable information relating to the affairs of the Company; regulate all private investments for the common good of the society; protect the legitimate interests of genuine investors; democratising and professionalising Company managements; discipline the

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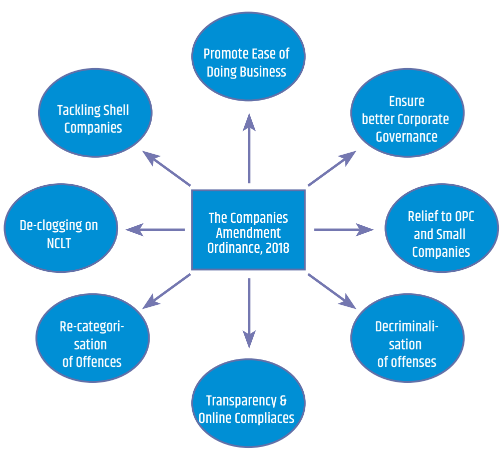
conduct and behaviour of the companies in public interest; ensure minimum standard of business integrity and conduct in promotion and management of companies; effective participation and control by shareholders and the protection of their legitimate interests and enforcement of proper performance of duties by Company management.

The Act bestowed with penal provisions to ensure the transparency in the functioning of the corporate world and prevent the misconduct and malpractices on the part of Company managements. Recently the Companies (Amendment) Act 2017 and Companies (Amendment) Ordinance, 2018 have injected much refinement and stringent provisions to increase consistency, transparency and accountability.



The fundamental objectives of the Companies (Amendment) Ordinance, 2018 are aplenty and multi-fold. These are summarised as follows:

- To give a thrust for the promotion of Indian Government's pet initiative 'Ease of doing Business'.
- To ensure better corporate compliance.
- To relieve the corporate bodies and professionals by decriminalising a host of offences.
- Re-categorisation of certain offences, which are in the category of compoundable offences to an in-house adjudication framework, wherein defaults would be subject to the penalty levied by an adjudicating officer.
- Instituting a transparent and technology driven in-house adjudication mechanism on an online platform and publication of the orders on the website.
- De-clogging the National Company Law Tribunal (NCLT) by introducing certain amendments and enhancing the role of the Regional Director (RD).
- Tackling the larger issue of "shell companies," enhancing accountability with respect to filing documents related to charges, non-maintenance of registered office, etc.

Broadly the salient features of Companies (Amendment) Ordinance, 2018 have been summarised as follows:

1. **PROMOTE 'EASE OF DOING BUSINESS'**

   In line with 'ease of doing business', there has been following changes in the Companies Act:

   A. **Registration of Charges (Section 77)**

      a. In case of Charges created before the commencement of Ordinance (2 November, 2018): the Registrar may, on application by the Company, allow registration of the charge, within a period of 300 days of creation of charge. If the registration is not made within 300 days, the registration of the charge shall be made within six months from the date of commencement of the Ordinance on payment of additional fees.

      b. In case of Charges created after commencement of Ordinance (2 November, 2018) the Registrar may, on application by the Company, allow registration of the charge within 60 days of such charge creation. If the registration is not made within the aforesaid period, the registration shall be made within an additional period of 60 days after payment of such ad-valorem fees.

   B. **Rectification by Central Government in Register of charges (Section 87 substituted)**

      The Central Government on satisfaction that-

   a. Omission in giving intimation to the Registrar regarding satisfaction of charge within the prescribed time,

   b. Omission or misstatement of an particulars with respect to any such charge or modification of charge or any memorandum of satisfaction or other entry made under section 82 or 83, was accidental or inadvertently made ot it is not a nature prejudicial to the interest of creditors or shareholders, it may direct for extending the time for intimating about the satisfaction of charge and rectification of the misstatement or omission made.

   C. **Power of the Registrar to remove the name of the Company (Section 248)**

      The erstwhile provisions of the Act provided the following situations in which the Registrar can remove the name of the Company from the register of companies:

      a) It has failed to commence its business within one year of incorporation

      b) Is not carrying out any business or operations for a period of two years

      c) Is a dormant Company under section 455

      However, the Ordinance has introduced two new clauses for removal of name of the Company:

      i) If the subscribers to the Memorandum of Association of the Company have not paid the subscription amount and have not furnished a declaration in this regard within 180 days of its incorporation.

      ii) If the Company is revealed to not carrying on any business or operation, after physical verification of registered office.

2. **ENSURE BETTER CORPORATE GOVERNANCE**

   A. **Commencement of Business, etc. (Insertion of a new Section 10A)**

      A Company having share capital incorporated after the commencement of the Ordinance, has to ensure the following before commencing its business or exercising borrowing powers-

      a. Director to file a declaration within a period of 180 days from the date of incorporation of the Company, in such form as is prescribed, that every subscriber to the memorandum has paid the value of the shares as agreed for..

b. The Company has verified its registered office in e-Form INC-22.

For default in complying with this section, the Company shall be liable to penalty of 50000 rupees and Officer-in-default shall be liable to penalty of 1000 rupees per day till the default continues subject to maximum of one lakh rupees. Further failure to comply with (a) or (b) above shall give reasonable cause to the Registrar to remove the name of the Company from the register of companies.

B. Registered office of Company-Physical verification (Section 12)

Physical verification of the registered office may be done on reasonable cause to believe that no business or operations is being carried out by the Company. In case of any default found, the Registrar may remove the name of the Company from the register of companies

C. Register of significant beneficial owners in a Company (Section 90)

1. Sub section 9 substituted --Aggrieved party to make an application to the Tribunal within one year from the date of such order for relaxation or lifting of the restriction placed under sub-section (8). In case no application made within this time, then such shares shall be transferred to IEPF constituted under section 125.
2. Sub-section 10 substituted-Person failing in making declaration shall be imprisoned for a period upto one year or with fine minimum one lakh rupees and maximum 10 lakh rupees or with both.

D. Disqualifications of Director (Section 164)

In sub-section (1) a new sub-clause (i) has been inserted.If a director does not comply with the number of directorships i.e. maximum ten public companies and maximum twenty in other companies he/she shall be disqualified under section 164 of the Act.

3. DE-CLUGGING OF NCLT

A. Definition of 'financial year' (Section 2(41))

The authority to make application for adopting a different year as "financial year" has been shifted from "Tribunal" to "Central Government". Existing applications pending before the Tribunal before 2nd November, 2018 shall be disposed off by the Tribunal as per the existing law.

B. Alteration of Articles (Section 14)

Authority to approve application for conversion of a public Company to private Company has been shifted from Tribunal to Central Government. Existing applications are however, are required to be disposed off by the Tribunal in accordance with existing applications.

4. ENLARGING THE JURISDICTION OF REGIONAL DIRECTOR

A. Compounding of offences (Section 441)

The pecuniary jurisdiction of Regional Director for compounding of offence under section 441(1)(b) has been from 5 lakh rupees to 25 lakh rupees. Considering the major bulk of cases handled by NCLT at present and the significance of the report of ROC, it is rightfully justified to give greater jurisdiction to Regional Director.

B. Demarcation of Compounding of offences (Section 441(6))

Ordinance has provided clarification that offences which are punishable with imprisonment only or with imprisonment and fine shall not be compoundable

5. RE-CATEGORISATION OF OFFENSES

A. Prohibition on issue of shares at discount (Section 53)

Existing penal provisions provided for fine for the Company and a punishment of imprisonment and fine for every officer in default. Now the Ordinance lays down that the Company and every officer-in-default shall pay a penalty of the amount raised through issue of shares at discount upto 5 lakh rupees, whichever is less alongwith refunding the amount with interest at the rate of 12% p.a. from the date of issue of shares to the respective persons to whom the shares were issued.

B. Notice to be given to Registrar for alteration of share capital (Section 64)

Existing law provided for fine on the Company and officer-in-default whereas the Ordinance lays down for penalty on the Company and every officer-in-default with Rupees1000 for each day during which such default continues or five lakh rupees, whichever is less.

C. Punishment of contravention- Insertion of a subsection (Section 86)

Wilful furnish of false or incorrect information or knowingly suppressing any material information required to be registered as per section 77 shall be liable to fraud and attract action under Section 447.

D. Annual Return-substitution of Section 92(5)

If a Company fails to file within the time specified under sub section (4), Penal provisions instead of levying fine for failure in filing annual return- Company and ever officer-in-default- 50000 rupees and in case of continuing default, further penalty of 100 rupees for each day upto maximum five lakh rupees.

E. Resolutions and agreements to be filed (Section 117)

In case of failure to file resolution within time, Company shall attract a penalty of 1 lakh rupees and in case of continuing failure, 500 rupees for each day upto maximum 25 lakh rupees. Penalty for Officer-in-default (including liquidator) is 50000 rupees and in case of continuing failure, 500 Rupees for each day upto maximum 5 lakh rupees

F. Report on Annual General Meeting (Section 121)

In case of ailure to file the report, Company shall attract a penalty of 1 lakh rupees and in case of continuing default, 500 rupees for each day upto maximum 5 lakh rupees and Officer-in-default shall attract penalty of 25000 rupees and in case of continuing default, a further penalty of 500 rupees each day upto maximum 1 lakh rupees.

6. DECRIMINALISATION OF OFFENSES- CIVIL LIABILITY (FINE TO PENALTY)

A. Statement to be annexed to notice Section 102

Penal provisions instead of levying fine for promoter, director, manager, KMP in default- penalty of 50000 rupees or 5 times the amount of benefit accruing to promoter, director, manager, KMP or his relatives, whichever is higher.

B. Proxies (Section 105)

Fine has been changed to penalty of 5000 rupees

C. Filing of Financial Statements – imprisonment or fine to penalty (Section 137)

The erstwhile provisions of section 137 provided that if a Company fails to file financial statements with the Registrar

(a) Company shall be punishable with fine and

(b) The officers of the Company shall be punishable imprisonment or with fine

Now the Ordinance has categorised such default as a 'civil default' by substituting fine or imprisonment with penalty.

D. **Resignation of Auditor (Section 140)**
If an auditor fails to file e-Form ADT-3 within 30 days of his resignation he shall be liable for a penalty of Rupees50,000 or his/her remuneration whichever is lower and if the failure continues, further penalty of Rupees500 for everyday till the default continues. As the default is merely a technical lapse, the same has been shifted from criminal prosecution to penalty.

E. **Intimation of DIN (Section 157(2))**
The fine under section 157 for not furnishing DIN to the Registrar has been substituted with penalty.However, the sub-section now specifically provides that if the default continues a further penalty of one hundred rupees shall be levied everyday.

F. **Punishment for contravention of sections 152, 155 and 156 (Section 159)**
Section 152, 155 and 156 of the Act list downs the provisions for appointment of director, allotment of DIN and intimation of DIN. The penalty for contravention of these section has been shifted to civil liability i.e. the word 'punishable with imprisonment' or 'punishment with fine' is substituted with 'liable to penalty'.

G. **Number of Directorships (Section 165)**
If a director contravene the maximum limit of directorship as provided in section 165 of the Act, he/she shall be punishable with a penalty of rupees five thousand everyday till the contravention continues. On similar lines, the default under this section has been categorised as a 'civil default' with the defaulting Company and officers liable to penalty only.

H. **Payment to director for loss of office (Section 191)**
The punishment for default under this section has been shifted to civil liability. Accordingly, the director shall be punishable with penalty of rupees one lakh for any contravention under this section.

I. **Overall maximum managerial remuneration in case of inadequacy of profits (Section 197)**
As per the erstwhile provisions of section 197(7) of the Act, the Independent Director was not entitled to any stock options. Accordingly, the remuneration of IDs included only sitting fees for Board and committee meetings and other profit related commission. The aforesaid sub-section has been omitted by the Ordinance.
However, the provisions of sub section (15) substituted. Accordingly, any person making default in complying with provisions of this section shall be liable to penalty of one lakh rupees whereas the Company, shall be liable to penalty of five lakh rupees.

j. **Appointment of KMP (Section 203)**
The penal provisions under this section shifted from fine to penalty. Further, a new insertion has been introduced which provides that a further penalty of one thousand rupees shall be levied everyday till the default continues however the same shall not exceed five lakh rupees.

K. **Registration of offer of schemes involving transfer of shares (Section 238)**
The fine provided under this section has been substituted with a penalty of one lakh rupees

7. **STRINGENT PROVISIONS**

A. **Punishment for Fraud-increase of the fine amount (Section 447)**
The section provided that where the fraud involves an amount less than 10 lakh rupees or 1% of the turnover of the Company and did not involve public interest the defaulter shall be punishable with imprisonment for a term which may extend to 5years and the maximum fine under section 447 has be increased from Rs.20 lakhs rupees to 50 lakhs rupees.

B. **Adjudication of penalties-Inclusion of 'any other person' (Section 454(3)**
a) Adjudicating officer can now impose penalty on Company, officer in default, or any other person
b) can provide any direction to the Company or officer in default or any other person
The erstwhile provisions only provided for officer in default. Introduction of the word 'any other person' shall widen the power of the adjudicating officer.

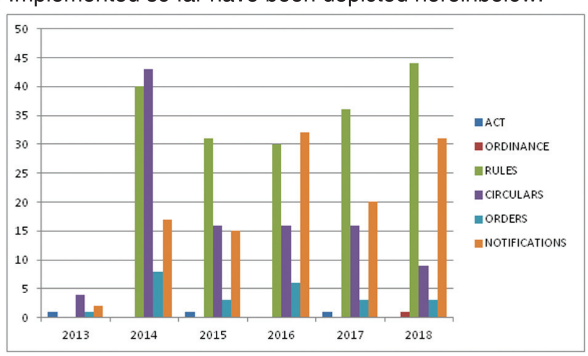
C. **Adjudication of penalties (Section 454(8)**
Non-payment of penalty imposed by adjudicating officer or Regional Director' has been substituted for 'non-compliace of the order under sub-section (3) or (7)'

8. **PENALTY FOR REPEATED DEFAULT**
New Section 454A introduced (after Section 454)
Company or officer in default, while commits such default within 3 years from the date of order imposing penalty shall be liable for second or subsequent defaults for an amount equal to double the penalty provided for such default.

9. **RELIEF TO OPC AND SMALL COMPANY**
Lesser penalties for OPC and small companies (Section 446B)
The penal provisions for following default by a OPC or small Company has been shifted from fine to penalty
a) Non-Filing of annual return under section 92
b) Non-Filing of resolutions or agreements etc. under section 117
c) Non-Filing of financial statements under section 137

RULES, CIRCULARS, ORDERS AND NOTIFICATIONS BY MCA

Alongwith the Companies Act, 2013, Rules have also been framed by the concerned Ministry for smooth compliance of the provisions enshrined in the Act, However, from the day of its implementation, there has been criticism received from different quarters on the grounds of poor drafting, ambiguity, confusion, harsh, lenient and superfluous provisions to some extent. To cater to the needs of the industry and stakeholders, the Ministry has also from time to time been coming forward and resolving the grave concerns through a plethora of Rules, General Circulars, Orders, Notifications, Clarifications, Schemes etc. In a nutshell, the number of Acts, Rules, Circulars, Orders, Notifications, Clarifications, Ordinance, etc. Implemented so far have been depicted hereinbelow:



(Source: website of Ministry of Corporate Affairs-www.mca.gov.in)

MCA RECOMMENDATION FOR OTHER AMENDMENTS OF URGENT NATURE - A WAY AHEAD

The engine of Change in Company law could not stop even after the introduction of the Companies (Amendment) Ordinance, 2018. There are many other lacunas and discrepancies brought to the notice of the Ministry, who during examination of recommendations, noted that certain other amendments of urgent nature would be required to strengthen the corporate governance and enforcement framework. Suggestion/Comments on the following proposed amendments alongwith justification in brief were sought my the Ministry from different quarters:

1. Alteration of Article of a Company registered under Section 8 shall require previous approval of the Central Government.
2. Matter to be stated in Prospectus (Section 26): For the word "registration", the word "filing" shall be substituted; Further the requirement of compliance under sub-section (7) shall be omitted.
3. Public offer of securities in dematerialised form (Section 29): it is proposed to omit public Company so to include private Company also.
4. Significant beneficial owners in a Company (Section 90) a new sub-section (4A) proposed to be inserted to enable every Company to find out if there is any individual who is a significant beneficial owner in relation to the Company and if so, to identify him and require him to comply with the provisions of this section.
5. Unpaid Dividend Account (Section 124) :dividends includes any dividend, which has not been paid or claimed, in such shares, together with interest, if any, accrued thereon.
6. Investor Education Protection Fund (Section 125): Sub section (3)(a) matured debentures included redemption amount towards unpaid or unclaimed preference shares. New sub section(12) the authority may, by general or special order in writing delegate to any member, officer or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it deems necessary.
7. The National Financial Reporting Authority (Section 132)- Its function, division and executive body be included.
8. Corporate Social Responsibility (Section 135)- A new subsection (6) proposed to be inserted which states that any amount remaining unspent under subsection (5) shall be transferred by the Company within thirty days from the end of the financial Amendment of section 135. year to a special account to be opened by the Company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the Company in pursuance of its Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer. Further a new sub-section (7) empowers the Central Government to give such general or special directions to a Company or class of companies to ensure compliance of provisions of this section and such Company or class of companies shall comply with such directions.".
9. Board of Directors (Section 149): A new proviso is proposed to be inserted to sub-section (6)(c), so that that the total pecuniary relationship with the Company, its holding, subsidiary or associate Company, or their promoters or directors, shall not exceed twenty-five per cent. of his total income, of which, professional or any services rendered by him, other than such services, as may be prescribed, shall not account for more than ten per cent. of his total income
10. Resignation of Director (Section 168)-Director shall not be an

independent director, provided further that an independent director shall forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within seven days of giving notice under sub-section (1),
11. Removal of Director (Section 169)
12. Investigation into affairs by Serious Fraud Investigation Office (Section 212)
13. Merger or amalgamation of certain companies (Section 233)
14. Application to Tribunal for relief in case of oppression, etc (Section 241)
15. Powers of Tribunal (Section 242)
16. Consequence of termination or modification of certain agreements (Section 243)
17. Effect of Company notified as dissolved (Section 250)
18. Appeal to Tribunal (Section 252)
19. Winding up of Company by the Tribunal (Section 271)
20. Winding up of unregistered Company (Section 375)

FREQUENT CHANGES IN COMPANY LAW- ONE MUST LEARN, UN-LEARN AND RE-LEARN

Frequent changes in Company law poses a real challenge to the members and practising professionals in acquainting themselves with the Act with better clarity and understanding. Especially, a Company Secretary being an expert as well as a KMP, must possess a balanced and positive mindset and be well prepared to learn the laws for the best use of it, unlearn when it becomes obsolete and relearn when there is any changes or amendments to it. To remain relevant in the market of cut-throat competition, he must be proficient in his areas of expertise and keep always updated with all the changes and amendments from time to time.

CONCLUSION

Change is the law of life. And those who look only to the past or present are certain to miss the future.

---John F. Kennedy

Under the aegis of the MCA, the Company law has crossed the milestone of empowering business and investors protection with positive notes. Presently, the law has been crossing the ordeal of enormous challenges and shortcomings faced by the stakeholders in due course their dealing of provisions of such law. Hope the Ministry may pass the litmus test of making the Company law more emphatic, futuristic and devoid of all sorts of ambiguity, irrelevancy and shortcomings. CS

REFERENCE:

1. www.mca.gov.in
2. www.google.com
3. The Companies Act, 2013 and related rules, amended acts and ordinance.

ARTICLE

Recent changes in Company Law Critical analysis of some of the better Corporate Governance related amendments

"Recent changes introduced in the Companies Act are much needed corporate governance practices. Such changes not only enable ease in compliances but ensure in enhancing transparent disclosure practices by corporate. Constitution of NFRA, dematerialisation of shares and disclosures of delayed payment to MSME etc. will certainly enhance "Ease of doing business in India".

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INTRODUCTION

"Take time to deliberate; but when the time for action arrives, stop thinking and go in."
...Andrew Jackson

The Companies Act, 2013 ("the Act"), enacted in August 2013, by replacing about six decade old Companies Act, 1956, has many uniqueness such as concept of Corporate Social Responsibility, requirement of appointment of Independent Directors & Women Director and their duties, rotation of auditors & audit firm, reporting of fraud; and constitution of the National Financial Reporting Authority ("NFRA") etc.

Initially, the corporates found it difficult to implement many provisions of the Act. Nonetheless, the MCA has understood the hardship of the Corporates and issued various circulars/ notifications, removal of difficulties order etc. which ensured that practical difficulty in ensuring the compliance of the provisions of the Act is substantially reduced. At the same time, during last 4 ½ years, many amendments in the Company Law have brought in force which are certainly better corporate governance practices and these initiatives are also ensuring that India is continuously achieving newer heights in "Ease of Doing Business in India".

In this Article, Authors intend to analyse major changes introduced in the Company Law recently which are certainly better corporate governance related amendments, as summarize hereunder:-

1. NATIONAL FINANCIAL REPORTING AUTHORITY

The Act was enacted about 4 ½ years ago and almost all the provisions of the Act already came into force barring few Sections and Sub-sections. One such important Section of the Act was Section 132 i.e. Constitution of NFRA.

a. Establishment of NFRA – Contextual Glance

Pursuant to Section 132 of the Act, Central Government ("Central Govt.") is empowered to constitute NFRA to deal, *inter-alia,* with the matters relating to accounting and auditing standards. With the unearthing of about Rs.12,000 crore scam, the Central Govt. quickly came into action and at the meeting of Union Cabinet Chaired by the Prime Minister Shri Narendra Modi on 1st March, 2018 approved establishment of NFRA paving the way for enforcement of the Section 132 of the Act.

As per the Press communique of the said meeting, *"this decision is expected to result in improved foreign/ domestic investments, enhancement of economic growth, supporting the globalisation of business by meeting international practices, and assist in further development of audit profession"*.

Keeping in view the sensitivity and importance of the matter, within a short span of 20 days of Union Cabinet's meeting on establishment of NFRA, MCA, on 21st March, 2018, enforced sub-sections (3) and (11) of Section 132 of the Act; and issued the National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Member), Rules, 2018 ("Appointment Rules").

b. Members of NFRA

Pursuant to Section 132(3) of the Act, NFRA shall consist of Chairman and other members (part-time and full-time) not exceeding fifteen. Accordingly, as per the Appointment Rules notified on 21st March, 2018, NFRA to consist of thirteen members (i.e. Chairperson, three full-time members; and nine part time members).

The Chairperson and full-time members are appointed by Central Govt. on the recommendation of a Search-cum-selection Committee consisting of:

i. Cabinet Secretary, Chairperson
ii. Additional Principal Secretary to the Prime Minister, Member
iii. Secretary, MCA, Member
iv. Chairperson NFRA for selecting full time member, Member
v. Three expert from the area of accountancy, auditing, finance, law - Member

Appointment Rules provides the rank of officers below which they could not become part-time members of NFRA representing MCA, CAG, RBI, SEBI and ICAI, which clearly demonstrates the intent of the Central Govt. that it want NFRA's part-time members to comprise of senior officials of the respective Authorities. This was missing in the National Advisory Committee on Accounting Standards ("NACAS") constituted under Section 210A of the Companies Act, 1956.

c. Role of NFRA

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

On 13th November, 2018, the MCA has issued the National Financial Reporting Authority Rules, 2018 ("NFRA Rules"). According to NFRA Rules, NFRA, with its establishment, has the power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service and suggest measures required for improvement in quality of service of:

a. companies whose securities are listed on any stock exchange in India or outside India;
b. unlisted public companies having paid-up capital of not less than Rs. 500 crores; or turnover of not less than Rs. 1,000 crores; or having, in aggregate, outstanding loans, debentures and deposits of not less than Rs.500 crores as on the 31st March of immediately preceding financial year;
c. insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force;
d. any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and
e. a body corporate registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds 20% of the consolidated income or networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

The above coverage indicates that NFRA have the powers to govern almost all entities keeping in view the point (d) above.

The NFRA Rules clearly specify that company or a body corporate other than a company governed under this rule shall continue to be governed by NFRA for a period of 3 years even after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the prescribed limits.

d. NFRA – Move towards better corporate governance

To ensure better governance system and independence of Regulator, the Chairperson and Members to make a declaration, as prescribed in Form I of the Appointment Rules, to the Government that their appointment does not have any conflict of interest. It is also mandated in the Appointment Rules that the Chairperson and full-time members of NFRA cannot be associated with any audit firm including related consultancy firms during the course of their appointment and two years after ceasing to hold such appointment. These provisions in the Appointment Rules are in line with the second and third proviso to sub-section (3) of section 132 of the Act.

NFRA, an independent regulator, is akin to the USA's Public Company Accounting Oversight Board ("PCAOB"), which comprises of 5 members,appointed from among prominent individuals of integrity and reputation who have demonstrated commitment to the interests of investors and the public; and UK's Financial Reporting Council ("FRC"), which is supported by two business Committees [i.e. Codes & Standards Committee; and Conduct Committee].

e. Way forward

As per NFRA Rules notified on 13thNovember, 2018, certain class of companies are required to file Form NFRA-1either within 30 days of the commencement of the Rules or within 15 days from the date of appointment of Auditor, as the case may be.

The wordings of NFRA Rules relating to filing of NFRA-1 by companies is little tedious to understand, particularly with regards to companies which are required to file form NFRA-1. Nonetheless, now MCA has to release the NFRA-1 so that filing of the same can be completed at the earliest.

2. DEMATERIALISATION OF SECURITIES

To improve the corporate governance, MCA, has mandated that effective 2nd October, 2018, unlisted public company shall mandatorily issue securities only in Dematerialised Form, deliberated hereunder:

a. Dematerialisation of Securities - Contextual Glance

Apart from improving the transparency in the holding of securities, maintaining the securities in Dematerialised form has many advantages such as prompt transfer of securities, no stamp duty on transfer, immediate credit of dividend as bank account of the investor is mapped to demat account etc. Further, risks associated with physical certificates such as forged transfer, bad deliveries, loss in postal transit etc. are eliminated. This will also enhance transparency such as elimination of benami holding and ease in transfer, pledge, etc, of securities.

b. Insertion of Rule 9A

MCA, vide notification dated 10 September, 2018, amended the Companies (Prospectus and Allotment of Securities) Rules, 2014, by inserting Rule 9A which relates to Issue of securities in dematerialised form by unlisted public company. Pursuant to insertion of said Rule, every unlisted public company is required to issue the security only in dematerialised form and the Company to facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and Regulations made there under. As per Section 2(h) of the Securities Contract (Regulation) Act, 1956,securities include equity shares, preference shares, debentures, units of mutual funds etc. Though, the Rules states that unlisted public company are required to issue security in dematerialised form, it will be even applicable to private companies those are subsidiary of public company.

c. Significance of insertion of Rule 9A

Upon notification of insertion of Rule 9A, obtaining ISIN by unlisted public companies for each type of security from Depository and informing existing security holders about availability of Demat facility for the securities was needed. In addition to above, the following are required to be ensured:-

- The public companies need to ensure that entire holding of securities of its promoters, directors and KMPs are dematerialised before it make offer of securities or buy back or bonus or right offer.
- Existing shareholders need to ensure that their shareholding is in Demat form if they wish to transfer

During last 4 ½ years, many amendments in the Company Law have brought in force which are certainly better corporate governance practices and these initiatives are also ensuring that India is continuously achieving newer heights in "Ease of Doing Business in India".

such securities on or after 2nd October, 2018.

- Existing shareholders who wish to subscribe in any securities of an unlisted company need to ensure that its existing shareholding is in Demat Form.
- Submission audit report as per regulation 55A of the SEBI (DP) Regulation, 1996 on a half-yearly basis to RoC.

d. Mandatory dematerialisation in Listed entity

SEBI,vide its circular SEBI/LAD-NRO/GN/2018/24 dated 8th June, 2018, mandated that except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with. Accordingly, Regulation 40 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations") has been amended and the Stock Exchanges vide Circular in July, 2018 have advised the Listed Companies that with effect from 5th December, 2018, the companies have to ensure that shares lodged for transfer shall be in dematerialized form only. Further, all the listed entitieswere required to intimate the shareholders who are holding securities in physical modeabout the above amendments by sending three communications (i.e. one initial letter and two reminders). First such communication was required to be sent though Speed post or Registered Post; and remaining two communications could have been sent by ordinary posts also. Further, compliance with regard to sending such communication to Shareholders need to be submitted to the Stock Exchange. Nonetheless, SEBI, on 3rd December, 2018, has extended the deadline and stated that its amendment notified on 8th June, 2018 shall come into force effective from 1st April, 2019 (*instead of 5th December, 2018)*.

Nonetheless, with the insertion of Rule 9A in the Companies (Prospectus and Allotment of Securities) Rules, 2014, applicability of mandatory dematerialisation for unlisted public company already came into force effective 2nd October, 2018.

d. Way forward

To improve corporate governance in unlisted public entities, it was certainly proactive move to make dematerialisation mandatory in such entities. However, it would be apt if the MCA makes dematerialisationof securities mandatory in private companies also.

Further, it would be apt if MCA:

i. amend the sub-rule (5) of Rule 9A by removing the requirement of maintaining security deposits of not less than 2 years' fees with Depository and Registrar to an issue and share transfer agent ('RTA') as it is not desirable to deposit 2 years' fees in advance; and

ii. prescribes the e-Form to submit audit report as per regulation 55A of the SEBI (DP) Regulation, 1996by unlisted companies with RoC and states that first such report be submitted for the half year ended 31st March, 2019.

3. KYC OF DIN HOLDERS

Over the years, Know Your Customer, popularly known as "KYC" has become integral part of banking business transactions as it prevents money laundering and at the same time Banks are able to understand their customers and their financial dealings in better way. In fact, KYC helps the Central Govt. to provide the benefits of its various welfare schemes/ subsidies to the needy without any financial leakage.

a. KYC of Directors – Contextual glance

KYC of Director Identification Number ('DIN')holders was long pending and it was much needed since its introduction in the year 2006. As the MCA have got some indication that there are plenty of inactive or shell companies and might be getting used for money laundering etc., MCA has very aptly and correctly taken proactive steps to remove/ de-activate DINsthose are non-KYC compliant. KYC of DIN holders is aimed at weed out fake names being listed as genuine Directors. This appears to be theMCA's strategy to clamp down on shell companies.

b. Insertion of Rule 12A

MCA, vide its notification dated 5th July, 2018, inserted 12A of The Companies (Appointment and Qualification of Directors) Rules, 2014 as under:

"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 31stAugust, 2018."

The last date for filing of DIR-3 KYC was extended from time to time beyond 31st August, 2018; and finally every individual who were allotted a DIN as at 31stMarch, 2018, were required to e-form DIR-3 KYC on or before 5th October, 2018.

c. Why KYC of DIN

To become Director in any company, requirement of having DIN is one of the pre-requisite. During last 1 ½ decades, lacs of DIN have been issued to individuals. After obtaining DIN, some of the DIN holders might have died, some may have left the countryor some ghost names might be getting used as genuine Directors. In view of this, KYC of DIN holders was introduced.

In Form DIR-3KYC, every DIN holders was required to confirm:

- his/ her Mobile No and Email ID;
- declare that he/ she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court;
- that he/ she 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.

In fact, keeping in view the technical issue that were arising to file DIR-3 KYC; and due to first of its kind of exercise, MCA was very considerate and extended the requisite help including extending the date of filing of KYC of DIN till 5th October, 2018.Inspite of this, as per Economic Times news dated 17th September, 2018, only 1.2 million directors were able to complete KYC. KYC of remaining about 2.1 million directors was pending after 15th September, 2018 deadlines.

Nonetheless, KYC of DIN holders has not only enabled MCA to have updated data of DIN holders but also remove KYC non-compliant DIN to large extent consequently removal of ghost directors from the Board of Directors of shell/ inactivecompanies.

d. Way forward

As KYC is annual exercise, all the individual holding DIN will require to file DIR-3 KYC on or before 30thApril every year. Going forward, MCA to take tough stand and should not extend the date of submission of DIR-3 KYC beyond 30th April. Any individual who does not file his/ her DIR-3 KYC by 30th April may be penalised Rs.100 for each day delay in filing which would bring discipline and enhance disclosure practice of persons responsible to discharge fiduciary duties.

4. PAYMENT TO MSME

Over the years, Central Govt. has taken numerous steps to boost Micro, Small and Medium Enterprises ('MSME') sector as it has become vibrant and dynamic sector of the Indian economy. MSMEs plays important role not only providing large employment opportunities at lower capital cost than large companies but also enable industrialization of rural & backward areas. This ensure in reduction of regional imbalances and also equitable distribution of national wealth.

a. Insertion of requirement relating to payment to MSME

Ministry of Micro, Small and Medium Enterprises vide notification dated 2nd November, 2018, introduced the requirement of reporting by all companies who deals with MSME to submit half yearly return to MCA with respect of payment not made within 45 days from the supplies made by MSME, as under:

"All companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from thedate of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

(a) The amount of payments due; and

(b) The reasons of the delay."

> Apart from improving the transparency in the holding of securities, maintaining the securities in Dematerialised form has many advantages such as prompt transfer of securities, no stamp duty on transfer, immediate credit of dividend as bank account of the investor is mapped to demat account etc.

b. Objectives

The objective of the above Notification is clear that focus of Central Govt. continues to boost MSME. The above notification will force all the large corporates to ensure prompt payment for the supplies received from MSME enterprises. At present, keeping in view the small scale business, MSME are unable to hard bargain with large corporates on payment term due to which working capital cycle of MSME increases.In fact, recent news item states: "The share of bank credit to micro and small enterprises has been shrinking since three years – from 5.9% in October, 2015 to 4.5% in October, 2018, data from the RBI shows." [Source: Times of India dated 3rd December, 2018]

The above amendment will enable MSMEs to receive payment for their supplies to large corporates within 45 days of the supplies of goods or services which will improve working capital cycle of MSMEs and ultimately their profitability.

c. Way forward

As the amendment requires all the companies, who get supplies of goods or services from MSME, to submit a half yearly return to the MCA stating the payment due to MSME enterprises beyond 45 days and reason of delay, MCA should notify the Form for such submission of such Return at the earliest. At the same time, for better disclosure practices, the Return should contain columns such as (a) Name of the MSME, (b) Address, (c) Brief particulars of goods or services received, (d) Total amount due beyond 45 days (f) Reason for delay etc. These disclosures will also be very helpful for MSME for any future litigation.

It would be apt, if MCA prescribe that first such half yearly return be filed by the companies for the half year ending on 31st March, 2019.

CONCLUSION

You don't have to be great to start, but you have to start to be great............. Zig Ziglar

During last 4 ½ years, Central Govt. has taken several initiatives in "Ease of Doing Business in India". Apart from taking some of the thought provoking social welfare initiatives such as Swachh Bharat Abhiyan; BetiBachao, BetiPadhao; Pradhan Mantri AwasYojana; Ujjawala Scheme; Jan DhanYojana etc., the Central Govt. also took some of the bold decisions such as implementation of Goods and Services Tax; Insolvency and Bankruptcy Code, removal of obsolete laws; liberalisation of Labour laws, pro-investment reforms to attract more Foreign Direct Investments etc. At the same time, MCA has not only issued various circulars, rules, removal of difficulty order etc. to ensure effective implementation of the Act, but also made various changes in the Company Law such as constitution of NFRA, dematerialisation of securities by public companies, KYC of DIN, payment to MSMEs, simplification of process of incorporation of the company etc. to achieve its intent towards adopting better governance practices by corporates. All these initiatives have also ultimately ensured that India now stand at 77thposition in the World Bank's ease of doing business index, becoming the top ranked country in South Asia for the first time and third among the BRICS Association. CS

ARTICLE

The What, Why and How of Companies (Amendment) Ordinance, 2018

Reforms in law are carried out whenever societies and its values and views change. In the earlier trend, laws evolved as societies evolved. However, the recent trend shows that laws evolve as scams evolve. One such reform is the amendments introduced by the Companies (Amendment) Ordinance, 2018 in the Companies Act, 2013. This article attempts to understand the background and significant events that necessitated the constitution of a Committee to review the offences under Companies Act, 2013 and eventually, the promulgation of the ordinance.

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The enactment of the Companies Act, 2013 was one of the most significant legal reforms in India in the recent past that had far reaching implications which significantly changed the manner in which corporates operated in India. With the changing business conditions, the government further amended the Act in 2015with the aim of encouraging business in India by providing a lot of exemptions to private companies and reducing the procedural requirements, making compliance easier. However, the government continued to receive various representations from the stakeholders to further review the act and thus the second round of amendments were made in 2017 (which received the Presidential assent in January 2018) which had its main motto as ease of doing business in India.In less than a year, the Act has been amended again by way of Companies (Amendment) Ordinance, 2018, this time, with the objective of establishing mechanisms for speedy disposal of cases and to reduce the menace of shell companies.

ORDINANCE – SIGNIFICANCE AND IT'S VALIDITY

According to Black's Law Dictionary, an ordinance is 'a rule established by authority'.In the Indian context, ordinances are laws declared by the President of India or Governor of a State during emergency situations that necessitates urgent actions.The President is vested with the legislative power of promulgating ordinances under Article 123 of the Constitution of India.The President may declare ordinances on any subject matter that the Parliament is empowered to legislate on, only when either house of the parliament is not in session, that is, during the recess of the Parliament and he is satisfied that there exist circumstances which require his immediate action. However, these ordinances, though have the equal footing as that of an Act of the Parliament, are temporary in nature.

An ordinance promulgated by the President is valid for a period of six weeks from the day the session of any house of the parliament resumes. During this six week period, the ordinance passed must be introduced as a bill before both of the houses of the Parliament for their approval along with a statement justifying the circumstances which required an immediate action that necessitated the promulgation of an ordinance. Once approved by both the houses of the Parliament, the ordinance becomes an act. An ordinance promulgated will lapse if it is disapproved by both the houses of the Parliament or on expiry of six weeks from the date of resumption of the session of the Parliament or if withdrawn by the President before its expiry. A joint session of parliament is held in case the ordinance is approved by one house and disapproved by another house.

STOCK MARKET SCAM – WHERE IT ALL BEGAN

The Harshad Mehta and Ketan Parekh scams are the two major scams that rattled the stock markets in 1992 and 2002 respectively.These scams exposed the inadequacies in our law to tackle the corporate scams of such unparalleled nature. In the Harshad Mehta scam, the Bombay High Court convicted Harshad Mehta in 1999 and he was sentenced to five years rigorous imprisonment and fine of twenty fivethousand rupees, whereas the amount involved in this scandal was Rupees 5000 crores. Similarly, in the Ketan Parekh scam, the accused was convicted by the special CBI court in Mumbai and sentenced to rigorous imprisonment for a period of two years, while the amount swindled by him in the scamwas to the tune of Rupees 800 crores. These scams and the money involved in them were huge, but the penalties and punishments imposed upon themwere not commensurate with the gains made and were meagre. It is during the wake of these scams, the lawmakers realized that there was a need to identify the irregularities and possible misuse of the loopholes present in the law and to suggest deterrent measures that prevent the recurrence of such misuse. In order to conduct a thorough inquiry on the same, it was suggested that a Joint Parliamentary Committee (JPC) be constituted.

JOINT PARLIAMENTARY COMMITTEE

Subsequent to the Harshad Mehta scandal, a Joint Parliamentary Committee was constituted in August 1992 to investigate into the irregularities in the securities and banking transaction.The committee finally presented its report in December 1993but the recommendations of this committee was never implemented. Due to the negligence in the implementation of these recommendations, 66 out of the 72 cases of 1992 scam registered by CBIwere not adjudicated for a period of nine year and were pending trial. Since there was no effective mechanism established to punish these wrongdoers, the scams continued to occur without any fear of punishment. It is said that those who fail to learn from history are doomed to repeat it. Subsequently, we had the Ketan Parekh scam in 2002.

In the aftermath of the Ketan Parekh scam, a30 member Joint Parliamentary Committee was constituted on 27th April 2001 consisting of 20 members from Lok Sabha and 10 members from the Rajya Sabha. The primary objective of this committee was to identify the irregularities and manipulations in the stock market and to suggest recommendations, to prevent the recurrence of such irregularities and also, to suggest

> Section 435 of the Companies Act, 2013 provided for the constitution of special courts to conduct the speedy trial of offences violating the provisions of the Companies Act and for prosecution of the defaulting companies. These courts were constituted exclusively for companies and to ensure that justice is neither delayed not denied to any person. The purpose of this provision was to reduce the number of litigations pending at various courts and to give effect to the government's motto of ease of doing business.

deterrent measures against those found guilty of violating the regulations.One of the major observations of the Committee was that the penalties and punishments specified in the Act for various serious offences were insignificant and inadequate. The Committee pointed out the example of Section 77 of the Companies Act, 1956 which dealt with the buyback of shares of company. According to section 77, a company is prohibited to buy back its own shares(other than by way of capital reduction) or to extend financial assistance for the same as it may cause artificial impact on the stock price. The penalty imposed for the contravention of this section was ten thousand rupees which was irrespective of the amount involved in the offence. The committee opined that this penalty was nominal and unrelated to the gravity of the offence. Another observation was that the procedure for obtaining permission for investigating into these offences were lengthy and often stalled by court action. The committee made the following two important recommendations:

(a) Make certain offences non-compoundable

(b) Prescribe monetarypenalties which are a percentage, or multiple, of the money involved in the offence/scam.

SHARDUL SHROFF COMMITTEE REPORT

Since the main aim of the joint Parliamentary committee of 2001was to investigate the irregularities in the stock market, the Department of Corporate Affairs appointed a separate committee in August 2001 headed by Mr. Shardul Shroff to examine the possibility of rationalization of penalties under the Companies Act, 1956 as the existing regime proved to be inadequate. It was suggested by this Committee that the penalties have to be rationalized and be levied according to the amount involved in the offence, the deterrent impact of the offence on the society and seriousness of the violation of law. It was also suggested by this Committee that a separate Securities and companies court have to be constituted vested with the powers of both a civil and criminal Court and have exclusive jurisdiction over all offences and violations committed under the companies act.It was also suggested that essentially civil penalties be levied in case of commission of economic or white-collar crimes.

SECTION 447 OF COMPANIES ACT 2013

The Companies Act, 2013 introduced the concept of fraud which did not exist in the erstwhile 1956 Act. The 1956 act included the provision for punishment for fraud in various sections but it was only in the 2013 act that a concrete definition for fraud was laid down and a separate section for punishment for fraud was introduced.At present, there are 17 offences prescribed under the Companies Act, 2013 which are liable to action under Section 447 apart from any other offence which might fall under the ambit of the definition of fraud. The purpose of Section 447 was to overcome the shortcomings and inadequacies of the 1956 Act which did not provider for stringent penaltiesand stricter punishments for offenses of serious nature.Since the punishment prescribed under this section was both imprisonment and fine, the offences punishable under this section where non-compoundable.

However, it was noted that this section was too broad and minor defaults also attracts the penalties under Section 447 which were non-compoundable. Also, this provision may also be misused and had a negative impact on attracting professionals in the capacity of directors.Due to the potential gross misuse of the section that might happen, it was further amended by way of Companies (Amendment) Act, 2017. Subsequent to the amendment, the punishment prescribed under Section 447 can be categorized as follows:

1. Fraud involving an amount of at least ten lakhs or one percent of turnover, whichever is lower – imprisonment for not less than six months but which may extend to ten years and fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud;

2. Fraud involves public interest - the term of imprisonment shall not be less than three years;

3. Fraud involving an amount of more than ten lakhs or one percent of turnover, whichever is lower and does not involve public interest - imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both

Accordingly, stringent penaltieshave been stipulated based on amountinvolved in the fraud and its impact on the society and public interest and opportunity was given to those offenders who have committed offences which did not involve public interest to compound them.

ESTABLISHMENT OF SPECIAL COURTS

Section 435 of the Companies Act, 2013 provided for the constitution of special courts to conduct the speedy trial of offences violating the provisions of the Companies Act and for prosecution of the defaulting companies. These courts were constituted exclusively for companies and to ensure that justice

> **The Committee constituted, classified the compoundable offences on the basis of their nature, gravity and discoverability so as to ascertain whether the nature of default was merely technical/procedural or whether they affected any public interest. The purpose of the categorization of the offences was to bring the less serious offences which are caused by procedural or technical mechanism under the ambit of in-house adjudication so that the Courts and Tribunals can concentrate on offences that affect the public interest.**

is neither delayed not denied to any person. The purpose of this provision was to reduce the number of litigations pending at various courts and to give effect to the government's motto of ease of doing business.

The Companies (Amendment) Act, 2015 amended this section to empower the special courts to adjudicate offences which are punishable with imprisonment of two years only. It was further amended by the Companies (Amendment) Act, 2017 for speedy trial of all offences and to conduct the trial of offences as follows:

i) Single Session Judge or Additional Sessions Judge - for offences punishable withimprisonment of 2 years or more

ii) Metropolitan Magistrate or Judicial Magistrate of First Class - for other offences.

THE NEED FOR THE ORDINANCE

Despite the various efforts taken by the lawmakers to curb the lengthy procedures and provide for speedy adjudication of the pending cases, there continued to be an existing rise in the number of pending cases before various courts. It was noted that a significant number of these cases were pertaining to non-filing of annual returns and financial statements on time. In order to reduce the pendency of the cases, the Ministry of Corporate Affairs introduced various settlement schemes over the years. Despite those efforts too, the number of cases before various forums were piling up. There was a need to recategorize the offences under Companies Act, 2013 to separate the less serious offences from the serious ones so that the Court may focus on serious offences such as fraud and corporate scams. Also, there was a need to introduce measures for ease of corporate governance and ease of doing business.

Pursuant to this, the government constituted a committee to review the offences under Companies Act, 2013 under the chairmanship of Mr. Injeti Srinivas in July 2018. The committee conducted its investigation and finally submitted its report on August 2018.Based on the recommendations of theCommittee, the Companies (Amendment) Ordinance, 2018 was promulgated by the President on 2nd November, 2018. The amendments were made by way of an ordinance instead of an act due to limited time available for the ruling government. The amendments introduced can be classified as amendments pertaining to categorization of offences, adjudication of penalties, declogging of NCLT and measures to tackle the menace of shell companies.

RECATEGORIZATION OF OFFENCES

The Committee constituted, classified the compoundable offences on the basis of their nature, gravity and discoverability so as to ascertain whether the nature of default was merely technical/procedural or whether they affected any public interest. The purpose of the categorization of the offences was to bring the less serious offences which are caused by procedural or technical mechanism under the ambit of in-house adjudication so that the Courts and Tribunals can concentrate on offences that affect the public interest.

Accordingly, the offences were classified under the following heads:

S. No.	Classification of Offence	Recommendations of the Committee
	Offences relating to non-compliance of order or direction of any authority (such as order issued by RD for change of name, producing of information called for before any authority, etc.).	Since offences of these kind are not procedural lapses, it was suggested not to bring these offences within the scope of in-house adjudication.
	Offences pertaining to non-maintenance of records in the registered office of the Company (such as non-maintenance of register of members, register of significant beneficial owners, etc.).	Since offences of these kind affect the rights and liabilities of members and other stakeholders, it was suggested not to bring these offences within the scope of in-house adjudication.
	Offences pertaining to non-disclosure of interest of persons to the Company (such as declaration of interest in other entities by directors, significant beneficial ownership, etc.).	Since timely disclosures ensure proper regulatory framework and offences of these kind debase the records of a Company and serious implications are attached to non-disclosures, it was suggested not to bring these offences within the scope of in-house adjudication
	Offences pertaining to corporate governance norms (such as prohibition on issue of shares at discount, appointment of key managerial personnel, maximum number of directorships, etc.).	Since offences of these kind are easily discoverable and there are inherent safeguard measures to prevent the commission of these offence, it was suggested to bring these offences within the scope of in-house adjudication.
	Offences pertaining to non-filing of forms with the Registrar and failure to send notices to stakeholders (such as filing of annual return, annexing explanatory statements to notices calling for special business, etc.)	Since offences of these kind are easily discoverable and mere procedural lapses, it was suggested to bring these offences within the scope of in-house adjudication. Default to file the registration/satisfaction of charges and the return of beneficial ownership, however, is not brought within the scope of in-house adjudication.
	Offences affecting the going concern nature of the Company, public interest or stakeholders' interest (such as contravention of terms of license of Section 8 companies, failure to comply with buy-back conditions, etc.)	Since offences of these kind are contrary to the larger good and are substantial violations, it was suggested not to bring these offences within the scope of in-house adjudication

	Offences related to liquidation proceedings	Since these proceedings happen before the NCLT and the Tribunal has the power of contempt, it was suggested not to bring these offences within the scope of in-house adjudication

Sixteen offences were recategorized and brought under the mechanism of in-house adjudication. It is pertinent to note that in an in-house adjudication, the adjudicatory proceedings are carried by an adjudicatory officer who levies penalty instead of fine. The significant difference between a fine and penalty is that fine is imposed by a court or tribunal and penalty is imposed by any authority. Subsequent to the changes brought about by the ordinance, it can be expected that the Registrar of Companies may start levying penalties by issuing show cause notice to the concerned persons in case of offences brought within the scope of in-house adjudication. There would be no need to compound these offences before the NCLT or any other authority. This would reduce the burden on the NCLT as these less serious offences will be handled by the adjudicating officers.

ADJUDICATION OF PENALTIES

With respect to adjudication of penalties by an adjudicatory officer, the following are the major recommendations put forth by the Committee and were included in the ordinance:

(a) To impose civil penalties on procedural lapses as it would not require the establishment of *mens rea* as against a criminal proceeding and reduce the burden of proof on the regulator;

(b) Apart from levying penalties, the adjudicatory officer can also direct the rectification of the default;

(c) To create an infrastructure where the adjudicatory proceedings can happen on an online platform;

(d) To impose severe punishments for commission of repeated and subsequent default of a similar nature.

DECLOGGING OF NCLT

The burden on the NCLT to adjudicate disputes related to Companies has been reduced by the Companies (Amendment) Ordinance, 2018 through the introduction of the following amendments:

(a) Applications for change of financial year of Company no longer needs to be made to NCLT and it will need to be made to the Central Government, which may delegate the power to any other authority.

(b) The power to approve the conversion of public companies to private companies has been vested with the Central Government. Prior to the amendment, this power was vested with NCLT.

(c) The pecuniary jurisdiction of the Regional directors for compounding of offences has been enhanced from five lakhs to twenty five lakhs.

MEASURES TO TACKLE SHELL COMPANIES

The following amendments have been made to improve corporate governance and to diminish the menace of shell companies:

(a) The requirement of every company having a share capital to submit a declaration that every subscriber to the memorandum has paid the value of shares agreed to be taken by him within 180 days of incorporation of company and file verification of registered office has been re-introduced. This provision existed in the 2013 Act before it was omitted by way of Companies (Amendment) Act, 2015. The Registrar can proceed to strike off the name of the Company in the event of default of filing of the required declarations. In these instances, the Registrar need not wait for a period of two years before striking off of name of company and this ensures weeding out of shell companies at the early stage.

(b) The Registrar may cause a physical verification of the registered offices of companies to ensure that they are not just 'paper companies'.

(c) The time period for creation and modification of charges has been reduced to 60 days from 300 days and extension may be sought by payment of prescribed ad valorem fees. However, the creation and modification of charges cannot be registered after 120 days. This amendment has been introduced as delayed reporting affects the interest of stakeholders and secured creditors at the time of winding up.

(d) Section 165 lays down the maximum number of directorships that can be held by a person. The ordinance has provided for an extra ground of disqualification stating that if an individual holds directorship in companies beyond the limit specified in Section 165, he will be subject to disqualification.

THE WAY FORWARD

With the winter session of the Parliament scheduled to commence from December 11,2018,the ordinance will be presented as a bill before both the sessions of the parliament and once it is approved by both the houses, it will become an act.In view of the extent and scope of changes that has been introduced by the ordinance which will soon become an act, it will definitely take time for the stakeholders to come to terms with the new regime with the new provisionsand understand the difficulties in the process of implementation of these provisions.

One of the major recommendations is to conduct the in-house adjudication on an online platform. It can be expected that the infrastructure for the online adjudication may be in line with the e-proceedings initiative introduced under the income tax act. All companies maybe expected to register themselves as an individual user with a unique username on a portal created for that purpose where e-notices will be issued by the authorities and the company will be able to submit their replies along with the supporting documents.It is pertinent to note that such a similar reporting structure was established to simplify the procedure of reporting foreign direct investment to RBI by creation of the FIRMS portal. All these steps have been taken keeping in mind the objective of ease of doing business.

CONCLUSION

As quoted by Martin Luther King Jr. '*law and order exist for the purpose of establishing justice and when they fail in this purpose,they become the dangerously structured dams that block the flow of social progress*'.The history has taught us that necessary reforms have to implemented seriously to allow the flow of social progress. We can expect the recent changes in the Companies Act, 2013 to be the expected and the much-needed transformationin the corporate world that establishes a flawless society with timely delivery of satisfactory justice, making India a corporate haven. CS

ARTICLE

Corporate Social Responsibility (CSR): Recent Development and Concerns

The Companies (Amendment) Act, 2017 addressed many rule based clarifications in the Act itself for better governance and compliances of CSR provisions and to avoid the rule based clarifications to the extent where the Rules override the Act. The proposed amendments to CSR provisions in FY 2018-19 need many clarifications which it is hoped that the Government will respond to these queries through notifications in CSR Rules in the coming days. In view of this one should avoid the rule based clarifications to the extent where the Rules override the Act.

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In India the Corporate Social Responsibility (CSR) activities are regulated by a piece of legislation. Section 135 of the Companies Act, 2013 mandates companies to create social value (SV) (public goods) by undertaking CSR activities as per CSR policy adopted by their Board in line with the Schedule VII of the Act. It is well said that CSR is an investment not an expenditure of the corporates which becomes an integral part of the wealth creation process for the stakeholders. The corporates become more sustainable or create more economic value (EV) with the intervention of innovative CSR related activities, which enhances trust and credibility after considering society's need and finding out the effective ways to fulfill the existing and anticipated demand of the communities. The good governance and CSR results into better image of the Company by spending at least 2% of the average profit of previous 3 years. As small drops of water make the mighty ocean, the effective CSR activities of eligible corporates in India would bring a new dawn of development.

The govt. of India has constituted a number of committees from time to time for developing a framework through which the CSR activities could be effectively governed and monitored.

CHANGES IN COMPANIES (AMENDMENT) ACT, 2017

There are various ambiguities in the existing CSR provisions. To bring more clarity in the existing provisions, Section 135 of the Companies Act, 2013 was amended in line with the uniform approach among the companies. The following changes along with the explanations are provided in the table:

* *The views expressed in this article are personal views of the authors.*

Sr. No.	Changes	Explanation
01.	In section 135 of the principle Act, - In sub-section (1), - (a) for the words **"any financial year"**, the words **"the immediately preceding financial year"** shall be substituted;	• The important term "any financial year" used in Section 135(1) is not very clear. There could be different assumptions/meaning possible by using the word "any financial year". The basic condition of CSR eligibility is net worth/turnover/net profit. The bone of contention is the net worth/turnover/net profit for the immediately preceding financial year or the current financial year. General circular No.21/2014 dated 18.06.2014 clarified that "any financial year" referred under Section 135(1) of the Act read with Rule 3(2) of Companies CSR rule, 2014, implies 'any of the three preceding financial year'. There was a concern that the CSR rules may be overriding the 2013 Act. **The 2017 amendment Act replaces the words "any financial year" with the word "the immediately preceding financial year"**. Now it is very clear that the applicability of CSR requirement would be decided only and only for the immediately preceding financial year.
	(b) the following proviso shall be inserted, namely: - "Provided that where a Company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility committee two or more directors"	• Section 135(1) provides that CSR committee of the Board shall consist of three or more directors, out of which at least one shall be an independent director (ID). Rule 5(1) of CSR Policy Rule 2014 relaxes the requirement of Independent director in the CSR Committee of **non-listed public Company, private Company and foreign Company**. The requirement of ID on the CSR committee was arising from the principal Act, 2013. Later on, the CSR Policy Rule, 2014 allows to have the committee with less than 3 directors without ID and overrides the Companies Act, 2013. There was a great concern that how rules override the Act. By including the CSR rules clarification in the Act itself, the 2017 Amendment Act addressed this concern and also clarify that CSR committee may be formed with two or more directors. This is a welcome provision in the Act. After the enactment of Amendment Act, 2017, Rule 5(1) of CSR Policy Rule 2014 would be non-operational and have no use among the companies.

> **The proposed amendment in CSR Laws for spending the unspent CSR money within a period of 3 years is applicable to CSR eligible Company only and not the implementing agency i.e. NGOs. Here NGOs means Trust/Society/not-for-profit Company (the implementing agency on behalf of CSR eligible Company) to whom the Company makes its contribution to undertake activities in the project or programme mode as per the CSR policy of such Company.**

02.	In sub-section (3), in clause (a), for the words and figure "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;	• Schedule VII provides the list of activities to be undertaken by the Company in pursuance of the CSR policy formulation. Schedule VII focuses on broad areas and intended to cover a wide range of activities which have been further explained to be interpreted liberally vide general Circular No. 21/2014 dated June 18, 2014. The word "as specified in Schedule VII" used earlier, was not reflecting the correct intention as it narrows down or restricts the scope of activities. Now the drafting error has been corrected through the Amendment Act, 2017 which provides that "formulate and recommend to the Board, a CSR policy which shall indicate the activities to be undertaken by the Company **in areas or subject** specified in Schedule VII". As such there is no change in law.
03.	In sub-section (5), for the Explanation, the following Explanation shall be substituted, namely: - 'Explanation. - For the purpose of this section **"net profit" shall not include sums as may be prescribed,** and shall be calculated in accordance with the provisions of section 198'.	• There was different connotation about the term "net profit" under the existing provision of the 2013 Act. Section 135(1) used the word **"net profit"** to determine applicability of CSR provisions, whereas Section 135(5) used the word **"average net profit"** in accordance with the provisions of Section 198 of the Companies Act, 2013. As per CSR Rule 2(f): (i) any profit arising from any overseas branches of the Company and (ii) dividend received from other companies in India, shall be deducted while computing the net profit of the Company; whereas the Act (Companies Act, 2013) does not contain these deductions. Besides, the High Level CSR Committee (appointed by MCA) had recommended in their Report in para 4.16 that **the term "average net profit" as per Section 135(5) should be changed to net profit** to bring harmony and uniformity in the Act. By including the CSR rules clarification in the Act itself, the 2017 Amendment Act addressed this concern and clarified that **the Central Government may prescribe sums which will not be included for computation of net profit of the Company**.
04	In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures **"and section 135"** shall be inserted.	• Rule 3 of the CSR Policy Rules, 2017 clarifies that the provisions of CSR are also equally applicable to foreign companies. However, as per Section 384 of the Companies Act 2013, the applicability of various provisions to a foreign Company, does not clearly specify the requirement of CSR to foreign Company. The question arises, how the rules override the Companies Act, 2013 for applicability of CSR to foreign companies. To bring more clarity about the disharmony, the Companies (Amendment) Act, 2017 contained a corresponding change in Section 384 of the Companies Act, 2013 i.e. CSR will also apply to a foreign Company if it meets the prescribed criteria for its India business as per section 135 of the Act.

PROPOSED AMENDMENTS OF CSR PROVISIONS TO THE COMPANIES ACT, 2013

The Ministry of Corporate Affairs (MCA) has made certain other amendments of urgent nature which would be required to strengthen the corporate governance and enforcement framework. The proposed amendments have been put in the public domain for seeking suggestion/comments from stakeholders on or before November 20, 2018.

Sr. No.	Proposed Amendments	Comments
01	In sub-section (5), after the words "three immediately preceding financial years", the words **"or where the Company has not completed the period of three financial years since its incorporation, during such period,"** shall be inserted.	This is to make it clear that newly incorporated eligible companies which are in existence for less than 3 years, need to spend on CSR **considering their average net profit for the respective period of existence**. This is a welcome provision. The question of averaging the net profit for computation of CSR was big ambiguity among the companies in cases where the companies are incorporated for less than 3 years. Now the proposed amendments provide the absolute clarity about the computation of average profit. For example: if a Company exists for last two years (FY 2016-17 & 2017-18) and the net profit was Rs. 10 & 15 Cr. respectively, the average profit for last 2 years (10+15)/2 is Rs.12.5 Cr. which is to be spent in FY 2018-19.

02.	After sub-section (5), new sub-section (6) is proposed i.e. any amount remaining **unspent under sub-section (5) shall be transferred by the Company within thirty days from the end of the financial** year to a special account to be opened by the Company in that behalf for that financial year in any scheduled bank to be **called the Unspent CSR Account**, and such amount shall be spent by the Company in pursuance of its CSR Policy within a period of 3 financial years from the date of such transfer.	The proposed amendments have highlighted important aspect where the CSR eligible Company would not be in a position to spend its CSR money either fully or partially. Going forward, the Company will open unspent CSR Account to park their unspent CSR fund within 30 days from the end of financial year and such amount shall be spent within a period of 3 financial years from the date of such transfer. The following points are not clarified in the proposed amendments: **(a)** **No penalty provision** has been prescribed in the proposed amendments, for: (i) non-compliance of opening separate CSR account or (ii) non-compliance of 30 days' timeline for transfer of unspent amount or (iii) not utilised within a period of 3 FYs from the date of such transfer**.** **(b)** **No utilisation guidelines** has been prescribed in the proposed amendments, if the amount remains unspent in separate CSR account after a lapse of 3 years. **(c)** **For non-compliance of the above points** (a) and (b); it is presumed that the existing general penalty provisions may prevail as per Section 450 of the Companies Act, 2013. (d) Spending of unspent money within a period of 3 years is **applicable to CSR eligible Company only.** The requirement is not applicable to **implementing agency such as Trust/ Society/not-for-profit Company** to whom the CSR eligible Company makes its annual contribution. The Companies Act, 2013 mandated to disclose the reasons for unspent amount in the Board's Report. **There is no clarity to disclose opening of separate CSR account or transfer of unspent money within 30 days' time or not utilised within a period of 3 FYs** in the Board's Report.
03.	Lastly, new sub-section (7) is proposed i.e. the Central Government may give **such general or special directions to a Company or class of companies as it considers necessary to ensure compliance of provisions of this section and such Company/class of companies shall comply with such directions.**	It is understood that this will give authority to the Central Government to direct companies to spend the unspent CSR funds in a particular manner. After the enactment of proposed amendments into the Act, the Government may issue directions to a Company or class of companies as it may deem necessary by way of notification in the CSR Rules.

CONCERNS AND CHALLENGES

1. Corporate and NGO are working as good partnership model for implementation of CSR projects. NGOs have good exposure for creating social value and Corporates have good experience to create economical value. This partnership model is a mixture of social value and economical value. Most of the Corporates have their own NGO to undertake CSR activities because of two reasons (a) 3 years' past track records are not applicable and (b) the corporates can enjoy the tax incentives for their contribution to registered NGOs [see detailed clarification in point no.5]. The proposed amendment in CSR Laws for spending the unspent CSR money within a period of 3 years is applicable to CSR eligible Company only and not the implementing agency i.e. NGOs. Here NGOs means Trust/Society/not-for-profit Company (the implementing agency on behalf of CSR eligible Company) to whom the Company makes its contribution to undertake activities in the project or programme mode as per the CSR policy of such Company. Circular No. 21/2014 dated June 18, 2014 clarified that "contribution to Corpus of a Trust/society/ section 8 companies etc. will qualify as CSR expenditure". The real sense of the circular is that if a Company contributes to corpus of NGOs at any point of time during the financial year (say on or before March 31), it would be treated as CSR expenditure in the hand of the Company for that Financial year. Here, the Company transfers/ contributes to corpus of registered NGO but not actually spent for the development of society. The CSR fund was lying in the hands of their partner (i.e. implementing agency) and may not be spent in full or part for the benefit of communities in that year end. Because of this contribution to corpus of NGO, the Company would not be required to open a separate unspent account in reference to the proposed amendment of the Act. The corporates can bypass this proposed amendments (i.e. **opening of separate CSR account or transfer of unspent money within 30 days' time to be utilised within a period of 3 FYs)** by contribution to Corpus of a Trust/society/Section 8 companies on or before the end of financial year.
2. After the enactment of Section 135 of the Companies Act, 2013, the NGO sector (i.e. Trust/Society/ and a non-for-profit Company) is playing a crucial role for the development of social and environmental aspect. Not-for-profit Company (i.e. Section 8 Company) is regulated by Central Act (i.e. Companies Act, 2013) whereas the Trust/ Society are regulated by States Act and/or other Acts. There is no uniformity among the NGOs in term of annual/ quarterly/monthly filing to the regulator, transparency of the business, governance aspect, accountability and reporting standard etc. Regulators are different among these sector as per the provisions of their respective Act. Like in other developed countries, there is a long demand for common regulator to control this sector in India. Common regulator will make provisions to regulate the NGOs sector keeping in mind the CSR provisions of the Companies Act, 2013.
3. In case of Merger of two CSR eligible companies, the existing companies are liquidated and the newly formed Company carries on business after acquiring all assets and liabilities from the existing companies. In such a situation, the question arises on the CSR applicability of transferor or transferee Company. Transferor companies would be liquidated after the merger process is completed and CSR provision may not be applicable to these companies in spite of having track record of CSR eligibility. On the other hand, the newly formed merged Company will not be eligible for CSR as the Company does not have any eligibility criteria (track record) in the previous year. The law is silent on these situations. Ministry of Corporate Affairs (MCA) should clarify the applicability of CSR in case of re-structuring of business such as Merger, Acquisition and Demerger etc. For example**: C**ompany 'X' Ltd. and 'Y' Ltd. are merged and form a newly incorporated Company 'XY' Ltd. during the financial year 2018-19. The merger process is completed on September 30, 2018 and the Company X Ltd and Y Ltd are dissolved on the same date (i.e. September 30, 2018) and Company XY commences its operation from October 1, 2018. The Company X Ltd. and Y Ltd. spent 50% of their

total CSR budget before their liquidation (i.e. September 30, 2018). How liquidated companies would spend remaining 50% of their CSR budget in the same Financial Year? The newly incorporated merged Company XY Ltd. is not eligible for CSR under the provisions of Section 135 of the Companies Act, 2013. Here the question arises, can the Company XY Ltd. spend remaining 50% unspent CSR fund on behalf of liquidated X Ltd and Y Ltd? The answer may be negative because the CSR provisions are silent in these circumstances and XY Ltd. does not have any track-record immediately preceding the financial year.

4. Section 135(1) is applicable to every Company having a net worth of Rs.500 Cr. or more; a turnover of Rs.1000 Cr. or more; or a net profit of Rs.5 Cr. or more in the immediately preceding financial year. Out of these three conditions, the most important condition is the **net profit** criteria because it increases the ability to address the manner in which companies engage their economic, social and environmental aspects and their stakeholder's relationship etc. The creation of social value (SV) have a positive correlation with the Company's earning capacity. If any Company with meagre profit or negative profit but having their turnover or net worth crosses the triggered limit, has to form CSR committee, adopt CSR policy in the board and comply with provisions of Section 135(1) of the Companies Act, 2013. Therefore, no exemption has been provided to those companies whose profit or earning capacity are at break-even point or even at loss. **Ministry of Corporate Affair (MCA) should give relief to those companies whose profit is below the certain limit irrespective of their turnover or net worth crosses the specified limit.** This measures would help those companies to grow and create stakeholder value in future. **Besides this, MCA can think about the eligibility criteria on the basis of net profit only instead of any of the 3 conditions in the preceding previous year (i.e. turnover/net worth/net profit).**
5. The Finance Act, 2014 provides that any expenditure incurred by a Company on the activity relating to CSR covered in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure for the purpose of business or profession. The CSR eligible Company has three options to undertake such activities: - (i) Company can undertake this responsibility directly on their own or (ii) through registered NGOs as their implementing agency or (iii) partly on their own and partly by a registered NGO. The amount spent by a Company towards CSR either directly or through NGO, cannot be claimed as business expenditure. **But from the tax planning point of view, it is advisable to undertake CSR activities through NGOs, who are registered under Section 80G and 12AA of the Income Tax Act, 1961**. For example: X Ltd. is a CSR eligible Company under Section 135(1) of the Companies Act, 2013. Assume, the 2% average profit of last 3 years is Rs. 100 Cr. for FY 2018-19. X Ltd. undertakes CSR obligation through a registered Trust, registered under Section 80G of the Income Tax Act, 1961, as an implementing agency. Apart from creating a social value, the Company can enjoy tax incentive from the Government of Rs. 15 Cr. (i.e.Rs.100x50%x30%) assuming the corporate tax rate is 30%. To undertake CSR through registered NGO FY 2018-19, the Company could create extra value of Rs. 15 Cr. from the Government in an ethical tax planning way. This is one of the reasons for the corporates to undertake the social responsibility through their own registered NGO.
6. Neither the Companies Act, 2013 nor the CSR rules provide any specific penal provision if a Company fails to spend the required amount under Section 135 of the Companies Act, 2013. Also there is no legal requirement on companies to make good the deficiency of one year in the subsequent years except the proposed amendment in CSR provisions in FY 2018. However, the board, in its report under Section 134 of the Companies Act, 2013, needs to clarify the reasons for not spending the required amount. The general penal provision of Section 450 of the Companies Act, 2013 would be applicable where no specific penalty or punishment is provided under Section 135 or the relevant CSR rules of the Act, where a Company fails to spend the required amount. **The Company should be aware of the indirect penal provisions of the Act.**

> After the enactment of Section 135 of the Companies Act, 2013, the NGO sector (i.e. Trust/ Society/ and a non-for-profit Company) is playing a crucial role for the development of social and environmental aspect. Not-for-profit Company (i.e. Section 8 Company) is regulated by Central Act (i.e. Companies Act, 2013) whereas the Trust/Society are regulated by States Act and/ or other Acts. There is no uniformity among the NGOs in term of annual/quarterly/monthly filing to the regulator, transparency of the business, governance aspect, accountability and reporting standard etc. Regulators are different among these sector as per the provisions of their respective Act. Like in other developed countries, there is a long demand for common regulator to control this sector in India.

CONCLUSION

To sum up the above, it can be said that the Companies (Amendments) Act, 2017 and the proposed amendments to CSR provisions in FY 2018-19 wanted to simplify the CSR laws to bring about a change in the attitude of corporate who would give back to the society in a big way. Therefore, the need of the hour is to amend the CSR laws to become long-term, simple and easier to monitor. The Companies (Amendment) Act, 2017 addressed many rule based clarifications in the Act itself for better governance and compliances of CSR provisions and to avoid the rule based clarifications to the extent where the Rules override the Act. The proposed amendments to CSR provisions need many clarifications for opening unspent CSR Account to park unspent CSR fund within 30 days from the financial year and such amount shall be spent within a period of 3 financial years from the date of such transfer. Possibly, the Government will respond on these queries through Rules in the coming days. One should avoid the rule based clarifications to the extent where the Rules override the Act. It is hoped that with these changes, corporates can create more social value (SV) in sustainable manner which would help them to operate a business in a manner that meets the ethical, legal, commercial and community expectation within the framework of laws. CS

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RESEARCH CORNER

- ECONOMIC DEVELOPMENT AND CHANGING EMPLOYMENT PATTERN- AN ANALYSIS

Economic Development and Changing Employment Pattern- An Analysis

India is very close to enjoy a distinct advantage in labour market compared to most developed and less developed countries due to the fast changing demographics, economic and legal environment. Continuous growth with widespread innovations in technology, economic liberalization, and the consistent structural adjustment programmes have shifted labour dependence from primary sector to manufacturing and services sectors and hence, changed the pattern of employment in India as well as in most of the economies of the world. Further a shift in the pattern of employment in recent years is also due to the process of actualization being stalled and self employment going up both in rural and urban areas for men as well as women. In this scenario this research study explores the trend in the structure of the workforce in terms of industry, occupations, status and growth of employment during recent period. The reviews on changing pattern of employment in the word as well as in India could be used by the researchers for multiple uses depending on the nature of study.

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INTRODUCTION

Labour force has the capability to define the growth and development of any country. It plays the most important role in any economic activity. Continuous growth with widespread innovations in technology, economic liberalization, and the consistent structural adjustment programmes have shifted labour dependence from primary sector to manufacturing and services sectors and hence, changed the pattern of employment in India as well as in most of the economies of the world.

With economic development, the employment pattern of the country undergoes significant changes. An increasing number of new job opportunities are created in the non-agricultural sector. In agricultural sector, development likely takes place in the form of increased productivity and thereby releasing many workers from this sector. As a result of which labour force shifts from agricultural to manufacturing/industries and services sectors. Besides, the factor such as high wages, fixed working hours, better working conditions, availability of modern facilities etc., in non-agricultural sectors induce the workers to migrate from agricultural to manufacturing and services sectors. In the process, the proportion of workforce engaged in these sectors increases over time. This indicates that the change in employment pattern, thus, merely symbolize the changes in the economic structure of the country.

OBJECTIVES AND METHODOLOGY

One can look into the changing structure and pattern of employment in different ways, depending on the types of data available and the precise questions that one has in mind. Present study seeks:

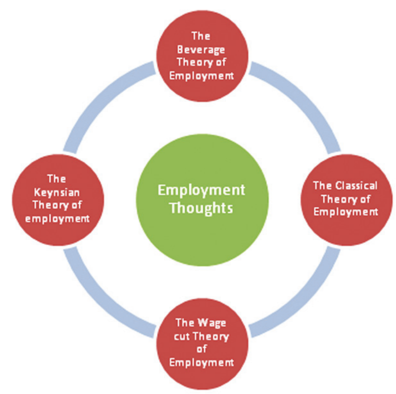
- to review important thoughts on employment that are relevant to the economy,
- to highlight current pattern of employment in major economies of the world, and,
- to review pattern of employment in India.

This study explores current trend in the structure of workforce in terms of industry, occupations, status and growth of employment. It is exploratory in nature and based on secondary sources of information. It examines the reported level of employment in the economy in terms of Work Population Ratios (WPR) as well as the incidence of unemployment by gender when measured by using Usual Principal Status (UPS) and Subsidiary Status (SS) of India.

REVIEW OF THOUGHTS

To understand the functioning of labour force in an economy, it is required to review the underlying thoughts on employment. There are four important thoughts available in the literature (as reflected in the figure) which are still having relevance in Indian scenario.

Figure-1: Employment Thoughts



(i) *The Classical Theory of Employment*

The classical believed that there always exists full employment of labour and other resources in any economy. 'Full employment' is a normal situation and any lapse from full employment is considered to be abnormal. The free play of the economic forces itself brings about the fuller utilization of economic resources including labour. It is believed that whatever goods are produced in the economy are sold automatically. Hence, the issue of overproduction

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does not arise. Since there is no over production, there is no unemployment.

(ii) *The Wage cut Theory*
The neo-classical considered wage cutting as the most effective means of reducing unemployment. It is viewed that money wage cuts would help to promote employment whenever there will be necessity. However, wage cut if not managed properly could cause harm to the economy also.

(iii) *The Keynesian Theory*
J.M. Keyne's systematic theory on employment and wages is known as the 'demand deficiency theory'. The greater the total output of the economy, the greater will be the employment. The national output, on the other hand, depends on the effective demand and in order to promote employment, effective demand should be increased by increasing investment. The way to do away with underemployment equilibrium in a private enterprise economy is to promote public investment so as to be compatible with full employment.

(iv) *The Beverage Theory of Employment*
Lord Beveridge, a thinker and an employment expert has stated that the volume of employment depends upon three factors: (i) adequate effective demand for the products of industry, (ii) the direction of demand and (iii) the manner in which industry responds to the demand. Further he has pointed out three ways to take action against unemployment: (i) maintaining adequate total outlay at all times by the state, (ii) control by the state to the location of industry to prevent local misdirection of demand for labour and the unemployment that may result from it, and (iii) organizing mobility of labour.

These thoughts when discussed in details are having much implication while handling the situation of employment in an economy.

PATTERN OF EMPLOYMENT AND LABOUR FORCE

The pattern of employment and condition of labour force is analysed both for India and also for the global scenario.

(A) **GLOBAL SCENARIO**
The changes in world of work in recent years have brought a new set of challenges to economies and labour market. With the shifts in the nature of work, the demand for the workforce has also seen fluctuations. Globalization, changing market trends, unpredictability and the demographic evolution has contributed to new attitudes towards work. Adapting labour markets to these dynamics is one of the challenges that the developing countries are facing.

- **Labour Force Participation Rate**
Globally, there are over 2 billion working-age people who are not participating in the labour market. According to ILO projections, participation rates are expected to stabilize at 62.8 per cent of the global working-age population, but then follow a moderate downward trend to 62.5 per cent until 2020. **Developed and emerging economies are likely to see further declines in activity rates, while developing economies are expected to experience more stable labour force participation rates.** Table-1 derived below shows global labour force participation rate with projecting upto the year 2020.

Table-1: Labour Force Participation Rates and Projections to 2020 (%)

Regions	2014	2015	2016	2017	2018	2019	2020
Developed economics	60.6	60.5	60.4	60.3	60.1	60.0	59.8
Emerging economics	62.3	62.3	62.2	62.1	62.0	61.9	61.8
Developing economics	76.8	76.8	76.8	76.9	76.9	76.9	76.9
G20 economics	62.4	62.3	62.2	62.1	61.9	61.7	61.6
G20 advanced economics	60.1	60.0	59.8	59.7	59.5	59.4	59.2
G20 emerging economics	63.3	63.2	63.1	63.0	62.8	62.7	62.5
MALE	76.2	76.1	76.1	76.1	76.1	76.0	76.0
Developed economics	69.1	68.9	68.8	68.7	68.5	68.4	68.2
Emerging economics	77.7	77.6	77.6	77.6	77.6	77.5	77.5
Developing economics	83.0	82.8	82.8	82.8	82.9	82.9	82.9
G20 economics	75.6	75.5	75.5	75.5	75.4	75.3	75.1
G20 advanced economics	68.0	67.9	67.8	67.6	67.4	67.2	67.0
G20 emerging economics	78.5	78.4	78.8	78.4	78.3	78.2	78.1
FEMALE	49.7	49.6	49.6	49.5	49.5	49.4	49.2
Developed economics	52.5	52.6	52.5	52.5	52.3	52.2	52.1
Emerging economics	46.8	46.7	46.6	46.6	46.4	46.3	46.1
Developing economics	71.0	71.0	71.0	71.0	71.0	71.0	71.0
G20 economics	49.2	49.1	49.0	48.8	48.7	48.5	48.2
G20 advanced economics	52.6	52.7	52.6	52.5	52.4	52.2	52.1
G20 emerging economics	47.7	47.6	47.5	47.3	47.2	46.9	46.7
World	62.9	62.9	62.8	62.8	62.7	62.6	62.5

Source: Global Employment and Social Trends, ILO-2015. Note- 2017 data is the projected data

- **Labour Market Outlook for Asia and the Pacific**
Detailed labour market outlook for Asia and the Pacific are presented in the table derived below. **It is observed that since most of the countries of this region are growing, hence, it is expected that their share of vulnerable employment is expected to gradually fall.** Yet vulnerable employment remains comparatively high, especially in South-Eastern Asia and the Pacific and Southern Asia.

Table-2: Labour Market Outlet for Asia and the Pacific

Activities	Region	2000-07	2008-13	2014	2015	2016	2017
Labour Force Participation Rate	Eastern Asia	73.4	69.9	69.6	69.5	69.3	69.1
	South-Eastern Asia & the Pacific	70.2	70.2	70.1	69.9	69.9	69.9
	Southern Asia	59.3	56.2	54.5	54.4	54.5	54.6

Unemployment Rate	Eastern Asia	4.3	4.4	4.5	4.5	4.5	4.6
	South-Eastern Asia & the Pacific	6.1	4.8	4.3	4.4	4.3	4.2
	Southern Asia	4.6	4.3	4.2	4.1	4.1	4.0
Employment Growth	Eastern Asia	0.9	0.4	0.4	0.3	0.2	0.1
	South-Eastern Asia & the Pacific	1.8	1.9	1.5	1.4	1.4	1.5
	Southern Asia	2.3	0.9	1.7	2.1	2.0	2.0
Vulnerable Employment	Eastern Asia	55.1	46.3	42.6	42.1	41.6	41.3
	South-Eastern Asia & the Pacific	59.6	56.4	54.4	54.1	53.7	53.3
	Southern Asia	79.4	76.1	74.1	73.6	73.3	72.8
Productivity Growth	Eastern Asia	5.7	5.7	5.1	4.9	4.8	4.7
	South-Eastern Asia & the Pacific	3.1	2.7	2.7	2.8	3.1	3.4
	Southern Asia	4.1	4.6	4.5	4.3	4.6	4.8

Source: Global Employment and Social Trends, ILO-2015. Note- 2017 data is the projected data

(B) INDIAN SCENARIO

Following are few issues which reflect on the pattern of employment and labour force in India.

(a) Worker Population Ratio (WPR)

Worker population ratio is defined as the number of persons employed per 1000 persons in India. Symbolically,

$$WPR = \frac{Nummer\ of\ employed\ persons}{Total\ Population} \times 1000$$

Following table shows state wise detailed figure of WPR for the age group of 15 years and above when calculated on basis of UPS. From the table it can be seen that WPR for male is highest in Daman and Diu and lowest for Lakashadweep. For female WPR is observed highest for Chhattisgarh and lowest for Jammu and Kashmir.

Table-3: Workers Population Ratio above 15 Years & Above as per (UPS) (per '000)

Name of the State/UT/All India	Male	Female	Transgender
Andhra Pradesh	752	446	775
Arunachal Pradesh	640	330	965
Assam	712	175	447
Bihar	733	131	462
Chhattisgarh	793	533	651
Delhi	651	112	447
Goa	699	204	--
Gujarat	757	189	265
Haryana	678	231	471
Himachal Pradesh	658	140	887
Jammu & Kashmir	627	77	167
Jharkhand	723	178	510
Karnataka	764	320	458
Kerala	684	216	450
Madhya Pradesh	688	159	396
Maharashtra	699	322	456
Manipur	713	285	--
Meghalaya	731	427	996
Mizoram	720	522	1000
Nagaland	649	489	315
Odisha	750	165	572
Punjab	686	89	143
Rajasthan	699	188	270
Sikkim	687	206	56
Tamil Nadu	733	367	496
Telangana	702	420	756
Tripura	748	158	--
Uttarakhand	663	173	458
Utter Pradesh	703	88	303
West Bengal	778	169	387
A & N Island	810	233	--
Chandigarh	610	81	--
Dadra & Nagar Haveli	696	161	--
Daman & Diu	812	148	--
Lakshadweep	485	145	--
Puducherry	745	272	--
All India	**721**	**217**	**459**

Source: file:///C:/Users/e0786/Desktop/Pattern%20of%20employment/employment%20-%20unemployment%20survey%202016.pdf

Below derived table-4 shows WPR when estimated by USP and SS approach. WPR for male is observed to be highest in A & N Island and minimum in Lakshadweep. For female, WPR is observed to be highest in Mizoram and lowest in Jammu and Kashmir.

Table-4: Worker Population Ratio above 15 Years by Usual Principal & Subsidiary Status in India (per '000)

Name of the State/UT/All India	Male	Female	Transgender
Andhra Pradesh	759	470	775
Arunachal Pradesh	720	516	965
Assam	734	245	598
Bihar	746	178	462
Chhattisgarh	798	542	651
Delhi	654	117	447
Goa	700	212	--
Gujarat	759	199	295
Haryana	687	187	471
Himachal Pradesh	662	151	887
Jammu & Kashmir	631	79	167
Jharkhand	799	482	666
Karnataka	766	333	458
Kerala	690	237	450
Madhya Pradesh	696	172	396
Maharashtra	705	328	459
Manipur	736	464	--
Meghalaya	754	499	996
Mizoram	763	590	1000

Nagaland	703	559	315
Odisha	766	237	572
Punjab	687	94	143
Rajasthan	736	319	270
Sikkim	734	482	79
Tamil Nadu	736	393	496
Telangana	703	427	756
Tripura	787	453	458
Uttarakhand	670	205	--
Utter Pradesh	716	120	316
West Bengal	790	205	420
A & N Island	813	251	--
Chandigarh	610	81	--
Dadra & Nagar Haveli	697	161	--
Daman & Diu	812	152	--
Lakshadweep	566	155	--
Puducherry	754	281	--
All India	**733**	**258**	**472**

Source- As mentioned in Table-3.

(b) Distribution of Households by Number of Employed Persons

The extent of labour force can be identified from the number of employed persons per households. Table-5 derived below shows the figure of number of households having 1 person employed, 2 persons employed etc., when calculated for persons having 15 years and above. From the table it can be seen that Lakshadweep followed by Kerala are having highest households who are not having any employed persons in the households. Whereas, Chhattisgarh followed by Nagaland is having employed persons more than 4 in a household.

Table-5: Distribution of Households by Number of Employed Persons Aged 15 Years & Above in India (per '000)

Name of the State/UT/ All India	None	1 Person	2 Persons	3 Persons	4 & Above Persons
Andhra Pradesh	95	351	365	115	74
Arunachal Pradesh	15	451	326	141	68
Assam	27	554	277	94	48
Bihar	27	553	271	101	49
Chhattisgarh	32	261	392	150	165
Delhi	30	587	269	84	30
Goa	79	551	219	101	51
Gujarat	26	437	338	129	70
Haryana	47	517	295	105	35
Himachal Pradesh	84	546	259	86	24
Jammu & Kashmir	39	602	271	63	25
Jharkhand	14	486	341	121	39
Karnataka	37	403	340	141	80
Kerala	132	463	300	81	25
Madhya Pradesh	56	556	250	98	40
Maharashtra	54	408	341	112	86
Manipur	12	491	329	100	67
Meghalaya	14	452	298	144	92
Mizoram	15	361	352	149	122
Nagaland	18	374	379	106	123
Odisha	37	524	301	105	33
Punjab	64	544	270	99	24
Rajasthan	40	480	317	111	52
Sikkim	07	571	308	93	20
Tamil Nadu	85	419	329	115	52
Telangana	85	416	370	82	46
Tripura	57	625	245	60	12
Uttarakhand	95	465	289	110	42
Utter Pradesh	31	565	264	102	38
West Bengal	51	514	300	100	35
A & N Island	31	570	294	74	32
Chandigarh	124	586	214	53	23
Dadra & Nagar Haveli	20	554	254	124	48
Daman & Diu	30	497	248	169	56
Lakshadweep	138	519	190	109	43
Puducherry	88	487	290	111	23
All India	**51**	**484**	**306**	**107**	**52**

Source- As mentioned in Table-3.

(c) Distribution of Households by Number of Wage/ Salaried Persons

Table-6 derived below shows households when calculated on basis of wage and salaried persons in India. From the table it can be seen that Bihar is leading the table with highest household having not a single person in the household as a salaried/ wage earners. Whereas Puducherry followed by Goa are having more than 3 persons per households as salaried/wage earners.

Table-6: Distribution of Households by Number of Wage/Salaried Persons Aged 15 Years and Above in India (per '000)

Name of the State/UT/All India	None	1 Person	2 Persons	3 & Above Persons
Andhra Pradesh	813	151	32	04
Arunachal Pradesh	778	186	27	08
Assam	729	215	46	10
Bihar	868	110	19	03
Chhattisgarh	821	142	30	06
Delhi	501	363	109	27
Goa	536	317	103	44
Gujarat	777	168	45	09
Haryana	691	243	54	12
Himachal Pradesh	597	354	44	05
Jammu & Kashmir	653	270	64	13
Jharkhand	731	227	38	04
Karnataka	751	177	59	13
Kerala	714	217	60	08
Madhya Pradesh	851	125	19	04
Maharashtra	755	199	39	07
Manipur	735	225	36	04
Meghalaya	806	161	25	08
Mizoram	629	288	69	14
Nagaland	546	371	62	20
Odisha	742	212	41	05
Punjab	785	182	29	05
Rajasthan	728	225	39	07
Sikkim	580	351	54	16
Tamil Nadu	698	224	65	13
Telangana	770	196	30	04
Tripura	783	200	14	03

Uttarakhand	632	306	48	14
Utter Pradesh	801	168	25	06
West Bengal	840	134	23	04
A & N Island	661	277	53	09
Chandigarh	469	400	105	25
Dadra & Nagar Haveli	709	230	57	05
Daman & Diu	727	239	30	04
Lakshadweep	512	387	81	20
Puducherry	589	278	84	49
All India	**773**	**182**	**38**	**07**

Source- As mentioned in Table-3.

(d) **Distribution of Households by Average Monthly Earnings**

Following table shows labour force based on average monthly earnings. From the table it can be seen that Madhya Pradesh is having the highest household in India having monthly income of Rs. Upto 5000/- per household. Further, Lakshadweep followed by Kerala is leading the table among the no earners category. Whereas Chandigarh followed by Goa is having highest earners in the category of monthly income of Rs. 10,000/- and above per household.

Table-7: Distributions of Households by Average Monthly Earnings for Persons 15 years and Above (per '000)

Name of the State/UT/All India	Up to 5000	5001-7500	7501-10,000	10,001-20,000	20,001-50,000	50,001-1,00,000	Above 1,00,000	No Earners ('000)
Andhra Pradesh	206	286	229	192	72	14	01	95
Arunachal Pradesh	287	258	125	209	99	21	01	15
Assam	195	241	195	202	136	27	03	27
Bihar	225	323	250	147	49	05	01	27
Chhattisgarh	232	328	205	162	61	10	00	32
Delhi	15	37	132	308	384	109	14	30
Goa	114	110	135	285	245	74	37	79
Gujarat	134	217	215	271	151	11	01	26
Haryana	147	175	166	245	217	39	11	47
Himachal Pradesh	202	116	126	300	239	18	00	84
Jammu & Kashmir	211	182	145	201	209	50	02	39
Jharkhand	195	272	216	190	111	16	--	14
Karnataka	185	225	182	233	146	25	04	37
Kerala	101	150	223	311	171	40	05	132
Madhya Pradesh	358	310	155	118	54	05	00	56
Maharashtra	157	233	222	238	133	15	02	54
Manipur	73	209	258	236	201	22	02	12
Meghalaya	144	339	197	159	132	28	--	14
Mizoram	191	186	123	172	247	73	08	15
Nagaland	112	143	178	275	242	44	07	18
Odisha	298	293	168	144	81	12	04	37
Punjab	167	190	200	235	185	23	02	64
Rajasthan	108	223	235	281	139	13	01	40
Sikkim	54	185	274	269	242	71	05	07
Tamil Nadu	186	222	225	229	106	27	04	85
Telangana	204	249	211	199	104	28	04	85
Tripura	219	336	234	153	47	08	03	57
Uttarakhand	92	159	231	307	161	38	13	95
Utter Pradesh	301	289	187	139	71	11	01	31
West Bengal	345	271	158	141	75	10	01	51
A & N Island	106	186	236	202	212	52	06	31
Chandigarh	96	384	214	149	81	36	41	124
Dadra & Nagar Haveli	174	316	267	188	56	--	--	20
Daman & Diu	58	125	349	255	178	31	04	20
Lakshadweep	133	146	76	166	372	103	04	138
Puducherry	94	224	164	311	153	39	15	88
All India	**221**	**254**	**201**	**196**	**108**	**18**	**02**	**51**

Source- As mentioned in Table-3.

(e) **Distribution of Households having Wage/Salaried as per UPS**

Following table calculated monthly average income of the households on UPS basis. When households are calculated by this approach, Tripura is having highest households upto 5000/- per month salary/wage. Further, Chandigarh followed by Delhi are highest among no earners and Goa is having highest households of income more than Rs. 10,000/- per month.

Table-8: Distribution of Households having Wage/Salaried Persons based on UPS and their Average Monthly Earnings (in Rs.)

Name of the State/UT/All India	Up to 5000	5001-7500	7501-10,000	10,001-20,000	20,001-50,000	50,001-1,00,000	Above 1,00,000	No Earners ('000)
Andhra Pradesh	41	139	268	287	202	61	02	187
Arunachal Pradesh	13	98	105	357	341	82	04	222
Assam	47	122	135	257	347	83	09	271
Bihar	39	176	228	332	188	32	05	132
Chhattisgarh	47	155	196	335	218	48	01	179
Delhi	05	27	91	265	457	136	20	499
Goa	--	25	56	298	430	128	63	464
Gujarat	22	107	184	343	309	33	02	223
Haryana	34	77	115	274	380	92	27	309
Himachal Pradesh	130	89	45	267	428	41	00	403
Jammu & Kashmir	46	54	83	229	451	131	06	347
Jharkhand	57	152	153	268	317	54	--	269
Karnataka	45	94	140	323	335	54	09	249
Kerala	35	70	121	333	315	111	15	286
Madhya Pradesh	64	198	212	273	223	28	01	149
Maharashtra	42	99	188	330	301	34	05	245
Manipur	11	38	111	173	588	73	06	265
Meghalaya	83	42	136	181	434	124	--	194
Mizoram	31	55	48	157	502	186	22	371
Nagaland	01	34	69	347	439	96	15	454
Odisha	56	166	198	275	215	39	14	258
Punjab	73	122	192	209	327	71	06	215
Rajasthan	37	126	177	340	285	30	04	272
Sikkim	00	85	166	166	474	98	11	420
Tamil Nadu	53	154	205	293	226	59	11	302
Telangana	42	116	180	289	252	103	19	230
Tripura	192	186	150	257	166	35	13	217
Uttarakhand	23	100	186	302	311	68	10	368
Utter Pradesh	98	204	190	245	215	44	04	199
West Bengal	80	122	140	282	321	48	07	160
A & N Island	--	36	116	146	540	143	18	339
Chandigarh	58	314	224	177	126	55	46	531
Dadra & Nagar Haveli	01	238	410	255	97	--	--	291
Daman & Diu	02	54	215	360	315	54	--	273
Lakshadweep	42	16	50	89	593	201	08	488
Puducherry	19	112	87	385	300	82	15	411
All India	54	**133**	**176**	**292**	**281**	**56**	**08**	**227**

Source- As mentioned in Table-3.

(f) **Labour Force Participation Rate (LFPR)**
Labour Force Participation Rate is defined as the number of persons in the labour force per 1000 persons. The formula for calculation is:

Table-9 derived below estimated LFPR for persons aged 15 years and above when calculated based on UPS approach for India. From the table it can be seen that A & N Island is having highest male labour followed by Tripura and Daman and Diu. For female, Mizoram followed by Nagaland occupies highest LFPR.

Table- 9: Labour Force Participation Rate for Persons Aged 15 Years and Above as per UPS in India (per '000)

Name of the State/UT/All India	Male	Female	Transgender
Andhra Pradesh	781	466	775
Arunachal Pradesh	696	370	965
Assam	742	204	447
Bihar	777	142	462
Chhattisgarh	808	543	651
Delhi	668	122	447
Goa	750	246	--
Gujarat	764	192	295
Haryana	706	145	471
Himachal Pradesh	723	170	887
Jammu & Kashmir	656	105	167
Jharkhand	774	204	666
Karnataka	774	327	458
Kerala	714	308	704
Madhya Pradesh	712	174	396
Maharashtra	714	330	467
Manipur	755	304	--
Meghalaya	750	476	996
Mizoram	740	540	1000
Nagaland	709	536	315
Odisha	778	186	572
Punjab	714	111	143
Rajasthan	742	215	270
Sikkim	769	328	56
Tamil Nadu	756	392	561
Telangana	714	440	756
Tripura	812	314	--
Uttarakhand	705	195	458
Utter Pradesh	745	112	314
West Bengal	808	188	387
A & N Island	852	347	--
Chandigarh	632	82	--
Dadra & Nagar Haveli	710	174	--
Daman & Diu	812	151	--
Lakshadweep	583	169	--
Puducherry	764	304	--
All India	**750**	**237**	**480**

Source- As mentioned in Table-4.

The combined approach for LFPR is narrated in the table-11 derived below. From the table it can be seen that A and N Island followed by Tripura are having highest LFPR for male and state like Mizoram followed by Nagaland for female.

Table-10: Labour Force Participation Rate above 15 Years for Usual Principal & Subsidiary Status in India (per '000)

Name of the State/UT/All India	Male	Female	Transgender
Andhra Pradesh	785	488	775
Arunachal Pradesh	755	532	965
Assam	753	267	598
Bihar	781	185	462
Chhattisgarh	809	548	651
Delhi	670	126	447
Goa	750	250	--
Gujarat	764	200	295
Haryana	706	197	471
Himachal Pradesh	725	180	887
Jammu & Kashmir	656	106	167
Jharkhand	820	490	666
Karnataka	775	339	458
Kerala	717	314	704
Madhya Pradesh	712	183	396
Maharashtra	715	334	467
Manipur	765	477	--
Meghalaya	770	536	996
Mizoram	770	604	1000
Nagaland	741	596	315
Odisha	789	254	572
Punjab	715	116	143
Rajasthan	754	328	270
Sikkim	781	556	79
Tamil Nadu	758	415	561
Telangana	715	445	756
Tripura	833	544	--
Uttarakhand	707	225	458
Utter Pradesh	750	140	327
West Bengal	813	220	420
A & N Island	852	362	--
Chandigarh	632	82	--
Dadra & Nagar Haveli	710	174	--
Daman & Diu	812	155	--
Lakshadweep	583	169	--
Puducherry	773	313	--
All India	**755**	**274**	**488**

Source- As mentioned in Table-3.

(g) **Distribution of Employed Persons by Category of Employment**
The distribution of employed persons by categories of employment, namely, self employed, wage/salary earners, contract workers and casual labour based on UPS & UPSS approach is presented in Table-11. The survey results show that majority of the persons i.e. 46.6 per cent of the employed persons were reported to be self employed followed by 32.8 per cent as casual labour, 17 per cent as wage/salary earners and remaining 3.7 per cent as contract workers based on Usual Principal Status approach.

Table-11: Distribution of Employed Persons among different categories of employment based on UPS and SS in India (in %)

Approach	Self Employed			Wage/Salary Earners			Contract Worker			Casual labour		
	M	F	T	M	F	T	M	F	T	M	F	T
UPS	48.4	39.9	44.1	17.6	14.8	19.6	3.8	3.1	4.9	30.2	42.1	31.4
UPSS	48.6	42.9	44.9	17.4	12.5	19.0	3.8	2.7	4.7	30.2	41.9	31.5

Source- As mentioned in Table-3.

(h) Industry Wise Distribution of Workers

Table-12 presents percentage distribution of employed persons (Rural+ Urban, Rural and Urban) based on National Industrial Classification (NIC), 2008 classification. The results reveal that under UPS approach, majority of the persons were employed in primary sector i.e agriculture, forestry & fishing and mining etc. In the primary sector, 46.1 per cent of the workers were estimated to be employed followed by 32 per cent in the tertiary sector and the remaining 21.8 per cent in the secondary sector i.e. manufacturing and construction sector based on Usual Principal Status approach.

Table-12: Sector Wise Distribution of Employed Persons based on NIC 2008 (%)

Approach	Primary Sector	Secondary Sector	Tertiary Sector
		Rural + Urban	
UPS	46.1	21.8	32
UPSS	47.3	21.9	31
		Rural	
UPS	58.5	19.5	22
UPSS	59.3	19.7	21.1
		Urban	
UPS	7.8	28.9	63.1
UPSS	7.9	29.0	63.0

Source- As mentioned in Table-3.

(k) Employed Persons by Earning

From table-13, at the All India level, a majority 67.5 per cent of the self employed workers had average monthly earnings up to Rs 7500. Only 0.1 per cent of self employed were estimated to have earnings above Rs 1 lakh. At the All India level, 57.2 per cent i.e. more than half of the regular wage/salaried workers earned monthly average earnings of up to Rs 10,000.Whereas, 23.6 per cent of regular wage/salaried workers fall in the monthly average earnings bracket Rs 10,001 to Rs 20,000 followed by 19.5 per cent in Rs 5001-Rs 7500 and 19 per cent in Rs 7501-Rs 10,000. Contract workers and Casual workers were predominantly in the low earnings bracket of up to Rs 7500. About 66.4 per cent of the contract workers and 84.3 per cent of the casual workers had average monthly earnings of up to Rs 7500.

Table-13: Workers According to Average Monthly Earnings in India (in %)

	Self Employed	Regular Wage/ Salaried	Contract Workers	Casual Labour
Persons in Labour Force	46.6	17.0	3.7	32.8
Up to Rs. 5000/-	41.3	18.7	38.5	59.3
Rs. 5001-7, 500/-	26.2	19.5	27.9	25.0
Rs. 7,501-10,000/-	17.4	19.0	20.3	12.0
Rs. 10,001-20,000/-	11.1	23.6	11.0	3.5
Rs. 20,001-50,000/-	3.5	17.7	2.1	0.3
Rs. 50,001-1,00,000/-	0.4	1.4	0.1	00
Above Rs. 1,00,000	0.1	0.2	00	00

Source- As mentioned in Table-3.

(l) Workers by Type of Job Contract

Table-14 provides data on the status of job contract of regular wage/salaried, casual workers and contract workers. The data reveals that at the All India level 64.9 per cent of the regular wage/ salaried workers, 67.8 per cent of the contract workers and 95.3 per cent of the casual workers did not have a written job contract. 27 per cent of the regular wage/salaried and 11.5 per cent of the contract workers had written job contract of more than three years.

Table-14: Workers Aged Above 15 by Job Contract in India (in %)

Types of Job contract	Regular Wage/Salary Earners			Contract Worker			Casual Labour		
	R	U	R+U	R	U	R+U	R	U	R+U
No Written Job Contracts	63.7	66.1	64.9	66.2	70.3	67.8	95.6	94.2	95.3
Written Job Contract 1 Year or Less	3.0	1.9	2.5	11.6	9.4	10.8	0.9	1.6	1.0
Written Job Contract more than 1 year to 3 years	2.8	2.3	2.6	4.6	8.1	5.9	0.3	0.3	0.3
Written job contract more than 3 years	26.8	27.2	27.0	13.2	8.8	11.5	0.4	0.6	0.4
Not Known	3.6	2.5	3.1	4.4	3.4	4.0	3.0	3.3	3.0

Note: R= Rural, U=Urban and R+U= Rural + Urban

Source- As mentioned in Table-3.

CONCLUSION

The shift of employment opportunities from primary sector to other sectors is increasingly viewed as a positive indicator for better growth and performance of the Indian economy. There has been a shift in the pattern of employment in recent years with the process self employment going up both in rural and urban areas for men as well as women.

Indian labour market has a sharp divide between organised and unorganised sector. **The small proportion of organised labour enjoys an advantage with stringent laws and rules and regulations enabling them to fight for their rights.** Each segment of labour whether organized or unorganized, industrial or agriculture, migrant or non migrant has its' peculiar issues and challenges to deal with. **With India poised to have the largest workforce in the world by 2025 it is imperative that labour issues are given the attention and the importance that they deserve. The global scenario indicates on the future pattern of employment and condition of the labour force in the world.** Thoughts derived give an idea about how to handle the changing pattern of employment strategically. CS

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3

LEGAL WORLD

- INDUSTRIAL CREDIT AND INVESTMENT CORPORATION OF INDIA LTD v. M/S. SRINIVAS AGENCIES & ORS [SC]
- MONTREAUX RESORTS (P) LTD & ORS v. ASCOT HOTELS & RESORTS LTD & ORS [NCLAT]
- S. AHAMED MEERAN v. RONNY GEORGE & ORS [NCLAT]
- RAJESH ARORA v. SANJAY KUMAR JAISWAL [NCLAT]
- ALL INDIA ONLINE VENDORS ASSOCIATION v. FLIPKART INDIA PRIVATE LIMITED & ANR [CCI]
- MEET SHAH & OTHER v. UNION OF INDIA, MINISTRY OF RAILWAYS & ORS [CCI]
- TRUSTEE, JACOBITE SYRIAN CATHEDRAL & ANR v. JIPPU VARKEY [NCDRC]
- NATIONAL BUILDING CONSTRUCTION CO LTD v. UNION OF INDIA & ORS. [Del]
- COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA v. GURVINDER SINGH [SC]

Corporate Laws

LMJ 12:12:2018

INDUSTRIAL CREDIT AND INVESTMENT CORPORATION OF INDIA LTD v. M/S. SRINIVAS AGENCIES & ORS [SC]

Civil Appeal Nos. 5082-85 of 1989

A.M Ahmadi & B.L. Hansaria, JJ. [Decided on 22/02/1996]

Equivalent citations: 1996 SCC (4) 165; JT 1996 (5) 405; 1996 SCALE (2) 774; (1996) 86 Comp Cas 255.

Companies Act, 1956- winding up- rights of secured creditors- approaching civil court for realisation- power of company court to permit the continuance of proceedings or to transfer the proceedings to itself- law explained.

Brief facts:

The extent of right of secured creditors to realize their debts from the assets of a company which is under winding-up or has been wound up, by approaching fora other than the company court, was required to be spelt out in these appeals. The Supreme Court was called upon to decide as to when a pending suit or proceeding relating to realization of the debts by such a secured creditor should be transferred to itself by a company court seized with the winding-up proceeding.

The foundational premise of the aforesaid points is that a secured creditor stands outside the winding-up proceeding and under the law he can proceed to realize his security without the leave of the winding-up court, if by the time he initiated the action the company has not beer wound up. This view has been holding field ever since a three-Judge bench decision of this Court in M.K. Ranganathan v. Government of Madras, 1955 (2) SCR 374.

Decision: Appeals disposed of.

Reason:

The real bone of contention is as to when (i) leave of the winding-up court should be granted to a secured creditor to proceed with the suit after an order of winding-up has been made; and (ii) when should a winding-up court transfer to itself any suit or proceeding by or against the company during the pendency of the winding-up proceeding.

The aforesaid questions arise because a secured creditor who has initiated a suit or proceeding in a civil court is interested in realization of his debt only, whereas the company court looks after the interest of all the creditors; so too, the workmen's dues, which rank pari passu with debts due to secured creditors.

We have duly applied our mind to the rival contentions. It is no doubt correct that the interest of the secured creditor, who has taken recourse to an independent proceeding to realise his debt has to be protected; but it is apparent this cannot be done at the cost of other secured creditors. To preserve the integrity of one secured creditor, another secured creditor cannot be discredited - his integrity has to be of equal concern. It may, however, be that in a particular case the secured creditor who has approached the civil court happens to be one who has lent huge amount, or be one who is the main secured creditor. In such a situation, on approach being made by such creditor, we have no doubt that company court would duly take note of this fact and should like to grant leave required by sub- section (1) of section 446; and by the same token refuse to transfer the proceeding to his court. This is not to say that in all cases where the proceedings have been initiated by the main secured creditor, the company court would grant leave. Such would depend on the circumstances of each case. But, if the position be that the secured creditor who had approached the civil court is one amongst many similar creditors, it may be that the company court feels that to take care of the interest of other secured creditors, either the relief of leave does not deserve to be granted or that the proceeding is required to be transferred to it for disposal. It may be pointed out that Sections 529 and 529A of the Act do contain provisions in so far as the priority of secured creditor's claim is concerned. Of course, the company court would not transfer the proceeding to it merely because of its convenience ignoring the difficulties which may have to be faced by the secured creditor, who may be at a place far away from the seat of the company court. The need to protect the company from unnecessary litigation and cost have, however, to be borne in mind by the company court.

We are, therefore, of the view that the approach to be adopted in this regard by the company court does not deserve to be put in a straight jacket formula. The discretion to be exercised in this regard has to depend on the facts and circumstances of each case. While exercising this power we have no doubt that the company court would also bear in mind the rationale behind the enactment of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, to which reference has made above. We make the same observation regarding the terms which a company court should like to impose while granting leave. It need not be stated that the terms to be imposed have to be reasonable, which would, of course, vary from case to case According to us, such an approach, would maintain the integrity of that secured creditor who had approached the civil court or desires to do so, and would take care of the interest of other secured creditors as well which the company court is duty bound to do. The company court shall also apprise itself about the fact whether dues of workmen are outstanding; if so, extent of the same It would be seen whether after the assets of the company are allowed to be used to satisfy the debt of the secured creditor, it would be possible to satisfy the workmen's dues pari passu.
The appeals and transfer cases stand disposed of with these observations, leaving the company court to pass appropriate orders in the concerned matters in the light of what has been stated by us.

LW 89:12:2018

MONTREAUX RESORTS (P) LTD & ORS v. ASCOT HOTELS & RESORTS LTD & ORS [NCLAT]

Company Appeal (AT) No.220 of 2017

S.J. Mukhopadhaya & Balvinder Singh. [Decided on 02/11/2018]

Companies Act, 2013- sections 241- oppression & mismanagement-

several intricate issues settled and explained by NCLAT.

Brief facts:

The appellant company M/s Montreux Resort was incorporated, *inter-alia*, with one of the objects to develop a Holiday Resort at Kasauli. In terms of business arrangement, it was proposed that 2nd respondent would infuse investment for developing the project and would be a majority shareholder. Respondent No.2 to 4 were inducted as Directors. It is alleged that Respondent No.2 further allotted shares to his wife and 4 daughters i.e. Respondents No.5-8, in an attempt to fraudulently usurp majority control of the appellant company under the garb of increasing its capital. It is further alleged that the 2nd Respondent, during his tenure as the Director of the 1st Appellant got sale deeds of various pieces of land parcels executed in favour of 1st Respondent or his nominees instead of getting it executed directly in favour of 1st Appellant. It is also alleged that 2nd Respondent being a majority stake holder in the 1st Respondent has set up competing business with that 1st Appellant, breaching the fiduciary relationship and the trust reposed in him by the appellants.

Therefore, appellants had filed Company Petition before the National Company Law Tribunal (hereinafter referred to as the Tribunal) accusing 1st respondent of oppression and mismanagement. After hearing the parties, the Tribunal dismissed the petition. Being aggrieved by the said order of the Tribunal the appellants have preferred this appeal.

Decision: Appeal allowed.

Reason:

We have heard the learned counsel appearing on behalf of both the parties and perused the record.

The appellants argued that they have not made any claim that they are the shareholders of the 1st Respondent and it is not their claim. This is also the position pinpointed by the counsel for the respondent. The appellants argued that they are not required to be shareholders of 1st Respondent, as it is not 1st respondent whose affairs were alleged to have been mismanaged or conducted oppressively. It has been argued that the appellants agitating oppression and mismanagement of affairs of 'x' company must be shareholder of that 'x' company, not of company 'y' and further argued at the highest, 1st Respondent could have been stripped from the array of respondents instead of dismissing the petition. We have given a thoughtful consideration on this issue and it would have to be examined whether 1st Respondent is a necessary party or not and if so the appellants (original petitioners) would have been directed to make suitable amendments. In the light of it we do not find that the dismissal of company petition at the preliminary stage on this would be justified and at best 1st Respondent could only be deleted from the arrays of the parties which also we have to reach a conclusion after some examination.

The other issue on which the company petition was dismissed raised in this appeal that No Board Resolution authorising representation of appellant company was presented. On this issue the appellants argued that No Board Resolution is required to be shown by shareholders of a Company claiming to act in the name of that company, on the principle of derivative rights to act for and/or on behalf of, and/or in the name of the company. It has been further argued that at the highest appellants (original petitioners) could have been directed that the company shall not be allowed to be represented until such time a Board Resolution was presented or it could have been directed to stand stripped from the array of appellants. We are, therefore, of the opinion that the appellants (original petitioners) should have been given time to produce the authority to represent the company or it could have been directed to stand stripped from the arrays of the appellants. Further 2nd to 4th appellants have also an independent right to move the application for oppression and mismanagement against their interest even if they are representing the company. Therefore, the dismissal of the petition that they do not have a Board Resolution etc. would be a partial truth only which should not amount to denial of right of a shareholder to move an application for oppression and mismanagement.

The other issue raised by the Respondents was that the appellants are not shareholders of the appellant company. On the other hand, the appellants have stated that they are the shareholders of the appellant company on affidavit, therefore, the Tribunal would have directed the appellants to present the proof of their shareholding during the course of hearing and then should have come to the conclusion whether the appellants are shareholders of the appellant company or not. In view of the above observations, we set aside the impugned order.

LW 90:12:2018

S. AHAMED MEERAN v. RONNY GEORGE & ORS [NCLAT]

Company Appeal (AT) No. 162 of 2018

S.J. Mukhopadhaya & A. I. S. Cheema. [Decided on 02/11/2018]

Companies Act, 2013- sections 241 & 244- eligibility criteria to petition the Tribunal- grant of waiver to maintain application-whether correctly granted -Held ,No.

Brief facts:

This appeal has been preferred by Appellant against order dated passed by National Company Law Tribunal, Single Bench Chennai, whereby and where under the Tribunal granted waiver in favour of 1st Respondent – 'Ronny George' under Proviso to Sub-section (1) of Section 244 of the Companies Act, 2013 for entertaining a petition alleging oppression and mismanagement in the company.

Decision: Appeal allowed.

Reason:

In the present case, the 1st Respondent tried to argue that he is also a less than 10% shareholder but that cannot be held to be an exceptional ground to grant waiver. From the shareholding pattern in the 2nd Respondent Company - 'Professional International Couriers Private Limited' as on 31.03.2018, it is clear that except two members all the member are individually eligible to maintain application under Section 241-242 having more than 10% of the share of the company. It is not necessary that they will have to join with one or other member to maintain their petition.

In 'Cyrus Investment Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors., 2017 SCC OnLine NCLAT 261, this Appellate Tribunal noticed the shareholding pattern and taking into consideration the fact that majority of the shareholders having less than 10% of the shareholding, except 2 got more than 10% and that the Appellant 'Cyrus Investment Pvt. Ltd.' has invested about Rs.1,00,000 Crore in 'Tata Sons Ltd.' out of the total investment of Rs.6,00,000 Crore, held that the Appellant of the said case namely 'Cyrus Investment Pvt. Ltd.' has made out an exceptional case to maintain a petition for waiver under Proviso to Sub-section (1) of Section 244 of the Companies Act, 2013.

In Another Case 'S. Ahamed Meeran Vs. Ronny George & Ors.', Company Appeal (AT) No. 161 of 2018 (CA/121/2017), which relates to another Group Company, this Appellate Tribunal by judgment dated 2nd November, 2018 having noticed the shareholding pattern that majority of them had less than 10% shares held that justified waiver has been granted by the Tribunal and refused to interfere with the impugned order.

The present case of the 1st Respondent 'Ronny George' is not only different but a reversal case where majority of the shareholders have more than 10% of shareholding except two who are less than 10% shareholding. Therefore, it cannot be held that the 1st Respondent has made out a case of exceptional circumstances for grant of waiver to maintain an application under Section 241-242 on such ground. This apart, no exceptional circumstance has been shown by the Tribunal to grant waiver. The factors recorded by NCLT in Para 17 of the impugned order are no grounds to treat them as exceptional circumstances keeping in view our Judgment in the matter of 'Cyrus Investment Pvt. Ltd. & Anr. Versus Tata Sons Ltd. & Ors.' (Supra).

In view of the aforesaid fact, the impugned order of Tribunal being based on wrong presumptions of fact and law and as the1st Respondent has failed to make out a case for waiver, the said order is set aside. We hold that the petition under Section 241 and 242 preferred by 1st Respondent (Petitioner) before the Tribunal in respect to 2nd Respondent Company – 'Professional International Couriers Private Limited' is not maintainable and to be dismissed. The appeal is allowed with aforesaid observations.

LW 91:12:2018

RAJESH ARORA v. SANJAY KUMAR JAISWAL [NCLAT]

Company Appeal (AT) (Insolvency) No. 634 of 2018

S.J. Mukhopadhaya & A.I.S. Cheema. [Decided on 05/11/2018]

Insolvency and Bankruptcy Code, 2016- section 9- application admitted without issuing notice to corporate debtor-whether correct-Held, No.

Brief facts:

This appeal has been filed by a shareholder of M/s Amira Pure Foods Pt. Ltd ('Corporate Debtor') against the order of the NCLLT which had admitted the application under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short I&BC) preferred by Ex-employee Respondent ('Operational Creditor').

Decision: Appeal allowed.

Reason:

The Appellant submits that the application under Section 9 of I&BC was admitted without any notice to the 'Corporate Debtor'. The Adjudicating Authority had not given any notice before admitting the case and the impugned order had been passed in violation of rules of Natural Justice. It is also stated that the parties have settled the matter and a draft for Rest. 2, 88,000/- has been handed over to the 'Operational Creditor' towards rest of the amount in terms of settlement.

The Respondent has not disputed the fact that the impugned order was passed by the Adjudicating Authority without any notice to the 'Corporate Debtor'. This is also clear from the impugned order.

Admittedly, impugned order was passed by the Adjudicating Authority without notice to the 'Corporate Debtor' in violation of rules of Natural Justice, we set aside the impugned order. The matter having been settled between the parties, we are not remitting the matter back to the Adjudicating Authority.

In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I & B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor (Company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

Competition Laws

LW 92:12:2018

ALL INDIA ONLINE VENDORS ASSOCIATION v. FLIPKART INDIA PRIVATE LIMITED & ANR [CCI]

Case No. 20 of 2018

Sudhir Mital, Augustine Peter Member & U.C. Nahta. [Decided on 06/11/2018]

Competition Act, 2002- section 4- abuse of dominance- online retailer Flipkart- abuse of dominance alleged- rejected on facts.

Brief facts:

The Informant Company is a group of more than 2000 sellers selling on e- commerce marketplaces such as Flipkart, Amazon, Snapdeal etc.OP-1, a company, is engaged in wholesale trading/ distribution of books, mobiles, computers and related accessories. OP-2 is also a company engaged in e-commerce marketplace business under the brand name Flipkart.com.

The Informant alleged that OP-1 sells goods to companies like WS Retail Services Private Limited, which was owned by founders of OP-2 till 2012, at a discounted price and thereafter, these are sold on the platform operated by OP-2, which practices amounted to preferential treatment to certain sellers. Further, it was apprehended that unfair trade practices are being carried and corporate veil on it is required to be lifted to assess the economic nexus and the wrongdoings being committed. The Informant averred that OPs have a direct conflict of interest with other manufacturers selling on their platform and their own brands like 'Smartbuy' and 'Billion'.

Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Parties alleging contravention of the provisions of Section 4 of the Act.

Decision: Complaint dismissed.

Reason:

In view of the above discussion, the relevant product market in this case may be considered as "Services provided by online marketplace platforms". Resultantly, the relevant market in the instant case may be defined as "Services provided by online marketplace platforms for selling goods in India".

On the issue of dominance, the Informant has stated that the OPs hold over 40% market share. In this regard, it is observed that the Informant has not given any credible source for the market share data. Moreover, there are multiple players in the online marketplace platforms. As per the data available in the public domain, it appears that presently Flipkart and Amazon are the bigger competitors; moreover, there are other players like Paytm Mall, Snapdeal, Shopclues etc. No doubt, the size and resources of Flipkart are large; yet, it cannot be disputed that the closest competitor to Flipkart is Amazon which has a valuation of around 700 billion dollars and has a global presence. With regards to entry barriers, it has to be noted that it is possible for new entrants to create online marketplace platforms, but the advantage gained by incumbents due to network effects may be difficult to breach. However, Flipkart has pointed out that there are several new players which have entered or propose to enter the e-commerce segment, such as Paytm Mall, thus indicative of low entry barriers.

Be that as it may, looking at the present market construct and structure of online marketplace platforms market in India, it does not appear that any one player in the market is commanding any dominant position at this stage of evolution of market.

As discussed earlier, Flipkart India is not dominant in the relevant market of "Services provided by online marketplace platforms for selling goods in India"; therefore, the issue of abuse of dominant position does not arise. The Commission, however, deems it appropriate to take on record the submissions made by Flipkart denying abusive conduct by its entities.

The Commission also observes that so far as the issue of preferential treatment given by OP-1 to exclusive seller (WS Retail Services Private Limited) which is stated to be owned by OP-2, suffice to point out that the Informant itself has admitted in the Information of such structural link between OP-2 and WS Retail existed only till 2012. Hence, no such concern is present today.

On the other allegations also, the Informant has not placed any material to substantiate the same. With reference to abusive conduct attributable to Flipkart Internet, it was submitted that the terms and conditions on which sellers access the Flipkart marketplace are standard and the incentive are based on objective criteria such as quality of product and volume and value of sales. Any person/ entity desirous of selling its products through the Flipkart marketplace can register on it, subject to satisfaction of standard terms and conditions.

In view of the foregoing, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties and the Information is ordered to be closed forthwith.

Lastly, the Commission observes that the marketplace based e-commerce model is still a relatively nascent and evolving model of retail distribution in India and the Commission is cognizant of the technology-driven nature of this model. Recognizing the growth potential as well as the efficiencies and consumer benefits that such markets can provide, the Commission is of the considered opinion that any intervention in such markets needs to be carefully crafted lest it stifles innovation.

LW 93:12:2018

MEET SHAH & OTHER v. UNION OF INDIA, MINISTRY OF RAILWAYS & ORS [CCI]

Case No. 30 of 2018

Sudhir Mital, Augustine Peter Member & U.C. Nahta. [Decided on 06/11/2018]9

Competition Act, 2002- abuse of dominance- railway ticket booking- online ticket booking- fare rounding off to nearest Rs.5- whether abuse of dominance-Held, Yes.

Brief facts:

The Informants are stated to be the individuals residing in Ahmedabad and Rajkot, respectively. The Opposite Party No.1 is the Ministry of Railways, which controls Indian Railways, a departmental undertaking of the Government of India which is administered by the Railway Board. The Opposite Party No.2, IRCTC is a public sector and is stated to be an extended arm of Indian Railways. The Opposite Party No.2 is, *inter-alia*, engaged in online ticketing operations of Indian Railways.

It has been averred by the Informants that as per the pricing policy of the Opposite Parties published on the Official Website, rounding off to the next higher multiple of Rs. 5 is included in base fare. Base fare has two components, i.e. actual fare (the base fare arrived at before rounding off to the nearest multiple of Rs. 5) and total base fare (the base fare arrived at after rounding off to the nearest multiple of Rs.5).

Based on the above, the Informants have alleged that the Opposite Parties round off the actual base fare to the nearest higher multiple of Rs.5 to arrive at the total base fare. For example, as per the Official Website, the total fare per passenger of the Sleeper Class of Ashram Express from Ahmedabad to Delhi is Rs.475. The actual base fare for the aforesaid journey can be Rs.421, Rs.422, Rs.423 or Rs.424. The total base fare for the said journey is 425 (after rounding off to the next multiple of 5).

Decision: Investigation ordered.

Reason:

The Commission notes that the Informant has alleged contravention of the provisions of Section 4 of the Act. The Commission has given a careful examination to the alleged conduct of the Opposite parties of rounding up of actual fares to the nearest higher multiple of Rs.5 which according to the Informants is unfair and a discriminatory condition imposed on the Informants which merit examination as abuse of dominant position in the 'market for sale of tickets by railways in India'.

The Commission has considered rival submission of the parties. The Opposite Parties have not been able to convince the Commission as to why the policy of rounding off of actual base fares to the next higher multiple of Rs.5 is applicable to the sale of online tickets, when it may be possible for the Opposite Parties to transfer even one paisa electronically. Further, during the preliminary conference, the Opposite Parties could not explain why rounding off is done separately for each passenger even when more than one tickets are booked through one account of the same time for a journey.

At this juncture, it appears that the Opposite Parties are rounding off the actual base fares for the online bookings without any plausible justification for the same. In view of the foregoing, the Commission is of the view that the practice of rounding off actual base fares to the next higher multiple of Rs. 5 by the Opposite Parties, *prima-facie* amount to an imposition of unfair condition in the market for sale of rail tickets in India, particularly for online booking of rail tickets, in contravention of provisions of Section 4 (2) (a) (i) of the Act.

Based on above discussion, *prima-facie*, a case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties. Accordingly, the Director General (the DG) is directed to cause an investigation into the matter and submit his report within a period of 60 days from the receipt of this order.

Consumer Protection Law

LW 94:12:2018

TRUSTEE, JACOBITE SYRIAN CATHEDRAL & ANR v. JIPPU VARKEY [NCDRC]

Revision Petition No. 2695-2696 OF 2018

V.K. JAIN, J. [Decided on 25/10/2018]

Consumer Protection Act, 1985- Cathedral collecting money for permitting to construct family tomb- tomb destroyed- whether deficiency of services liable for compensation-Held, No.

Brief facts:

The case of the complainant, who is a Christian by faith, is that the petitioners, who are the Trustees of Jacobite Syrian Cathedral collected a sum of Rs.1001/- from him 31.12.1984, for granting permission to construct a family tomb in the cemetery of the said Cathedral. The family tomb was allegedly constructed by the complainant / respondent and even the mortals of his father were placed in the said tomb when he expired in the year 2004. It is alleged by the complainant that the said tomb was destroyed by the petitioners. Being aggrieved from the destruction of the tomb and claiming to be a consumer of the petitioners, the complainant approached the concerned District Forum by way of a consumer complaint, seeking reconstruction of the tomb and compensation.

The District Forum vide its order dated 31.10.2014 directed that the complainant would have every right to reconstruct the family tomb at its own cost and the petitioners were liable to extend necessary help and support to him for the said reconstruction in the cemetery of the Church.

Being aggrieved from the order passed by the District Forum, both the parties preferred separate appeals before the concerned State Commission. Vide impugned order dated 05.4.2018, the State Commission directed the petitioners to reconstruct the tomb in the cemetery of the Cathedral at their own expenses and also pay a sum of Rs.25,000/- as compensation to the complainant. Being aggrieved from the order passed by the State Commission the petitioner is before this Commission by way of the present revision petition.

Decision: Petition dismissed.

Reason:

The term ‘consumer’ has been defined in Section 2(1) (d) of the Consumer Protection Act and means a person who either purchases goods or avails services for a consideration. The question which arises for consideration is as to whether the complainant can be said to have hired or availed the services of the Cathedral or its Trustees, by allegedly paying Rs.1001/- to them, for obtaining permission for construction of a family tomb in the cemetery of the Cathedral .

In my opinion, the grant of permission for construction of a family tomb in the cemetery of Cathredel does not amount to rendering services within the meaning of Section 2(1) (o) of the Consumer Protection Act. At best, it is a permission granted by a religious organization to one of its devotees. Even if some amount is charged by the religious organization from the devotees for granting the requisite permission that would not amount to rendering services as is understood in the context of the Consumer Protection Act. A devotee availing such a facility from the religious organization to which he belongs cannot be said to be a consumer in terms of the Consumer Protection Act. Therefore, a consumer complaint for redressal of the grievance of the complainant was clearly not maintainable. The view taken by the fora below in this regard cannot be sustained and is liable to be set aside.

For the reasons stated hereinabove, the impugned orders are set aside and the complaint is consequently dismissed, with liberty to the complainant to avail such other remedy as may be open to him in law, including approaching a Civil Court for the redressal of his grievances.

Tax Law

LW 95:12:2018

NATIONAL BUILDING CONSTRUCTION CO LTD v. UNION OF INDIA & ORS. [Del]

W.P.(C).No. 1144 of 2016

Sanjiv Khanna & Prathiba M. Singh, JJ. [Decided on 16/11/2018]

Service tax- petitioner having 88 service tax registrations for different projects in different States- DGCEI permitted investigation at Lucknow by Additional Director- whether DGCEI has all India Jurisdiction- Held, Yes.

Brief facts:
The petitioner has filed the present writ petition primarily challenging the permission accorded authorizing the Additional Director General, Directorate General of Central Excise Intelligence, Lucknow Zonal Unit to investigate service tax evasion cases of all the branches of the petitioner.

Decision:Petition dismissed.

Reason:
Contentions raised and to be decided are primarily two-fold. Firstly, whether the respondents can centralize investigation with DGCEI, Lucknow at one place with all India jurisdiction, though the petitioner has opted for 88 service tax registrations for different projects in different States. Secondly, whether an officer of DGCEI can act as the Central Excise Officer to issue summons for production of documents and papers and for recording of statements Section 14 of the CE Act even when no proceedings under Section 73 of the Fin Act or other provision are pending before the said officer. In other words, whether summons to produce documents/papers and for recording of statements on oath can be issued by an officer of DGCEI under Section 14 of CE Act to investigate and enquire into allegations of non-payment and evasion of tax. The two issues and questions overlap are being dealt with together.

After an elaborate discussion it has been held as under:

(i) Central Excise Officers of DGCEI have all India jurisdiction and can issue notices and enquire into the matters relating to service- tax against any assessee/ person even if the said person or assessee is registered with one or multiple Commissionerates.

(ii) Notice under Section 14 of the CE Act i.e. Central Excise Act can be issued even if proceedings under Section 73 of the Fin Act i.e. Finance Act, 1994 are not pending. However the notice should relate to matters and issues relating to provisions of services and imposition of service tax.

(iii) The petitioner should comply with the notices issued or would be issued by the Central Excise Officers, DGCEI to furnish evidence and documents pertaining to the PMC charge i.e. Project Management Consultancy Charge in respect of Commissionerate/ registration except those subject matter of show cause notice dated 13th March, 2015 issued by the Commissionerate of Central Excise and Service Tax, Patna.

(iv) Interim orders are accordingly, vacated except and limited to evidence and documents, subject matter of demand-cum-show cause notice dated 13th March, 2015 issued by the Patna Commissionerate.

(v) Period between 10th Februrary,2016 when the stay order was passed till the pronouncement of the judgement would be excluded for purpose of computing limitation period specified for issue of show cause notice under Section 73(1) of the Fin Act.

Recording the aforesaid and in terms of the observations made above, the writ petition is dismissed, albeit holding and clarifying that the proceedings before the Central Excise Officer relating to PMC Charges would not include the subject matter of the show cause notice issued by the Patna Commissionerate.

General Law

LW 96:12:2018

COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA v. GURVINDER SINGH [SC]

Civil Appeal No. 11034 of 2018 (Arising out of SLP (C) No. 19564/2017)

R F Nariman & N Sinha, JJ. [Decided on 16/11/2018]

ICAI Act- professional misconduct- other misconduct- member transferring shares in his own name- Council restrained him from practice for 6 months- whether correct-Held, Yes.

Brief facts:
The present appeal arises out of a complaint dated 16.03.2005 against Respondent No.1, who is a Chartered Accountant, relating to sale of 100 shares in 1999, which were transferred to the Chartered Accountant's own name. The matter has ultimately been settled between the Complainant and the Chartered Accountant, despite which the Disciplinary Committee took up the case and ultimately found that the conduct of the Respondent No.1-Chartered Accountant was derogatory in nature and highly unbecoming and held him guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as 'the Act').

The Council of the Institute of Chartered Accountants of India [ICAI], therefore, made its recommendation to the High Court to remove the aforesaid Chartered Accountant for a period of six months from the rolls. The High Court, declined to do so. Hence, the present appeal to the Supreme Court by ICAI.

Decision: Matter remanded to High Court.

Reason:
We are afraid that the High Court has not correctly appreciated Section 21(3) of the Chartered Accountants Act, 1949. The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity.

This, it was entitled to do under Schedule I Part-IV sub- clause(2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work.

This being the case, it is clear that the impugned judgment is incorrect and must, therefore, be set aside. We thus remand the matter to the High Court to be decided afresh leaving all contentions open to both parties.

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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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FROM THE GOVERNMENT

- COMPANIES (COST RECORDS AND AUDIT) AMENDMENT RULES, 2018
- COMPANIES (REGISTERED VALUERS AND VALUATION) FOURTH AMENDMENT RULES, 2018
- NATIONAL FINANCIAL REPORTING AUTHORITY RULES(NFRA) 2018
- STANDARDISED NORMS FOR TRANSFER OF SECURITIES IN PHYSICAL MODE
- GUIDELINES FOR ENHANCED DISCLOSURES BY CREDIT RATING AGENCIES (CRAS)
- DISCLOSURES REGARDING COMMODITY RISKS BY LISTED ENTITIES
- DISCLOSURE OF REASONS FOR DELAY IN SUBMISSION OF FINANCIAL RESULTS BY LISTED ENTITIES
- OPERATING GUIDELINES FOR ALTERNATIVE INVESTMENT FUNDS IN INTERNATIONAL FINANCIAL SERVICES CENTRES.
- FUND RAISING BY ISSUANCE OF DEBT SECURITIES BY LARGE ENTITIES
- INTEROPERABILITY AMONG CLEARING CORPORATIONS
- TRADING HOURS FOR COMMODITY DERIVATIVES SEGMENT
- CYBER SECURITY & CYBER RESILIENCE FRAMEWORK FOR STOCK BROKERS / DEPOSITORY PARTICIPANTS

Corporate Laws

01 Companies (cost records and audit) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/40/2013-CL-V Part 1 dated 03.12.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 and section 148 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (cost records and audit) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (cost records and audit) Amendment Rules, 2018.
   (2) They shall come into force on the date of their publication in the official Gazette.
2. In the Companies (cost records and audit) Rules, 2014 (hereinafter referred to as the Principal Rules). in rule 3, in TABLE, under the heading (B) Non-regulated Sectors,-
   (i) against Sl. No. 7 for the words "services rendered by a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports" the words, figures and brackets "services rendered for a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports under the Major Port Trusts Act, 1963 (38 of 1963)", shall be substituted;
   (ii) against Sl. No. 8 for the words 'by airports' the words 'at the airports' shall be substituted;
   (iii) against Sl. No. 13, after the entry '8608', the entry '8609' shall be inserted;
   (iv) against Sl. No. 19. after the entry '5303', the entry '5307' shall be inserted;
   (v) against Sl. No. 28, for the words 'Paper', the words 'Pulp and Paper' shall be substituted and before the entry '4801 to 4802' the entry '4701 to 4704' shall be inserted;
   (vi) against Sl. No. 29, after the entry '5303', the entry '5307' shall be inserted;
   (vii) against Sl. No. 33, in point no. (xiii), for the word 'deflobillator' the word 'defibrillators' shall be substituted;
3. in rule 6, in sub-rule (6), the following proviso shall be inserted, namely:-
   "Provided that the Companies which have got extension of time of holding Annual General Meeting under Section 96 (I) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under Section 137 of the Companies Act, 2013."
4. In the principal rules, in Annexure,-
   (i) in Form CRA-1, paragraph number 31 shall be inserted, namely:

   "31. Unit of Measurement (UOM).
   The Unit of Measurement (UOM) for each Customs Tariff Act Heading, wherever applicable, shall be the same as provided for in the Customs Tariff Act, 1975 (51 of 1975) corresponding to that particular Customs Tariff Act Heading.":
   (ii) in form CRA-3, in Note, Note (3) shall be added, namely:-
   "Note (3) The Unit of Measurement (UOM) for each Customs Tariff Act Heading, wherever applicable, shall be the same as provided for in the Customs Tariff Act, 1975 (51 of 1975) corresponding to that particular Customs Tariff Act Heading."

K. V. R. MURTY
Joint Secretary

02 Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/27/2013-CL-V (Part) dated 13.11.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 1108(E) dated 13.11.2018]

In exercise of the powers conferred by Section 247 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 (Registered Valuers and Valuation) Rules, 2017, namely:-

1. (1) These rules may be called the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018.
   (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "the said rules"), in rule 1,-
   (a) for the marginal heading, the following marginal heading shall be substituted, namely:-
   "Short title, commencement and application";
   (b) after sub-rule (2), the following sub-rule shall be inserted, namely:-
   "(3) These rules shall apply for 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 under the provision of the Act or these rules.
   Explanation.- It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.".
3. In the said rules, in rule 3, in sub-rule (2), -
   (a) in clause (a), the word "not" shall be omitted;
   (b) in clause (c), after the brackets and letter "(e)", the brackets and letter "(f)," shall be inserted.
4. In the said rules, in rule 4,-
   (a) in clause (c), the words, brackets and letters "and having qualification mentioned at clause (a) or (b)" shall be omitted;
   (b) in Explanation II, the words "and examination or training" shall be omitted;
   (c) after Explanation II, the following Explanation shall be inserted, namely :-
   "Explanation III.- For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as

equivalent to professional and technical degree.".

5. In the said rules, in rule 10, the words "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority" shall be omitted.
6. In the said rules, in rule 11, the Explanation shall be omitted.
7. In the said rules, in rule 12, in sub-rule(1), in clause (ii), for the words "a professional institute", the words "it is a professional institute" shall be substituted.
8. In the said rules, for Annexure IV, the following Annexure shall be substituted, namely :-

"Annexure IV

Eligibility Qualification and Experience for Registration as Valuer (See Explanation II to rule 4)

Asset Class	Eligibility Qualifications	Experience in specified discipline.
Plant and Machinery	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent;	(i) Five years
	(ii) Post Graduate on above courses.	(ii) Three years
Land and Building	(i) Graduate in Civil Engineering, Architecture, or Town Planning or equivalent;	(i) Five years
	(ii) Post Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course).	(ii) Three years
Securities or Financial Assets	(i) Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration or Post Graduate Diploma in Business Management (specialisation in finance).	Three years
	(ii) Post Graduate in Finance	
Any other asset class along with corresponding qualifications and experience in accordance with rule 4 as may be specified by the Central Government.		

Note.- The eligibility qualification means qualification obtained from a recognised Indian University or equivalent Institute whether in India or abroad.".

K. V. R. MURTY
Joint Secretary

03 National Financial Reporting Authority Rules(NFRA) 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/04/2016-CL-I Part 1 dated 13.11.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 1111(E) dated 14.11.2018]

In exercise of the powers conferred under sub-sections (2) and (4) of section 132, sub-section (1) of section 139 and sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely :-

1. **Short Title and Commencement.-** (1) These rules may be called the National Financial Reporting Authority Rules, 2018.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.-** (1) In these rules, unless the context otherwise requires,-
   (a) "accounting standards" means the 'accounting standards' as defined in clause (2) of section 2 of the Act;
   (b) "Act" means the Companies Act, 2013 (18 of 2013);
   (c) "auditing standards" means the 'auditing standards' as defined in clause (7) of section 2 of the Act;
   (d) "auditor" means an individual or a firm including a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009) or any other Act for the time being in force, who has been appointed as an auditor of a company or a body corporate under Section 139 of the Act or under any other Act for the time being in force;
   (e) "Authority" means the National Financial Reporting Authority constituted under sub-section (1) of section 132 of the Act; (f) "chairperson" means the chairperson of the Authority;
   (g) "Division" means a division established by the Authority for the purpose of organising and carrying out its functions and duties;
   (h) "Form" means the Form annexed to these Rules;
   (i) "full-time member" means a member who has been appointed as such under sub-section (3) of section 132 of the Act;
   (j) "part-time member" means a member of the Authority other than a full-time member
   (2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. **Classes of companies and bodies corporate governed by the Authority.-** (1) The Authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:-
   (a) companies whose securities are listed on any stock exchange in India or outside India;
   (b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;
   (c) insurance companies, banking companies, companies engaged in the generation or supply of electricity,

companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty per cent. of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

(2) Every existing body corporate other than a company governed by these rules, shall inform the Authority within thirty days of the commencement of these rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

(3) Every body corporate, other than a company as defined in clause (20) of section 2, formed in India and governed under this rule shall, within fifteen days of appointment of an auditor under sub-section (1) of section 139, inform the Authority in Form NFRA-1, the particulars of the auditor appointed by such body corporate:

Provided that a body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in Form NFRA-1.

(4) A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

4. **Functions and duties of the Authority.-** (1) The Authority shall protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate governed under rule 3 by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.

(2) In particular, and without prejudice to the generality of the foregoing, the Authority shall:-

(a) maintain details of particulars of auditors appointed in the companies and bodies corporate specified in rule 3;

(b) recommend accounting standards and auditing standards for approval by the Central Government;

(c) monitor and enforce compliance with accounting standards and auditing standards;

(d) oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;

(e) promote awareness in relation to the compliance of accounting standards and auditing standards;

(f) co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and

(g) perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

(3) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein delegate any of its powers or functions under the Act, other than the power to make rules, to the Authority.

5. **Annual return.** Every auditor referred to in rule 3 shall file a return with the Authority on or before 30th April every year in such form as may be specified by the Central Government.

6. **Recommending accounting standards and auditing standards.-** (1) For the purpose of recommending accounting standards or auditing standards for approval by the Central Government, the Authority-

(a) shall receive recommendations from the Institute of Chartered Accountants of India on proposals for new accounting standards or auditing standards or for amendments to existing accounting standards or auditing standards;

(b) may seek additional information from the Institute of Chartered Accountants of India on the recommendations received under clause (a), if required.

(2) The Authority shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.

7. **Monitoring and enforcing compliance with accounting standards.-** (1) For the purpose of monitoring and enforcing compliance with accounting standards under the Act by a company or a body corporate governed under rule 3, the Authority may review the financial statements of such company or body corporate, as the case may be, and if so required, direct such company or body corporate or its auditor by a written notice, to provide further information or explanation or any relevant documents relating to such company or body corporate, within such reasonable time as may be specified in the notice.

(2) The Authority may require the personal presence of the officers of the company or body corporate and its auditor for seeking additional information or explanation in connection with the review of the financial statements of such company or body corporate.

(3) The Authority shall publish its findings relating to non-complainces on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

(4) Where the Authority finds or has reason to believe that any accounting standard has or may have been violated, it may decide on the further course of investigation or enforcement action through its concerned Division.

8. **Monitoring and enforcing compliance with auditing standards.-** (1) For the purpose of monitoring and enforcing compliance with auditing standards under the

Act by a company or a body corporate governed under rule 3, the Authority may: –

(a) review working papers (including audit plan and other audit documents) and communications related to the audit;

(b) evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and

(c) perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.

(2) The Authority may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.

(3) The Authority may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.

(4) The Authority shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.

(5) The Authority shall publish its findings relating to non-complainces on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

(6) The Authority shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

(7) The Authority may send a separate report containing proprietary or confidential information to the Central Government for its information.

(8) Where the Authority finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

9. Overseeing the quality of service and suggesting measures for improvement.-

(1) On the basis of its review, the Authority may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.

(2) It shall be the duty of the auditor to make the required improvements and send a report to the Authority explaining how it has complied with the directions made by the Authority.

(3) The Authority shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.

(4) The Authority may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.

(5) The Authority may take the assistance of experts for its oversight and monitoring activities.

10. Power to investigate.- (1) Where the Authority has-

(a) received any reference from the Central Government for investigation into any matter of professional or other misconduct under sub-section (4) of section 132 of the Act;

(b) decided to undertake investigation into any matter on the basis of its compliance or oversight activities; or

(c) decided to undertake *suo motu* investigation into any matter of professional or other misconduct, after recording reasons in writing for this purpose,

it shall forward the matter to its Division dealing with enforcement for carrying out investigation and other action.

(2) If, during the investigation, the Authority has evidence to believe that any company or body corporate has not complied with the requirements under the Act or rules which involves or may involve fraud amounting to rupees one crore or more, it shall report its findings to the Central Government.

(3) On the commencement of these rules-

(a) the action in respect of cases of professional or other misconduct against auditors of companies referred to in rule 3 shall be initiated by Authority and no other institute or body shall initiate any such proceedings against such auditors:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the Authority has initiated an investigation under this rule;

(b) the action in respect of cases of professional or other misconduct against auditors of companies or bodies corporate other than those referred to in rule 3 shall continue to be proceeded with by the Institute of Chartered Accountants of India as per provisions of the Chartered Accountants Act, 1949 and the regulations made thereunder.

11. Disciplinary proceedings.- (1) Based on the reference received from the Central Government or findings of its monitoring or enforcement or oversight activities, or on the basis of material otherwise available on record, if the Authority believes that sufficient cause exists to take actions permissible under sub-section (4) of section 132, it shall refer the matter to the concerned division, which shall cause a show-cause notice to be issued to the auditor.

(2) The show-cause notice shall be in writing, and shall, *inter alia*, state-

(a) the provisions of the Act or rules under which it has been issued;

(b) the details of the alleged facts;

(c) the details of the evidence in support of the alleged facts;

(d) the provisions of the Act, rules or the accounting standards or auditing standards thereunder allegedly violated, or the manner in which the public interest is allegedly affected;

(e) the actions that the Authority proposes to take or the directions it proposes to issue if the allegations are established;

(f) the time limit and the manner in which the auditor is required to respond to the show-cause notice;

(g) the consequences of failure to respond to the show-cause notice; and

(h) the procedure to be followed for disposal of the show-cause notice.

(3) The show-cause notice shall enclose copies of documents relied upon and extracts of relevant portions from the report of investigation or other records.

(4) The show-cause notice shall be served on the auditor in the following manner, namely -

   (a) by sending it to the auditor at the address provided by him or provided by the Institute of Chartered Accountants of India (if required by the Authority) by registered post with acknowledgement due; or

   (b) by an appropriate electronic means to the email address of the auditor provided by him or it or provided by the the Institute of Chartered Accountants of India (if required by the Authority):

   Provided that where the auditor is a firm -

   (a) a notice to a firm shall be deemed to be a notice to all the partners or employees of that firm as on the date of service of notice;

   (b) the notice shall call upon the firm to disclose the name or names of the partner or partners concerned who shall be responsible for answering the allegations;

   (c) the partner whose name is disclosed by the firm shall be responsible for answering the notice against the firm, and if no partner, whether erstwhile or present, of the firm owns responsibility for the allegations made against the firm, then the firm as a whole shall be responsible for answering the allegations, and all the partners and employees of that firm as on the date of occurrence of alleged misconduct, shall be responsible for answering the allegations.

(5) The Division shall dispose of the show-cause notice within a period of ninety days of the assignment through a summary procedure as may be specified by the Authority, by a reasoned order in adherence to the principles of natural justice including where necessary or appropriate an opportunity of being heard in person, and after considering the submissions, if any, made by the auditor, the relevant facts and circumstances, and the material on record.

(6) The order disposing of a show-cause notice may provide for-

   (a) no action;

   (b) caution;

   (c) action for imposing penalty against auditor under sub-clause (A) of clause (c) of sub-section (4) of section 132 or for debarring the auditor from engaging as such under sub-clause (B) of clause (c) of sub-section (4) of section 132 or both.

(7) The order passed under sub-rule (6) shall not become effective until thirty days have elapsed from the date of issue of the order unless the Division states otherwise in the order along with the reason for the same.

(8) The order passed under sub-rule (6) shall be served on the auditor in the manner specified in sub-rule (3) and a copy of the same shall be sent

(i) in all cases to - (a) the Central Government; and (b) the Institute of Chartered Accountants of India;

(ii) in the case of a company referred to in sub-section (5) of section 139 to the Comptroller and Auditor General of India;

(iii) in the case of a listed company to the Securities and Exchange Board of India; (iv) in the case of a bank or a non-banking finance company to the Reserve Bank of India;

(iv) in the case of a bank or a non-banking finance company to the Reserve Bank of India;

(v) in the case of an insurance company to the Insurance Regulatory and Development Authority of India;

(vi) in case the auditor is resident outside India to concerned regulator of such country; and the same shall be published on the website of the Authority.

12. Manner of enforcement of orders passed in disciplinary proceedings.- (1) Where the order passed under rule 11 relates to imposition of a monetary penalty on any auditor, the auditor shall deposit the amount of penalty with the Authority within thirty days of the order:

Provided that where the auditor prefers an appeal against the order of the Authority, it shall deposit ten per cent. of the amount of the monetary penalty with the Appellate Tribunal.

(2) If, within thirty days of the order passed under rule 11, the auditor neither pays the penalty nor appeals against the order, the Authority shall, without prejudice to any other action, inform about such non-compliance to every company or body corporate (including those not covered by rule 3) in which the auditor is functioning as auditor and every such company or body corporate shall appoint a new auditor in accordance with the provisions of the Act.

(3) Where the order passed under rule 11 imposes a penalty on the auditor or debars the auditor from practice, the order shall be sent to every company or body corporate in which the auditor is functioning as auditor.

(4) Where the order passed under rule 11 debars the auditor from practice or the order under sub-rule (2) is passed, the order shall be sent to every company or body corporate (including those not covered by rule 3) in which the auditor is functioning as auditor and every such company or body corporate shall appoint a new auditor in accordance with the provisions of the Act.

13. Punishment in case of non-compliance.- If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

14. Role of chairperson and full-time members.- All matters related to, investigation, monitoring, enforcement and disciplinary proceedings shall be examined and decided by the chairperson or any one or more of the full-time members, acting through one of the Divisions.

15. Advisory committees, study groups and task forces.- For the effective performance of its functions under the Act, the Authority may constitute advisory committees, study groups and task forces.

16. Financial reporting advocacy and education.- The Authority shall take suitable measures for the promotion of awareness and significance of accounting standards, auditing standards, auditors' responsibilities, audit quality and such other matters through education, training, seminars, workshops, conferences and publicity.

17. Confidentiality and security of information.- (1) The Authority and all persons and organisations associated with it shall maintain complete confidentiality and security of the information provided to them for the purpose of the work of the Authority.

(2) The Authority may enter into such contractual arrangements as may be necessary in order to maintain complete confidentiality and security of the information.

18. Avoidance of conflict of interest.- (1) The Authority shall not enter into any contract, arrangement or relationship or participate in any event that may, or is likely to be perceived to, interfere with its ability to perform its functions and duties in an effective, fair and reasonable manner.

(2) In particular the Authority or any person associated with it shall not receive any funds, assets, donations, favours, gifts or sponsorships from any source other than the Central Government and shall not enter into any liabilities, obligations or commitments except as permitted by the Central Government.

19. International associations and international assistance.-

(1) The Authority may become a member of regional or international associations of independent audit regulators and standard-setters on such terms as it deems fit.

(2) The Authority may provide assistance to, or receive assistance from, foreign independent audit regulators in investigation of an auditor in accordance with Indian laws on such terms as it deems fit.

K. V. R. MURTY
Joint Secretary

FORM NFRA-1
[Pursuant to section 132 of the Companies Act, 2013 and Rule 3(2) and 3(3) of the National Financial Reporting Authority Rules, 2018]

सत्यमेव जयते

Notice to the Authority by a body corporate regarding its auditor

Form language o **English** o **Hindi**

Refer instruction kit for Filing the form.

O **Auditor of a body corporate functioning as on the date of commencement of the Rules**
O **Auditor of a body corporate referred to in rule 3(3)**
O **Auditor of a foreign body corporate referred to in proviso to rule 3(3)**

1.(a) *Identity number of body corporate

(b) Global Location Number(GLN)

2. (a) Name of the body corporate

(b) Address of the Registered Office of the Body Corporate

(c) *email id of the body corporate

3. *Whether joint auditors have been appointed O Yes O No

*Number of auditor(s) appointed

I. (a) *Category of auditor O Individual O Auditor's firm

(b) *Income-tax permanent account number of auditor or auditor's firm

(c) *Name of the auditor or auditor's firm

(d) *Membership number of auditor or auditor's firm registration number

(e) *Address of the auditor or auditor's firm

Line I

Line II

*City

*State

Country

*Pin code

*e-mail ID of the auditor or auditor's firm

(f) *Period of accounts for which appointed From (DD/MM/YYYY) To (DD/MM/YYYY)

(g) *Number of financial year(s) to which appointment relates

(h) *Whether the appointment of auditor, if being appointed in India, is within the limits specified in section 141(3)(g) O Yes o No

(i) Specify the tenure of previous appointment(s) of the auditor or auditor's firm or its member in the same company in which audit was conducted.

*Number of financial year(s)

S. No.	Person appointed as auditor	Financial year Start date	Financial year End date

4. (a) *Whether auditor(s) have been appointed in Annual general meeting (AGM) O Yes O No

(b) If yes, date of AGM (DD/MM/YYYY)

5. *Date of appointment (DD/MM/YYYY)

6. (a) *Whether auditor is appointed due to casual vacancy in the office of auditor

O Yes O No

(b) *Person vacated the office o Individual o Auditor's firm

(c) *Mention the membership number of auditor or Registration number of auditor's firm who has vacated the office

(d) *Mention the date of such vacancy

(e) *Reasons of the casual vacancy

Attachments

1. Copy of the intimation sent by body corporate — Attach
2. *Copy of written consent given by auditor; — Attach
3. *Copy of resolution passed by the body corporate; — Attach
4. Copy of the letter of appointment from C&AG — Attach
5. Copy of the order of the Tribunal — Attach
6. Optional attachments, if any. — Attach

List of attachments

Remove Attachments

Declaration

I am authorized by the Board of Directors of the body corporate vide resolution number * dated* to sign this form and declare that all the relevant requirements of Companies Act, 2013 and rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

*To be digitally signed by DSC Box

*Designation

*Director identification number of the director; or
DIN or PAN of the manager/CEO/CFO; or
Membership number of the Company Secretary

Note: Attention is also drawn to provisions of Section 448 of the Companies Act which provide for punishment for false statement.

Modify | Check Form | Prescrutiny | Submit

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

04 Standardised norms for transfer of securities in physical mode

[Issued by the Securities and Exchange Board of India vide Circular No.SEBI/HO/MIRSD/DOS3/CIR/P/2018/139 dated 06.11.2018.]

1. Vide Regulation 40 and Schedule VII of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") SEBI has prescribed requirements for transfer of securities in physical mode.

2. It has been brought to the notice of SEBI that RTAs are seeking various documents for effecting transfer of securities and the documents sought vary across RTAs. SEBI has also received representations, highlighting difficulties faced by transferees in providing these documents. In this regard, SEBI had meetings with Registrars Association of India (RAIN) and Depositories in this regard and pursuant to such meetings, RAIN has submitted a standardised procedure for transfer of securities in physical mode. The proposal of RAIN has been examined and accordingly, the documentation / procedure for transfer of physical securities is modified as under:
   a. **Non-availability of PAN of the transferor for transfer deeds executed prior to December 01, 2015:** It has been brought to the notice of SEBI that many transfer deeds executed prior to the notification of LODR, (i.e., December 01, 2015) have not been registered due to non-availability of PAN of the transferor. It is clarified that transfer deeds executed prior to notification of LODR may be registered with or without the PAN of the transferor as per the requirement of quoting PAN under the applicable Income Tax Rules.
   b. **Mismatch of name in PAN card vis-à-vis name on share certificate/ transfer deed:** In such cases, transfer shall be registered on submission of any of the four following additional documents explaining the difference in names:
      i. Copy of Passport
      ii. Copy of legally recognized Marriage Certificate
      iii. Copy of gazette notification regarding change in name
      iv. Copy of Aadhar Card
   c. **Major mismatch / Non-availability of transferor's signature:** As per procedure laid down in LODR, in case of non-availability / major mismatch in transferor's signature the transferor is required to update his / her signature by submitting bank attested signature along with an affidavit and cancelled cheque to the RTA/ company. Multiple instances have been brought to the notice in such cases, where the transferor did not take efforts to update his signature since he had already received the consideration for the transfer. Further, in many cases, the transferors could not be traced now. Accordingly, following procedure / documentation shall be followed for registration of transfer of securities, in such cases:
      i. RTA/ company shall follow the procedure as laid down in Para (B)(2) of Schedule VII of LODR for major difference or non-availability of signature of the transferor(s).
      ii. Issuers / RTAs shall make efforts to contact the transferor :
         1. by checking the Dividend history and obtaining the current contact details from the bank where dividend was encashed.
         2. from the address, email ids and phone numbers, if any, available with the Depositories/KRA
      iii. In case of non- delivery of the objection memo to the transferor or non-cooperation by / inability of the transferor to provide the required details to the transferee, company / RTA shall register the transfer after following the procedure as under:
         1. Following additional documents shall be collected from the transferee:
            i. An indemnity bond from the transferee in the format placed at Annexure A;
            ii. Copy of address proof - Passport / Aadhar Card / Driving License of the transferee.
            iii. An undertaking that the transferee will not transfer/ demat the physical securities until the lock-in period specified under clause (4) below is completed.
         2. RTA may also verify the documents submitted by the transferee with the KYC details, if any, available with the Depositories/ KRAs.
         3. Companies / RTAs shall publish an advertisement in at least one English language national daily newspaper having nationwide circulation and in one regional language daily newspaper published in the place of registered office of the listed entity is situated, giving notice of the proposed transfer and seeking objection, if any, to the same within a period of 30 days from the date of advertisement. A copy of the advertisement shall also be published on the company's website.
         4. Transfer shall be effected only after the expiry of 30 days from the newspaper advertisement. The securities so transferred shall bear a stamp affixed by the company / RTA stating that these securities shall be under lock-in for a period of 6 months from the date of registration of transfer and should not be transferred / dematerialized during the said period.
         5. Names of the transferor, transferee and no. of securities transferred under this procedure shall be disclosed on the company's website for a period of 6 months from the date of transfer. This information shall also be displayed on stock exchange website as a corporate announcement;
   d. In case of non-availability of any document required

for transfer and the transferor is not cooperating or not traceable, companies/ RTA shall register the transfer by following the procedure as specified in case of major mismatch / non-availability of transferor's signature, as specified in Para 2(c) above.

e. Clause (B)(2)(d) of Schedule VII of LODR , inter-alia, require that the transfer shall be registered if, the address of the transferor submitted in the bank attestation matches with the address recorded in the records of the company / RTA. However, it has been brought to the notice that the address as available with the company, as per old records, may not match with the current address attested by the bank and this has resulted in rejection of transfer requests causing undue hardship to investors. Accordingly, in case the bank attested address of the transferor differs from the records available with the company / RTA, companies/ RTAs shall register the transfer by updating the new address as attested by the bank. Further, an intimation may also be sent by the RTA with regard to updation of address on the old and new address of the transferor.

3. This circular is issued under Regulation 101 and 102 of LODR to address the difficulties faced by investors in transfer of physical shares.

4. The Stock Exchanges are advised to bring the provisions of this circular to the notice of Listed Entities and also to disseminate the same on their websites.

SURABHI GUPTA
Deputy General Manager

05 Guidelines for Enhanced Disclosures by Credit Rating Agencies (CRAs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated 13.11.2018.]

SEBI has constantly endeavoured to enhance the quality of disclosures made by the CRAs. In pursuance of the same, the following disclosures are being prescribed to bring about greater transparency:

1. **Disclosures in the Press Release regarding Rating Actions:**

A. SEBI, vide Circular dated November 01, 2016, had prescribed the standard format for press release regarding rating action by CRAs. While CRAs are required to monitor and analyse the relevant factors that affect the creditworthiness of an issuer and discuss the same in the rating notes considered by the rating committee for assignment of ratings, such relevant factors may also be suitably incorporated in the press release regarding the rating action.
Accordingly, in order to enable investors to understand underlying rating drivers better and make more informed investment decisions, CRAs shall make the following specific disclosures in the section on "Analytical Approach" in the Press Release:

a. When a rating factors in support from a Parent/ Group/ Government, with an expectation of infusion of funds towards timely debt servicing, the name of such entities, along with rationale for such expectation, may be provided.

b. When subsidiaries or group companies are consolidated to arrive at a rating, list of all such companies, along with the extent (e.g. full, proportionate or moderate) and rationale of consolidation, may be provided.

B. The Press Release shall include a specific section on "Liquidity", which shall highlight parameters like liquid investments or cash balances, access to unutilised credit lines, liquidity coverage ratio, adequacy of cash flows for servicing maturing debt obligation, etc. CRAs shall also disclose any linkage to external support for meeting near term maturing obligations.

2. **Review of Rating Criteria**

A. In terms of Para 2 in Annexure A of SEBI Circular dated November 01, 2016, CRAs may review their rating criteria with regard to assessment of holding companies and subsidiaries in terms of their inter-linkages, holding company's liquidity, financial flexibility and support to the subsidiaries, etc.

B. While carrying out "Monitoring of Repayment Schedules", CRAs shall analyse the deterioration in the liquidity conditions of the issuer and also take into account any asset-liability mismatch.

C. While reviewing "Material Events", CRAs may treat sharp deviations in bond spreads of debt instruments vis-à-vis relevant benchmark yield as a material event.

3. **Disclosure of Average Rating Transition Rates for long-term instruments**

A. Transition studies are central to evaluating the performance of a CRA and provide an insight on the stability of ratings over a period of time. In order to promote transparency and to enable the market to best judge the performance of the ratings, the CRA should publish information about the historical average rating transition rates across various rating categories, so that investors can understand the historical performance of the ratings assigned by the CRAs.

B. Accordingly, CRAs shall publish their average one-year rating transition rate over a 5-year period, on their respective websites, which shall be calculated as the weighted average of transitions for each rating category, across all static pools in the 5-year period. The format of the transition matrix is enclosed as **Annexure A**.

a. For the said purpose, the following terms shall have the meaning as under:

i. Static Pool: Ratings outstanding for each category at the beginning of any financial year. However, it shall exclude ratings that have been withdrawn or ratings of non-cooperative issuers during the financial year. Ratings downgraded to D shall be treated as default for the rest of the financial year. Ratings which are upgraded from D shall be considered as new rating for the relevant subsequent static pools.

ii. Transition Rate: The number of movements/ transitions from each rating category to another, as at the end of the financial year, as a percentage of the total number of ratings in the static pool.

iii. Averaging: All averaging across static pools for transition rate computations must be based on the weighted average method where the weights are the number of issuers in each static period.

4. **Disclosure of performance of CRAs on Stock Exchange and Depository website**
   A. Each CRA shall furnish data on sharp rating actions in investment grade rating category, as per the format specified in **Annexure B**, to Stock Exchanges and Depositories for disclosure on website on half-yearly basis, within 15 days from the end of the half-year (31st March/ 30th September).

5. **Internal Audit of CRAs:**
   A. It is clarified that the half-yearly internal audit, mandated under Regulation 22 of the SEBI (Credit Rating Agencies) Regulations, 1999 and Circular SEBI/ MIRSD/CRA/Cir-01/ 2010 dated January 06, 2010, shall also cover adherence to the prescribed methodology for calculation of transition rates, as specified in Para 3.
   B. above and default rates, in line with Circular CIR/ MIRSD/CRA/6/2010 dated May 3, 2010.

6. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

PARAG BASU
Chief General Manager

ANNEXURE A

Average one-year transition rates for long-term ratings for the last 5-Financial Year Period

Rating Category	AAA	AA	A	BBB	BB	B	C	D
AAA								
AA								
A								
BBB								
BB								
B								
C								

Note: The left-hand column identifies ratings outstanding at the beginning of the year. Each row provides information on the migration pattern of those ratings by end of the year.

06 Disclosures regarding commodity risks by listed entities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/CFD/CMD1/CIR/P/2018/0000000141 dated 15.11.2018.]

1. Regulation 34(3) read with clause 9(n) of Part C of Schedule V of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations") mandates listed entities to make disclosures regarding commodity price risk and hedging activities in the Corporate Governance Report section of the Annual Report of a listed entity.

2. In order to benefit the shareholders and to bring further clarity in disclosures to be made in the annual reports by listed entities, the Corporate Governance Committee formed under the Chairmanship of Shri Uday Kotak inter alia, in its report to SEBI dated October 5, 2017 recommended the following:
   a. The listed entities should disclose their risk management activities during the year, including their commodity hedging positions in a more transparent, detailed and uniform manner for easy understanding and appreciation by the shareholders.
   b. For the consistent implementation of the requirements of the SEBI LODR Regulations regarding disclosure of commodity risks and other hedging activities across listed companies, a detailed format along with the periodicity of the disclosures may be outlined by SEBI which would depict the commodity risks they face, how these are managed and also the policy for hedging commodity risk, etc. followed by the company for the purpose of disclosures in the annual report.

3. The aforesaid recommendation of the Committee was accepted by the SEBI Board in its meeting held on March 28, 2018 and it was decided to implement the same through a circular.

4. Accordingly, all listed entities shall make the disclosures in the format as placed at the **Annexure** as part of the Corporate Governance Report in the Annual Report under clause 9(n) of Part C of Schedule V.

5. This Circular is issued in exercise of the powers conferred under Regulation 101 of the SEBI LODR Regulations.

6. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

7. The recognized stock exchanges are advised to disseminate the contents of this Circular on their website.

PRADEEP RAMAKRISHNAN
Deputy General Manager

07 Disclosure of reasons for delay in submission of financial results by listed entities

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/ CFD/CMD-1/142/2018 dated 19.11.2018.]

1. Regulation 33 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), *inter-alia*, specifies timelines for submission of financial results by listed entities. Accordingly, the quarterly and annual financial results are to be submitted by listed entities to stock exchanges within forty-five/sixty days from the end of the quarter/financial year. It is expected that the listed entities shall adhere to the aforesaid timelines for submission of financial results.
2. In case of non-compliance of various provisions of the Listing Regulations including non-submission / delayed submission of financial results, SEBI has prescribed

a standard operating procedure (providing for levy of penalties, freezing of promoter shareholding, suspension of trading ,etc.) through certain circulars, the latest being the circular dated May 3, 2018. Such penalties, freezing of promoter shareholding, etc. act as deterrents for listed entities to delay disclosure of their financial results.

3. Nevertheless, wherever there were delays in submission of financial results by certain listed entities to the stock exchanges in the past, while the fact of delay was intimated by the listed entity, the reasons for the same were not disclosed / were not brought out clearly. In such cases, the investors were often left unaware as to the reasons for such delays which may have had an impact on their investment decision. Hence, a need for disclosure by listed entities of reasons for delay in submission of financial results arises.

4. Accordingly, if any listed entity does not submit its financial results in accordance with the timelines specified in Regulation 33 of Listing Regulations, the listed entity shall disclose detailed reasons for such delay to the stock exchanges within one working day of the due date of submission for the results as required under Regulation 33. However, if the decision to delay the results was taken by the listed entity prior to the due date, the listed entity shall disclose detailed reasons for such delay to the stock exchanges within one working day of such decision.

5. The Stock Exchanges are advised to bring the provisions of this circular to notice of the listed entities and also to disseminate it on their websites.

6. This circular shall come into force with immediate effect.

7. The circular is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of India Act, 1992 read with regulations 33 and 101 of the Listing Regulations.

8. The circular is available on SEBI website at www.sebi.gov.in under the category 'Legal→Circulars'.

PRADEEP RAMAKRISHNAN
Deputy General Manager

08 Operating Guidelines for Alternative Investment Funds in International Financial Services Centres.

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF1/CIR/P/143/2018 dated 26.11.2018.]

1. SEBI has issued SEBI (International Financial Services Centre) Guidelines, 2015 (hereinafter referred to as 'IFSC Guidelines') on March 27, 2015 for facilitating and regulating financial services relating to securities market in an IFSC set up under section 18(1) of Special Economic Zones Act, 2005. The IFSC Guidelines provide for broad framework for setting up of Alternatives Investment Funds (hereinafter referred to as 'AIF') in IFSC.

2. Based on the deliberations in Alternative Investment Policy Advisory Committee (AIPAC) and in consultation with other stakeholders, it has been decided to put in place 'Operating Guidelines for Alternatives Investment Funds in IFSC'. The same is annexed herewith.

3. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

4. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - AIF".

NAVEEN SHARMA
Deputy General Manager

Annexure

Operating Guidelines for Alternative Investment Funds in International Financial Services Centres (IFSC)

REGISTRATION OF ALTERNATIVE INVESTMENT FUNDS FOR OPERATING IN IFSC

1. For registration as Alternative Investment Funds (AIFs) for operating in IFSC, any fund established or incorporated in IFSC in the form of a trust or a company or a limited liability partnership or a body corporate, can seek registration under the provisions of SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations') under the categories mentioned therein.

2. An application for grant of certificate shall be made in accordance with the provisions of Chapter II of AIF Regulations, accompanied by a non-refundable application fee as stated in para 15 of this Annexure.

3. The Board may grant certificate under any specific category of AIF, if it is satisfied that the applicant fulfills the requirements as specified in AIF Regulations.

COMPLIANCE REQUIREMENTS, CONDITIONS AND RESTRICTIONS

4. Any person as specified in sub-clause (1) of clause 22 of SEBI IFSC Guidelines may invest in AIFs operating in IFSC.

5. An AIF operating in IFSC is permitted to make investment in terms of sub-clause (3) of clause 22 of SEBI IFSC Guidelines and circulars issued in this regard by SEBI from time to time.
   Earlier, such AIFs were permitted to invest in India through the Foreign Portfolio Investment route in terms of SEBI circular dated May 23, 2017 governing permissible investments by AIFs operating in IFSC. Now, such AIFs may invest in India through the Foreign Venture Capital Investor or Foreign Direct Investment (FDI) route also, in accordance with applicable FDI policy/ guidelines issued by Government of India and RBI in this regard.

6. Each scheme of the AIF shall have corpus of at least USD three million;
7. The AIF shall accept from an investor, an investment of value not less than USD one hundred and fifty thousand :

   Further, for investors who are employees or directors of the AIF or employees or directors of the Manager, the minimum value of investment shall be USD forty thousand.

8. The Manager or Sponsor shall have a continuing interest in the AIF of not less than two and half percent of the corpus or USD seven hundred and fifty thousand, whichever is lower, in the form of investment in the AIF and such interest shall not be through the waiver of management fees:
Further, for Category III AIF, the continuing interest shall be not less than five percent of the corpus or USD 1.5 million, whichever is lower.

9. An AIF set up in IFSC may invest in the units of other AIFs set up in IFSC and India subject to the provisions of AIF Regulations.

10. **Sponsors and Managers of AIF**
    a. A Sponsor / Manager of an existing AIF in India may act as a Sponsor / Manager of an AIF set up in the IFSC by :
        i) setting up a branch in the IFSC; or
        ii) incorporating a company or limited liability partnership in the IFSC
    b. However, Sponsor / Manager to be set up in IFSC shall need to incorporate a company or limited liability partnership in the IFSC.

11. **Custodian**
    a. The Sponsor or Manager of an AIF (Category I and II) shall appoint a custodian registered with the Board for safekeeping of securities if the corpus of the AIF is more than USD seventy million.
    b. It will be mandatory for Category III AIF to appoint a custodian.

12. **Angel Funds**
    a. An angel fund shall have a corpus of at least USD seven hundred and fifty thousand.
    b. **Investment in angel funds.**
    For the purpose of investment in an Angel Fund set-up in IFSC, an "angel investor" shall satisfy the following financial criteria :
        i. An individual investor shall have net tangible assets of at least USD three hundred thousand excluding value of his principal residence,
        ii. A body corporate shall have a net worth of at least USD one million five hundred thousand.
    c. Angel funds shall accept, up to a maximum period of five years, an investment of not less than USD forty thousand from an angel investor.
    d. **Investment by Angel Funds.**
        i. Angel funds shall invest in venture capital undertakings (VCU) in India in accordance with DIPP Guidelines as referred to in regulation 19(F) (1) (a) of AIF regulations.
        ii. Angel funds shall invest in VCUs which have a turnover of less than USD three million, seven hundred and fifty thousand;
        iii. Angel funds shall invest in VCU which are not promoted or sponsored by or related to an industrial group whose group turnover exceeds USD forty five million; and
        iv. Investment by an angel fund in any VCU shall not be less than USD forty thousand and shall not exceed USD one million five hundred thousand.
    e. The Manager or Sponsor shall have a continuing interest in the Angel Fund of not less than two and half percent of the corpus or USD eighty thousand, whichever is lesser, and such interest shall not be through the waiver of management fees.

MISCELLANEOUS

13. **Applicability of SEBI AIF Regulations**
All provisions of the AIF regulations and the guidelines and circulars issued thereunder, shall apply to AIFs setting up/ operating in IFSC, their investors, sponsors, managers and other intermediaries as applicable, except para 2(B) of SEBI circular dated October 1, 2015 governing overseas investments by AIFs. However, such AIFs shall report there activities in accordance with para 3.2 of SEBI circular dated July 29, 2013. The said reporting shall be denominated in USD million.

14. The applicability of these operating guidelines is subject to such conditions that may be prescribed by the Board, Reserve Bank of India and other appropriate authority from time to time.

15. **AMOUNT TO BE PAID AS FEES**

Application fee	USD 1,500
Registration fee for Category I Alternative Investment Funds other than Angel Funds	USD 7,500
Registration fee for Category II Alternative Investment Funds	USD 15,000
Registration fee for Category III Alternative Investment Funds	USD 22,500
Registration fee for Angel Funds	USD 3,000
Scheme Fee for Alternative Investment Funds other than Angel Funds	USD 1,500
Re- Registration fee	USD 1,500

09 Fund raising by issuance of Debt Securities by Large Entities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/CIR/P/2018/144 dated 26.11.2018.]

1. With a view to operationalising the Union Budget announcement for 2018-19, which, inter-alia, stated "SEBI will also consider mandating, beginning with large entities, to meet about one-fourth of their financing needs from the debt market", SEBI came out with a discussion paper on July 20, 2018. Based on feedback received on the discussion paper and wider consultation with market participants including entities, the detailed guidelines for operationalising the above budget announcement are given below.

2. **Applicability of Framework**
    2.1. For the entities following April-March as their financial year, the framework shall come into effect from April 01, 2019 and for the entities which follow calendar year as their financial year, the framework shall become applicable from January 01, 2020.
    Explanation: The term 'Financial Year' (FY) here would imply April- March or January-December, as may be followed by an entity. Thus, FY 2020 shall mean April 01, 2019 - March 31, 2020 or January 01, 2020 - December 31, 2020, as the case may be.
    2.2. The framework shall be applicable for all listed entities (except for Scheduled Commercial Banks), which as on last day of the FY (i.e. March 31 or December 31):

i. have their specified securities or debt securities or non-convertible redeemable preference share, listed on a recognised stock exchange(s) in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; and

ii. have an outstanding long term borrowing of Rs 100 crores or above, where outstanding long-term borrowings shall mean any outstanding borrowing with original maturity of more than 1 year and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies); and

iii. have a credit rating of “AA and above”, where credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in; and in case, where an issuer has multiple ratings from multiple rating agencies, highest of such rating shall be considered for the purpose of applicability of this framework.

3. **Framework**

3.1. A listed entity, fulfilling the criteria as specified at para 2.2 above, shall be considered as a “Large Corporate” (LC) and such a LC shall raise not less than 25% of its incremental borrowings, during the financial year subsequent to the financial year in which it is identified as a LC, by way of issuance of debt securities, as defined under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter “ILDS Regulations”).

Explanation: For the purposes of this circular, the expression “incremental borrowings” shall mean any borrowing done during a particular financial year, of original maturity of more than 1 year, irrespective of whether such borrowing is for refinancing/repayment of existing debt or otherwise and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies).

3.2. For an entity identified as a LC, the following shall be applicable:

i. For FY 2020 and 2021, the requirement of meeting the incremental borrowing norms shall be applicable on an annual basis. Accordingly, a listed entity identified as a LC on last day of FY 2019 and FY 2020, shall comply with the requirement as laid down under para 3.1, by last day of FY 2020 and FY 2021, respectively.

Provided that in case where a LC is unable to comply with the above requirement, it shall provide an explanation for such shortfall to the Stock Exchanges, in the manner as prescribed at para 4.

ii. From FY 2022, the requirement of mandatory incremental borrowing by a LC in a FY will need to be met over a contiguous block of two years. Accordingly, a listed entity identified as a LC, as on last day of FY “T-1”, shall have to fulfil the requirement of incremental borrowing for FY “T”, over FY “T” and “T+1”.

However, if at the end of two years i.e. last day of FY “T+1”, there is a shortfall in the requisite borrowing (i.e. the actual borrowing through debt securities is less than 25% of the incremental borrowings for FY “T”), a monetary penalty/fine of 0.2% of the shortfall in the borrowed amount shall be levied and the same shall be paid to the Stock Exchange(s).

4. **Disclosure requirements for large entities**

4.1. A listed entity, identified as a LC under the instant framework, shall make the following disclosures to the stock exchanges, where its security(ies) are listed:

i. Within 30 days from the beginning of the FY, disclose the fact that they are identified as a LC, in the format as provided at **Annexure A**.

ii. Within 45 days of the end of the FY, the details of the incremental borrowings done during the FY, in the formats as provided at **Annexure B1** and **B2**.

4.2. The disclosures made in terms of para 4.1 shall be certified both by the Company Secretary and the Chief Financial Officer, of the LC.

4.3. Further, the disclosures made in terms of para 4.1 shall also form part of audited annual financial results of the entity.

4.4. The details of the framework as mentioned under para 3 and disclosure requirements as mentioned under para 4.1, are illustrated in **Annexure C**.

5. **Responsibilities of Stock Exchanges**

5.1. The Stock Exchange(s) shall collate the information about the LC, disclosed on their platform, and shall submit the same to the Board within 14 days of the last date of submission of annual financial results.

5.2. In the event of a short fall in the requisite borrowing, the Stock Exchanges shall collect the fine as mentioned at para 3.2(ii). The fine so collected shall be remitted by the stock exchanges to SEBI IPEF fund within 10 days from the end of the month in which the fine was collected.

6. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with regulation 101(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

7. This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and under the drop down “Corp Debt Market”.

RICHA G. AGARWAL
Deputy General Manager

Annexure A

Format of the Initial Disclosure to be made by an entity identified as a Large Corporate

(To be submitted to the Stock Exchange(s) within 30 days from the beginning of the FY)

Sr. No.	Particulars	Details
1	Name of the company	
2	CIN	
3	Outstanding borrowing of company as on 31st March/ 31st December, as applicable (in Rs cr)	
4	Highest Credit Rating During the previous FY along with name of the Credit Rating Agency	
5	Name of Stock Exchange# in which the fine shall be paid, in case of shortfall in the required borrowing under the framework	

We confirm that we are a Large Corporate as per the applicability criteria given under the SEBI circular SEBI/HO/DDHS/CIR/P/2018/144 dated November 26, 2018.

(Signature)
Name of the Company Secretary
Designation
Contact Details

(Signature)
Name of the Chief Financial Officer
Designation
Contact Details

Date - dd/mm/yyyy

- In terms para of 3.2(ii) of the circular, beginning F.Y 2022, in the event of shortfall in the mandatory borrowing through debt securities, a fine of 0.2% of the shortfall shall be levied by Stock Exchanges at the end of the two-year block period. Therefore, an entity identified as LC shall provide, in its initial disclosure for a financial year, the name of Stock Exchange to which it would pay the fine in case of shortfall in the mandatory borrowing through debt markets.

Annexure B1

Format of the Annual Disclosure to be made by an entity identified as a LC
(To be submitted to the Stock Exchange(s) within 45 days of the end of the FY)

(Applicable for FY 2020 and 2021)

1. Name of the Company:
2. CIN:
3. Report filed for FY:
4. Details of the borrowings (all figures in Rs crore):

Sr. No.	Particulars	Details
i.	Incremental borrowing done in FY **(a)**	
ii.	Mandatory borrowing to be done through issuance of debt securities **(b) = (25% of a)**	
iii.	Actual borrowings done through debt securities in FY **(c)**	
iv.	Shortfall in the mandatory borrowing through debt securities, if any **(d) = (b) - (c)** **{If the calculated value is zero or negative, write "nil"}**	
v.	Reasons for short fall, if any, in mandatory borrowings through debt securities	

(Signature)
Name of the Company Secretary
Designation
Contact Details

(Signature)
Name of the Chief Financial Officer
Designation
Contact Details

Date - dd/mm/yyyy

Annexure B2

Format of the Annual Disclosure to be made by an entity identified as a LC$
(To be submitted to the Stock Exchange(s) within 45 days of the end of the FY)

(Applicable from FY 2022 onwards)

1. Name of the Company:
2. CIN:
3. Report filed for FY: **T**
4. Details of the Current block (all figures in Rs crore):

Sr. No.	Particulars	Details
i.	2-year block period (Specify financial years)	**(T), (T+1)**
ii.	Incremental borrowing done in FY (T) **(a)**	
iii.	Mandatory borrowing to be done through debt securities in FY (T) **(b) = (25% of a)**	
iv.	Actual borrowing done through debt securities in FY (T) **(c)**	
v.	Shortfall in the borrowing through debt securities, if any, for FY (T-1) carried forward to FY (T). **(d)**	
vi.	Quantum of (d), which has been met from (c) **(e)**	
vii.	Shortfall, if any, in the mandatory borrowing through debt securities for FY (T) {after adjusting for any shortfall in borrowing for FY (T-1) which was carried forward to FY (T)} **(f)= (b)-[(c)-(e)]** **{If the calculated value is zero or negative, write "nil"}**	

5. Details of penalty to be paid, if any, in respect to previous block (all figures in Rs crore):

Sr. No.	Particulars	Details
i.	2-year Block period (Specify financial years)	**(T-1) ,(T)**
ii.	Amount of fine to be paid for the block, if applicable **Fine = 0.2% of {(d)-(e)}#**	

(Signature)
Name of the Company Secretary
Designation
Contact Details

(Signature)
Name of the Chief Financial Officer
Designation
Contact Details

Date - dd/mm/yyyy

($ - In cases, where an entity is not categorised as LC for FY (T), however was LC for FY (T-1), and there was a shortfall in the mandatory bond borrowing for FY (T-1), which was carried forward to FY (T), the disclosures as prescribed in this annexure shall be made by the entity for FY (T).

#- (d) and (e) are same as mentioned at 4(v) and 4(vi) of this annexure.

Annexure - C

The illustration given below is only for the purpose of demonstration and shall not be construed in any other manner.

Company Name	XYZ
Credit Rating of unsupported bank borrowing or plain vanilla bonds	AA or equivalent
Security Listed	Equity shares and/or debt securities and/or NCRPS
Financial Year format	01st April –31st March

For FY 2020 and 2021 (all figures in Rs crore)

Current FY	2020	2021
Outstanding borrowing as on March 31st of previous FY	1000	1200
Whether framework applicable?	Yes	Yes
Incremental Borrowing in the current FY **(a)**	400	500
Mandatory borrowing through debt securities in the current FY **(b) = 25% of (a)**	100	125
Actual borrowings done through debt securities in the current FY **(c)**	80	150
Shortfall in mandatory borrowing through debt securities, if any, for the current FY **(d)= (b)-(c)**	20	-
Compliance Status	Shortfall, hence explanation to be provided.	Complied with the requirement of 25% borrowing through issuance of debt securities.

From FY 2022 onwards (all figures in Rs. Cr)

Current FY	2022	2023	2024	2025
Outstanding borrowing as on March 31st of previous FY	800	400	80	120
Whether framework is applicable for current FY?	Yes	Yes	No	Yes
Incremental Borrowing in the current FY **(a)**	400	200	40	100
Mandatory borrowing through debt securities in the current FY **(b) = 25% of (a)**	100	50	Not Applicable	25
Block for compliance of the mandatory borrowing through debt securities	FY 2022 and FY 2023	FY 2023 and FY 2024	Not Applicable	FY 2025 and FY 2026
Actual borrowings done through debt securities in the current FY **(c)**	50	75	10	25
Shortfall of previous FY {for first year of the previous block} carried forward to current FY **(d)**	-	50	25	Nil
Quantum of (d), which has been met from (c) **(e)**	-	50	10	Nil
Shortfall, if any, in the mandatory borrowing through debt securities for the current FY {after adjusting for any shortfall in borrowing for previous FY, carried forward to current FY} **(f)= (b)-[(c)-(e)]**	50	25	Not Applicable	Nil
Fine, to be paid {in case the shortfall of previous FY, if any, is not adjusted completely against the debt securities borrowings of current FY} **0.2% of [(d)-(e)]**	Nil	Nil	0.2% of Rs 15 crore = Rs 3 lakhs	Nil
Compliance Status	**For previous block** - NA **For current block -** Shortfall of Rs 50 crore carried forward to FY 2023	**For previous block -** Rs. 50 cr of borrowing shortfall for FY 2022 adjusted towards debt market borrowings of FY 2023. Complied **For current block -** Shortfall of Rs. 25 crore carried forward to FY 2024	**For previous block -** Rs. 10 cr of borrowing shortfall for FY 2023 adjusted towards debt market borrowings of FY 2024. Thus, remains a borrowing shortfall of Rs. 15 crore for FY 2023. Thus, fine of Rs. 3 lakh to be paid by XYZ. **For current block -** Framework not applicable.	**For previous block-** Framework not applicable. **For current block -** Complied with by the end of first year

10 Interoperability among Clearing Corporations

[Issued by the Securities and Exchange Board of India vide Circular No.CIR/MRD/DRMNP/CIR/P/2018/145 dated 27.11.2018.]

Interoperability among Clearing Corporations

1. Interoperability among Clearing Corporations (CCPs) necessitates linking of multiple Clearing Corporations. It allows market participants to consolidate their clearing and settlement functions at a single CCP, irrespective of the stock exchange on which the trade is executed. It is expected that the interoperability among CCPs would lead to efficient allocation of capital for the market participants, thereby saving on costs as well as provide better execution of trades.
2. An expert Committee constituted by SEBI, under the Chairmanship of Shri K V Kamath, had, *inter alia*, examined the *'Viability of Interoperability between different Clearing Corporations'*. Thereafter, proposals on Interoperability, received from CCPs, were placed before the Secondary Market Advisory Committee (SMAC) of SEBI. As recommended by SMAC, three working sub-groups pertaining to relevant subjects viz. Risk Management, Technology, and Finance and Taxation were constituted comprising academicians, market participants and relevant stakeholders to examine the related issues and provide their recommendations. The reports of these sub-groups were placed before SMAC and their recommendations were deliberated upon.
3. Thereafter, SEBI Board approved suitable amendments to the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations to, inter alia, enable interoperability among clearing corporations.
4. The Committee on Payments and Settlement Systems (CPSS) and the Technical Committee of International Organization of Securities Commissions (IOSCO) have prescribed the Principles for Financial Market Infrastructures (PFMIs) with a view to enhance safety and efficiency in payment, clearing, settlement, and recording arrangements as well as to limit systemic risk, and foster transparency and financial stability. Principle 20 of PFMIs, which is relevant to the proposed interoperability among clearing corporations, prescribes that "An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks."
5. Keeping the aforementioned in view, the broad guidelines for operationalizing the interoperable framework among CCPs are prescribed for compliance hereunder :-

   5.1. **Scope of Interoperability among CCPs**

   (1) The interoperability framework shall be applicable to all the recognised clearing corporations excluding those operating in International Financial Services Centre.

   (2) All the products available for trading on the stock exchanges (except commodity derivatives) shall be made available under the interoperability framework.

   5.2. **Interoperable links among CCPs**

   (1) The recognised clearing corporations shall establish peer-to-peer link for ensuring interoperability. A CCP shall maintain special arrangements with another CCP and shall not be subjected to normal participant (membership) rules. Risk management between the CCPs shall be based on a bilaterally approved framework and shall ensure coverage of inter-CCP exposures. CCPs shall exchange margins and other financial resources on a reciprocal basis based on

mutually agreed margining models.

(2) However, SEBI, in certain cases, may require a CCP to establish participant link for interoperability. In such cases the CCP concerned shall become participant of another CCP (the host CCP) and shall be subjected to the host CCP's normal participant rules. Since the participant CCP would be posting margins with the host CCP, but would not be collecting margins from the host CCP, it shall be required to hold additional financial resources to protect itself against default of the host CCP.

5.3. Inter CCP Collateral

(1) To manage the inter-CCP exposure in the peer-to-peer link, CCPs shall maintain sufficient collateral with each other so that any default by one CCP, in an interoperable arrangement, would be covered without financial loss to the other non-defaulting CCP. The inter-CCP collateral shall comprise two components, viz.

(a) Margins as per the existing Risk Management Framework (initial margin, extreme loss margin, calendar spread margin, etc.) prescribed by SEBI; and

(b) Additional capital, to be determined by each CCP, based on the credit risk from the linked CCP, on which no exposure shall be granted to the linked CCP.

(2) The collateral posted by one CCP with another CCP shall be maintained in a separate account which can be clearly identified in the name of such linked CCP which is providing collateral and shall not be included in the Core SGF of the CCP receiving them.

(3) The liquid assets as well as hair-cuts as prescribed vide SEBI Circular MRD/DoP/SE/Cir-07/2005 dated February 23, 2005 on "Comprehensive Risk Management Framework for the cash market" and SEBI Circular CIR/MRD/DRMNP/9/2013 dated March 20, 2013 on *"Corporate bonds and Government securities as collateral"* shall be applicable for inter-CCP transactions.

5.4. Inter CCP Settlement

The CCPs shall undertake multilateral netting to create inter-CCP net obligations and exchange funds and securities on a net basis. The pay-in and pay-out shall be completed as per the settlement schedule prescribed vide SEBI Circular MRD/DoP/SE/Dep/Cir-18/2005 dated September 02, 2005 on "Revised Activity schedule for T+2 rolling settlement".

5.5. CCP-Trading Venue Link

(1) In an interoperable arrangement, the stock exchange and the CCP may not be located at same venue. Accordingly, to ensure real time flow of information between the stock exchange (trading venue) and the CCP, so as to facilitate effective real-time risk monitoring and mitigation, each interoperable CCP shall put in place appropriate infrastructure including deployment of adequate servers at each of the linked trading venues.

(2) In order to mitigate any risk arising out of latency, in partial modification of para-7 of the SEBI Circular CIR/MRD/DP/34/2012 dated December 13, 2012 on *"Pre-trade Risk Controls"*, Stock Exchanges shall ensure that stock brokers are mandatorily subjected to risk reduction mode on utilization of 85% of the stock broker's collateral available for adjustment against margins.

(3) Other provisions with regard to risk reduction mode, prescribed vide the above-mentioned SEBI Circular dated December 13, 2012 shall continue to be applicable.

5.6. Default Handling Process

In case of default by a CCP, in the interoperable arrangement, the collateral provided by such CCP shall be utilized by the non-defaulting CCP to cover losses arising from such default, as per the default waterfall prescribed vide SEBI Circular CIR/MRD/DRMNP/25/2014 dated August 27, 2014 on *"Core Settlement Guarantee Fund, Default Waterfall and Stress Test"*.

5.7. Charges by Stock Exchanges/Clearing Corporations

(1) In order to promote transparency in terms of charges levied by the Stock Exchanges/ Clearing Corporations, the transaction charges levied shall be clearly identified and made known to the participants upfront.

(2) The Stock Exchanges and Clearing Corporations shall comply with the provisions under Para-2 of SEBI Circular MRD/DoP/SE/Cir-14/2009 dated October 14, 2009 on *"Revision of transaction charges by the stock exchanges"*.

5.8. Dispute Resolution

The Conflict Resolution Committee, as prescribed vide SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2017/9 dated January 27, 2017 on *"Procedures for Exchange Listing Control Mechanism"* shall address disputes, among CCPs and Stock Exchanges, arising out of interoperability.

5.9. Inter-CCP Agreement

(1) Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 prescribes that *"...in case a recognised stock exchange enters into an arrangement with more than one recognised Clearing Corporation, it shall enter into a multipartite agreement in writing with such recognised clearing corporations to ensure interoperability among the clearing corporations"*.

(2) The agreements entered into by the Stock Exchanges/ Clearing Corporations shall, inter alia, include system capability, inter-CCP links and CCP-trading venue link, risk management framework, monitoring of client margin/position limits, obligation system, settlement process, surveillance systems, sharing of client data, sharing of product information, default handling process and dispute resolution process.

6. Stock Exchanges and Clearing Corporations shall adhere to aforesaid guidelines and accordingly, take all necessary steps to operationalize interoperability at the earliest but not later than June 01, 2019.

7. The Stock Exchange and Clearing Corporations are directed to:

(1) take necessary steps to put in place requisite infrastructure and systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;

(2) bring the provisions of this circular to the notice of their members and also disseminate the same on its website; and

(3) communicate to SEBI, the status of implementation of the provisions of this circular.

8. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.

SANJAY PURAO
General Manager

11 Trading hours for commodity derivatives segment

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2018/146 dated 30.11.2018.]

1. Vide circular SEBI/HO/CDMRD/DMP/CIR/P/2016/75 dated August 30, 2016 SEBI had inter-alia specified commodity category-wise time limits within which exchanges are permitted to fix trading hours for trading in derivatives contracts.
2. In order to deepen the commodity derivatives markets as well as to enhance the participation of stakeholders such as Farmers Producers Organizations (FPOs), value chain participants, foreign entities having actual exposure to Indian physical markets etc., as recommended by the Commodity Derivatives Advisory Committee, it has been decided to extend the trade time within which recognized stock exchanges can set their trading hours for their commodity derivatives segment. The revised trade timings are as under:

S. No.	Commodity Category	Trade Start Time	Trade End time	
			After Start of US Day light Savings in Spring Season	After End of US Day light Savings in Fall Season
1	Non-Agricultural Commodities	09:00 AM	11:30 PM	11:55 PM
2	Agricultural and Agri-processed Commodities	09:00 AM	09:00 PM	

3. The extension of the trade timing is subject to the Stock Exchange and its Clearing Corporation(s) putting in place adequate risk management system, surveillance system and infrastructure commensurate with the increased trading hours.
4. Thus, para 4 of the circular dated August 30, 2016 stands modified accordingly.
5. The provisions of this circular shall come into effect from 30 days from the date of this circular.
6. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
7. Exchanges and Clearing Corporations are advised to:
   i. to make necessary amendments to the relevant bye-laws, rules and regulations.
   ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.
   iii. communicate to SEBI, the status of the implementation of the provisions of this circular.
8. This circular is available on SEBI website at www.sebi.gov.in under the category "Circulars" and "Info for Commodity Derivatives".

VIKAS SUKHWAL
Deputy General Manager

12 Cyber Security & Cyber Resilience framework for Stock Brokers / Depository Participants

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/CIR/PB/2018/147 dated 03.12.2018.]

1. Rapid technological developments in securities market have highlighted the need for maintaining robust cyber security and cyber resilience framework to protect the integrity of data and guard against breaches of privacy.
2. Since stock brokers and depository participants perform significant functions in providing services to holders of securities, it is desirable that these entities have robust cyber security and cyber resilience framework in order to provide essential facilities and perform systemically critical functions relating to securities market.
3. Accordingly, after discussions with Exchanges, Depositories and Stock Brokers' and Depository Participants' associations, a framework on cyber security and cyber resilience has been designed, which is placed at Annexure 1. The framework would be required to be complied by all Stock Brokers and Depository Participants registered with SEBI.
4. The guidelines annexed with this circular shall be effective from April 1, 2019.
5. Stock Exchanges and Depositories shall;
   a) make necessary amendments to the relevant byelaws, rules and regulations for the implementation of the above direction;
   b) bring the provisions of this circular to the notice of their members/participants 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.

DEBASHIS BANDYOPADHYAY
General Manager

Annexure – 1

1. Cyber-attacks and threats attempt to compromise the Confidentiality, Integrity and Availability (CIA) of the computer systems, networks and databases (Confidentiality refers to limiting access of systems and information to authorized users, Integrity is the assurance that the information is reliable and accurate, and Availability refers to guarantee of reliable access to the systems and information by authorized users). Cyber security framework includes measures, tools and processes that are intended to prevent cyber-attacks and improve cyber resilience. Cyber Resilience is an organization's ability to prepare and respond to a cyber-attack and to continue operation during, and recover from, a cyber-attack.

Governance

2. As part of the operational risk management framework to manage risk to systems, networks and databases from cyber-attacks and threats, Stock Brokers / Depository Participants should formulate a comprehensive Cyber Security and Cyber Resilience policy document encompassing the framework mentioned hereunder. In case of deviations from the suggested framework, reasons for such deviations, technical or otherwise, should be provided in the policy document.

   The policy document should be approved by the Board / Partners / Proprietor of the Stock Broker / Depository Participants. The policy document should be reviewed by the aforementioned group at least annually with the view to strengthen and improve its Cyber Security and Cyber Resilience framework.
3. The Cyber Security Policy should include the following process

to identify, assess, and manage Cyber Security risk associated with processes, information, networks and systems:

a. 'Identify' critical IT assets and risks associated with such assets.
b. 'Protect' assets by deploying suitable controls, tools and measures.
c. 'Detect' incidents, anomalies and attacks through appropriate monitoring tools/processes.
d. 'Respond' by taking immediate steps after identification of the incident, anomaly or attack.
e. 'Recover' from incident through incident management and other appropriate recovery mechanisms.

4. The Cyber Security Policy of Stock Brokers trading through APIs based terminal / Depository Participants should consider the principles prescribed by National Critical Information Infrastructure Protection Centre (NCIIPC) of National Technical Research Organization (NTRO), Government of India (titled 'Guidelines for Protection of National Critical Information Infrastructure') and subsequent revisions, if any, from time to time.
5. Stock Brokers trading through APIs based terminal / Depository Participants may refer to best practices from international standards like ISO 27001, COBIT 5, etc., or their subsequent revisions, if any, from time to time.
6. Stock Brokers / Depository Participants should designate a senior official or management personnel (henceforth, referred to as the "Designated Officer") whose function would be to assess, identify, and reduce security and Cyber Security risks, respond to incidents, establish appropriate standards and controls, and direct the establishment and implementation of processes and procedures as per the Cyber Security Policy.
7. The Board / Partners / Proprietor of the Stock Brokers / Depository Participants shall constitute an internal Technology Committee comprising experts. This Technology Committee should on a half yearly basis review the implementation of the Cyber Security and Cyber Resilience policy approved by their Board / Partners / Proprietor, and such review should include review of their current IT and Cyber Security and Cyber Resilience capabilities, set goals for a target level of Cyber Resilience, and establish plans to improve and strengthen Cyber Security and Cyber Resilience. The review shall be placed before the Board / Partners / Proprietor of the Stock Brokers / Depository Participants for appropriate action.
8. Stock Brokers / Depository Participants should establish a reporting procedure to facilitate communication of unusual activities and events to the Designated Officer in a timely manner.
9. The Designated officer and the technology committee of the Stock Brokers / Depository Participants should periodically review instances of cyber-attacks, if any, domestically and globally, and take steps to strengthen Cyber Security and cyber resilience framework.
10. Stock Brokers / Depository Participants should define responsibilities of its employees, outsourced staff, and employees of vendors, members or participants and other entities, who may have privileged access or use systems / networks of Stock Brokers / Depository Participants towards ensuring the goal of Cyber Security.

Identification

11. Stock Brokers / Depository Participants should identify critical assets based on their sensitivity and criticality for business operations, services and data management. To this end, Stock Brokers / Depository Participants should maintain up-to-date inventory of its hardware and systems and the personnel to whom these have been issued, software and information assets (internal and external), details of its network resources, connections to its network and data flows.
12. Stock Brokers / Depository Participants should accordingly identify cyber risks (threats and vulnerabilities) that it may face, along with the likelihood of such threats and impact on the business and thereby, deploy controls commensurate to the criticality.

Protection

<u>Access controls</u>

13. No person by virtue of rank or position should have any intrinsic right to access confidential data, applications, system resources or facilities.
14. Any access to Stock Brokers / Depository Participants systems, applications, networks, databases, etc., should be for a defined purpose and for a defined period. Stock Brokers / Depository Participants should grant access to IT systems, applications, databases and networks on a need-to-use basis and based on the principle of least privilege. Such access should be for the period when the access is required and should be authorized using strong authentication mechanisms.
15. Stock Brokers / Depository Participants should implement an access policy which addresses strong password controls for users' access to systems, applications, networks and databases. Illustrative examples for this are given in Annexure C.
16. All critical systems of the Stock Broker / Depository Participant accessible over the internet should have two-factor security (such as VPNs, Firewall controls etc.)
17. Stock Brokers / Depository Participants should ensure that records of user access to critical systems, wherever possible, are uniquely identified and logged for audit and review purposes. Such logs should be maintained and stored in a secure location for a time period not less than two (2) years.
18. Stock Brokers / Depository Participants should deploy controls and security measures to supervise staff with elevated system access entitlements (such as admin or privileged users) to Stock Broker / Depository Participant's critical systems. Such controls and measures should inter-alia include restricting the number of privileged users, periodic review of privileged users' activities, disallow privileged users from accessing systems logs in which their activities are being captured, strong controls over remote access by privileged users, etc.
19. Employees and outsourced staff such as employees of vendors or service providers, who may be given authorized access to the Stock Brokers / Depository Participants critical systems, networks and other computer resources, should be subject to stringent supervision, monitoring and access restrictions.
20. Stock Brokers / Depository Participants should formulate an Internet access policy to monitor and regulate the use of internet and internet based services such as social media sites, cloud-based internet storage sites, etc. within the Stock Broker / Depository Participant's critical IT infrastructure.
21. User Management must address deactivation of access of privileges of users who are leaving the organization or whose access privileges have been withdrawn.

<u>Physical Security</u>

22. Physical access to the critical systems should be restricted to minimum and only to authorized officials. Physical access of outsourced staff/visitors should be properly supervised by ensuring at the minimum that outsourced staff/visitors are accompanied at all times by authorized employees.
23. Physical access to the critical systems should be revoked immediately if the same is no longer required.
24. Stock Brokers / Depository Participants should ensure that the

perimeter of the critical equipments room, if any, are physically secured and monitored by employing physical, human and procedural controls such as the use of security guards, CCTVs, card access systems, mantraps, bollards, etc. where appropriate.

Network Security Management

25. Stock Brokers / Depository Participants should establish baseline standards to facilitate consistent application of security configurations to operating systems, databases, network devices and enterprise mobile devices within their IT environment. The LAN and wireless networks should be secured within the Stock Brokers / Depository Participants' premises with proper access controls.
26. For algorithmic trading facilities, adequate measures should be taken to isolate and secure the perimeter and connectivity to the servers running algorithmic trading applications.
27. Stock Brokers / Depository Participants should install network security devices, such as firewalls, proxy servers, intrusion detection and prevention systems (IDS) to protect their IT infrastructure which is exposed to the internet, from security exposures originating from internal and external sources.
28. Adequate controls must be deployed to address virus / malware / ransomware attacks. These controls may include host / network / application based IDS systems, customized kernels for Linux, anti-virus and anti-malware software etc.

Data security

29. Critical data must be identified and encrypted in motion and at rest by using strong encryption methods. Illustrative measures in this regard are given in Annexure A and B.
30. Stock Brokers / Depository Participants should implement measures to prevent unauthorized access or copying or transmission of data / information held in contractual or fiduciary capacity. It should be ensured that confidentiality of information is not compromised during the process of exchanging and transferring information with external parties. Illustrative measures to ensure security during transportation of data over the internet are given in Annexure B.
31. The information security policy should also cover use of devices such as mobile phones, faxes, photocopiers, scanners, etc., within their critical IT infrastructure, that can be used for capturing and transmission of sensitive data. For instance, defining access policies for personnel, and network connectivity for such devices etc.
32. Stock Brokers / Depository Participants should allow only authorized data storage devices within their IT infrastructure through appropriate validation processes.

Hardening of Hardware and Software

33. Stock Brokers / Depository Participants should only deploy hardened hardware / software, including replacing default passwords with strong passwords and disabling or removing services identified as unnecessary for the functioning of the system.
34. Open ports on networks and systems which are not in use or that can be potentially used for exploitation of data should be blocked and measures taken to secure them.

Application Security in Customer Facing Applications

35. Application security for Customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications (repository of financial and personal information offered by Brokers to Customers) are paramount as they carry significant attack surfaces by virtue of being available publicly over the Internet for mass use. An illustrative list of measures for ensuring security in such applications is provided in Annexure C.

Certification of off-the-shelf products

36. Stock Brokers / Depository Participants should ensure that off the shelf products being used for core business functionality (such as Back office applications) should bear Indian Common criteria certification of Evaluation Assurance Level 4. The Common criteria certification in India is being provided by (STQC) Standardisation Testing and Quality Certification (Ministry of Electronics and Information Technology). Custom developed / in-house software and components need not obtain the certification, but have to undergo intensive regression testing, configuration testing etc. The scope of tests should include business logic and security controls.

Patch management

37. Stock Brokers / Depository Participants should establish and ensure that the patch management procedures include the identification, categorization and prioritization of patches and updates. An implementation timeframe for each category of patches should be established to apply them in a timely manner.
38. Stock Brokers / Depository Participants should perform rigorous testing of security patches and updates, where possible, before deployment into the production environment so as to ensure that the application of patches do not impact other systems.

Disposal of data, systems and storage devices

39. Stock Brokers / Depository Participants should frame suitable policy for disposal of storage media and systems. The critical data / Information on such devices and systems should be removed by using methods such as crypto shredding / degauss / Physical destruction as applicable.
40. Stock Brokers / Depository Participants should formulate a data-disposal and data-retention policy to identify the value and lifetime of various parcels of data.

Vulnerability Assessment and Penetration Testing (VAPT)

41. Stock Brokers / Depository Participants should regularly conduct vulnerability assessment to detect security vulnerabilities in their IT environments exposed to the internet.
42. Stock Brokers / Depository Participants with systems publicly available over the internet should also carry out penetration tests, at-least once a year, in order to conduct an in-depth evaluation of the security posture of the system through simulations of actual attacks on its systems and networks that are exposed to the internet.
    In addition, Stock Brokers / Depository Participants should perform vulnerability scanning and conduct penetration testing prior to the commissioning of a new system that is accessible over the internet.
43. In case of vulnerabilities discovered in off-the-shelf products (used for core business) or applications provided by exchange empanelled vendors, Stock Brokers / Depository Participants should report them to the vendors and the exchanges in a timely manner.
44. Remedial actions should be immediately taken to address gaps that are identified during vulnerability assessment and penetration testing.

Monitoring and Detection

45. Stock Brokers / Depository Participants should establish

appropriate security monitoring systems and processes to facilitate continuous monitoring of security events / alerts and timely detection of unauthorised or malicious activities, unauthorised changes, unauthorised access and unauthorised copying or transmission of data / information held in contractual or fiduciary capacity, by internal and external parties. The security logs of systems, applications and network devices exposed to the internet should also be monitored for anomalies.

46. Further, to ensure high resilience, high availability and timely detection of attacks on systems and networks exposed to the internet, Stock Brokers / Depository Participants should implement suitable mechanisms to monitor capacity utilization of its critical systems and networks that are exposed to the internet, for example, controls such as firewalls to monitor bandwidth usage.

Response and Recovery

47. Alerts generated from monitoring and detection systems should be suitably investigated in order to determine activities that are to be performed to prevent expansion of such incident of cyber attack or breach, mitigate its effect and eradicate the incident.
48. The response and recovery plan of the Stock Brokers / Depository Participants should have plans for the timely restoration of systems affected by incidents of cyber-attacks or breaches, for instance, offering alternate services or systems to Customers. Stock Brokers / Depository Participants should have the same Recovery Time Objective (RTO) and Recovery Point Objective (RPO) as specified by SEBI for Market Infrastructure Institutions vide SEBI circular CIR/MRD/DMS/17/20 dated June 22, 2012 as amended from time to time
49. The response plan should define responsibilities and actions to be performed by its employees and support / outsourced staff in the event of cyber-attacks or breach of Cyber Security mechanism.
50. Any incident of loss or destruction of data or systems should be thoroughly analyzed and lessons learned from such incidents should be incorporated to strengthen the security mechanism and improve recovery planning and processes.

51. Stock Brokers / Depository Participants should also conduct suitable periodic drills to test the adequacy and effectiveness of the aforementioned response and recovery plan.

Sharing of Information

52. Quarterly reports containing information on cyber-attacks and threats experienced by Stock Brokers / Depository Participants and measures taken to mitigate vulnerabilities, threats and attacks including information on bugs / vulnerabilities / threats that may be useful for other Stock Brokers / Depository Participants should be submitted to Stock Exchanges / Depositories.

Training and Education

53. Stock Brokers / Depository Participants should work on building Cyber Security and basic system hygiene awareness of staff (with a focus on staff from non-technical disciplines).
54. Stock Brokers / Depository Participants should conduct periodic training programs to enhance knowledge of IT / Cyber Security Policy and standards among the employees incorporating up-to-date Cyber Security threat alerts. Where possible, this should be extended to outsourced staff, vendors etc.
55. The training programs should be reviewed and updated to ensure that the contents of the program remain current and relevant.

Systems managed by vendors

56. Where the systems (IBT, Back office and other Customer facing applications, IT infrastructure, etc.) of a Stock Brokers / Depository Participants are managed by vendors and the Stock Brokers / Depository Participants may not be able to implement some of the aforementioned guidelines directly, the Stock Brokers / Depository Participants should instruct the vendors to adhere to the applicable guidelines in the Cyber Security and Cyber Resilience policy and obtain the necessary self-certifications from them to ensure compliance with the policy guidelines.

Systems managed by MIIs

57. Where applications are offered to customers over the internet by MIIs (Market Infrastructure Institutions), for eg.: NSE's NOW, BSE's BEST etc., the responsibility of ensuring Cyber Resilience on those applications reside with the MIIs and not with the Stock Broker / Depository Participant. The Stock Broker / Depository Participant is exempted from applying the aforementioned guidelines to such systems offered by MIIs such as NOW, BEST, etc.

Periodic Audit

58. The Terms of Reference for the System Audit of Stock Brokers specified vide circular no. CIR/MRD/DMS/34/2013 dated November 06, 2013, shall accordingly stand modified to include audit of implementation of the aforementioned areas.

    The Depository Participants and Type I Stock Brokers (as defined in CIR/MRD/DMS/34/2013 dated November 06, 2013) shall arrange to have their systems audited on an annual basis by a CERT-IN empanelled auditor or an independent CISA/CISM qualified auditor to check compliance with the above areas and shall submit the report to Stock Exchanges / Depositories along with the comments of the Board / Partners / Proprietor of Stock Broker/ Depository Participant within three months of the end of the financial year.

Annexure A

Illustrative Measures for Data Security on Customer Facing Applications

1. Analyse the different kinds of sensitive data shown to the Customer on the frontend application to ensure that only what is deemed absolutely necessary is transmitted and displayed.
2. Wherever possible, mask portions of sensitive data. For instance, rather than displaying the full phone number or a bank account number, display only a portion of it, enough for the Customer to identify, but useless to an unscrupulous party who may obtain covertly obtain it from the Customer's screen. For instance, if a bank account number is "123 456 789", consider displaying something akin to "XXX XXX 789" instead of the whole number. This also has the added benefit of not having to transmit the full piece of data over various networks.
3. Analyse data and databases holistically and draw out meaningful and "silos" (physical or virtual) into which different kinds of data can be isolated and cordoned off. For instance, a database with personal financial information need not be a part of the system or network that houses the public facing websites of the Stock Broker. They should ideally be in discrete silos or DMZs.
4. Implement strict data access controls amongst personnel,

irrespective of their responsibilities, technical or otherwise. It is infeasible for certain personnel such as System Administrators and developers to not have privileged access to databases. For such cases, take strict measures to limit the number of personnel with direct access, and monitor, log, and audit their activities. Take measures to ensure that the confidentiality of data is not compromised under any of these scenarios.

5. Use industry standard, strong encryption algorithms (eg: RSA, AES etc.) wherever encryption is implemented. It is important to identify data that warrants encryption as encrypting all data is infeasible and may open up additional attack vectors. In addition, it is critical to identify the right personnel to be in charge of, and the right methodologies for storing the encryption keys, as any compromise to either will render the encryption useless.
6. Ensure that all critical and sensitive data is adequately backed up, and that the backup locations are adequately secured. For instance, on servers on isolated networks that have no public access endpoints, or on-premise servers or disk drives that are off-limits to unauthorized personnel. Without up-to-date backups, a meaningful recovery from a disaster or cyber-attack scenario becomes increasingly difficult.

Annexure B

Illustrative Measures for Data Transport Security

1. When an Application transmitting sensitive data communicates over the Internet with the Stock Brokers' systems, it should be over a secure, encrypted channel to prevent Man-In-The-Middle (MITM) attacks, for instance, an IBT or a Back office communicating from a Customer's web browser or Desktop with the Stock Brokers' systems over the internet, or intra or inter organizational communications. Strong transport encryption mechanisms such as TLS (Transport Layer Security, also referred to as SSL) should be used.
2. For Applications carrying sensitive data that are served as web pages over the internet, a valid, properly configured TLS (SSL) certificate on the web server is mandatory, making the transport channel HTTP(S).
3. Avoid the use of insecure protocols such as FTP (File Transfer Protocol) that can be easily compromised with MITM attacks. Instead, adopt secure protocols such as FTP(S), SSH and VPN tunnels, RDP (with TLS) etc.

Annexure C

Illustrative Measures for Application Authentication Security

1. Any Application offered by Stock Brokers to Customers containing sensitive, private, or critical data such as IBTs, SWSTs, Back office etc. referred to as "Application" hereafter) over the Internet should be password protected. A reasonable minimum length (and no arbitrary maximum length cap or character class requirements) should be enforced. While it is difficult to quantify password "complexity", longer passphrases have more entropy and offer better security in general. Stock Brokers should attempt to educate Customers of these best practices.
2. Passwords, security PINs etc. should never be stored in plain text and should be one-way hashed using strong cryptographic hash functions (e.g.: bcrypt, PBKDF2) before being committed to storage. It is important to use one-way cryptographic hashes to ensure that stored password hashes are never transformed into the original plaintext values under any circumstances.
3. For added security, a multi-factor (e.g.: two-factor) authentication scheme may be used (hardware or software cryptographic tokens, VPNs, biometric devices, PKI etc.). In case of IBTs and SWSTs, a minimum of two-factors in the authentication flow are mandatory.
4. In case of Applications installed on mobile devices (such as smartphones and tablets), a cryptographically secure biometric two-factor authentication mechanism may be used.
5. After a reasonable number of failed login attempts into Applications, the Customer's account can be set to a "locked" state where further logins are not possible until a password and authentication reset is performed via an out-of-band channel validation, for instance, a cryptographically secure unique link that is sent to the Customer's registered e-mail, a random OTP (One Time Password) that is sent as an SMS to the Customer's registered mobile number, or manually by the Broker after verification of the Customer's identity etc.
6. Avoid forcing Customers to change passwords at frequent intervals which may result in successive, similar, and enumerated passwords. Instead, focus on strong multi-factor authentication for security and educate Customers to choose strong passphrases. Customers may be reminded within reasonable intervals to update their password and multi-factor credentials, and to ensure that their out-of-band authentication reset information (such as e-mail and phone number) are up-to-date.
7. Both successful and failed login attempts against a Customer's account may be logged for a reasonable period of time. After successive login failures, it is recommended that measures such as CAPTCHAs or rate-limiting be used in Applications to thwart manual and automated brute force and enumeration attacks against logins.

ICSI APPRECIATE MEMBERS AND STUDENTS FOR PARTICIPATING IN ICSI TAGLINE COMPETITION

ICSI	Name	CS Profession	Name	CS Student	Name
Where Excellence Meets Perfection	CS Shubham Somnath Phule ACS 54673 shubhamphule@ymail.com	**Governance Professionals of India**	CS B BILU FCS 7299 bilubalakrishnancs@gmail.com	**Your Career. Your Future. Your Pride**	Ms. Vaishali Aggarwal vaishaliaggarwalglobalcorp@gmail.com
Nation building through governance	CS Sudheendhra Putty Sudheendhra.Putty@cyient.com	**The profession with passion and excellence**	Chepuri Sairam Reg no 320045122/12/2012 chepurisairam@gmail.com		

REGISTERED VALUERS ORGANISATION
(A wholly owned subsidiary of ICSI and registered with IBBI)

Dear Professional Colleagues,

Subject: Registrations Open for Educational Course on 'Valuation of Securities or Financial Assets' at BENGALURU

We are pleased to inform you that the Classroom training of ICSI Registered Valuers Organisation (ICSI RVO) **Educational Course on 'Valuation of Securities or Financial Assets'** has been successfully completed at various cities.

In continuation of the above, ICSI RVO is planning to conduct Classroom training of its **50 hour course** for its next batch at **Bengaluru**:

Venue		Dates
Bengaluru Chapter No-5, 1st Main Road, KSSIDC Industrial Estate, 6th Block, Rajajinagar, West of Chord Road, Bengaluru - 560052 Phone : 080-23116574/ 23111861/23117158		The **50 hour course** shall be conducted as follows: **7th January, 2019** **to** **13th January, 2019**

Any individual willing to register for the Educational Course, which is a pre-requisite for appearing in the IBBI examination, may fill-in the online application in the form available at the link below with the requisite attachments:

http://www.icsirvo.in/Member/SignUp

After the successful submission of application, the payment link shall be sent to the candidates.

Enrolment Fee: **Rs. 8,850 (Rs. 7,500 + GST @18%)**
Educational Course Fee: **Rs. 26,550 (Rs. 22,500 + GST @ 18%)**

Educational course Fee (for members who have successfully completed the online Course on Valuation conducted by ICSI): **Rs.20,650 (Rs.17,500 + GST @ 18%)**

For more details, please visit the website www.icsirvo.in

Regards

CS Samir Raheja
CEO (Designate)

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NEWS FROM THE INSTITUTE

- MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2018
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2018
- LIST OF MEMBERS WHOSE REMOVAL OF NAME FROM REGISTER OF MEMBERS REVOKED W.E.F. 01-09-2018
- CONGRATULATIONS
- KNOW YOUR MEMBER (KYM)
- OBITUARIES

Institute News

MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2018

S. NO.	A/F	MEM. NO.	MEM. NAME	REGN.
1	A	66	SH. J SUBRAMANI	WIRC
2	A	97	SH. RAMACHANDRA RAO KARANDIKAR	WIRC
3	A	241	SH. V NARAYANAN	SIRC
4	A	1041	SH. PRAKASH CHAND BHANDARI	EIRC
5	A	1316	SH. M P HARAN	NIRC
6	A	1523	SH. AMITAVA DAS	EIRC
7	A	1576	SH. NANI ARDESHIR DESAI	WIRC
8	A	1698	SH. A DORAISWAMY	SIRC
9	A	2798	SH. R S RAGHAVAN	SIRC
10	A	2861	SH. ASHOK K GUPTA	WIRC
11	A	3012	SH. M SUNDARESWARAN	SIRC
12	A	3069	SH. C N VAZE	WIRC
13	A	3323	SH. ANIL V UPADHYAY	WIRC
14	A	3525	SH. VIJESH KUMAR GUPTA	SIRC
15	A	3531	SH. TARUN JAIN	WIRC
16	A	3564	SH. PURUSHOTTAM KUMAR CHAUBEY	EIRC
17	A	3887	SH. SURENDERA SHRIRAM GUPTA	WIRC
18	A	4184	SH. VIVEK MAHAJAN	EIRC
19	A	4199	SH. K K BANSAL	NIRC
20	A	4246	SH. L B BAPAT	WIRC
21	A	4558	SH. V PADMANABHAN NAMBI	SIRC
22	A	4632	MS. URAVASHI A DHARADHAR	WIRC
23	A	4871	SH. SHRINIWAS YESHWANT JOSHI	WIRC
24	A	4895	SH. R D JOG	WIRC
25	A	5013	SH. ANIL ANANT TIKEKAR	WIRC
26	A	5321	SH. NAGESH GANESH ALAI	WIRC
27	A	5508	SH. K V K SESHAVATARAM	SIRC
28	A	5542	SH. RAKESH GARG	WIRC
29	A	5919	SH. VENKATACHALAM SHESHADRI SHEKARIPURAM	WIRC
30	A	6052	SH. DEVESH M NAYEL	SIRC
31	A	6561	SH. S SRIVATSAN	WIRC
32	A	6600	SH. A VISWANATHAN	SIRC
33	A	6651	SH. ATULAY SHARMA	NIRC
34	A	6920	DR T V SOMANATHAN	SIRC
35	A	7022	SH. VIJAY R KHETAN	WIRC
36	A	7138	SH. G.N.V. RAMAKRISHNAM RAJU	SIRC
37	A	7157	SH. N PADMANABHAN	SIRC
38	A	7465	SH. E K S NAMASIVAYAM	SIRC
39	A	7505	MS. MEENAKSHI NATARAJAN	SIRC
40	A	7623	SH. DEVAL RAJNIKANT SHAH	WIRC
41	A	7776	SH. J CHANDRAMOULI	SIRC
42	A	7862	SH. SAURABH BALKRISHNA SHAH	WIRC
43	A	7950	SH. SUNIL M RANADE	WIRC
44	A	7971	SH. RAJAT BHANDARI	NIRC
45	A	8033	SH. SUBRAMANAYAN R VENKATA	SIRC
46	A	8415	SH. ASHOK KUMAR SHARMA	SIRC
47	A	8472	SH. R P MALLADI	SIRC
48	A	8511	MS. DARSHITA TEJPAL SHAH	WIRC
49	A	8632	SH. SUBIR BANERJEE	NIRC
50	A	8769	SH. VINOD KUMAR GUPTA	EIRC
51	A	9235	SH. KUPPUSWAMY SRINIVASA VARADHAN	WIRC
52	A	9542	SH. SUDHIR KUMAR AGARWAL	NIRC
53	A	9627	SH. ANIL MADHAV TIKEKAR	NIRC
54	A	9634	SH. SANJAY MEHTA	NIRC
55	A	9713	SH. V L RAMAKRISHANAN	SIRC
56	A	9755	SH. ARUN KUMAR BHUYAN	EIRC
57	A	10043	SH. ANIL SHARMA	NIRC
58	A	10144	SH V V GANESHAN	SIRC
59	A	10237	SH. ANIL KUMAR SHRINGI	NIRC
60	A	10310	SH. RAJU RAMAMURTHI	SIRC
61	A	10538	MS. NISHA ANIL UPADHYAY	WIRC
62	A	10561	SH. DARAIUS ZARIR FRASER	WIRC
63	A	10647	SH. V SUNDARARAMAN	SIRC
64	A	10704	SH. AJOY KUMAR GOYAL	NIRC
65	A	11458	MS. KALYANI SUBRAMANIAM	SIRC
66	A	12001	MS. TARUNA ANAND	NIRC
67	A	12172	SH. S SATHYANARAYANAN	SIRC
68	A	12188	SH. HEMANG K MANIAR	WIRC
69	A	12532	MS. MALINI GULATI	NIRC
70	A	12697	SH. NAGARAJAN KRITHIVASAN	SIRC
71	A	12698	MS. SONALI N NARASIMHAN	SIRC
72	A	12825	MS. MONAZ RAYOMAND NOBLE	WIRC
73	A	12832	SH. JAG MOHAN BANSAL	NIRC
74	A	12930	MS. MADHUMITA MAJUMDAR	EIRC
75	A	12960	SH. SUSHIL KUMAR RATHI	EIRC
76	A	12986	SH. SATYAJIT M JOSHI	WIRC
77	A	13013	SH. SUBHASH CHAND GUPTA	NIRC
78	A	13071	SH. G SAMBASIVAN	WIRC
79	A	13277	SH. V K HARIDAS	SIRC
80	A	13278	SH. K M GOPI KUMAR	SIRC
81	A	13446	SH. JATIN CHANDRAKANT DESAI	WIRC
82	A	13625	MS. NEHA R GUHA	NIRC
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84	A	13842	MS. ANJALI BANSAL	NIRC
85	A	14039	SH. AJAY KUMAR JHUNJHUNWALA	SIRC
86	A	14147	SH. M RAVI KIRAN	WIRC
87	A	14299	DR PIROOZ PERVEZ MOVDAWALLA	WIRC
88	A	14340	MS. HETALI HARSHADBHAI SHASTRI	WIRC
89	A	14488	MS. JOTIKA SINGH	WIRC
90	A	15101	MS. VANDANA YADAV	NIRC
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92	A	16771	SH. RAVINDRA BHALCHANDRA PATEL	WIRC
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94	A	18014	MS. SOMA GUPTA	NIRC
95	A	18033	SH. KHUSHI RAM JADHWANI	WIRC
96	A	18244	SH. VIJAY RAMACHANDRAN	WIRC
97	A	18293	MS. REENA SHARDA	WIRC
98	A	18558	MS. RAMALAXMI RACHAKONDA	SIRC
99	A	18642	MS. G AKILA	SIRC

100	A	18729	SH. SANJAY KUMAR KHEMANI	WIRC
101	A	18905	SH. SAURABH GANGRADE	WIRC
102	A	18955	SH. YOGESH ISHWARLAL DAVE	WIRC
103	A	19017	SH. RAKSHIT MAHENDRABHAI SHAH	WIRC
104	A	19239	SH. KARTHIK G	SIRC
105	A	19267	SH. PRAJEET NAIR	WIRC
106	A	19557	SH. AJAY KUMAR MITTAL	NIRC
107	A	19711	SH. SANTOSH G	SIRC
108	A	20143	SH LAKSHMI NARAYANA MATUKUMALLI	SIRC
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110	A	20558	MS. MAHIMA SHARMA	NIRC
111	A	20562	MS. NIDHI AGARWAL	NIRC
112	A	20746	MS. SANGEETA SAJJAN JHUNJHUNWALA	WIRC
113	A	21802	SH. SANAT KUMAR DAS	EIRC
114	A	21805	SH. VENKATA NARAYANA PULLELA	SIRC
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116	A	22458	MS. ANAGHA KARAMBELKAR	WIRC
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118	A	22808	MS. KOMAL JAIN	EIRC
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122	A	23463	MR. SANDEEP LAMBIWALA	NIRC
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126	A	23897	MS. MADHURI SHEKHAR NAWARE	WIRC
127	A	24292	MS. SHRUTI CHAWLA	NIRC
128	A	24581	SH. SANJAY YASHWANT RAJWADE	WIRC
129	A	24686	MS. DEEPAL SHAH	WIRC
130	A	24876	MS. PADMA CHANDAK	NIRC
131	A	24917	MS. KRATI KHANDELWAL	NIRC
132	A	24943	SH. RAJESH BAHETI	NIRC
133	A	25164	MS. RASHNA DINYAR DUMASIA	WIRC
134	A	25168	MS. LALITHA RAMAKRISHNAN	SIRC
135	A	25517	MS. SHIWANGI HARWANI	NIRC
136	A	25679	MS. BHOOMI RAMESH THAKKER	WIRC
137	A	25749	SH. KIRAN KUMAR MOHANTY	WIRC
138	A	26330	SH. PUNEET BHATIA	NIRC
139	A	26458	MR. ANAND SURESHBHAI LAVINGIA	WIRC
140	A	26697	MS. HONEY AGARWAL	NIRC
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142	A	26869	MRS. NEHA GUPTA	NIRC
143	A	27096	MS. MURUGAVENI PILLAI	WIRC
144	A	27243	MS. PRIYANKA MAHESHWARI	NIRC
145	A	27435	MS. SHRUTI AGARWAL	NIRC
146	A	27664	MS. NEHA LAKHANI	NIRC
147	A	27721	MS. REKHA RANI	NIRC
148	A	27815	MS. POOJIA RADHAKRISHNAN	SIRC
149	A	28312	MS. REEMA AGARWAL	NIRC
150	A	28745	MS. VIJAYA AGRAWAL	WIRC
151	A	28885	MR. KUSHAGRA RASTOGI	NIRC
152	A	28923	SH. RAJENDRA PRAKASH BHOSALE	WIRC
153	A	29137	MRS. VIDHI BHAVIK BADIANI	WIRC
154	A	29270	MS. AMITA MISTRY	WIRC
155	A	29541	MS. PREETI JAIN	NIRC
156	A	30155	MS. SHWETA KHURANA	NIRC
157	A	30441	MS. AMISHA CHATURVEDI	EIRC
158	A	30509	MS. MEGHA NITIN OZA	WIRC
159	A	31145	MR. TEJAS JAYESHBHAI THAKKAR	WIRC
160	A	31358	MS. NEHA GUPTA	NIRC
161	A	31364	MR. GOKUL R VARMA	SIRC
162	A	31927	MS. PREETI MANTRI	NIRC
163	A	32073	MS. PARUL GARG	NIRC
164	A	32220	MR. BANNE SINGH TANWER	NIRC
165	A	32745	MR. SHAILESH VISHWAS GADGIL	WIRC
166	A	32869	MR. SWAPNIL TUKARAM DAFLE	WIRC
167	A	33155	MRS. NEHA DARSHAN SANGHAVI	WIRC
168	A	33935	MS. SHEETAL NAHARIA	NIRC
169	A	34057	MR. RITHESH S	SIRC
170	A	34189	MS. SARANYA U	SIRC
171	A	34305	MR. SACHIN KUMAR KADD	NIRC
172	A	34309	MS. MANIK ROUT	EIRC
173	A	34381	MR. ANKIT JAGETIA	NIRC
174	A	34392	MS. RATIKA THAREJA	NIRC
175	A	35104	MR. V HARIHARAN	SIRC
176	A	35374	MR. AVS PRASAD	SIRC
177	A	35512	MR. MUKESH TEKRIWAL	EIRC
178	A	35671	MR. RAJAT GUPTA	NIRC
179	A	35886	MRS. SHRUTI AGARWALA	EIRC
180	A	35947	MS. CHANDYA KUNTAL VIRENDRA	WIRC
181	A	36090	MS. TESSA JOSEPH KALLARACKAL	SIRC
182	A	36325	MS. GREENA MAHESH KARANI	WIRC
183	A	37550	MS. GEETANJALI AGGARWAL	NIRC
184	A	37676	MR. SHIRISH BHOOTRA	NIRC
185	A	37943	MR. BHUSHAN GOVARDHANRAO KOKATE	WIRC
186	A	38036	MS. G A LAKSHMI	SIRC
187	A	38444	MS. AMRITA SINGH	EIRC
188	A	38479	MS. MEENAKSHI NAAG	WIRC
189	A	38539	MS. HENA BHARAT JUTHANI	WIRC
190	A	38790	MR. TARUN KUMAR	SIRC
191	A	38933	MR. PRINCE KUMAR SURANA	EIRC
192	A	39201	MS. NATISHA CHOUDHARY	NIRC
193	A	39289	MS. KASHISH BANSAL	NIRC
194	A	39814	MS. RUCHITA BIYALA	EIRC
195	A	40118	MR. VIJAY KUMAR	NIRC
196	A	40191	MS. NILAM SHAHAJI JADHAV	WIRC
197	A	40440	MR. K SURESH	SIRC
198	A	40681	MS. GITIKA SARMA	EIRC
199	A	40688	MS. HIMA GOEL	NIRC
200	A	40796	MS. RITIKA JAISWAL	NIRC
201	A	40807	MS. POOJA BABUL SUTRADHAR	WIRC
202	A	41537	MR. VISHAL AJAY GOSWAMI	SIRC
203	A	42196	MS. PRIYANKA KHURANA	NIRC
204	A	42340	MS. SANCHITA MEHTA	NIRC
205	A	42836	MS. VARSHA DHANDHARIA	EIRC
206	A	43103	MS. SUNITA YADAV	NIRC
207	A	43154	MS. SUBANYA S	SIRC
208	A	43585	MR. K DAMODARAN	WIRC
209	A	43589	MS. SONIA	NIRC
210	A	43596	MR. SAHIL GARG	NIRC
211	A	43781	MS. UPASANA AGARWAL	NIRC

212	A	43810	MR. HIMANSHU KHURANA	NIRC
213	A	44059	MS. NABAR AARTI SUHAS	WIRC
214	A	44086	MS. MEENAKSHI JAIN	NIRC
215	A	44388	MS. CHHAYA BADAL	NIRC
216	A	44407	MS. DEEPIKA RAJAWAT	NIRC
217	A	44551	MR. PIYUSH RAMESHBHAI BHADRESHVARA	NIRC
218	A	44713	MR. NISHANT TAYAL	NIRC
219	A	45249	MS. SIDDHI SAMIR MEHTA	WIRC
220	A	45476	MS. POOJA BANG	SIRC
221	A	45554	MS. ARPITA HARSHAD DOSHI	WIRC
222	A	45562	MS. MANSI MANISHBHAI VEJANI	WIRC
223	A	45602	MR. SHYAM KUMAR RATHI	EIRC
224	A	45950	MS. SHRUTI DIDWANIA	WIRC
225	A	46062	MS. ANJALI GIRISHBHAI RAYTHATHTHA	WIRC
226	A	46902	MS. VIDHYA G	SIRC
227	A	46905	MS. PRIYANKA GOUTHAM MEHTA	WIRC
228	A	46988	MS. MITTALI UDAYPARULKAR	WIRC
229	A	47470	MR. ANAS ABDULHAI PATEL	WIRC
230	A	47616	MS. RESHMA M C	SIRC
231	A	47969	MS. CHEMMEEN ANSHUMALI RUPAREL	WIRC
232	A	48090	MR. YOGESH KANKANI	WIRC
233	A	48531	MS. SHIVANGI SETHI	NIRC
234	A	48585	MS. BHOOMI MUKESHBHAI SANGHVI	WIRC
235	A	48587	MS. PAWNI BHAVE	WIRC
236	A	48610	MS. JOLLY VASUDEV GIDWANI	NIRC
237	A	48793	MS. ANJU VENARAM CHOUDHARY	WIRC
238	A	49038	MR. RAVI KUMAR DHAKER	NIRC
239	A	49043	MR. PRATIK ASHOKBHAI PATEL	WIRC
240	A	49580	MS. POOJA SURESH NAYAK	WIRC
241	A	49615	MS. TRUPTI KANAIYALAL PANCHAL	WIRC
242	A	49726	MR. HARIKRISHNAN VAIDYANATHAN	WIRC
243	A	49788	MR. AFNAAN SIDDIQUI	NIRC
244	A	49858	MR. AMIT KUMAR LAHOTI	EIRC
245	A	49866	MS. ADITI JAISWAL	NIRC
246	A	50164	MS. APOORVA MEHTA	NIRC
247	A	50447	MR. JENISH SANJAYBHAI DOSHI	WIRC
248	A	50530	MR. RITES GOEL	EIRC
249	A	50606	MS. PRIYANSHI NAIR	WIRC
250	A	50861	MS. NUPUR GUPTA	NIRC
251	A	50962	MS. SWITI AGRAWAL	EIRC
252	A	51509	MS. VANI BANSAL	NIRC
253	A	51553	MR. DHARAN ANUP GUDHKA	WIRC
254	A	51870	MR. ANSH JAIN	NIRC
255	A	52050	MR. PIYUSH SURESHKUMAR KEWALRAMANI	WIRC
256	A	52268	MR. YOGESH PRASAD JOSHI	WIRC
257	A	52397	MS. CHARU RAJENDRA KUMAR JAIN	WIRC
258	A	52471	MS. JAI DILIP SHRIMANKAR	WIRC
259	A	52979	MS. NIKITA KIRAN DEDHIA	WIRC
260	A	53115	MR. MUNISH PRAKASH VAZIRANI	WIRC
261	A	53125	MR. RUSHABH AMIT KAPADIA	WIRC
262	A	53642	MS. ISHITA BAGGA	NIRC
263	A	53716	MR. SIDDHARTH TEWARI	NIRC
264	A	54075	MR. VIVEKANANDAA M	SIRC
265	A	54822	MR. MADHU THOKALA	SIRC
266	F	954	SH. KAILASH CHAND JAIN	EIRC
267	F	1116	SH. M N SUBRAMANIAN	SIRC
268	F	1318	SH. V K NAGPAL	NIRC
269	F	1395	MS. RATAN KAPADIA	WIRC
270	F	1558	SH. DEVENDRA BHANDARI	WIRC
271	F	1672	SH. AJAY KUMAR CHOPRA	WIRC
272	F	1697	SH. GYANCHAND JAIN	NIRC
273	F	1753	SH. A V MANOHAR	SIRC
274	F	1901	SH. SHASHANK GAJANAN SAPRE	WIRC
275	F	1912	SH. SAJJAN KUMAR KHANDELWAL	EIRC
276	F	1950	SH. S I SHETH	WIRC
277	F	2635	SH. ARVIND SHARMA	NIRC
278	F	2659	SH. SANJAY C. KOTHARI	WIRC
279	F	2755	SH. WILTON A. HENRIQUES	WIRC
280	F	3193	SH. DHYANESH VIRENDRA KOTAK	WIRC
281	F	3229	SH. DHIRAJLAL DAMODARDAS SANGHAVI	WIRC
282	F	3394	SH. SANJAY MEHRA	NIRC
283	F	3400	SH. MUTHIAH PANDIAN SURESH KUMAR	SIRC
284	F	3539	SH. ANIL K. MALHOTRA	NIRC
285	F	3553	SH. SANTOSH KUMAR	NIRC
286	F	3702	SH. VIREN PRANLAL VASA	WIRC
287	F	3716	MS. HIMADRI KATHARANI	WIRC
288	F	4000	SH. SURENDRA KUMAR HEGDE	WIRC
289	F	4196	SH. SOMNATH MAJUMDAR	WIRC
290	F	4378	SH. D K SETHUMADHAVAN	WIRC
291	F	5519	SH. N S SANKAR	SIRC
292	F	5589	SH. AMIT KUMAR RAHEJA	WIRC
293	F	6294	SH. ASHUTOSH CHOUBEY	EIRC
294	F	6321	SH. VIJAYABHASKAR PERUNDURU	SIRC
295	F	6678	SH. TANAY KASERA	WIRC
296	F	6781	MS. BINJU NIRLAP VORA	WIRC
297	F	6968	MS SHALOO NAHATA	EIRC
298	F	7020	SH. SANJAY MANGALMURTI PHADKE	WIRC
299	F	7093	MS. KAPILA MAHENDROO	NIRC
300	F	7259	SH. ANKUR SINGHAL	NIRC
301	F	7566	SH. SATISH AGGARWAL	NIRC
302	F	7797	SH. G. RAJENDRAN	SIRC
303	F	7903	MRS. RAJANI NANGALIA	EIRC
304	F	8539	MS. LAKSHMI RATHNAM	SIRC
305	F	8932	MS. DIMPLE JUNEJA	NIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2018

SL. NO.	NAME	ACS/FCS NO.	COP NO.	REGN.
1	MS. VARSHA	A - 36765	17046	NIRC
2	MR. AMAN NIJHAWAN	A - 42277	15768	WIRC
3	MS. REKHA KEJRIWAL	F - 5978	20426	NIRC
4	MR. BIPIN BIHARI SAH	A - 27354	11890	EIRC
5	MR. MIR IRFAN BASHIR	F - 9849	12054	NIRC
6	MS. VIJAYA AGRAWAL	A - 28745	10702	WIRC
7	MS. GARIMA MAHAWAR	F - 7710	8591	NIRC
8	MS. GAURI DATTATRAY MALI	A - 41619	16094	WIRC
9	MS. JASMEET KAUR	A - 39575	14977	NIRC
10	MS. PRERANA JHA	A - 23830	17634	WIRC
11	MR. ABHINAV GAUTAM	A - 34108	20235	NIRC
12	MS. DIPTI GUPTA	A - 13269	19308	NIRC
13	MS. PRIYA JAIN	A - 42546	18856	WIRC

14	MR. AAKASH KUMAR SAHU	A - 51233	20221	WIRC
15	MS. ROY SWETA RAMKISHORE	A - 28097	18386	WIRC
16	MS. SHIWANI DAYAL	A - 31819	12542	WIRC
17	MS. ALPANA JAIN	A - 51519	19131	NIRC
18	MR. MOHIT SRIVASTAVA	A - 53458	19721	NIRC
19	MS. ANUJA PODDAR	A - 47151	18942	SIRC
20	MS. MENKA KUMARI GUPTA	A - 39429	15286	EIRC
21	MR. MAGHISUDDIN	A - 51216	19391	NIRC
22	MR. DEEPAK JAIN	F - 3792	17720	NIRC
23	MR. C MURUGANANDAM	A - 12232	15297	SIRC
24	MR. M SUBRAHMANYAM	F - 4556	18307	SIRC
25	MS. ADITI NITINKUMAR SINGH	A - 28836	11433	WIRC
26	MS. SIMRATJEET KAUR	A - 49975	18228	NIRC
27	MS. VINEETA GULGULIA	A - 36867	13743	EIRC
28	MS. AVANTIKA SHUKLA	A - 47558	17818	NIRC
29	MR. MANUPRASAD MANEKLAL PATEL	F - 2588	6357	WIRC
30	MR. RINKU ROHILLA	A - 54389	20497	NIRC
31	MR. SUNIL KUMAR	F - 6788	20428	NIRC
32	MR. SHOBHIT GERA	A - 46042	16952	NIRC
33	MS. ASHA KUMARI PATHAK	A - 44283	19422	EIRC
34	MS. HITIKA KWATRA	A - 42641	16967	NIRC
35	MS. ANITA AJMERA	A - 53442	20547	NIRC
36	MS. DOLLY JITENDRA MEHTA	A - 38116	14960	WIRC
37	MR. SHAILESH KIRANKUMAR SOMANI	A - 43293	17081	WIRC
38	MR. DEEPAK KUMAR JHA	F - 9678	20781	NIRC
39	MS. SUSMITA SEN	A - 34368	17223	EIRC
40	MS. AVANI BHAGYESH SHARMA	A - 32370	16846	WIRC
41	MS. DIVYA V RAVICHANDRAN IYER	A - 32173	11832	WIRC
42	MR. SANKET BHUPENDRABHAI TRIVEDI	A - 51758	18875	WIRC
43	MS. AASTHA VIJ	A - 49523	18223	NIRC
44	MR. KETAN KUMAR GUPTA	A - 42729	20244	WIRC
45	MR. JEETAM KUMAR SAINI	A - 42969	21197	NIRC
46	MR. AVINASH KUMAR AGARWAL	A - 56404	21169	EIRC
47	MS. PRIYANKA GARG	A - 49087	18038	NIRC
48	MR. ANKUSH THAKUR	A - 54323	20951	NIRC

LIST OF MEMBERS WHOSE REMOVAL OF NAME FROM REGISTER OF MEMBERS REVOKED W.E.F. 01-09-2018

Sl. No.	MEMBER No.	MEMBER'S NAME	REGN.
1	ACS - 22724	MS. AASHIMA KALRA	NIRC
2	ACS - 14942	SH. VIJAYKUMAR D. SHAH	WIRC

CONGRATULATIONS

Shri Murali Santhanam, ACS on his being awarded Ph.D.Degree by the Reva University, Bengaluru with effect from 04.10.2018

CORRIGENDUM

The headline printed as "Members Restored During the month of September 2018" in the November, 2018 edition of Chartered Secretary Journal be read as "Certificate of Practice surrendered During the month of September 2018".

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

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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

NOTICE

The last date for payment of annual membership fee was 31-08-2018 and for renewal of certificate of practice was 30-09-2018. The members who have not paid their annual membership fee and/or certificate of practice fee by the last date are required to restore their membership and/or certificate of practice by paying the requisite entrance and restoration fees alongwith the applicable annual membership fee and annual certificate of practice fee with GST@18% on the total fee payable. Members are required to submit Form–BB for restoration of membership and Form-D for restoration of certificate of practice duly filled and signed. For more clarification, may please write at jitendra.kumar@icsi.edu(for restoration of membership) and vidhya.ganesh@icsi.edu (for restoration of certificate of practice).

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following Members:

CS Chandreshwar Prasad Sinha (08.04.1939 – 14.03.2018), a Fellow Member of the Institute from Samastipur.

CS Govindapichai Ayyaswamy (28.01.1952 – 22.05.2018), a Fellow Member of the Institute from Coimbatore.

CS Thakur Udhawdas Khatri (08.05.1931 – 02.08.2018), a Fellow Member of the Institute from Mumbai.

CS Pradyumna Shrinivas Rao (03.03.1938 – 11.09.2018), an Associate Member of the Institute from Mumbai.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.

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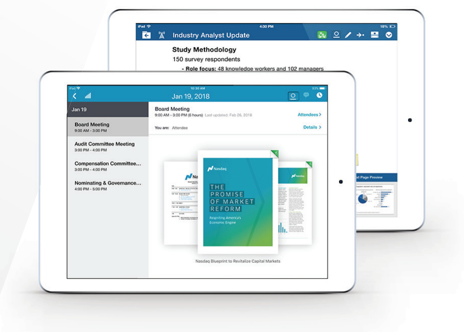

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6

MISCELLANEOUS CORNER

Ethical Wisdom

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

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The time where we find ourselves positioned presently, is an age of information boom. The Information Age (believed to be started around the 1970s) is also known as the Computer Age, Digital Age, or New Media Age. The onset of the Information Age is associated with the Digital Revolution, just as the Industrial Revolution marked the onset of the Industrial Age. The 21st century is called so, characterized by the rapid shift from traditional industry that the Industrial Revolution brought through industrialization, to an economy based on Information Technology. Hence, we see industries coming up which are no more producing products or machines but are accumulating, managing, delivering and utilizing information. It wouldn't be wrong to mention that during the Information Age, the digital industry creates an information-based society. Thus, this era has brought about a time period in which people are accessing information easier than ever before. Many communication services like texting, email, and social media developed and the world has not been the same since. People learn new languages easier and many books have been translated into different languages, so people around the world can become more educated. The children are now well equipped in accumulating information at a much faster rate than their parents and even all the schools are focusing on producing 'informatically sound' students.

But, being information- savvy and up-to-date does not necessarily mean that one is equally knowledgeable or wise. To understand the co-relation and the difference in the 3 terms, let us look at their definitions:
Information (जानकारी) is mainly referred to the data / facts gathered or learned about something or someone. Merely knowing something is not known as knowledge- even though the root of both the words are same, their meanings are vastly different. While on the other hand, Knowledge (ज्ञान) refers to the application of the information with proper reasoning and understanding beyond the obvious.

Being information- savvy and up-to-date does not necessarily mean that one is equally knowledgeable or wise.

It is said that "if you burn all the books of the world, the heat will be more than the light", i.e., the 'heat' or the ego of acquiring information is more than the actual 'light' of knowledge. Thus, if we intake a lot of information and if most of it is not of our use, like: negativities, rumors etc, the information load on the mind is so much that it is causes heaviness, stress levels to increase, perception of lack of time, muddled thinking and impaired judgment. If we try to find the essence of this load of information, it will give us knowledge. Moreover, knowledge is compared to that weapon (pen is mightier than a sword) through which we overcome difficulties. If increase of information (which is in leaps and bounds) were translated into knowledge, the difficulties would have been solved easily. But we see that the difficulties are increasing day by day, indicating that there remains a wide gap between information and knowledge, which might also increase in the coming times, if or focus is not shifted.

Ethical Wisdom also involves looking into the ethical domain from all the 3 aspects of time .

Thus, knowledge is lightness, and just superficial information which is devoid of real understanding or knowledge may cause burden. Further, using this knowledge for the benefit of self and others brings wisdom. Wisdom (बुद्धिमत्ता) can be understood as the experience- based power gained after reasoning and applying knowledge, which further develops discretion power to differentiate between right and wrong, foresightedness, better decision- making and so on… It would not be wrong to mention that in the present times, wisdom is lost in knowledge and knowledge is lost in information.

Furthermore, information can be easily forgotten and thus to retain it needs extra attention and efforts. While if the information is logically understood and applied, it becomes the asset of knowledge and is easy to replicate later. It can be understood as the churning of cream: Just as churning of cream gives rich butter which may be less in quantity but high on value, while the by- product is the buttermilk which even though in large quantity, lacks richness; churning and understanding of information gives useful and rich knowledge. Wisdom is the strength developed when this butter is consumed, i.e. the knowledge is applied to test results and practical experience is gained.

Also, if we eat a lot and if most of it is not of our use, ie junk food, then we may have food poisoning. But if we chew and digest it well and gain energy then it will not cause food poisoning. Moreover, simply gaining energy and storing it, is not the purpose of eating,

With spiritual information, our purpose of life changes from search of these qualities to expression of these qualities.

When we have the right information about ourselves, we are able to experience the right feelings and understand the events in the right perspective.

unless we utilize that energy and convert it into power, or else we will become overweight and bloat. So finally, knowledge accumulated but not brought into action may be a sin. For instance, in the epic Mahabharata, the character of Bhishma is remembered as an example of the most noble sacrifice and devotion. As such, he represents the yogic virtue of brahmacharya. Accumulation of merit due to his bramhacharya made him the strongest warrior of the era. He was a true and invincible warrior as well as a disciplined ascetic - a rare combination. However, his inability to stand for truth and use his accumulated wealth of knowledge in the testing time of dire need when it was required to transform knowledge into wisdom by bringing it into action, lead to his doom.

Based on the above definitions, it can be fairly stated that- although being the 1st step to wisdom, information cannot be considered alone to be the criteria of intelligence or success.

If we extend this concept to ethics, we will be able to find out where we, as a system, are lagging behind in creating an ethical family base, or workplace, or society. Ethical information is widely available to all since childhood, in the form of value / moral education classes, books, articles, speeches etc. But all that information when not understood and applied, remains bookish and hypothetical while the common unethical practices continue to prevail. Furthermore, when we start contemplating on ethical information, applying that ethical information in practice, gain confidence in those ethical practices, understand the challenges that one might face in practicing them, and find out the solutions to those challenges, it can be called Ethical Wisdom. Such an ethical wisdom is the need of the hour. It will not just benefit its practitioner in day-to-day lives, but also becomes a personality trait which is carried along and influences others too. Ethical Wisdom also involves looking into the ethical domain from all the 3 aspects of time . For instance, we teach children that honesty is the best policy and one should never tell a lie. But if the phone rings up and there is someone on the call we want to avoid, we tell the children to give an excuse that we are not at home. So, what the children heard as a teaching by us and what they experienced from our action, are completely different. Growing up in such a dual environment will later shape their minds and make them believe that all the ethics and morals are good to be read in books but not feasible in a practical world- the reason being, they only heard stories about the morals and ethics but seldom saw them being practiced around them. This might have been a good demonstration of information about honesty by the parents, but definitely not a wise action. Thus, to be truly wise is to look beyond the present and practice knowledge.

spiritual information paves way to ethical information and practicing spirituality is equivalent to become ethically wise.

Spirituality offers us all the 3 –

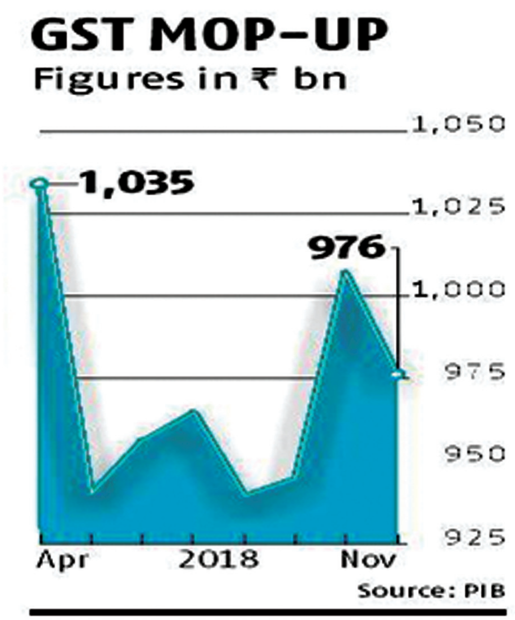
- **Information-** It is offered by spirituality in the form of 'who are we?', 'whom do we belong to?', 'what is our purpose of life?', 'where have we come from?'… Spirituality opens our eyes to the ocean of information about ourselves which helps us understand ourselves and others better. It tells us about the resources we have within us with the true understanding about ourselves- that we are not the corporeal body, but an incorporeal energy of peace, love, happiness, purity… With spiritual information, our purpose of life changes from search of these qualities to expression of these qualities. And with this change, our whole outlook towards the world changes. We don't expect the organization, the government, the system, the society or the family- neighbors etc to change and don't hold them responsible for what is not right or for what is unethical around us. We appreciate the fact that a change at all these levels is waiting for me to initiate it.

- **Knowledge-** It is the experience and application of this spiritual information through meditation. If the information we have is not correct, then how can we gain true knowledge? When we have the right information about ourselves, we are able to experience the right feelings and understand the events in the right perspective. On the other hand, incorrect, insufficient and limited information about ourselves leads us to a wrong experience, developing a wrong belief system that ethics don't or cannot work.

- **Wisdom-** Once we have the right understanding and the right knowledge, we have set ourselves on the right path. Keeping to this right track of experience further enhances our experience of the right knowledge. Moreover, spirituality is stable with respect to time. That is, it doesn't change with respect to time. So, the right experience will always remain right in all the 3 aspects of time. This results in gaining insights related to the right karma and what should I be doing now after having this experience- thus, making us an embodiment of this information and knowledge. Thus, spiritual information paves way to ethical information and practicing spirituality is equivalent to become ethically wise.

GST NEWS

1. **November GST collection drops to Rs 976 billion after breaching Rs 1-trillion mark in October**
   - Goods and services tax (GST) collection stood at Rs 976 billion in November, falling Rs 24 billion short of the government's average monthly target of Rs 1 trillion.
   - However, to mobilise Rs 12.3 trillion to reach the annual target, the government needed an average of Rs 1.107 trillion in each month from November to March. Taking this into account, the collection shortfall in November was around Rs 130 billion. If the trend continues, shortfall estimates by finance ministry officials as well as independent experts to the tune of Rs 500 billion could turn out to be true.



2. **Rs 330 billion in IGST pool apportioned between Centre and states in November**
   - As much as Rs 330 billion lying in the integrated goods and services tax (IGST) pool has been apportioned between the centre and states in November.
   - This is the sixth time that IGST funds have been divided between the centre and states.
   - As much as Rs 320 billion was settled in October, Rs 290 billion was settled in September, Rs 120 billion in August, Rs 500 billion in June and Rs 350 billion in February this year.
   - When some substantial amount accrues to IGST pool, it is apportioned between the centre and states so that it does not lie idle with the centre.

3. **Directorate General of Audit to scrutinise Service firms' accounting software**
   - In order to prevent incorrect allocation of Goods and Services Tax revenue among states, the Directorate General of Audit has been asked to scrutinize the accounting software of large service providers like banks and telecom companies, an official said.
   - The issue concerning allocation of revenue in case of inter-state supply of services was raised by some states during high-level meetings between the central and state tax officers to analyse reasons for GST revenue shortfall, the official added.
   - Some states have expressed apprehension that service providers might not be depositing the taxes collected from customers to the state exchequer where they are rightfully due. Instead, they are depositing in some other states where they are not due as per the GST rules and regulations of Place of Supply.

4. **Small Businesses' Grievances on GST to be monitored daily**
   - The Central Board of Indirect Taxes and Customs (CBIC) will daily monitor the grievances of the Ministry of Micro, Small and Medium Enterprises relating to Goods and Service Tax as a part of its efforts to resolve issues being faced by small businesses in the tax regime.
   - The move comes at a time when the government initiated a major support and outreach programme for MSMEs to ensure growth and expansion of the sector.
   - The GST help desks have already been set up in 80 districts where a 100-day support and outreach programme for the MSMEs have been launched by the government on November 2.

5. **CBIC to focus on Behavioural Patterns of Taxpayers to improve GST compliance**
   - Soon, GST officers will study the behavioural pattern of certain taxpayers to nudge them to comply with tax laws, in a departure from the current practice of focusing only on deterrent action to check evasion.
   - The Central Board of Indirect Taxes and Customs has set up a "Nudge Team" to formulate a strategy on studying behavioural patterns of taxpayers and use segmented approach to encourage them to pay taxes, an official said.
   - The plan is based on "behavioural interventions" or "non-deterrence approach" adopted by countries like the U.K., Australia and Mexico to frame policies and increase tax collections.

6. **After GST, pharma sector grew 6% to Rs 1.31 trn till May-end: Mandavaiya**
   - After the implementation of GST, the pharmaceutical sector grew 6 per cent to Rs 1.31 trillion on a year-on-year basis till May 31, Minister of State for Chemicals and Fertilisers Mansukh Mandaviya said.
   - "Before GST, annual turnover of the pharma sector (as on May 31, 2017) was Rs 1.14 trillion," Mandaviya said in a statement.
   - Elaborating on the reasons for the growth, he said that under the 'One Nation, One Tax' regime, the removal of the complexity of multiple taxes has reduced their cascading effect on the final product.
   - "GST is expected to decrease the manufacturing cost in view of merging of different taxes levied earlier and promote ease of doing business. It will create one single market for all stakeholders with equal chance towards development," Mandaviya said.
   - Pharmaceutical companies can now consolidate their warehouses at strategic locations, effecting a reduction in the cost of distribution. As a result, it will

benefit the warehouse strategy and improve supply chain efficiency in the sector, he added.
- There has also been a significant jump in the number of drug approvals after GST, Mandaviya said.

7. **Goods can be impounded for lapses under GST, says Kerala High Court**
   - Authorities impounded a car being sent by a dealer from Puducherry to Thiruvananthapuram for personal use of his customer without an e-way bill. It has to be generated if goods worth more than Rs 50,000 are transported, but is not applicable on goods for personal consumption. The matter went to the Kerala high court.
   - The court said the vehicle could be impounded for lapses under the GST laws. But, the litigant is free to press for his arguments that it was for personal use through adjudication. However, he will have to prove the car being transported stand exempted from the rigours of the GST regime.
   - If the person wants, the adjudication can happen at the commissioner appeals level now. The court did not comment on whether such a vehicle was used for personal and household effects and accordingly, the e-way bill would not apply. It held that these questions would be decided by adjudicating authorities.
   - The court made observations on larger and harsh outcomes originating from minor lapses. It stated the law, at times, can be harsh, and the courts, usually, needs to respect the legislative wisdom.
   - Experts say the ruling has lessons for those buying vehicle in one state and getting it transported to the other.
   - "As a thumb rule, carrying e-way bill for movement of goods with value more than Rs 50,000 is mandatory. One should be aware of the exemptions available to this rule, in case no e-way bill is being carried along with the goods," said Harpreet Singh, partner, KPMG.

8. **CAG conducting Performance Audit of GST**
   - The Comptroller and Auditor General (CAG) of India is conducting a performance audit of the Goods and Services Tax and is likely to finalise its report soon.
   - The performance audit report on implementation of GST could be tabled in Parliament as early as in the forthcoming winter session beginning December 11, according to sources.
   - The audit aspect would include registration, refund, input tax credit, transition credit mechanism, ease of payment of taxes and the impact on the economic activity, the sources told PTI.
   - The performance audit will not take into account revenue collections. Its focus would primarily be on the implementation aspect of GST, which has subsumed 17 local taxes.
   - Tagged as the biggest tax reform since Independence, GST has faced some teething problems in the initial months of its implementation with the GST Network unable to take load of last minute monthly return filing rush.
   - Also, there were hiccups with respect to refunds to be claimed by exporters as well as excessive transitional credit claims.

9. **Revenue Department plans linking E-Way Bill with FASTag, Logistics Data Bank to check GST Evasion**
   - The revenue department is planning to integrate e-way bill with The National Highways Authority of India's FASTag mechanism and Delhi-Mumbai Industrial Corridor's Logistics Data Bank services, to facilitate faster movement of goods and check the Goods and Service Tax evasion.
   - The proposal, according to officials, will improve operational efficiencies across the country's logistic landscape.
   - Currently, lack of harmonisation under the "track and trace" mechanism in terms of sharing information among different agencies is affecting the ease of doing business in the country. Besides, it is also impacting the logistic costs of the companies.
   - The proposal, being worked out by the revenue department, will also help in preventing GST evasion by unscrupulous traders who take advantage of the loopholes in the supply chain.
   - Touted as an anti-evasion measure, e-way bill system was rolled out on April 1, for moving goods worth over Rs 50,000 from one state to another. The same for intra or within the state movement was rolled out in a phased manner from April 15.
   - Transporters of goods worth over Rs 50,000 would be required to present e-way bill during transit to a GST inspector, if asked.
   - "The integration of the e-way bill system with FASTag and Logistics Data Bank is expected to help boost tax collections by clamping down on trade that currently happens on cash basis," the official said.
   - NHAI has put in place the FASTag system for collection of toll electronically on national highways. FASTag also offers non-stop movement of vehicles through toll plazas.
   - Integration of e-way bill with FASTag will help revenue authorities track the movement of vehicles and ensure that they are travelling to the same destination as the transporter or the trader had specified while generating the e-way bill.
   - It will also help the suppliers locate goods through the e-way bill system. Transporters, too, would be able to track their vehicles through SMS alerts that would be generated at each toll plaza.
   - Similarly, Delhi-Mumbai Industrial Corridor's container tracking services, also called LDB programme, would be integrated with the e-way bill to improve the logistics ecosystem.
   - The official said that the implementation of the proposal would require inter-ministerial coordination as integration would have several operational and technical challenges.
   - The new indirect tax regime GST was rolled out on July 1, 2017. With GST systems now stabilising, the focus of the Central Board of Indirect Taxes and Customs is now on increasing compliance and checking evasion.
   - The government has also set up the Directorate General of GST Intelligence to investigate cases of tax evasion and conduct search and seizure operations under the GST Act, and erstwhile the Excise and Service Tax Act.

CORPORATE GOVERNANCE CORNER

Developments – November, 2018

Ireland: Corporate Governance Requirements for Investment Firms and Market Operators

The Central Bank of Ireland has published Corporate Governance Requirements for Investment Firms and Market Operators 2018 (the Requirements). The Central Bank is committed to strengthening corporate governance standards and practices across the financial services industry. The Requirements provide clarity to industry and promote high standards of corporate governance within firms. These Requirements are intended to apply to firms that are designated as High, Medium High or Medium Low Impact under the Central Bank's Probability Risk Impact System (PRISM). Low Impact firms are encouraged to adopt the Requirements as best practice. The Requirements are intended to supplement and support the MiFID (Markets in Financial Instruments Directive) regime, and take effect from 1 July 2019. A copy of the Regulations is available at:

https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp120/corporate-governance-requirements-for-investment-firms-and-market-operators-2018.pdf?sfvrsn=0

Singapore: Variable Capital Companies Act 2018 published

The Variable Capital Companies Act 2018 was passed by Parliament of Singapore on 1 October 2018 and received the President's assent on 31 October, 2018. The Act provides a legislative framework for the incorporation and operation of a corporate structure tailored specifically for investment funds. The introduction of this corporate structure, known as the variable capital company or "VCC", will aid in strengthening the Singapore's fund management industry. The VCC structure will complement and expand the existing group of fund structures available in Singapore, such as the company, limited partnership and unit trust structures. Taken together, this will provide a comprehensive range of investment fund vehicles and structures to support investors' needs. The Act has been published in the Government Gazette. A copy of the Act is also available at:

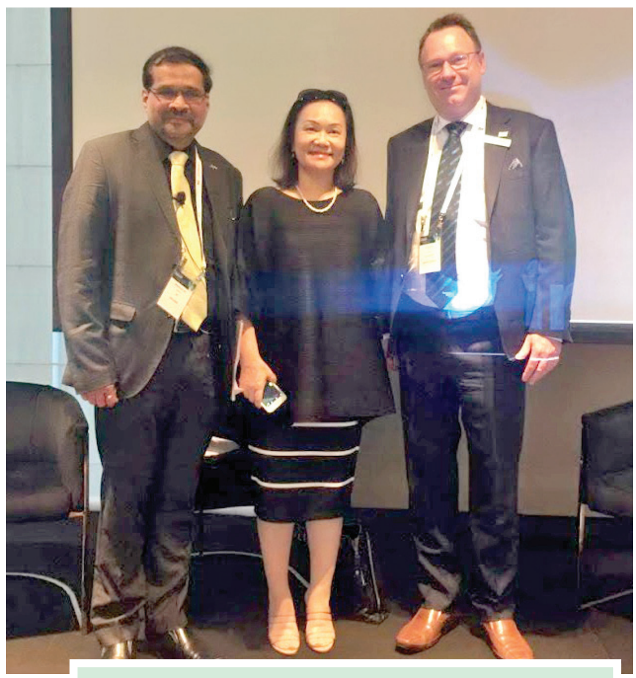
https://sso.agc.gov.sg/Acts-Supp/44-2018/Published/20181112?DocDate=20181112&ViewType=Within

AN OVERVIEW OF THE AUSTRALIA VISIT OF ICSI DELEGATION LED BY CS MAKARAND LELE, PRESIDENT ICSI

Mr. V K Jhalani, Council Member, ICSI; CS Makarand Lele, President, ICSI; CS Ashish C Doshi, Council Member, ICSI at National Conference of Governance Institute of Australia at Melbourne.

Meeting of ICSI delegation with H.E. B. Vanlalvawna, Consul General of India, Sydney.

CS Makarand Lele, President, ICSI addressing the delegates on topic “The Expansion of the Business Universe and Consequent Challenges of governance” at Conference of Governance Institute of Australia at Melbourne.



Group Photo with other Speakers at National Conference of Governance Institute of Australia.

ICSI International Newsletter launched at the hands of Mr. GN Bajpayi (Former Chairman, SEBI)

Singapore Visit of ICSI delegation

CS S K Agrawala, Council Member, ICSI addressing the participants on "Corporate Ethics and Legal Compliance" at IOD's Annual Singapore Global Convention on theme the Board's Ethics and Emerging Risk Strategies in Turbulent Times at Singapore.

Group photo with other Speakers at IOD's Annual Singapore Global Convention

Rise in Ease of Doing Business

MAKARAND LELE
PRESIDENT, ICSI

The caste system of India had long before the present scenarios created a separate tribe of traders and businessmen, a tribe which earned profits from the purchase, manufacture and sale of goods. The advent of time, the transformation in governmental structures and further the shrinkage of the entire world into a global village have all played a monumental role in evolving the business culture and enterprises as they stand today. As far as the Indian scenario is concerned, the post independence era has been one historic journey. From a draconian licensing system and regulatory mechanism to the New Economic Policy of 1991 to the altering approach towards providing maximum comfort to stakeholders, the governments over the years with their varied views and approaches have paved a unique business culture in the economy, one which is quite different from not only its South-Asian counterparts but the rest of the world as well. And yet, India is emerging as one of the most sought after investment and stable business destinations.

The recent report of the World Bank over the Doing Business Index and the 23 point jump of the Indian economy therein speak voluminously of the enlarged vision and focussed approach of the government and its various Ministries and Departments. From 142nd rank in 2014 to 77 in 2018, the reforms over the past four years have metamorphosed the economic and business scenario in a way that there is a legal structure in place, the regulatory mechanism is functioning and in order, and yet none of them is suffocating.

While the doing business index covers the initiation of business to the resolution of insolvency and everything in between, the idiom that 'Well begun is half done' is taken quite seriously. Single forms for company incorporation, Pemanent Account Number (PAN), Tax Deduction & Collection Account Number (TAN) and Director Identification Number (DIN) to online single window for obtaining construction permits come across as some of the biggest contributors towards reducing the time taken, the cost involved and hence the riding up in the global ladder of achievement. Talk of international business and what matters or rather holds utmost significance is the value of time, timely deliveries and minimal procedural and transit legalities. Reduced inspections, e-filing of documents, electronic sealing of containers have all played their part in simplifying international trades and strengthened bonds basing them on trust and self-governance in the business and corporate arena.

That coupled with introduction of laws like Goods and Services Tax (GST), continuous amendments in the Company Law, pan-India coverage of reforms, and a hands-on approach to understand the World Bank ideologies and ways and areas of improvement have each played a fetching part in remodelling the entire business culture and ethnicity.

The words of Alvin Toffler, an American writer, futurist, and businessman, "The great growling engine of change – Technology", find apt relevance and absolute relativity if the 'dramatic' change in the Indian ranking is to be studied, observed and pondered over. The elimination of personal interface, online single windows, online registrations, mandatory e-payments, digital filings, have all made the delivery of public service at the touch of a few buttons and clicks.

Though the process of easing of doing business seems like a completely government and regulator-oriented activity, the hidden roles of professional bodies in providing realistic feedback, the practical issues and difficulties facing the corporates, the possible corrective measures and their appropriate implementation, cannot be left aside. If the role of the Institute of Company Secretaries of India (ICSI) is to be mentioned, not only is ICSI, the nation's GST partner, but is a constant support in national reformative endeavours on a variety of fronts. The ICSI Institute of Insolvency Professionals (ICSI IIP) has been acting as the perfect ground for developing and training Insolvency Professionals covering an area which has witnessed a 28 point improvement in the last two years on the index, i.e. Resolving Insolvency. Even further, the ICSI has been continuously striving to analyse and address the issues faced by corporates in incorporation as well as post-incorporation related activities, etc.

It is understandable that any regulatory authority while putting across a legislative structure requires the comfort of the fact that such laws, rules and regulations are adhered to and the intended purpose of such laws is accomplished. And it is for this impetus that the role and responsibility of professionals like Company Secretaries pursuing the role of Governance Professionals is heightened. Understanding the true intent of the lawmakers and policy framers, Company Secretaries along with other professionals not only have been playing but shall continue to pursue a noteworthy role in strengthening the nation and its various pillars.

Irrefutably, with a target of 50, as preset by our Hon'ble Prime Minister, Shri Narendra Modi, the road yet to be travelled further is equally long and demanding. What matters and is required for this 27 point ascend is a combined effort from not just the law making bodies or the professional bodies alone but the corporates and businesses as well to play their part and adhere to the legal structure in true letter and spirit thus strengthening the governance scenario and paving way for a simplified legal gastronomy.

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

icsa
The Institute of Chartered Secretaries & Administrators

Guidance on Memorandum of Understanding between ICSI and ICSA

The Institute of Company Secretaries of India (ICSI) and the Institute of Chartered Secretaries and Administrators (ICSA) have signed the supplement on August 31, 2018 to the existing Memorandum of Understanding (MOU) for inclusion of subjects as per New Syllabus of ICSI and ICSA in existing MoU and extension of MoU with nine divisions of ICSA namely Australia, New Zealand, Southern Africa, Zimbabwe, UKRIAT, Canada, Hong Kong/China, Malaysia and Singapore.

Members of ICSI can now study with the ICSA division of their choice, subject to residency requirements in some countries. You can access more information on the arrangements under this MOU at https://www.icsi.edu/member/icsa/

Eligibility criteria for ICSI Member:

You must have been a member of ICSI (Associate or Fellow), in good standing for a minimum of two years.

Registration Procedures:

To register as a student of ICSA, following documents are required to submit with ICSI:

1) Duly completed Membership Verification Form
2) Demand Draft of Rs. 1500/- in favour of the Institute of Company Secretaries of India payable at New Delhi.
3) Self certified copy of your ICSI Membership Certificate

Send the above mentioned documents to ICSI at CS Sonia Baijal, Director, ICSI House, C-36, Sector 62, Noida-201 301 Uttar Pradesh.

After the receipt of form at ICSI this will be certified by the ICSI Endorsing Officer and then ICSI will forward form to respective division of ICSA.

After receipt of form, Student Support Section of ICSA will contact ICSI members by email for the payment of applicable course fees and after the payment of fee he will be registered as student with respective division of ICSA.

Role of ICSI

Members may please note that ICSI would be playing its role as Endorsing authority and forwarding applications to ICSA. Thereafter the members would receive the communication directly from respective division of ICSA with regard to their registration and other matters.

Followings are the FAQs on the same:

1. **Who is eligible to be covered by the MOU between the ICSI and ICSA?**
   All persons that are Associates or Fellows and member in good standing for a minimum of two years of either Institute are eligible to be covered by this MOU.
2. **How do I prove that I am a member of respective Institute?**
   You will need to contact endorsing officer of your respective Institute for endorsement of Member Verification form. The member verification form is available at https://www.icsi.edu/member/icsa/ . After endorsement, it will be sent to other Institute.
3. **Will I need to have post membership experience in order to become a member of the other Institute?**
   No, membership of your Institute assumes that you have the minimum number of years of experience. You will only need to study the additional subjects to qualify for membership of the other Institute.
4. **Will I become an Associate or a Fellow of the other Institute once I have met all the requirements?**
   Yes, if you are a Fellow of your Institute you will become a Fellow of the other Institute and if you are an Associate you will become an Associate in the other Institute.
5. **Will I have to pay a membership fee to the other Institute?**
   Yes, you will be expected to pay the same fee as any other member. Please check the websites of the ICSI or relevant division of the ICSA for membership fees.
6. **Can I transfer my membership between ICSA divisions?**
   Yes. All members of the ICSA are members of the same Institute, regardless of which division they are registered in. If you wish to transfer your membership please contact the ICSA division where you are a member and they will arrange for your details to be transferred.
7. **How much will it cost to enrol as a student?**
   It will vary depending on whether you study with the ICSI and with the ICSA. Please see the website of the ICSI and the respective division of the ICSA, where you want to enroll as student.
8. **Will I have to pay extra for study materials or tutorials?**
   The arrangements for student support services such as study materials, text books, tutorials etc. will vary depending on respective institute. Please contact or check the website of respective institute.
9. **What are the cut-off dates for registration as a student of ICSI/ICSA ?**
   Cut-off dates vary depending on whether you study with the ICSI and with the particular division of ICSA. Please see the website of the ICSI and respective division of the ICSA.
10. **When will the examinations take place?**
    Examination dates vary depending on whether you study with the ICSI and with the particular division of ICSA. Please see the website of the ICSI and the respective division of the ICSA.
11. **If I am not a resident when I am studying and therefore studying by distance education, can I sit my examination in the country where I live?**
    Yes, you can take your examination where you live. You will have to arrange for an invigilator to supervise your examination. Please contact the ICSI or respective ICSA division.
12. **Do I have to be resident in the country where I want to study?**
    No, You need not be a resident if you wish to study the ICSA's course from the UK, Australia, New Zealand, Canada and Zimbabwe. However, you must be a resident if you wish to study the ICSA's papers in Hong Kong, Malaysia, South Africa and Singapore. You don't have to be a resident if you wish to study with ICSI, India.

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CSIA Corporate Secretaries International Association

CORPORATE SECRETARY'S TOOL KIT
TRAINING OF TRAINERS (TOT) PROGRAMME

Day(s) and Date(s)	Venue	Timings
Monday to Wednesday, 14-16 January, 2019	*The Claridges, 12 Dr. APJ Abdul Kalam Road, New Delhi - 110011*	*11:00 AM to 7:00 PM (14 Jan.) & 9:00 AM to 6:00 PM (15 & 16 Jan.)*

- **10 PCH for ICSI Members**
- **Mandatory attendance for all sessions**

Limited Seats (first cum first serve basis)

Award of Certificate on Successful completion

Key Benefits

- **Become the International Lead Trainer**
- **Learning from experienced International faculties**
- **Get trained and let train to others**
- **Enrich Expansive duties of Corporate Secretaries and enhancing of skills**

Broad Coverage

• Corporate Secretary's role in the Corporate Governance Framework	• Identify skills needed to manage relationships within a governance system
• Experiential Learning Cycle	• The Value of an In-House Corporate Secretary
• Governance, Adult Learning, and the Corporate Secretary	

Participation Fees*

Residential		***Non-Residential***
Rs. 17,700/- inclusive of 18% GST (twin sharing basis)	*Rs. 22,420 /- inclusive of 18% GST (Single Occupancy basis)*	*Rs. 14,160/- inclusive of 18% GST*

**(Above includes all meals i.e. breakfast, lunch, dinner for2 nights and 3 days, programme kit etc.)*

For more details you may contact Directorate of Professional Development, Perspective Planning & Studies at mahesh.airan@icsi.edu/0120- 4082142/38.

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग III—खण्ड 4
PART III—Section 4
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 499] नई दिल्ली, सोमवार, दिसम्बर 17, 2018/अग्रहायण 26, 1940
No. 499] NEW DELHI, MONDAY, DECEMBER 17, 2018/AGRAHAYANA 26, 1940

भारतीय कम्पनी सचिव संस्थान

अधिसूचना

नई दिल्ली, 17 दिसम्बर, 2018

पश्चिमी भारत क्षेत्रीय परिषद, 2018 के चुनाव

2018 संख्या 2.—रिट याचिका सं 13109 के 2018 न्यायिक माननीय उच्च न्यायालय, बॉम्बे के 5 दिसम्बर, 2018 के आदेशानुसार और एस.एल.पी. संख्या 32894 में भारत के माननीय सर्वोच्च न्यायालय के 13 दिसम्बर, 2018 के आदेशानुसार, 14 और 15 दिसम्बर, 2018 को निर्धारित भारतीय कम्पनी सचिव संस्थान (आई.सी.एस.आई.) के पश्चिमी भारत क्षेत्रीय परिषद् (डब्ल्यु. आई.आर.सी) के क्षेत्रीय परिषद् के चुनाव को 13 दिसम्बर, 2018 को आई.सी.एस.आई. के नोटिस द्वारा स्थगित कर दिया गया था।

2. दिनाँक 10 सितम्बर 2018 की अधिसूचना संख्या 1 के 2018 के आगे और कम्पनी सेक्रेटरीज (परिषद् के चुनाव) नियमावली, 2006 ('नियमावली') के नियम 3 एवं 4 तथा सम्बन्धित कम्पनी सेक्रेटरीज विनियामवली, 1982 (विनियमावली) के संगत प्रावधानों तथा अन्य लागू नियमों के साथ के अनुसरण में यह अधिसूचित है कि पश्चिमी भारत क्षेत्रीय परिषद् (डब्ल्यु.आई.आर.सी) के क्षेत्रीय परिषद् के चुनाव संबंधी विभिन्न कार्यकलापों का आयोजन निम्नलिखित संशोधित चुनाव तिथियों के अनुसार किया जाएगा :

क्रम.सं.	कार्यकलाप	समय, दिवस और दिनांक	स्थान / आयोजन स्थल
1	संशोधित चुनाव तिथियों के लिए अधिसूचना जारी करना	सोमवार, 17 दिसम्बर, 2018	भारत का राजपत्र
2	मतदान	मुम्बई : बुधवार और गुरूवार, 16 और 17 जनवरी, 2019 को प्रातः 8:00 बजे से सायं 8:00 बजे तक। पश्चिमी भारत क्षेत्रीय परिषद् के तहत अन्य स्थान : बुधवार, 16 जनवरी, 2019 को प्रातः 8:00 बजे से सायं 8:00 बजे तक	नियत चुनाव मतदान बूथों पर
3	मतपत्र डाक द्वारा वापिस प्राप्त करना	बुधवार, 16 जनवरी, 2019 को सायं 4:00 बजे तक	पोस्ट बॉक्स
4	मतगणना का प्रारंभ	शुक्रवार, 18 जनवरी 2019 को प्रातः 7.00 बजे	आईसीएसआई–एनआईआरसी बिल्डिंग, 4, प्रसाद नगर

			इंस्टीट्यूशनल एरिया, नई दिल्ली–110 005
5	परिणामों की घोषणा	मतगणना समाप्त होने के बाद	भारत का राजपत्र

3 विनियामवली के विनियम 114 के उप–विनियम (1) के साथ पठित विनियम 115 के उप–विनियम (1) के अनुसरण में, पश्चिमी भारत क्षेत्रीय परिषद् के लिए चुने जाने वाले व्यक्तियों की संख्या और विभिन्न राज्यों एवं संघ शासित क्षेत्रों के लिए आरक्षित सीटें इस प्रकार होंगी :

क्र.सं.	क्षेत्रीय परिषद	चुने जाने वाले व्यक्तियों की संख्या	आरक्षण
1	पश्चिमी भारत क्षेत्रीय परिषद् – छत्तीसगढ़, गुजरात, मध्य प्रदेश,, महाराष्ट्र एवं गोवा राज्य और संघ शासित क्षेत्र दादर एवं नागर हवेली और दमन एवं द्वीव शामिल हैं	11 (ग्यारह)	छत्तीसगढ़, गुजरात, मध्य प्रदेश एवं महाराष्ट्र राज्यों के लिए एक–एक सीट आरक्षित

4. नियमावली की अनुसूची 2 के साथ पठित नियम 5, 21 एवं 28 के अनुसरण में, मतदान केन्द्रों को प्रत्येक मतदाता के लिए नियत कर दिया है। मतदाता नियत मतदान केन्द्र पर अपना मत डाल सकते हैं। मतदान केन्द्रों की एक सूची संस्थान की वेबसाइट पर प्रकाशित की गई है।

5. नियम 15 के अनुसरण, संस्थान की वेबसाईट पर उम्मीदवारों की संशोधित सूची प्रकाशित की गई है।

6. आचार संहिता को परिषद् द्वारा पारति और निर्वाचन अधिकारी द्वारा समय समय पर जारी किए गए निर्देश/परिपत्र इस चुनाव में लागू रहेंगे।

7. 10 सितम्बर, 2018 की अधिसूचना संख्या 1 के 2018 के सभी अन्य प्रासंगिक खण्ड और कम्पनी सेक्रेटरीज अधिनियम, 1980, कम्पनी सेक्रेटरीज (परिषद् के चुनाव) नियमावली, 2006 और कम्पनी सेक्रेटरीज विनियामवली, 1982 तथा अन्य लागू विधियों के सम्बन्धित प्रावधान, सब के सब इस चुनाव पर लागू होंगें।

अशोक कुमार दीक्षित, निर्वाचन अधिकारी और आईसीएसआई के स्थानापन्न सक्रेटरी

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

NOTIFICATION

New Delhi, the 17th December, 2018

Election to the Western India Regional Council, 2018

No. 2 of 2018.—Pursuant to the Order dated 5th December, 2018 of the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 13109 of 2018 and the Order dated 13th December, 2018 of the Hon'ble Supreme Court of India in SLP No. 32894 of 2018, the election to the Western India Regional Council (WIRC) of the Institute of Company Secretaries of India (ICSI) scheduled on 14th and15th December, 2018 was postponed *vide* ICSI notice dated 13th December, 2018.

2. Further to the Notification No. 1of 2018 dated 10th September, 2018, and, in exercise of powers under Rules 3 and 4 and other applicable Rules of the Company Secretaries (Election to the Council) Rules, 2006 (hereinafter 'the Rules') and the relevant provisions of the Company Secretaries Regulations, 1982 (hereinafter 'the Regulations'), the revised dates for election to the Western India Regional Council (WIRC) of ICSI are hereby notified as under:

Sl.No.	Activity	Time, Day and Date	Place / Venue
1	Issue of notification for revised election dates	Monday , the 17th December, 2018	Gazette of India
2	Polling	**Mumbai:** Wednesday and Thursday, the 16thand 17thJanuary, 2019 from 8.00 AM to 8.00 PM	Assigned election Polling Booths

		Other Places under Western India Regional Constituency: Wednesday, the 16th January, 2019 from 8.00 AM to 8.00 PM	
3	Last date of receipt of postal ballot papers	Wednesday, the 16th January, 2019 upto 4.00 PM	Post Box
4	Commencement of counting of votes	Friday, the 18th January, 2019 at 7.00 AM	ICSI-NIRC Building 4, Prasad Nagar Institutional Area, New Delhi-110 005
5	Declaration of results	On conclusion of counting	Gazette of India

3. In pursuance of sub-regulation (1) of regulation 115 read with sub-regulation (1) of regulation 114 of the Regulations, the number of persons to be elected to Western India Regional Council and reservation of seats for various States and Union Territories therein shall be as under:

S. No.	Regional Council	No. of Persons to be elected	Reservation
1	Western India Regional Council (WIRC) - Comprising the States of Chattisgarh, Gujarat, Madhya Pradesh, Maharashtra and Goa and the Union Territories of Dadra and Nagar Haveli and Daman & Diu.	11 (Eleven)	One seat each reserved for the States of Chhattisgarh, Gujarat, Madhya Pradesh and Maharashtra.

4. In pursuance of Rules 5, 21 and 28 read with Schedule 2 of the Rules, Polling Booths have been assigned to each voter for casting the vote. A list of Polling Booths has been published on the website of the Institute.

5. In pursuance of Rule 15, revised list of candidates has been published on website of the Institute.

6. Code of conduct approved by the Council & directives/circulars issued by Returning Officer from time to time shall continue to apply to this election.

7. All other relevant clauses of Notification No. 1 of 2018 dated 10th September, 2018 and all applicable provisions of the Company Secretaries Act, 1980, the Company Secretaries (Election to the Council) Rules, 2006 and the Company Secretaries Regulations, 1982, shall continue to apply to this election.

ASHOK KUMAR DIXIT, Returning Officer & Officiating Secy.


Unveiling value
through valuation
10%
60%
30%
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 18th 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	S. NO.	COVERAGE
1.	Macro Economics	2.	Finance
3.	Professional Ethics and Standards	4.	Financial Statement Analysis
5.	General laws and Judicial Pronouncements	6.	Overview of Valuation
7.	Valuation Approaches and Methodologies	8.	Valuation Application
9.	Laws and Regulations relevant to Financial Assets Valuation	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**

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

1. Meet eligibility requirements, qualification and experience prescribed under Rule 4 of the Companies (Registered Valuers and Valuation) Rules, 2017.
2. Seek enrolment as a valuer member of ICSI RVO.
3. Complete 50 hours educational course.
4. Register and pass computer based Valuation Examination conducted by IBBI.
5. Within 3 years of passing the examination, submit Form A along with requisite fee in favour of Insolvency and Bankruptcy Board of India and supporting documents, to ICSI RVO.
6. ICSI RVO shall verify Form A & other requirements and submit the same along with its recommendation to IBBI.
7. On receipt of Form A along with recommendation of ICSI RVO, fee and other documents, the IBBI shall process the application for registration in accordance with the Rules.
8. After registration with IBBI, take up training with ICSI RVO.
9. On completion of the training, the ICSI RVO shall issue a Certificate of Practice to the registered valuer.
10. Valuation certificate can be issued only after obtaining Certificate of Practice.

IBBI EXAMINATION REQUIREMENTS

a. The examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions by IBBI

b. The duration of the examination is 2 hours

c. A candidate is required to answer all questions

d. Wrong answer attracts a negative mark of 25% of the marks assigned for the question

e. A candidate needs to secure 60% of marks for passing

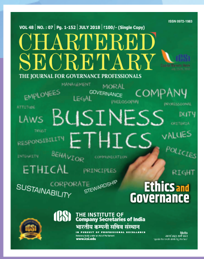
FEE FOR THE IBBI EXAMINATION: Rs. 1500/- for every enrolment.

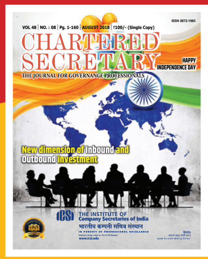
For further information contact:

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

CHARTERED SECRETARY

Advertisement Tariff





(With Effect from September 2018)

BACK COVER (COLOURED)		COVER II/III (COLOURED)	
Non – Appointment		Non – Appointment	
Per Insertion	₹1,00,000	Per Insertion	₹ 70,000
4 Insertions	₹ 3,60,000	4 Insertions	₹2,52,000
6 Insertions	₹ 5,28,000	6 Insertions	₹ 3,69,000
12 Insertions	₹ 10,20,000	12 Insertions	₹ 7,14,000

FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 50,000	₹ 15,000	Per Insertion	₹ 25,000	₹ 7,500
4 Insertions	₹ 1,80,000	₹ 54,000	4 Insertions	₹ 90,000	₹ 27,000
6 Insertions	₹ 2,64,000	₹ 79,200	6 Insertions	₹ 1,32,000	₹ 39,600
12 Insertions	₹ 5,10,000	₹ 1,53,000	12 Insertions	₹ 2,55,000	₹ 76,500

PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES	
Per Insertion	15,500	4,500	For 'Situation Wanted' ads	100
(Subject to availability of space)			For Others	200

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 1st 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 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor
CHARTERED SECRETARY

सत्यं वद। धर्मं चर।
"speak the truth abide by the law"

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Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
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