Diligent Board Evaluations

Diligent Board Evaluations is designed to meet mandatory board evaluation requirements under Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

Administrators can prepare a board assessment with multiple question types, evaluating the board at all required levels, generate custom reports and cross-link content.

To book a demo, please visit: diligent.com/ICSI

FIND OUT MORE

- Singapore 800 130 1595
- India +91 96869 02287
- Hong Kong +852 3008 5657

- info@diligent.com
MOVE TO DIGITAL BOARD AND COMMITTEE MEETINGS WITH EASE.

---

**Advertisement Tariff**

(With Effect from 1st April 2012)

<table>
<thead>
<tr>
<th>BACK COVER (COLOURED)</th>
<th>COVER II/III (COLOURED)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non – Appointment</strong></td>
<td><strong>Non – Appointment</strong></td>
</tr>
<tr>
<td>Per Insertion</td>
<td>Per Insertion</td>
</tr>
<tr>
<td>₹75,000</td>
<td>₹50,000</td>
</tr>
<tr>
<td>4 Insertions</td>
<td>4 Insertions</td>
</tr>
<tr>
<td>₹2,70,000</td>
<td>₹1,80,000</td>
</tr>
<tr>
<td>6 Insertions</td>
<td>6 Insertions</td>
</tr>
<tr>
<td>₹3,96,000</td>
<td>₹2,64,000</td>
</tr>
<tr>
<td>12 Insertions</td>
<td>12 Insertions</td>
</tr>
<tr>
<td>₹7,85,000</td>
<td>₹5,10,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FULL PAGE (COLOURED)</th>
<th>HALF PAGE (COLOURED)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non – Appointment</strong></td>
<td><strong>Non – Appointment</strong></td>
</tr>
<tr>
<td>Per Insertion</td>
<td>Per Insertion</td>
</tr>
<tr>
<td>₹40,000</td>
<td>₹20,000</td>
</tr>
<tr>
<td>4 Insertions</td>
<td>4 Insertions</td>
</tr>
<tr>
<td>₹1,44,000</td>
<td>₹72,000</td>
</tr>
<tr>
<td>6 Insertions</td>
<td>6 Insertions</td>
</tr>
<tr>
<td>₹1,11,000</td>
<td>₹51,000</td>
</tr>
<tr>
<td>12 Insertions</td>
<td>12 Insertions</td>
</tr>
<tr>
<td>₹4,08,000</td>
<td>₹2,04,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PANEL (QTR PAGE) (COLOURED)</th>
<th>EXTRA BOX NO. CHARGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Insertion</td>
<td>For ‘Situation Wanted’ ads</td>
</tr>
<tr>
<td>₹10,000</td>
<td>₹50</td>
</tr>
<tr>
<td>(Subject to availability of space)</td>
<td>For Others ₹100</td>
</tr>
</tbody>
</table>

**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.

---

"We find Dess Digital Meetings to be very easy to use and happily recommend it for others.

CS. S. Ramprasad, Senior Manager Legal & Internal Audit
TRIL INFOPARK LIMITED (A Tata Group Company)

Please contact:
Dess Digital Meetings
The Trusted Meetings Solution Used By The Leading Boards

📞 +91 97029 28562 📧 info@dess.net
From the President 10

Articles 21

Research Corner 77

Legal World 83

From the Government 91

News from the Institute 105

From the President

Articles

Research Corner

Legal World

From the Government

News from the Institute

Annual Subscription

‘Chartered Secretary’ is normally published in the first week of every month. Non-receipt of any issue should be notified within that month. Articles on subjects of interest to company secretaries are welcome. Views expressed by contributors are their own and the Institute does not accept any responsibility. The Institute is not in any way responsible for the result of any action taken on the basis of the advertisements published in the journal. All rights reserved. No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. The write ups of this issue are also available on the website of the Institute.

Edited, Printed & Published by

Dinesh Chandra Arora* for The Institute of Company Secretaries of India, ‘ICSI House’, 22, Institutional Area, Lodi Road, New Delhi- 110 003.
Phones : 4150444, 45341000, Grams : 'COMPSEC'
Fax : 91-11-24626727
E-Mail : info@icsi.edu
Website : http://www.icsi.edu

Mode of Citation: CSJ (2018)(02/--- (Page No.)
CHARTERED SECRETARY GREETS AND CONGRATULATES
CS MAKARAND LELE AND CS AHALADA RAO V ON THEIR ELECTION AS PRESIDENT
AND VICE PRESIDENT RESPECTIVELY OF THE INSTITUTE FOR THE YEAR 2018-19

CS Makarand Lele, President, ICSI

CS Makarand Lele, a Fellow Member of the Institute since 1992, has been elected as the President of the Institute of Company Secretaries of India for the year 2018-19 w. e. f. 19th January, 2018.

He has done his Commerce Graduation (B.Com.) from Garware College of Commerce Pune and Law Graduation (LL.B.) from ILS Law College Pune. CS Lele is a Practising Company Secretary since 1993 and has professional experience of 25 years.

Actively associated with The Institute of Company Secretaries of India (ICSI) since 1994, CS Lele was elected to the Central Council of the Institute for the term 2015-19 and became the Vice-President of the Institute for the year 2017-18. Prior to this, he was elected to the Western India Regional Council and was the Regional Council Chairman for the year 2011-12. He has also served on the Managing Committee of Pune Chapter and it was during his Chairmanship in the year 2003, that Pune Chapter was, first time in its history conferred with the exclusive ‘Best National Chapter’ Award by ICSI.

He was appointed as the first Chairman of ICSI Auditing Standards Board formed in the year 2016. He is a member of Corporate Legislation Core Committee of Mahratta Chamber of Commerce, Industry & Agriculture (MCCIA) and was invitee on the Business Law Syllabus Review Committee of University of Pune.

A renowned trainer and speaker on several segments in corporate laws, management & economic affairs, CS Lele is also a regular contributor to various professional magazines & publications as well.

CS Ahalada Rao V,, Vice President, The ICSI

CS Ahalada Rao V. is a Fellow Member of the Institute of Company Secretaries of India. A resident of Hyderabad, Telangana and a Science Graduate from Osmania University, Master of Law from Osmania University and Master in Financial Management from Pondicherry University, he was elected from Southern Region to the Council of ICSI.

CS Ahalada Rao V. has overall 20 years of corporate experience including representing before the Company Law Board and Consumer Forums. His profile boasts of his rich experience in both Secretarial and legal fields. He was a member of the Secretarial Standards Board of ICSI for the period from 2013 to 2015.

He was also the Secretary of All India Federation of Tax Practitioners south zone for the year 2010-2011 and is a Certified SEBI Financials Resource Person.

CS Ahalada Rao V. has been Chairman of Hyderabad Chapter of SIRC of ICSI for the year 2006. He has written numerous articles in various professional journals and newspapers and is a regular faculty at Seminars and Workshops conducted by various Professional Bodies.
1. Outgoing President CS (Dr.) Shyam Agrawal putting the President’s Collar to CS Makarand Lele, the newly elected President of the ICSI.

2. Newly elected President of the Institute CS Makarand Lele pinning the ICSI insignia to CS Ahalada Rao V., the newly elected Vice President of the Institute.

3. CS Dinesh Chandra Arora presenting photo albums to CS (Dr.) Shyam Agrawal, the outgoing President of the Institute.

4. CS R Venkata Ramana & CS Venkata Srinivasa Kodukula Subramanyam felicitating CS Makarand Lele, the newly elected President & CS Ahalada Rao V., the newly elected Vice President of the Institute.

5. Felicitation of newly elected President and Vice President of ICSI for year 2018-19 - A view of the Council Members present on the occasion.

6. Meeting of CS Makarand Lele, the newly elected President & Vijay Kumar Jhalani (Govt. Nominee to the Central Council of the ICSI) with Arun Jaitley (Hon’ble Union Minister of Finance and Corporate Affairs).

7. Meeting of ICSI delegation with Secretary, MCA – From Left: CS Dinesh Chandra Arora, CS Makarand Lele, Injeti Srinivas (Secretary, MCA) and CS Vineet K. Chaudhary.
8. Meeting of ICSI delegation with Joint Secretary, MCA – From Left: CS Vineet K. Chaudhary, K V R Murthy (Joint Secretary, MCA), CS Makarand Lele and CS Dinesh Chandra Arora.

9. Meeting of ICSI delegation with President, NCLT – From Left: CS Dinesh Chandra Arora, CS Makarand Lele, Justice M M Kumar (President, NCLT) and CS Vineet K. Chaudhary.

10. CS Makarand Lele presenting a planter to Ajay Tyagi (Chairman, SEBI). Also present on the occasion CS Ahalada Rao V & CS Mahavir Lunawat.

11. Meeting of CS Makarand Lele with Prof. (Dr.) Nitin R. Karmalkar (Vice Chancellor, Savitribai Phule Pune University).

12. CMA Sanjay Gupta (President, Institute of Cost Accountants of India) congratulating CS Makarand Lele on being elected as President, ICSI.

13. CS Makarand Lele meets Amardeep Singh Bhatia (Director, SFO). Also present on the occasion CS Dinesh Chandra Arora.

14. CS Makarand Lele with J N Gupta (Former Executive Director, SEBI). Also present on the occasion CS Ahalada Rao V & CS Mahavir Lunawat.

15. Meeting of ICSI delegation with Dr. V R Narasimham (Compliance Officer, National Stock Exchange of India Ltd.) - Group Photo.
16. Training program for Senior Management Personnel on The Companies Act, 2013 – Sitting on dais from Left:  Dr. U. D. Choubey (Director General, SCOPE), Ved Prakash (Chairman, SCOPE) and CS Makarand Lele.


18. Haryana State Conference (Host: Gurgaon Chapter) (Co-Host : Faridabad, Karnal-Panipat, Sonepat & Yamunanagar Chapters) on "GST: Good and Simple Tax, A Game Changer for the Indian Economy" - Chief Guest: Dr. Sudha Yadav (Former Member of Parliament, Lok Sabha, National Secretary, BJP), CS Bimal Jain (Eminent Expert on Tax) seen with CS Dhananjay Shukla, CS Ranjeet Pandey, CS Saurabh Kalia, Shailender Pandey and other members.


20. Meeting of ICSI delegation with Lakshmikant Garg (Partner, Deloitte) – Standing from Left: CS Ahalada Rao V., CS (Dr.) Shyam Agrawal, Lakshmikant Garg (Partner, Deloitte) and CS Sonia Baijal.

21. PCS Regional Conference (Host: Kanpur Chapter) On PCS - In New Era in Terms of Precision, Competence And Speed: Chief Guest: Dr. R.C. Katiyar (Vice-chancellor, Chhatrapati Shivaji Maharaj University, Kanpur) seen with CS Atul H Mehta, CS Ranjeet Pandey, CS Dhananjay Shukla, CS Nitesh Sinha and other.
22. One day Seminar on “Updates on Corporate Law” at Chennai - Sitting on dais from Left: CS Vasudeva Rao Devaki, CS Thirupal Gorige, CS B Chandra, CS Prakash R and CS Desikan Balaji.

23. Valedictory session of 37th MSOP organized by the ICSI- Bengaluru Chapter - Group photo of participants with faculty.

24. Full day Seminar on Disqualification of Directors, Strike off and Revival of Companies at the ICSI- Bengaluru Chapter - A view of the gathering.

25. Interactive Meeting at ICSI Bengaluru Chapter - Sitting on dais from Left: CS Vasanth Kumar, M Jayakumar( Registrar of Companies, Karnataka), CS M.R.Bhat (Regional Director, South East Region, MCA, Hyderabad) and CS Gopalkrishna Hegde.

26-27. Full day Seminar on FEMA and IND AS at the ICSI Bengaluru Chapter - Address by the speakers.

28. Full day Seminar on Constitution and Contracts Act at the ICSI- Bengaluru Chapter - Address by the speaker.
The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

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

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

**How to join**
- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹10,000/-. 
- One can submit Form A and also the subscription amount of ₹10,000/- ONLINE through Institute’s web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹10,000/- drawn in favour of ‘Company Secretaries Benevolent Fund’, at any of the Offices of the Institute/Regional Offices/Chapters.

**Benefits**
- ₹7,50,000 in the event of death of a member under the age of 60 years
- Upto ₹3,00,000 in the event of death of a member above the age of 60 years
- Upto ₹40,000 per child (upto two children) for education of minor children of a deceased member
- Upto ₹60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

**Contact**
For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.0120-4082135.
Dear Professional Colleagues,

A year ago and an year hence... Time seems to simply fly by... My elevation from the Vice President to President giving me an opportunity to not just serve the Institute with all my might, fulfil the dreams and visions for my fellow members and stakeholders while providing me a stupendous opportunity to connect with you through this journal, all fills my heart with gratitude and pride at the same time. I would take this moment to extend my heartfelt gratitude towards the council members of ICSI for instilling their faith in me and solicit their support to move ahead in high spirits and with greater enlightenment about our vision, mission and goals.

The Institute has witnessed quite a glorious moments in the past few years, both in terms of enhanced opportunities as well as its brand positioning; both nationally and globally. The need to explain an introduction has almost vanished, courtesy the unflinching efforts of both the members as well as the Institute in carving out a niche, a brand and a name; a name that speaks for itself, an image that speaks volumes, all of which go a long way in making us realise our true worth and potential.

Quoting the words of the longest serving First Lady of the United States, Eleanor Roosevelt, “The future belongs to those who believe in the beauty of their dreams”, at ICSI, our vision summarises our dreams, dreams of not just a futuristic ICSI but rather dreams of building the torchbearers of governance, the Company Secretaries into governance professionals in every sense of the word. And it is not just the vision that carries a 6-fold approach, its execution and materialization too seek and have been provided with an approach confirming all the aspects of the profession. The mantra for 2018 is that, “All shall work uniformly in the areas of create, knowledge, develop, support, opportunity and regulate the students and member community”.

Each of these words shall, if I am not wrong, prove to be high powered lamps, lighting the path ahead in complete brightness and sheen. The ideology behind this mantra is to while creating strategies for gaining access to a bigger talent pool as well as knowledge repository of contemporary research work through both existing as well as upcoming dedicated Research Centres and Centres of Excellence; develop contemporary skills amongst both the members as well as the students who shall be the members of tomorrow. And while the academic as well as skill development shall continue at one end, simultaneous efforts shall be intended at supporting each and every stakeholder to grow and excel and generating more opportunities and recognition avenues for the members and regulating the profession in consonance with the existing laws and disciplinary mechanism in place in true letter and spirit.
The mantra seems to be holistically covering each and every aspect which even remotely concerns the profession of Company Secretaries. Following a RED Approach, i.e., reform, redefine and redevelop; the idea is to reshape and redesign not just the profession in its entirety but each single member of the Institute, so much so that each professional is the brand ambassador for ICSI to the outside world. The right skills, the right training and the right opportunities go a long way in determining and defining the future of not just the professionals but the profession in its entirety and that coupled with adequate regulation provides a strong base for ages to follow. It is with this intent that the Mantra for 2018 has been chalked out, one which shall strengthen the very foundation of CS and both the ‘I’ encasing it as well.

It has been long observed that the word ‘professional’ and Company Secretary usually find mention in the same breath and it would not be an understatement to say that we as Company Secretaries have forever considered ourselves to be the governance professionals, not just for the corporates or India Inc. but for the whole of the nation. It is for this reason that a Company Secretary, whether in employment or in practice, dons many hats while fulfilling or dispensing with his duties, which goes without saying have crossed the boundaries of e-filing, long ago. However, at the core, we are yet to imbibe true professionalism in each and every endeavour, each and every activity and aspect, we set foot into.

Looking for the real meaning to share with you, I came across an intriguing statement. Though the name of the author was missing, the thought hit hard. They say “Professionalism is not the job you do, it’s how you do the job”.

While we may take pride in being referred as ‘intellectuals’ by the Hon’ble Prime Minister, Shri Narendra Modi, we cannot help but realise that the responsibilities entailing and hopes pinned upon cannot be fulfilled without acquiring and assimilating true professionalism in our work culture, our ethics and more so our conduct, which go a long way in distinguishing us from the rest of the world and give us the podium we truly aspire for.

The year we are living through is a proud privilege, the Golden Jubilee year for the ICSI; and while the last year gone by have given us moments of immense happiness, the intent is to look forward and make each day, each moment of this year more significant and special than any of those already passed by, for as George Bernard Shaw puts it, “We are made wise not by the recollection of our past, but by the responsibility for our future”.

I would take this moment to share with you my pleasure and delight on having bestowed with the opportunity to meet quite a few dignitaries in the past month. From Shri Arun Jaitley, Hon’ble Union Minister of Finance & Corporate Affairs, Justice M M Kumar, President, National Company Law Tribunal to Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs, Shri KVR Murty Joint Secretary, Ministry of Corporate Affairs, and Shri Amardeep Bhatia, Director, Serious Fraud Investigation Office; and it is a matter of immense gratification that all of them have assured there wholehearted support to the profession and the Institute in whatsoever manner possible. The who’s who of the regulatory bodies Shri Ajay Tyagi, Chairman, SEBI, Dr. V R Narasimham, Compliance Officer, National Stock Exchange of India Limited, and Shri J N Gupta, Former Executive Director, SEBI, while not only accoladed the contribution of ICSI and its members to the India Inc. but also nodded in affirmation to future partnerships and support in strengthening the governance framework.

It is not a mere passing realization or a fleeting thought but a hard hitting reality that the responsibility for our future which includes not just the members but each and every stakeholder, is immense. Understanding this responsibility, the focus of the Institute in the days to come shall be to fulfil and live up to its role as the perfect facilitator, support and guide for the members and stakeholders to realise and achieve the dreams envisioned for 2022, a vision that does not belong to just the professionals but the profession in its entirety but each single member of the Institute, a vision that stands tall only for the fact that it has all its partners and their roles defined and in place.

Each one of us has a role to play and an accountability to live up to, and when the person accomplishing the tasks or performing the duties is looked up to as a true professional, the level of responsibility just multiplies. While giving each one of you food for thought to ponder over your roles in the society and expecting a prompt and jubilant approach towards the same I would like to part on the following note:

“Your life is your message to the world. Make sure its inspiring!”

Step out of your comfort zone, recognize your talents, realise your dreams and achieve your goals, be not just a Company Secretary but a professional whole...

Happy Reading!!

Best wishes.

Yours Sincerely

February 04, 2018
New Delhi

CS Makarand Lele
President, ICSI
Recent Initiatives taken by ICSI

In furtherance to our earlier communications, we are pleased to share the following initiatives taken by the Institute during the month of January, 2018:

1. **Meeting with Dignitaries**
   Taking forward our pursuit for exploring opportunities for the profession and also for joint participation in flagship government initiatives, the Institute met the following dignitaries:
   - Shri Arun Jaitley, Hon’ble Union Minister for Finance
   - Justice M. M. Kumar, Hon’ble President, NCLT
   - Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs
   - Shri K. V. R. Murty, Joint Secretary, Ministry of Corporate Affairs
   - Shri Amardeep Bhatia, Director, SFIO
   - Prof. (Dr.) Nitin R. Kamalkar, Vice Chancellor, Savitribai Phule Pune University
   - CMA Sanjay Gupta, Hon’ble President, ICAI-CMA

2. **New President of the Institute**
   CS Makarand Lele, a fellow member of the Institute of Company Secretaries of India (ICSI) has been elected as the President of the Institute for year 2018 w.e.f. January 19, 2018.

3. **New Vice President of the Institute**
   CS Ahalada Rao V, a fellow member of the Institute of Company Secretaries of India (ICSI) has been elected as the Vice President of the Institute for year 2018 w.e.f. from January 19, 2018.

4. **ICSI- Guinness World Record for Largest Taxation Lesson**
   Taking forward our dedication in standing shoulder to shoulder with the Government's Initiatives towards the reformed regime of Indirect Taxes in India, the Institute has created a historical landmark in its golden journey with the proud credit of setting a Guinness World Record for conducting the Largest Taxation Lesson in India. This Mega Program on GST marking an upright entry in the Guinness Book of World Record has witnessed the registration of 3738 people for the largest taxation lesson in India. The mega event under the title of “Taxation Lesson – Tax Regime in India and Convergence of Indirect Taxes into GST” was aimed to create awareness on GST and its finer aspects along with the free of cost registration of ICSI Students and Public at large for the Course on GST Accounts Assistant, which itself is one of the newest form of courses covering the effective implementation of GST pan India.

5. **Publications released at ICSI- Guinness World Record for Largest Taxation Lesson**
   In order to commemorate the momentous entry of the Institute in the Guinness World Record for Largest Taxation Lesson in India, following publications were released at the event:
   - **Frequently Asked Questions (FAQs) on Electronic Way Bill**: The publication shall be very useful to understand the newly introduced Goods Movement Mechanism under GST. FAQs on E-way Bill has covered all the important aspect to better understand the practical implications of E-way Bill rules.
   - **Thought Leadership**: Understanding the recognized significance of Thoughtful Leadership and to guide the manoeuvres of Thought Leadership for advancing the culture of inclusive growth in true letter and spirit, the Institute has come up with a publication on “Thought leadership”. This publication, which is one of its kind, would apprise the professionals, regulators, stakeholders, members and students on the meaning and significance of Thought Leadership in the contemporary regime of the country, lessons of thought leadership through Ramayana, Mahabharata and eminent Thought Leaders, and how one could entail the qualities of thoughtful leadership in their professional expertise and excellence.
   - **Vastu Avam Seva Kar Margdarshika (वस्तु एवं सेवकार मार्गदर्शिका)**: In the edition of Beginners Guide to GST – Hindi version, all the latest updates, amendments have been incorporated to update the members, students and other stakeholders of the Institute with the latest developments of GST Law.

6. **Highlights of The Companies (Amendment) Act, 2017**
   As you are aware that The Companies (Amendment) Act, 2017, duly passed by the Lok Sabha on July 27, 2017 and by the Rajya Sabha on December 19, 2017, having received the assent of the President of India on January 3, 2018 was subsequently published in the Gazette of India. In order to facilitate the thorough understanding of the Amendment Act, the Institute prepared the highlights of Act and placed on the website of the Institute for the benefit of all stakeholders.

7. **Shaheed Ki Beti – First Cheque handed over**
   As you are aware that on October 4, 2017, Institute has adopted a practice of presenting a certificate of benevolence to the dignitaries and guests replacing the mementoes under the Shaheed ki Beti Initiative, wherein the cost of the same would be credited to a corpus established with the aim of funding and supporting the education of the daughters of the martyrs of the nation who laid down their lives while protecting the sovereignty of the country. Within three months of the launch of this noble initiative, the first cheque of Rs.5 Lakh was handed over to Maj. Gen. G S Bhat, VSM, Additional Director, General Ceremonial & Welfare, Adjutant General’s Branch, Ministry of Defence, New Delhi on January 12, 2018.

8. **ICSI Webinar on MCA Initiatives for Ease of Doing Business – Starting a Business**
   The Institute organized a Webinar on “MCA Initiatives for Ease of Doing Business – Starting a Business”. The Institute organized a Webinar on “MCA Initiatives for Ease of Doing Business – Starting a Business”.

FEBRUARY 2018 | CHARTERED SECRETARY ICSI
13. **Study Centre Scheme**

As you are aware, that in order to break the distance barrier for students belonging to cities / locations in which the representative offices of the Institute are not in existence, the Institute launched the Study Centre Scheme, under which 59 Study Centres have been established in collaboration with reputed colleges in different locations so far. This Scheme also covers the remote places including Lakshadweep, Andaman & Nicobar Islands, North Eastern States, Daman and Diu and Puducherry.

In the month of January 2018, a study centre has been opened in Saharanpur, Uttar Pradesh at Disha Bharti College of Management & Education.

14. **ICSI Signature Award Scheme**

As you are aware that the Institute launched an ICSI Signature Award Scheme in January, 2016 under which top rank holders in B.Com. Final Examinations in reputed universities and also specialised programmes/papers of IITs / IIMs are awarded a Gold Medal and a Certificate. So far, ICSI Signature Award has been instituted in 17 Universities and Total (09) Gold Medals have been awarded under this scheme.

Some of the prominent universities and Institutes wherein ICSI Signature award scheme have been recently instituted are:

1. Indian Institute of Management (IIM), Indore, Madhya Pradesh
2. Indian Institute of Management (IIM) Tiruchirappalli, Tamil Nadu
3. Indian Institute of Management (IIM), Raipur, Chhattisgarh.
Election of ICSI President and Vice President for the year 2018-19
Election of ICSI President and Vice President for the year 2018-19
69th Republic day
PAN INDIA Celebrations
69th Republic day
PAN INDIA Celebrations
Economics of Corporate Survival and Theory of Governance Gap \textit{vis-à-vis} the Companies (Amendment) Act, 2017

Ashish Makhija

Theories of corporate governance have drawn a line between governance and management advocating the policy of non-interference without realizing that the line has the risk of turning into a gap – called as ‘governance gap’. The Companies Amendment Act, 2017 has further liberalized the provisions making doing business easier reposing faith in democratic corporate set ups. The present article, while propounding a new ‘Theory of Governance Gap’ defining governance gap, indicating the stages involved and its components, examines how it affects the governance gap. The corporate survival depends on recognizing, identifying, considering and correcting the governance gap. The components of governance gap have been described with examples from real corporate world. The ultimate aim should be to bridge the gap to ensure the best performance.

Anatomy of Section 185 of the Companies Act, 2013 \textit{(as amended by the Companies Amendment Act, 2017)}

B Shanmugasundaram

Section 185 of the Companies Act, 2013, when became effective on 12th September, 2013 introduced almost a complete prohibition on loans to Directors and the persons connected to such directors. Such norms were relaxed by incorporating rules for governing loans relating to intra group transactions, especially loans, guarantees or security from holding company to a wholly owned subsidiary company and a subsidiary company. Now, the Companies Amendment Act, 2017 has substituted a new Section 185. The section is known to have varied interpretations and complexities in its application right from the time when it was introduced in the Companies Act, 2013. Therefore, it is found necessary for a compendious dissection of Section 185 to render a meticulous comprehension of the legal principles along with judicial decisions. Some of the judicial decisions though were relating to the law under the Companies Act, 1956, the principles and ratio evolved in such decisions still being relevant are referred in the article.

Change in Policies and Procedures for Managerial Appointment and Remuneration mainly in the light of the Companies (Amendment) Act, 2017

Devesh A. Pathak

In spite of provisions for managerial remuneration in Company Law since decades, there has always been a room for grey areas. When provisions of Sections 196 and 197 of the then newly enacted Companies Act, 2013 (‘The Act’) became effective on 1st April, 2014, it initially appeared that private companies and public companies (whether listed or unlisted) were at par as regards managerial appointment and remuneration. Of course, Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 effective from 31st March, 2014 granted liberty to the unlisted companies (other than subsidiary of listed one) to fix managerial remuneration beyond the limits of Section 197 as well as Schedule V. Exemption to private companies vide Sr.No.16 of the notification dated 5th June,2016 liberalized (and clarified) policies and procedures for managerial appointment and remuneration in private companies to a great extent.

The Companies (Amendment) Act, 2017: Panacea for Ease of Doing Business?

Dinesh Arya and Sumit Jaiswal

The implementation of the Companies Act, 2013 was found to be a challenge in the wake of difficulties in respect of inter alia, further issue of shares, rotation of Auditors, inter-company loans particularly loan to subsidiaries, etc. necessitating issue of various Notifications/Removal of difficulties Orders/Circulars/Amendments, culminating in The Companies (Amendment) Act, 2017. The Amendment Act seeks to supplement the Companies Act, 2013 in achieving improved transparency, higher corporate governance standards and better harmonization with other statutes. Response to the Amendment Act is positive, though the Rules for implementation of the amended provisions are awaited. The Amendment Act has largely succeeded in removing the difficulties while simultaneously taking care to bring in the requisite changes for the larger perspective. Whether the Amendment Act is panacea for Ease of Doing Business would depend on reciprocating changes in the other laws/regulations as well as response from the stakeholders by effective compliance.

Provisions Relating to Maintenance of Register of Significant Beneficial owners in a Company

G M Ramamurthy

Clause 22 of the Companies (Amendment) Act, 2017 has introduced provisions relating to register of significant beneficial owners in a company in section
The Companies (Amendment) Act, 2017
Amendment that ensures further ease of doing Business
Narendra Singh and Prativa Jena

Upon enactment of the Companies Act, 2013 ("Act"), majority of the corporate found difficulties in implementing various provisions of the Act. The Government of India understood the hardship of the corporate and swiftly 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 reduced substantially. At the same time, Govt. constituted Company Law Committee ("CLC") to look into antagonistic provisions in the Act. The report of CLC became the basis of the enactment of the Companies (Amendment) Act, 2017 ("Amendment Act") which received the assent of the President on 3rd January, 2018. The Amendment Act further simplifies the provision of the Act, do away with unwanted procedural requirements and at the same time protect the interest of the stakeholders. This would also become an enabler in enhancing the global ranking of India in "Ease of doing business".

Some Impacts of the Companies (Amendment) Act, 2017
Prabir Bandyopadhyay

The Companies (Amendment) Act, 2017 has brought about many changes and new provisions in the Companies Act, 2013. The onus of payment of Managerial Remuneration especially in case of inadequacy of profits has been given on the Members of the Company to act by way of passing Special Resolution and the Central Government has gone off the scene. Of course conditions have been attached. The Independent Director has been redefined and the stringent conditions of interest through relations have been relaxed. The scope of the requirement of the deposit of Rs. 1 lakh to propose the appointment of someone as Director who is not a Director retiring by rotation, has narrowed down. Regarding loan to employees, Section 186 of the Act has been made not applicable. In the matter of contents of prospectus, unlisted companies are also required to follow SEBI Regulations. Postal Ballot has been made redundant. The entire Annual Return is required to be given on the company’s website. The proceeds of Private Placement shall not be utilised until the Return of Allotment is filed with the Registrar of Companies.

90 of the Companies Act, 2013, by substituting the existing provision. It seeks to provide that a declaration is to be given to the company by every individual acting alone or together or through one or more person(s) including a trust and persons resident outside India, who holds beneficial interest of not less than 25% or other prescribed percentage of shares of a company or the right to exercise or the actual exercising of significant beneficial influence or control. More clairty regarding this provision will emerge after the relevant rules are framed as contemplated in the amended provision. There are some grey areas and it is expected that those will be plugged before operationalisation of the new provision.

Companies (Amendment) Act, 2017 w.r.t. Appointment and Qualifications of Directors and Meetings of the Board and its Power
Hema Gaitonde

The Central Government notified the Companies (Amendment) Act, 2017 on 3rd January, 2018. The provisions of this Amendment Act shall come into force on the date or dates as the Central Government may appoint by notification(s) in the Official Gazette. This Article aims at analyzing the amendments made to Chapter XI (Appointment and Qualifications of Directors ) and Chapter XII (Meetings of the Board and its Power) of the Companies Act, 2013 and the rationale behind the amendments.

Analysis of Companies (Amendment) Act, 2017
Meenu Gupta

The Companies (Amendment) Act, 2017 was passed in consideration of various representations received by the Government to further review and simplifying the Companies Act, 2013, being one of the most important law reforms in India, which replaced the old Companies Act, 1956. It aimed to align with modern corporate law and bringing in disclosure and transparency norms in Indian corporate in line with global standards. However, the constituents faced numerous implementation challenges and hence the amendment Act passed to strengthen the corporate governance standards, improve transparency, initiate strict action against defaulting companies and help improve ease of doing business in the Country while also making compliance easier. The article briefs the major amendments in Act including appointment of auditors, managerial remuneration, corporate social responsibility, etc.

Related Party Transactions – Impact Assessment of the Amendment
N R Sridharan and Krishna Sharan Mishra

In relation to related party transactions, the Companies (Amendment) Act, 2017 has incorporated the insights gained over a period of time. In this regard, the said Amendment Act has made two amendments in section 188 and one amendment in section 177 and an amendment to the definition of the term Related Party. These changes focus on relaxation on voting in cases of closely held companies, refinement of pre-approval requirements by audit committee, extending the veto rights to shareholders and tuning of the definition of Related Party. With these amendments when in effect, the regulations will be able to encompass the spirit of the provisions governing related party transactions better.
**Budget 2018: Highlights Concerning Income Tax Proposals**

T. N. Pandey

The Union Budget’s suspense, being over on 1st February, 2018 with the presentation of the same in Parliament by the FM, discussions have started on its contents. The same are being debated. However, the contents of the Budget documents are quite long and comprehensive for being digested and understood in short post Budget period. The author in this write up, has analysed lucidly and in a detailed way the salient income tax proposals in the Finance Bill, 2018 concerning personal and corporate taxation aspects for readers of the Journal. It is hoped that they will find it handy and useful for meaningful discussion and for sending their suggestions to the FM. The author, in the article, has also raised the issue whether the Budget proposals should only contain details of Government’s revenue and expenditure for the previous year and estimates for the coming year and other policy aspects, including tax changes be not mixed up with revenue and expenditure figures and should be undertaken through separate Act. As per the present practice, these do not receive due consideration in Parliament because of constraint of time. He has left this issue for readers’ response.

**RESEARCH CORNER**

ICSI – CCGRT INVITES

Empirical Research Papers on Related Party Transactions and Disclosures

ICSI – CCGRT INVITES

Unique Research Papers on ‘Crypto Assets’ or ‘Crypto Currencies’

**LEGAL WORLD**

- **LMJ 02:02:2018** It is abundantly clear that the Court is the custodian of the interests of the Company and its creditors. Hence, it is the duty of the Court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. [SC]
- **LW 08:02:2018** The purchase order is a single contract and general reference to the standard form even if it is not by a trade association or a professional body is sufficient for incorporation of the arbitration clause. [SC]
- **LW 09:02:2018** In our view, therefore, it is clear that the award dated 23rd July, 2015 is an interim award, which being an arbitral award, can be challenged separately and independently under Section 34 of the Act. [SC]
- **LW 10:02:2018** If goodwill or reputation in the particular jurisdiction (in India) is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff’s right in the action of passing off that it had brought against the defendants in the Delhi High Court. [SC]
- **LW 11:02:2018** The conclusion that the petitioner had not demonstrated that it was the first user of the logo/mark and that it is the respondent who is the first user was arrived at on such consideration. [SC]
- **LW 12:02:2018** Since the strength of workers was below 100, it was not necessary for respondent No.1 to ensure compliance of Chapter VB. [SC]
- **LW 13:02:2018** The respondent-hospital is declared to be taken as a whole for the purpose of determining its ability to pay the debt. [SC]
- **LW 14:02:2018** The Commission is of the view that the concept of collective dominance does not find a place under the Act. Hence, no case of contravention of Section 4 of the Act is also made out against the OPs. [CCI]
- **LW 15:02:2018** The original demand was raised by KSEBL on 09.03.1998 and looking at the background of the litigation between the parties, it is a clear case of forum shopping and hunting by the Informant to rake up the stale disputes under the garb of competition law. [CCI]

**FROM THE GOVERNMENT**

- The Companies (Registration Offices and Fees) Amendment Rules, 2018.
- The Companies (Cost Records and Audit) Second Amendment Rules, 2017
- Date of coming into force of sections 1 and 4 of the Companies (Amendment) Act, 2017
- Transaction Charges by Commodity Derivatives Exchanges
- Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957
- Benchmarking of Scheme’s performance to Total Return Index
- Electronic book mechanism for issuance of securities on private placement basis
- Margin provisions for intra-day crystallised losses
- Prevention of Unauthorised Trading by Stock Brokers
- Participation by Strategic Investor(s) in InvITs and REITs
- Online Filing System for Offer Documents, Schemes of Arrangement, Takeovers and Buy backs
- Role of the Independent Oversight Committee for Product Design
- Online Registration Mechanism and Filing System for Depositories
- Review of additional expenses of up to 0.30% towards inflows from beyond top 15 cities (B15)
- Charging of additional expenses of upto 0.20% in terms of Regulation 52 (6A) (c) of SEBI (Mutual Funds) Regulations, 1996
- Total Expense Ratio – change and disclosure

**OTHER HIGHLIGHTS**

- Members Restored
- Certificate of Practice Surrendered
- New Syllabus for Executive and Professional Programmes
- GST Corner
- CG Corner
- Ethics & Sustainability Corner
ARTICLES

- Economics of Corporate Survival and Theory of Governance Gap vis-à-vis the Companies (Amendment) Act, 2017
- An Anatomy of Section 185 of the Companies Act, 2013 (as Amended by the Companies Amendment Act, 2017)
- Change in Policies and Procedures for Managerial Appointment and Remuneration Mainly in the Light of the Companies (Amendment) Act, 2017
- The Companies (Amendment) Act, 2017: Panacea for Ease of Doing Business?
- Provisions Relating to Maintenance of Register of Significant Beneficial Owners in a Company
- Companies (Amendment) Act, 2017 W.r.t. Appointment and Qualifications of Directors and Meetings of the Board and Its Power
- Analysis of Companies (Amendment) Act, 2017
- Related Party Transactions – Impact Assessment of the Amendment
- The Companies (Amendment) Act, 2017 Amendment That Ensures Further Ease of Doing Business
- Some Impacts of the Companies (Amendment) Act, 2017
- Budget 2018: Highlights Concerning Income Tax Proposals
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 sil.ak@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
   c. the copyright in respect of this article, if published in Chartered Secretary, shall vest with the Institute.
   d. the views expressed in this article are not necessarily those of the Institute or the Editor of the Journal.
3. I undertake that I:
   a. comply with the guidelines for authors,
   b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing.
   c. shall be liable for any breach of this ‘Declaration-cum-Undertaking’.

(Signature)
Survival is the most dreaded term in the corporate world. Company boards discuss growth strategies but do not discuss survival; it is assumed. The focus remains on policy and strategy formation leaving implementation to the top management. Governance concentrates on strategic decision making defining core aspects — values, mission and vision. It is the “framework of accountability to users, stakeholders and the wider community, within which organisations take decisions, and lead and control their functions, to achieve their objectives”. Management, on the other hand, is believed to be concerned about working within the confines of strategies and policies. “The Board is responsible for the governance of the company but the Board does not look after the day-to-day management of the company. The Board of Directors meets periodically and makes policy decisions setting out the goals of the company. Achieving these goals effectively is the function of the management. The management function is left to the key officers of the company. In the business world, these key officers are commonly referred to as the top management. The top management shoulders the responsibility of all the functions of the company, be it administration, marketing, operation, finance, secretarial, human resources etc.” Corporate governance norms across the world support this practice. The scholarship available on the governance and management role restricts itself to this concept.

The Companies (Amendment) Act, 2017 has further liberalized the provisions making doing business easier reposing faith in democratic corporate set ups. The present article, while propounding a new ‘Theory of Governance Gap’ defining governance gap, indicating the stages involved and its components, examines how it affects the governance gap. The corporate survival depends on recognizing, identifying, considering and correcting the governance gap. The components of governance gap have been described with examples from real corporate world. The ultimate aim should be to bridge the gap to ensure best performance.
GOVERNANCE GAP

Indisputably, there is separation between governance and management though “the boundary between governance and management is not hard and fast” 3. Corporate culture and structure determines the dividing line. It settles on its own over a period of time as an accepted norm. Typically, for effective corporate governance, the board functions include policy management, risk analysis, encouraging disclosure and transparency, oversight of management functions, protecting stakeholder’s interests and strategic guidance 4. Illustratively management functions include implementation of policies and plans, administrative control, compliances, communication and performance. In a way, Ordinarily, management functions start where governance ends with presumptions of no overlapping. In reality, however, there exists a gap between governance and management in every corporate entity, let’s term it as governance gap; though the extent may differ. No one has ever realized that defining and assigning governance and management functions this way results in governance gap.

IDENTIFYING MISSING PIECES

The missing link between the governance and management belongs to governance gap. Smart governance may not result in smart management but it will definitely create an atmosphere of management accountability. The converse may not be true at all. On paper, the dividing line between governance and management looks judicious; no one trips over the other with the existence of recognised separation. The principle of separation has been articulated so well over the years that it now resides in the sub-conscious mind of every governance and managerial personnel. The scholarship on corporate governance elaborately deals with the subject to ensure that governance functionaries know their boundaries and the management personnel are aware that their functions start where governance ends. With this assertion over the years, governance leaders have realised that their role is restricted to strategic decision making in board or committee meetings presuming that the policies framed by them will be implemented by management functionaries. This approach is enshrined in corporate governance norms across the countries. The weakness of this approach is that it fails to recognise the existence of governance gap. The governance and management are not separated by a line but there exists a gap – governance gap.

STAGES OF GOVERNANCE GAP

Governance gap differs from one entity to another. Not only the size of governance gap may vary but also the elements constituting it. Ignoring governance gap may lead to disaster; understanding governance gap will reduce chances of its occurrence. The governance gap has four step routines called as governance gap stages. The corporates have to shift their focus on governance gap and they must deploy their resources to trace the gap through the stages.

STAGE 1 – RECOGNITION

The corporates have to recognize the governance gap. Recognising involves understanding the factors that contribute to governance gap. This understanding is possible with open discussion between those who govern and those who manage. Governance leaders have to take the lead and ensure that the management team gets a fair chance to state their views. Balanced discussion is the key. Expert involvement in the discussion should be encouraged. Recognising the existence of governance gap is the most difficult step as it calls for free and frank dialogue between the two sets of leaders. Board members should take care not to dominate the discussion.

STAGE 2 – IDENTIFICATION

Having recognized the existence of gap, the next step calls for identification of the missing pieces. It emerges out of the analysis of the discussion. The process of identification calls for impartial study of discussion points gathered during recognition stage. Firstly, on macro basis, broad categories of governance gap should be identified. Thereafter, micro level identification of the factors is required to be carried out.

STAGE 3 – CONSIDERATION

Having identified the categories of governance gap broadly, the next stage involves analysing the causes of governance gap. What has triggered the governance gap is the question that needs to be answered in this stage? It is the reflection on cause and effect relationship. The analytical study of reasons behind the governance gap are bound to provide a useful insight. The evaluation of the causes should also be an independent exercise having unbiased view of the situation. Preferably, it

---

should be carried out by an outside expert.

**STAGE 4 – CORRECTION**

Correction involves joining the dots. Corrective measures will help in bridging the governance gap. The smaller is the governance gap, the higher will be the efficiency, performance and growth. Corrective steps mean paying special attention to the causes and finding out the specific solution. It may not be possible to remove altogether the causes but an attempt should be made to reduce the gap over a period of time. Correction also includes watching the impact of corrective measures.

**GOVERNANCE GAP COMPONENTS**

Unique in its design, the stages will reveal causes of governance gap. The task of identifying the factors will be followed by categorization of these factors into components of governance gap. The reasons will be unique to each company. Much would depend on existing governance and management structure of the company. Broad categorisation is necessary to understand the root of the problem. Once this exercise is over, micro level identification is necessary being an essential element to bridge the gap.

**First Component - Perception Gap**

Intuitive understanding and insight creates a veil of perception. The greater degree of difference of opinion between governance leadership and top management is the root cause of perception gap. The documents containing vision, mission and objectives of a corporate are ornamental pieces with elaborate use of elegant phrases which turn out to be confusing at the best. The top management’s perception of goals must be in sync with the governance leaders. The board of directors in their role of governance may envision company goals in a different perspective than the management leaders. Opinions may differ but understanding of the strategy calls for perfection. A Company, for example, in its manifesto, may have the mission to keep its ‘Customers First’. While it sounds good from governance perspective, the management team must know its elements to achieve it. Whatever the management does, they must keep this goal in view. The governance leadership must realise that they cannot remain detached but must ensure that their mission of keeping customers happy is implemented by carrying out with random scrutiny of execution steps. The perception gap is the most difficult to decode. This calls for constant discussion and understanding of the perception of each set of leaders.

**Second Component - Communication Gap**

The governance leaders usually come only for board or committee meetings with little interaction between two sets of corporate leadership. It results in non-meeting of minds with ever widening gap of communication. Board members rightly perceive themselves as non-interfering in the day-to-day functioning of the company, yet this does not mean that there should be a communication break between the two sets. The communication between the board members usually happens only when the board or committee meetings are organised. Communication link breaks no sooner the board or committee meeting is over. Consistent and effective communication will keep governance leaders abreast of company’s functioning on a continuous basis. Regular communication also helps in changing the perception. In India, for example, a board meeting of a company can be held at a maximum gap of 120 days. Ordinarily, the time of communication between the board and management starts with sending out board meeting notice and agenda and ends with minutes being circulated. There remains no communication in between the board meetings. ‘No communication’ for over three months is a sure recipe for disaster.

**Third Component - Strategy Gap**

The corporate strategy flows from the top. The goals are defined once the strategy is known. Strategical policies should be concrete, realistic and implementable. Understanding the intent behind the strategy is the key. Strategy gap will breed disastrous results more often than not, strategy documents contain objects ignoring practical considerations. Governance and management leaders must understand each other’s view point. Policy implementation is dependent on and follows strategic management. For example, a company with five subsidiaries may decide, as part of strategy, to merge all subsidiaries with the parent company to reap tax benefit. But implementation may pose difficulties as each company may have different management style and culture. While finalising strategy, the governance leaders ought to consider the anticipated problems in implementation rather than merely looking at tax angle. The strategy gap can be understood to be the gap between ‘framing’ and ‘implementation’ of the strategy. Policy framework should be flexible recognising the real-world difficulties. Management leaders have a dominant role to play in the strategy gap. Lucid explanation of the complications involved in accomplishing the goals may become necessary for the governance heads to understand. The extent and severity of the problem is to be understood by the board members in the way the management team perceives it. Of all the components, strategy gap remains the most prominent.

**Fourth Component - Performance Gap**

Unarguably, management is responsible for operations and performance. The governance team, drawn from diverse vocation, has limited awareness how the business is run. They are experts in their own domain but not necessarily in the business of the company. Imperfect knowledge of corporate functioning leads to uncertainty. The governance theories, thus far, propagate ‘non-interference’ of governance leaders into management domain. The corporate governance regulations across the world are based on the doctrine of non-interference. Advancing this opinion for over a quarter century now, it has turned into conviction and a mandatory principle. The oversight of performance functions calls for thorough business understanding. Questioning operational style does not necessarily mean interference. Contrarily, the management style will undergo improvement, if judged by the governance leaders. For example, mere appointment of a professional CEO does not absolve the governance leaders
with their oversight responsibility. Let the governance leaders understand the specific action planned by CEO for achieving the goals. Performance would improve if the board members understand the modus operandi adopted by the management in achieving the company's goals. The board members have to shed their inhibition of extremely publicised norm of 'non-interference'. Governance styles are not iron cast. Breaking free from dogmatic principles is the key to achieve higher trajectory growth. The governance leaders must, however, respect the independence of the management team. Governance does not involve monitoring on daily basis. Performance gap can be closed with effective understanding of the management approach.

**Fifth Component - Compliance Gap**
Compliance failure is the greatest indicators of corporate failure. Management team is primarily responsible for compliances but under the governance regulations those responsible for governance become liable for non-compliances. The governance leaders cannot be mere spectators to non-compliances. The delinquency in compliances is bound to be problematic for those in-charge of governance. The directors are under the threat of being responsible for something they did not bargain\(^6\). Rules of compliances must be understood by them and close interaction to the management at short intervals will keep them abreast of non-compliances in the company. More often than not, bank defaults are not immediately brought to the notice of the governance leaders. Keeping them under wrap till the last moment makes it difficult for the governance leaders to take corrective measures. The management filters the information supplied to the board in the hope of a correction in a short time. Such filtered information serves no useful purpose and affects decision making by the board. Corrective steps are not possible if the information about defaults of the company is concealed. Due diligence at regular intervals will reveal the existence of veil. The due diligence must, however, be carried by independent experts directly reporting to the committee chairs or the board. For example, secretarial due diligence must be carried out by the qualified company secretaries in practice with straight reporting to the audit committee or the board. "The directors must build a safety net around them for protection. The safety net is a conscious effort on the part of directors to protect themselves from the legal penalties and liabilities under [the laws of any country]. The safety net is essentially an attempt to save the directors from unsolicited troubles. The safety net may work towards protecting the directors from the acts of omissions or commissions for which they are not party or have no role to play"\(^6\).

**Bridging the Governance Gap**
Bridging the governance gap calls for seriousness to look within and take corrective steps. Once the factors causing the governance gap are determined, component stacking would make it easier for corrective action to follow. Ignoring the governance gap may continue to cause conflict between those charged with governance and those charged with management. Understanding the governance gap theory will lessen the impact of friction between two sets with positive consequence of better governance and better management. "The directors should adopt 'liberalative approach'. It is a rare combination of rich board experience and knowledge of systems, business and regulations. It is gained and earned through classroom environment and exposure to real business situations\(^7\). The earlier the gap is bridged, the better it is for the functioning of the company. The corporate survival hinges on early closure of governance gap.

**Impact of Companies Amendment Act, 2017 on Corporate Survival and Governance Gap**
The Companies (Amendment) Act, 2017, assented to by the President on 3rd January 2018 makes pragmatic changes in the Companies Act, 2013 to address the issues of corporate governance, survivability and gap that occur in governance. The amendment in the definition of key managerial personnel permits those charged with governance to designate any officer in whole-time employment as key managerial personnel. This is step forward towards bridging the governance gap. The amendments also reposition confidence in the board of the companies to decide remuneration payable to the managerial personnel. It cuts the power of the Central Government to sit in judgment approving the remuneration. This empowers the board of directors who can incentivize the good performance of managerial personnel. It helps in lessening the gap as it encourages open and deeper communication to understand the working of managerial personnel. The provision relating to evaluation of performance of the Board, under the amendment Act, permitting an independent external agency to carry out such evaluation is a measure which will help weed out underperforming and passive directors thereby improving the quality of the board members. Such an exercise will also keep the directors on their toes making them understand their role to make a discernible effort to curtail the governance gap.

\(^6\) Chapter 26 – Safety Net, Corporate Directors – Role, Responsibilities, Powers and Duties of Directors by Ashish Makhija, published by Lexis Nexis India.

\(^7\) Chapter 19 – Corporate Governance – Practice and Procedure, Corporate Directors – Role, Responsibilities, Powers and Duties of Directors by Ashish Makhija, published by Lexis Nexis India.
Anatomy of Section 185 of the Companies Act, 2013 (as amended by the Companies Amendment Act, 2017)

INTRODUCTION

Section 295 along with Section 296 of the Companies Act, 1956 governed loans to the Directors of a Company. The corresponding provision Section 185 of the Companies Act, 2013, when became effective on 12th September, 2013 introduced almost a complete prohibition on loans to Directors and the persons connected to such directors. However, the clamor on the stringent norms reaching the regulators door steps, the norms were relaxed by incorporating rules for governing loans relating to intra group transactions, especially loans from holding company to a wholly owned subsidiary company and a subsidiary company. A swift review on the norms would reveal that there has been notable shift in the thought process of the regulator in the 2013 Act vis-

à-vis the 1956 Act, with an aim towards more stringent regime on loans to directors and persons connected to him. As Section 185 is known to have varied interpretations and complexities in its application, an endeavor is being made for a compendious dissection of Section 185 to render a meticulous comprehension of the legal principles along with judicial decisions. Though some of the judicial decisions pertain to the law under the Companies Act, 1956, the principles and ratio evolved in such decisions are still relevant in the context of the Companies Act, 2013 (the Act).

SCOPE OF SECTION 185

Section 185 is a complete code in itself with respect to loans by a company to its directors and persons connected to him. The specified norms under Section 185 indicate that the law aims towards more stringent regime with respect to loans to directors and persons connected to him. Section 185 can be deduced into four parts comprising of prohibitions, exceptions, exemptions and penal provisions.

1. MCA Notification GSR 463(E) dated 5th June, 2015
2. MCA Notification GSR 464(E) dated 5th June, 2015
3. AIR 1962 SC 458
4. Circular No.8(26)/2(7)/63-PR, dated 13th March, 1963
had clarified that the term body corporate does not include a society registered under the Societies Registration Act, 1960 for the purpose of the 1956 Act. The same principles should be compatible for Section 185 also with respect to a society.

**SCHEME OF SECTION 185**

Section 185 can be deduced into **four parts** as follows:-

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sub-Section (1) lays down an absolute <strong>prohibition</strong> on loans, guarantee or security by a company to the parties specified therein.</td>
<td>Sub-Section (2) provides an <strong>exception</strong> to Sub-Section (1) and facilitates advancing of loans, giving of guarantee or providing security to any person in whom any of the directors of the company is interested, subject to complying with the five conditions specified therein. The explanation to Sub-Section (2) <strong>defines</strong> the term ‘any person in whom any of the director of the company is interested’.</td>
<td>Sub-Section (3) provides a complete <strong>exemption</strong> from sub-section (1) and (2) for certain loans, guarantees and securities to certain parties specified therein.</td>
<td>Sub-Section (4) is a penal provision for contravention of the provisions of sub-sections (1) to (3).</td>
</tr>
</tbody>
</table>

**PART 1 - PROHIBITIONS**

**Prohibition under sub-section (1) of Section 185**

Sub-section (1) lays down the prohibition in advancing any loan (including a loan represented by a book debt) to, or giving guarantee or providing any security in connection with a loan. Thus, there are restrictions with respect to advancing a loan, giving guarantee, providing security in connection with any loan taken by the specified persons. It is pertinent to note that such prohibition applies to loans, guarantee or security given by a company either directly or indirectly.

The persons falling under the ambit of prohibition under sub-section (1) are:-

1. Any director of a Company; or
2. Any partner of such director of such company; or
3. Any director of a holding company; or
4. Any partner of a director of such holding company; or
5. Any relative of such director; or
6. Any relative of a director of such holding company; or
7. Any firm in which any such director is a partner; or
8. Any firm in which any director of such holding company is a partner; or
9. Any firm in which a relative of such director is a partner; or
10. Any firm in which a relative of a director of such holding company is a partner;

The conspicuous departure of the new Section 185 is that sub-section (1) is now devoid of the saving clause, which existed before the amendment. Section 185 of the Companies Act, 2013 commenced with the saving clause - “Save as otherwise provided in this Act”, which means the rights and privileges provided elsewhere in the Act expressly on the subject is protected.

**Meaning of term indirectly**

Sub-section (1) of Section 185 provides for an absolute prohibition of loans, which would fall under the section but for the exceptions and exemptions provided in sub-section (2) and (3). Hence, the word indirectly has been used in the section. In other words, a company cannot advance any loan or give any guarantee or security through any intermediate layer or an agency. Such an attempt would unveil the intent to circumvent the law. However, what is not a loan cannot be considered in the nature of a loan to bring it under the term ‘indirectly’. In Dr Fredie Ardeshir v. Union of India⁵ it has been held by the Bombay High Court that when a debt is not in the nature of a loan it cannot be considered as an indirect loan (more facts about this case can be read in later part of the article).

**PART 2 – EXCEPTIONS**

**5.1 Exceptions under Sub-section (2) of Section 185 – Conditional Loans, guarantees and securities**

Sub-section (2) provides that a company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the conditions specified therein. It is significant to note that under Section 295 of the Companies Act, 1956, the use of the words ‘no company’ (thereafter in this section referred to as ‘the lending company’) at the beginning of the section ensured that lending company referred not just to a company that advanced loans but also included within its ambit a company that gave a guarantee or provided security in respect of a loan. The usage of the term ‘lending company’ in Clause (a) and (e) of the Explanation under erstwhile Section 185(1) led to an interpretation that term would refer only to a company that advances a loan and not to a company that provides a guarantee or security in respect of loans⁶. This lacuna has been partly addressed by the amended Section 185 as erstwhile Clause (a) now stands completely changed. However, the erstwhile clause (e), the corresponding provision now being clause (c) under sub-section(2) of amended Section 185, still retains the term lending company, thus retaining the lacuna in part.

According to the *bonam partem* rule of interpretation, if a

---

⁵ (1969) 2 CLA 244 (1991) 70 Comp Cas 210 (Bom) (1991) 1 Comp LJ 437 (Bom)
statutory benefit is given on a specified condition being satisfied, the Parliament intended the benefit to operate only where the required act is performed in a lawful manner by fulfilling such condition. Thus, *bonam partem* means that words used in the statute are to be taken in their lawful sense. In *Glamorgan Country Council v Carter*, it has been held that *prima facie* the words should be taken in their lawful and rightful sense. Thus, the exceptions provided under Section 185(2) are to be availed in the manner and nature so stipulated. Therefore, the words ‘subject to the condition’ in sub-section (2) is of vital importance.

Sub-section (2) is in the nature of an exception to the prohibition laid down under sub-section (1). Exceptions are added for the purpose of excepting something, which would otherwise fall within the ambit of the main provision. In *State of West Bengal and Others v. Committee for protection of Democratic Rights, W.B. and Others*, the Supreme Court has held that any construction that makes it unnecessary and redundant should be avoided. Sub-section (1) lays down four conditions under which a loan or a guarantee or security can be provided to any person in whom any of the directors of the company is interested.

1. Such company passes a special resolution in a general meeting.
2. The explanatory statement to such notice shall disclose the full particulars of the loan given;
3. Such statement should also disclose the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient, and any other relevant fact; and
4. The loans are utilized by the wholly-owned subsidiary or the subsidiary for its principal business activities.

In the absence of specific guidance on what would constitute ‘full particulars of the loan’, it may be appropriate to refer to Form MBP-2 prescribed under Rule 12 of the Companies (Meetings of Board and its Powers) Rules, 2014 and full particulars as near thereto may be a reasonable disclosure to meet the regulatory requirements. Further, compliance of Paragraph 1.2.5 of Secretarial Standard 2 on General Meetings is also necessary.

Paragraph 1.2.5 of Secretarial Standard 2 on General Meetings provides that each item of business shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out *all such facts* as would enable a Member to understand the *meaning, scope and implications* of the item of business and to take a decision thereon.

**Whether the approval envisaged by a special resolution contemplates a prior approval?**
The words ‘loans given, guarantee given or security provided’, which is in past tense, makes it clear that the approval through special resolution can be a *post facto* approval, unlike the prior approval expressly contemplated under Section 186(3). The disclosures to be made in the explanatory statement pursuant to the proviso under clause (a) of Section 185(2) are indistinguishable to the requirement under Section 186(4).

**Whether the approval by a special resolution can be obtained through Postal Ballot?**
The general principle of interpretation that the later law will prevail over the former may not have application, since Section 185 does not have a *non-obstante clause*. Though the sub-section stipulates obtaining approval in a general meeting, such approval may also be obtained through a postal ballot in view of the *non-obstante clause* contained in Section 110 of the Act. While interpreting in this regard, the Supreme Court in *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd* has held in no uncertain terms that where two statutes contain similar *non obstante clauses*, it is the latter which is to prevail over the former, for, the Legislature is supposed to be aware of the fact that the statute already in force contains a *non obstante clause* but still incorporates such *non obstante clause* in order to obliterate the effect of the *non obstante clause* contained in the former statute. With no *non-obstante clause* in Section 185, it would not be improper to pass such special resolution through a postal ballot under Section 110.

**Meaning of the term ‘Ordinary course of business’ for the purpose of sub-section (3)**
According to Black’s Law Dictionary, the expression, ‘ordinary course of business’ means the transaction of business according to the common usages and customs of commercial world generally or of the particular community or (in some cases) of the particular individual whose acts are under consideration.

---

8 (1963) 1 WLR 1
9 AIR 2010 Sc 1561
Anatomy of Section 185 of the Companies Act, 2013 (as amended by the Companies Amendment Act, 2017)

Terms used in connection with the sales made by a merchant as a part of his regular business and in contrast with the sale in bulk, which is regulated by a statute. In general, any matter, which transpires as a matter of normal and incidental daily customs and practices in business.\(^{11}\)

**Persons covered under the term 'Any person in whom any of the directors is interested' i.e. Persons who are eligible to obtain loan, avail guarantee or security**

There are two parties envisaged to such transaction, with one party being the Director of a company per se, say for instance Mr X and other party being any of the following:-

1. A private company in which Mr X is a Director; or
2. A private company in which Mr X is a Member;
3. Any body corporate at a general meeting of which not less than 25% of the total voting power may be controlled or exercised solely by Mr X; or
4. Any body corporate at a general meeting of which not less than 25% of the total voting power may be controlled or exercised solely by Mr X or by two or more directors with Mr X, together; or
5. Any body corporate, whose Board, Managing Director or Manager is accustomed to act in accordance with the directions or instructions of the Board, or any Directors of A Ltd (A Ltd being the lending company).

Thus, in case of a private company mere directorship and membership (even holding of one share) by Mr X would make Mr X being interested in such private company. But in case of body corporate other than a private company, there are two types of control tests envisaged to determine whether Mr X has the interest in such body corporate. Firstly, control over voting, that is controlling or exercising of 25% voting power either by Mr X individually on his own or together with the other directors is essential to trigger interest. It is significant to note that the voting power controlled by relatives of such directors is not reckoned for arriving at the 25% threshold limit specified. Secondly, if there is no such controlling interest on voting power, then the Board, Managing Director or Manager must be accustomed to act in accordance with the instructions of the Board, or any Director of A Ltd. Section 184 disclosure by Directors assumes lot of importance to determine whether the shareholding of any one or more director(s) exceed the threshold limit of 25%.

**Meaning of the term ‘accustomed to act in accordance with the instructions of the board or any director’**

The term ‘accustomed to act in accordance with the instructions of the board or any director’ is not defined under the Act. In *Re Hydrocram (Croby) Ltd*\(^2\), it has been held that to establish that they were accustomed to act, what is needed first is, the Board of Directors claiming and purporting to act as such and secondly, a pattern of behavior in which the Board did not exercise any discretion or judgement of its own, but acted in accordance with the direction of others.

**Can a subsidiary advance a loan or give any guarantee or provide any security in connection with a loan to a holding company?**

The explanation under sub-section (2) defining the term ‘any person in whom any of the director of the company is interested’ does not include the director of a subsidiary company within its fold. Thus, subject to the fulfillment of the following two conditions (as may be applicable), a subsidiary may advance a loan, give guarantee or provide security in connection with a loan to a holding company:

1. No director of such lending subsidiary should be a director in a holding company, which would come under the purview of clause (a) to the Explanation of the amended Section 185(2).
2. As long as the Board, Managing Director or the Manager of the holding company is not accustomed to act in accordance with the instructions of the board, or any director or directors of the subsidiary company (as stipulated under clause(c) to the explanation);

Admittedly, the same was the position under Section 185 before amendment also, having regard to the corresponding provisions. However, any loan by a subsidiary company to a director of a holding company is prohibited under sub-section (1) (a).

**PART 3 – EXEMPTIONS**

**Exempted Loans, guarantees and securities - Sub-Section (3) of Section 185**

There are four kinds of exemptions conferred under sub-section (3) from the rigors of Section 185 with respect to loans, guarantee or security. They are:-

1. Loans to a Managing Director or Whole-time Director of a Company;
2. Loans by a company (in the business of lending) in its ordinary course of business;
3. Loans by a holding company to its wholly-owned subsidiary or any guarantee given or security provided in connection with a loan to a wholly-owned subsidiary;
4. Giving of guarantee or providing security in connection with a loan to a subsidiary.

Loans to a Managing Director or a Whole-time Director are permissible under sub-section (3), subject to the following conditions:-

1. Such loan is being extended by the Company to all its employees as a part of conditions of service; or
2. Pursuant to any scheme approved by the members by a special resolution;

It is pertinent to note that the exemption under sub-section (3) (a) is confined only to loans and not for giving guarantee or security in connection with a loan to Managing Director or Whole-time Director. Here again, such special resolution may be passed by a postal ballot as discussed elsewhere in this article.

Loans or guarantee or security by a company (in the business of lending) in its ordinary course of business are subject to the following conditions:-

1. Such loan or guarantee or security is provided for the due repayment of such loans
2. Interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan;

Loan by a Holding Company to its wholly owned Subsidiaries; or guarantee given or security provided in connection with a loan to a wholly owned subsidiary company or to a subsidiary company is subject to the following condition:-

---

\(^{12}\) (1984) 2 BCLC 180 at 183
Such loans are utilized by the wholly-owned subsidiary company or a subsidiary company for its principal business activities. The loan between a holding company and a subsidiary or a wholly owned subsidiary company facilitates easy cash flow by avoiding the delay, which is inherent while obtaining loans from third parties or banks. Further, such loans can be unsecured too. In addition, such loans come with much easier terms sans processing costs.

Meaning of the term ‘Principal business activities’ for the purposes of sub-sections (2) and (3)
The term ‘principal business activity’ is not defined under the Act. In general parlance, the term principal business activity may be construed to be such activities, which are specified in the main objects of the company in its memorandum of association. In Deputy Commissioner of Income Tax v. Venkateswar Investment and Others, it has been held as follows:-

- Memorandum and articles of association of the company, past history of the assesse, current and past year’s deployment of the capital of the assesse, break-up of the income earned during the relevant and past years and the nature of activities of the assesse will all help in determining the principal business of the assesse.
- If in any particular year, the assesse has nominal business income and has substantial interest income, it does not imply that the assesse’s principal business is of finance or granting of loans and advances.
- Similarly, the assesse, the principal business of which is the granting of loans and advances, may earn a comparatively high income from other activities in any particular year and still the principal business of the assesse may remain granting of loans and advances.

Section 29(1) of the Act specifies that certain category of companies shall issue the securities only in a dematerialized form. Section 110(1) (a) of the Act mandates that certain prescribed items of business shall be transacted only by means of postal ballot. Section 180(1) of the Act provides that the Board of Directors of a company shall exercise certain powers only with the consent of the company by a special resolution. Similarly, there are various other provisions in the Act, where the word ‘only’ can be found while specifying conditions to be fulfilled. Thus, the intent of the legislature is clear, that where the word ‘only’ can be found while specifying conditions to be fulfilled. The absence of the word ‘only’ before the words ‘principal business activities’ in the proviso to sub-section (3) of Section 185, indicates that there may be other purposes for which the loan may be utilized by such subsidiary company in a situation, where a company availing such a loan is not in a position to deploy it in business immediately for some genuine reason. For instance, B Ltd a wholly-owned subsidiary avails a loan amounting to Rs 100 crores from A Ltd, its holding company. The loan is towards purchase of land, plant and machinery for a new project of B Ltd. For some reason or reasons such as pending statutory approvals, B Ltd is unable to deploy such loans to business immediately on receipt from A Ltd. Till such deployment, as a matter of commercial prudence, B Ltd may deposit such funds in a fixed deposit or invest such funds in liquid investments, rather than keeping such funds idle in a current account. It is very interesting to note that the condition relating to end use restriction in proviso to sub-section (3) is confined to clauses (c) and (d) of sub-section (3). Understandably, it may be illogical to extend such condition to clause (a) and (b). On the same proposition, it is reasonable to deduce that the interest rates prescribed is applicable only to a company in clause (b) and not to the holding company referred to in clause (c). Had it been the intent of the legislature to apply the interest rate condition to clause (c) the words ‘at a rate not less than the rate...’ should have been inserted in clause (c) also or at the least along with the end use condition laid down in the proviso. This view is further reinforced by the existence of the word ‘or’ in between the clause (b) and (c) which was absent in the section before the amendment. It may be an unintended omission in drafting, but the interpretation is clear from the words of the statute. The extract of the sub-clause (b), (c) and (d) post amendment of Section 185 are reproduced below for ease of reference.

Is writing off of loans or interest payable on loan is permissible in a transaction between a holding company and wholly-owned subsidiary?
As discussed in the earlier paragraph, it is only sub-section (3) (b) of Section 185 which provides for charging of interest rates on loans at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or charging a lower or a concessional rate of interest or advancing an interest free loan or writing off of loans or interest payable thereon appears to be a possible proposition in a transaction between a holding company and a wholly-owned subsidiary. It is very interesting to note that in Section 186(7), it is stipulated that no loan shall be given under this section (i.e. Section 186) at a rate of interest lower than the rate specified in such section. With the absence of similar wording in Section 185, it is not fallacious to interpret that writing off of loans or interest payable is permissible as long as the loans are granted under sub-clause (c) of Section 185 by a holding company. Section 185 being a special provision cannot be over ruled and made redundant by Section 186(7). Even on an application of the rule of harmonious construction, it is only sub-section (2) and (3) of Section 186 (the words ‘under this section’ are absent in these sub-sections (2) and (3) of Section 186), which may have a controlling effect on Section 185, by requiring a

The term ‘accustomed to act in accordance with the instructions of the board or any director’ is not defined under the Act. In Re Hydrocram (Croby) Ltd, it has been held that to establish that they were accustomed to act, what is needed first is, the Board of Directors claiming and purporting to act as such and secondly, a pattern of behavior in which the Board did not exercise any discretion or judgement of its own, but acted in accordance with the direction of others.

Whether a subsidiary or a step-down subsidiary is entitled to receive loans from a holding company or avail guarantee or security towards a loan obtained from a third party lender?

Only wholly-owned subsidiaries are exempted to receive loans from a holding company, subject to the compliance of conditions prescribed under sub-section (3) and not a subsidiary company. The alacrity in the regulatory provision obviates the need to analyze whether a loan can be given to a step-down subsidiary. However, while writing off loans or interest thereon, due regard shall be had to reporting requirements under the Secretarial Audit Report by the Secretarial Auditor and also Statutory Auditor’s report in terms of the Companies (Auditor’s Report) Order, 2016. Section 134 relating to disclosure in the Board’s report is confined to loans, guarantee or security under Section 186.

Every loan is a debt but every debt is not a loan. In Dr Fredie Ardeshir Mehta v. Union of India, the question arose on Section 295 whether deferment of part payment of the consideration of sale of a flat by the company to its director was a loan within the meaning of Section 295. The Bombay High Court has held that amount payable by the director, which was deferred, was not in the nature of a loan, but it was a debt. The debt arose not out of an advance (or loan) but out of the sale of the flat by the company to the director. The company gave the director time to pay a part of the purchase price. The director was thus given financial assistance by the company in the matter of payment of the debt. Such financial assistance was not and did not amount to a loan. Goods supplied on credit results in debt arising due from the buyer to the supplier and was not in the nature of loan as it has been held in Laxmi Co. v. CIT. Let us consider an illustration. Suppose, where there are a group of companies being located together in the same building and are using shared services such as lift, maintenance, alternate power etc. When one company paying for the services availed on behalf of the other companies and that company which pays at the first instance, issuing a debit note on the other companies for share of cost of services availed, can such transaction be considered as a loan? Having regard to the ratio in the above decisions, it can be said that such payment on behalf of other companies is only a contracted debt and not a loan.

7.2 Loan versus Deposit / inter-corporate deposits

The term loan under Section 185 does not include an inter-corporate deposit in view of the absence of the word inter-corporate deposit in Section 185. Similarly, Section 186 also does not include the word inter-corporate deposit in its fold unlike Section 372A of the 1956 Act, which defined the term ‘loan’ as including a deposit of money made by one company
The term 'advance' literally a payment beforehand, in certain cases it may be a payment on demand. The Bombay High Court in Ponnawat India Ltd v. Registrar[16], has held that the fact the both the transactions i.e. a loan and a deposit create the relationship of a debtor and creditor, is not enough to equate loan with a deposit. In case of a loan, it is the borrower at whose instance and for whose needs money is advanced, which is primarily for the benefit of the borrower. In case of deposit, it is the depositor who is the prime mover while in case of a loan; it is the borrower, who is the prime mover. Further, the obligation to repay in case of a deposit is on demand while in case of a loan may arise immediately on receipt of a loan. Thus, the transaction of a loan and a transaction of deposit are not always identical.

**Loan versus advance/trade advance**

Unlike Section 295 of the old Act, Section 185 does not contain the term ‘advance’. Thus, unless advance is given in the nature of loan, it would not constitute a loan. Similarly, any trade advance which is essentially a payment in advance would not constitute as a loan as long as there is no requirement for repayment. It is usually adjusted against the final sum to be paid. In M R Electronic Components Ltd v. Asst. Registrar of Companies[17], the Madras High Court has held that an advance payment of salary made to an employee, who is the wife of the Managing Director of a private company does not per se amount to loan so as to be hit by Section 295 of the Act i.e. Companies Act, 1956. The court further went on to hold that onus of proving that the transaction is a sham lies on the prosecution. The ratio of the judgment of the Madras High Court may be equally relevant under Section 185 also. In K M Mohammad Abdul Kadir Rowther v. S Muthiah Chettiar[18], on a question what was an advance for the purposes of Section 296 of the Act, it was held that ‘advance’ means literally a payment beforehand, in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan. In Raja of Venkatagiri v. Sri Krishnayya Rao Bahudur[19], it was observed that ordinarily an advance does not connote any idea of repayment.

**PART 4 - PENAL PROVISIONS**

8.1 Penal consequences of contravention of sub-section (1) to (3) of Section 185

Before dwelling upon the penal consequences of contravention of Section 185, it is necessary to examine on how will the regulator become aware of the non-compliance of Section 185? In addition to the other provisions in the Act, there are two mechanisms available to the regulator to watch out for a red flag in this regard. Firstly, the Secretarial Auditor in his Secretarial Audit Report in Form MR-3 is required to report on the compliance of the provisions of the Companies Act, 2013. Though no specific mention regarding Section 185 is referred in the format, this is an extensive requirement of reporting considering the reporting is on the compliance of the provisions of the Act. Secondly, as per the Companies (Auditor's Report) Order, 2016, a statutory auditor is required to include a statement in his report, among other things, on whether the company has granted any loans, secured or unsecured to companies, firms, limited liability partnerships or other parties covered in the register maintained under Section 189 of the Companies Act, 2013. If so, a) whether the terms and conditions of the grant of such loans are not prejudicial to the company’s interest; b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular; c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest; and in respect of loans, investments, guarantees and security, whether provisions of Section 185 and Section 186 have been complied with and if not, details thereof. These two mechanisms would serve as a source of information for the regulator to initiate action against violation.

What are the consequences of contravening Section 185? The loan given in contravention of Section 185 would be void and illegal and hence recoverable. In N Ekambaram v. Sri Venkatachalamapathi Mills Ltd[20], the Andhra Pradesh High Court has held that the liability to repay the loan survives the death

---

15 AIR 1956 SC 12
16 (1987) 62 Comp Cas 112 (Bom); (1986) 2 Comp LJ 208 (Bom).
17 (1986) 3 Comp LJ 281 : (1987) 61 Comp Cas 8 (Mad)
18 (1960) 2 Mad LJ 13
19 AIR 1948 PC 150, p. 155 : (1948) 61 LW 545
20 (1967) 37 Comp Cas 693 (AP)
of a director.

Sub-section (4) of Section 185 contains the penal provisions for contravention of sub-section (1) to (3) of Section 185, which are plotted in the exhibit below:

<table>
<thead>
<tr>
<th>Category of Offender</th>
<th>Penal Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Fine of INR 5 lakh to INR 25 lakhs or 6 months imprisonment</td>
</tr>
<tr>
<td>Officer in default</td>
<td>Fine of INR 5 lakh to INR 25 lakhs or 6 months imprisonment or with both</td>
</tr>
<tr>
<td>Director or any other person who is a recipient of the loan</td>
<td>Fine of INR 5 lakh to INR 25 lakhs or 6 months imprisonment or with both</td>
</tr>
</tbody>
</table>

The penal provision envisions differential penal proportionality on the various categories of offenders. It may be pertinent to note that the stringency of penal provisions is more on the recipient or beneficiary of the loan rather than the party advancing the loan or giving guarantee or providing security. The above table makes it obvious, the liability cast upon the Director or any other recipient of the loan is on a much higher proportion vis-à-vis the Company and the officer in default. It is also pertinent to note that the penal provision not only applies to sub-section (1) and (2) but also to the exemptions provided under sub-section (3). Thus, if the exemptions availed by the company is not in compliance with the conditions specified in such sub-section, then in such case too, the penal provisions under sub-section (4) is bound to be attracted. Under the erstwhile Section 295(5) of the 1956 Act, the liability for the offence under that section was specifically provided to be joint and several on all persons who may have sanctioned the loan or acted in contravention of that section. The 2013 Act does not have a similar provision.

8.2 Is establishment of mens rea essential ingredient to fasten the liability on Officer in default specified under sub-section (4) of Section 185?

Section 2(60) defining the term officer in default does not contain the phrase – ‘who is knowingly guilty of the default, non-compliance, failure, refusal or contravention’. In view of this section devoid of such phrase, mens rea need not be established by the prosecution. Thus, Section 2(60) fastens absolute liability on the persons covered in the definition whether or not there is an essential ingredient of mens rea and without any opportunity for such persons to rebut the presumption of mens rea. Thus, an inadvertent non-compliance of Section 185 would not absolve the liability of the offenders including the officers in default. However, a company or an officer or a director can compound the offence under Section 441 with the permission of the Special Court. It is critical to note that if an investigation has been initiated or is already pending, compounding cannot be resorted to. In such cases, relief under Section 463 seems to be the only recourse for an officer in default or a director.

Whether the repayment of loan which has been extended in violation of Section 185 provides immunity from the penal provisions envisaged under sub-section (4)? On a plain reading of penal provision under sub-section (4), the answer is negative for the above question. It may be pertinent to note under the earlier regime of the 1956 Act, the proviso to sub-section (4) of Section 295 (which is the penal provision) read as under:-

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where the loan has been repaid in part, the maximum punishment, which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

Thus, the erstwhile regime of Section 295 had due regard to repayment while fastening the penal provision. However, in the current regime of Section 185 as amended, no such leniency is provided, which is evident due to the absence of the similar provision in Section 185. Thus, repayment of loan in full or part, which at the first instance was granted in violation of Section 185, does not provide immunity from the clutches of the penal provisions. In fact, this point emphasizes the regulators strict view on contravention of Section 185. However, it is significant to note that the contravention of Section 185 is not a ground for vacation of office under Section 167.

CONCLUSION

Where a company cannot comply with any of the provisions in Section 185, but still under a necessity or a burden to extend financial assistance to any entities specified under this section, contribution to capital seems to be the only recourse.

REFERENCES

1. The Companies Act, 2013
2. The Companies Amendment Act, 2017
Change in Policies and Procedures for Managerial Appointment and Remuneration mainly in the light of the Companies (Amendment) Act, 2017

INTRODUCTION

In spite of provisions for managerial remuneration in Company Law since decades, there has always been grey areas. When provisions of sections 196 & 197 of the then newly enacted Companies Act, 2013 (‘The Act’) became effective from 1st April, 2014, it initially appeared that private companies and public companies (whether listed or unlisted) were at par as regards managerial appointments and remuneration. Of course, Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 effective from 31st March, 2014 granted liberty to the unlisted companies (other than subsidiary of listed one) to fix managerial remuneration beyond the limits of section 197 as well as Schedule V. Exemption to private companies vide Sr.No.16 of the Notification dated 5th June, 2015 liberalized (and clarified) policies and procedures for managerial appointment and remuneration in private companies to a great extent.

Amendment in Schedule V i) by notification no.S.O.2922(E) dated 12th September, 2016 and ii) by virtue of schedule eleven to the Insolvency and Bankruptcy Code, 2016 (IBC) being effective vide Notification no.S.O.3453(E) dated 15.11.2016 inter alia have strengthened the say of creditors. Lastly provisions of Sections 196 and 197 amended under the Companies (Amendment) Act, 2017 (‘the Amendments, 2017’), on being effective (yet not notified) would have far reaching implications on managerial appointment and remuneration in public companies especially in the light of changing role of Central Government to minimum government governance.

In this backdrop, it would be expedient to have a relook to the policies and procedures in respect of managerial appointments and remuneration.

MANDATORY REQUIREMENT FOR APPOINTMENT OF MANAGERIAL PERSONNEL (SECTION 203 OF THE ACT)

Section 196 of the Act relating to the appointment of MD, WTD and manager does not specify as to which company shall mandatorily appoint managerial personnel. It is Section 203 of the Act which provides that every prescribed company should have following Whole Time Key Managerial Personnel i.e

I. Managing director (MD) or Chief Executive Officer(CEO) or manager or Whole Time Director (WTD)
II. Company Secretary (CS) and
III. Chief Executive Officer (CEO)
CHANGE IN POLICIES AND PROCEDURES FOR MANAGERIAL APPOINTMENT AND REMUNERATION MAINLY IN THE LIGHT OF THE COMPANIES (AMENDMENT) ACT, 2017

APPOINTMENT OF MANAGERIAL PERSONNEL IN PRIVATE COMPANY

A private company is not required to appoint any Key Managerial Personnel (‘KMP’) generally. However, a private company having paid up capital of Rs. 5 Crores or more is required to appoint a Whole Time Company Secretary [Rule 8 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014] (‘The Rules’).

Even if private company would appoint MD/WTD/Manager, sub sections (4) & (5) of Section 196 of the Act would not apply in terms of the aforesaid notification dated. 5th June, 2015.

Accordingly,

* Section 197 of the Act (relating to ceilings of remuneration) and
* Schedule V of the Act as a whole would not apply to the managerial personnel in private company

However, conditions relating to appointment under Sub Section (1) to (3) of Section 196 of the Act would continue to apply to the private company (and public company also) as follows:

1. A same person cannot hold position of MD and manager both [Section 196(1)]
2. His tenure shall not exceed 5 years [Section 196(2)]
3. A person can neither be appointed nor can continue as a managerial person if,
   a) he is below 21 years or above 70 years. However, a person who has attained 70 years may be appointed or may continue with the approval by special resolution. Alternatively, it can be with the approval by Ordinary Resolution and by Central Government (Approval of Central Government sounds surprising for private company, but so is the literal interpretation) [Section 196(3)(a)].
   b) he is undischarged insolvent or adjudged as an insolvent [Section196(3)(b)]
   c) he has at any time suspended payment to the creditors or made composition with them [Section196(3)(c)]
   d) imprisoned for a period of 6 months on conviction of an offence [Section 196(3)(d)]

APPOINTMENT OF MANAGERIAL PERSONNEL IN A PUBLIC COMPANY [SECTION 203(1) READ WITH RULE 8 OF THE RULES]

Every listed company and every other public company having paid up capital of Rs. 10 crores or more is required to appoint Whole time KMPs i.e.

i. MD/CEO /WTD/Manager
ii. CS
iii. CFO

MD/WTD/Manager of the public co. are subject to the provisions of section 196,197 and Schedule V to the Act as a whole, but CEO/CS/CFO are not. [section 196(1) and section 197(1)].

As stated earlier, in pursuit of policy of minimum government governance, by virtue of amended section 197 under the Amendment, 2017 (yet to be notified) approval of central government would not be necessary and would be necessary for remuneration only that too in few circumstances.

For payment of remuneration to managerial personnel (i.e. MD/WTD/Manager), approval of Board of Directors as well as approval of members of the company would be necessary. In case of listed company and other public companies as prescribed under Section 178(1) of the Act read with Rule 6 of the Companies (Meeting of Board and its Powers) Rules, 2014, approval of Nomination and Remuneration Committee also would be necessary.

Section 196 of the Act shall also fulfill the condition precedent for appointment without approval of Central Government as specified in Part I of schedule V as follows:

a) No imprisonment for any period or fine exceeding Rs.1000/- for the conviction of an offence under any one of the Acts, specified in clause (a) of part I of Schedule V

However, appointment can be made with the approval of Central Government.

b) No detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. (COFEPOSA)

However, appointment can be made with the approval of Central Government.

c) At least of 21 years but not exceeding 70 years. However, no approval of Central government would be necessary in case of person of the age of 70 years, if his appointment is approved by Special Resolution.

d) If a person is managerial person in more than one company, he can draw remuneration in one or more companies in accordance with the ceiling as per section V of Part II of Schedule V.

e) He has to be resident. ‘Resident’ includes a person who has been staying in India continuously since at least 12 months from the date of his appointment

Thus, in a nutshell, the conditions spelt out in Section 196 of the Act as also conditions in Part I of Schedule V should be satisfied for the appointment of MD/WTD/Manager in Public Company without approval of Central Government.

REMUNERATION

It would be expedient to analyze the provisions in respect of remuneration payable to a managerial person of private company/unlisted public co./listed public co. especially in the light of amended Section 197 (yet to be effective.)

PRIVATE COMPANY

Neither provisions of Section 197 nor provisions of Schedule V of the Act as a whole would apply to the remuneration payable to the managerial personnel of a Private company, if any in view of non-applicability of sub sections (4) and (5) of section 196 in
terms of notification dated 5th June, 2016. Accordingly, no ceiling of remuneration would apply to managerial personnel of the Private Company.

PUBLIC COMPANY

Ceilings of remuneration

For payment of remuneration to managerial personnel (i.e. MD/WTD/Manager), approval of Board of Directors as well as approval of members of the company would be necessary. In case of listed company and other public companies as prescribed under Section 178(1) of the Act read with Rule 6 of the Companies (Meeting of Board and its Powers) Rules, 2014, approval of Nomination and Remuneration Committee also would be necessary.

REMNUNERATION PAYABLE BY PUBLIC COMPANIES HAVING PROFIT

It would be construed as company having profit if
- remuneration to one managerial person (i.e. MD/WTD/Manager does not exceed 5% of the net profit as per section 198 of the Act) or
- remuneration to more than one managerial personnel does not exceed 10% of the net profit

REMNUNERATION PAYABLE BY PUBLIC COMPANY HAVING NO PROFIT OR INADEQUATE PROFIT

Schedule V of the Act as a whole does not apply to non-executive directors. In case remuneration to any one managerial person exceeds 5% of the net profits or to more than one managerial personnel taken together exceeds 10% of the net profits in any financial year, it may be construed as Company having inadequate profit.

In the circumstances, as of date, a Company has option to pay remuneration exceeding 5% or 10% as the case maybe either in compliance with Schedule V or with the approval of Central Government.

However, amended section 197 under the Amendments 2017 becoming effective (yet to be notified), Central Government would have no power to approve remuneration under section 197. It should not be considered as a matter of rejoicing for the Public Companies thinking that approval of Central Government is no more required. On the contrary, option of payment of remuneration exceeding 5%/10% as the case maybe with the approval of Central Government would not be available to the Company even if it is not able to satisfy the conditions of Schedule V. Then, the Public Company (except unlisted Company which is not subsidiary Company) would have no choice but either to restrict remuneration up to 5%/10% as the case maybe or to pay remuneration exceeding 5%/10% as the case maybe only in conformity with Schedule V.

Options Available for Payment of Remuneration to Managerial Personnel (MD/WTD/Manager) in case of No Profit or Inadequate Profit

GENERAL

In case of no profit or inadequate profit, following options of payment of remuneration exceeding 5% or 10% as the case may be are available to the Managerial Personnel (MD/WTD/Manager) under Schedule V of the Act. First two options are generally available. Third option pertains to a professional person. They are subject to common conditions as spelt out in the next paragraph of the article. Rest of the options are available in Special circumstances.

<table>
<thead>
<tr>
<th>Effective Capital</th>
<th>Cap of yearly remuneration per managerial personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) Negative or less than Rs. 5 Crores</td>
<td>Rs. 60 lakhs</td>
</tr>
<tr>
<td>ii) 5 crores and above but less than Rs.100 Crores</td>
<td>Rs. 84 lakhs</td>
</tr>
<tr>
<td>iii) Rs.100 Crores and above but less than Rs.250 Crores</td>
<td>Rs. 120 lakhs</td>
</tr>
<tr>
<td>iv) Rs.250 Crores and above</td>
<td>Rs. 120 lakh + 0.01% of the effective capital in excess of Rs.250 crores</td>
</tr>
</tbody>
</table>

As of date, remuneration as per aforesaid limits can be paid with the approval of members only by way of Ordinary Resolution under this option.

However, once amended Section 197(1) under the Amendments, 2017 becoming effective, approval of Special Resolution would be necessary even for availing this option.

OPTION II: DOUBLE LIMIT OF PARAGRAPH A

With the approval of members by way of Special Resolution, remuneration at the double rate of the limits in aforesaid Paragraph A can be paid (first proviso to Paragraph A of Section II of Part II of Schedule V).

OPTION III: REMUNERATION TO A PROFESSIONAL PERSON

A) Professional managerial person can be paid any remuneration if following conditions are satisfied

i) no interest in capital (shareholding) directly or indirectly or through any other statutory structure (e.g. through company in last 2 years) before, on or after the date of appointment in the
- the company or
- its holding company or
- any of its subsidiaries

However, if he holds shares not exceeding 0.5% of its paid up share capital

- under any scheme for the allotment of shares to such employees (including ESOP) or
- qualification share it would not be construed as interest in the capital.

ii) no direct or indirect interest/relaton to any director/promoter of
- the company or
- its holding company or
- any of its subsidiaries.

iii) at least graduate level qualification

iv) expertise and specialized knowledge in the field in which the company operates.

B) Common conditions to be complied with for Payment of Remuneration in accordance with option - I to III [Proviso second to Section II of Part II of Schedule V]

i) Approval by
- Nomination and Remuneration Committee as applicable
- Board of Directors in rest of cases

ii) a) No default in repayment of its any debts (including public deposits) or (debentures or interest payable)
For a continuous period of 30 days
In preceding financial year from the date of appointment
b) In case of default
- prior approval from secured creditors
- fact of such approval to be mentioned in the explanatory
  statement to the notice seeking approval of members
iii) a) Ordinary Resolution or Special Resolution as the case may be
  b) approval to remuneration for a period not exceeding 3 years
  iv) a statement to the notice seeking approval of members,
      containing the information in accordance with clause (iv) of
      third proviso to section II of Part II to Schedule V mainly on
      following aspects:
      i) General information
      ii) Information about the appointee
      iii) Other information
      iv) Disclosures in the ‘Corporate Governance’ section under
          the Board’s report, if any relating to terms of service
          contracts including remuneration.

C) Other Options available in Special Circumstances

Option IV: Remuneration in excess of limits prescribed in
Section II/III (options I to VII) [First proviso to Section III of Part II of Schedule V]
Remuneration in excess of limits prescribed in Section II/II of Part
II of Schedule V can be paid to a managerial person by following company:
i) Foreign Company
  ii) Another Indian Company
     - whose members have approved remuneration
     - treats as its managerial remuneration under section 197 of
       the Act.
     - the said remuneration is within permissible limits under
       section 197 of the Act.

Option V: Remuneration up to double limit of Section II
Remuneration up to double limit of the amount specified in Section
II of Part II of Schedule V can be paid to a managerial person of
following companies:
i) Newly incorporated company up to 7 years from the date of
   incorporation.
ii) In case of sick company, up to 5 years from the date of sanction
    of scheme of revival by BIFR (no more in existence now)
iii) Up to 5 years from the date of sanction in respect of the
    company whose resolution plan is approved by NCLT under
    the IBC.

Option VI: Remuneration exceeding the limits prescribed in
Section II fixed by BIFR/NCLT [Paragraph (c) of Section III of
Part II of Schedule V]
Remuneration exceeding the limits prescribed in Section II of part
II of Schedule V can be paid to a managerial personnel if it is so
fixed by BIFR or NCLT.

Option- VII: A Company in SEZ [Paragraph (d) of Section III of
Part II of Schedule V]
A company in SEZ notified by Department of Commerce can pay
remuneration to its managerial person up to Rs. 2,40,00,000 p.a.
if it has
- not raised money by public issue of shares/debentures in India

D) Common conditions to be complied with for payment of
remuneration in accordance with Option IV to VII [First
proviso to Section III of Part II of Schedule V]
All the conditions mentioned in Second Proviso to Section II of Part
II of Schedule V (as mentioned in paragraph B above) shall be
complied with.

Following additional conditions shall also be satisfied
(i) the managerial person is not receiving remuneration from any
other company(except in option IV as aforesaid)
(ii) Certificate from
   - Auditor or
   - CS of the company or
   - PCS, if there is no CS of the company
   (a) relating to NOC from secured creditors/term lenders in
      respect of appointment/remuneration to managerial
      person
   (b) such certificate filed with the return unde section 196(4) in
      form MR-1
(iii) Certificate from
   - Auditor or
   - CS of the company or
   - PCS, if there is no CS of the company
   Relating to no default of payment to any creditors /all dues to the
   depositors being settled on time.

Perquisites in addition to the remuneration accordance with
Section II/III (options I to VII)
(A). Additional Perquisites [paragraph 1 of section IV of schedule
VI]
(a) Contribution to PF, contribution to superannuation or
   annuity to the extent either singly or put together not
   taxable under the Income Tax Act,1961
(b) Gratuity not exceeding half a month’s salary for each
    completed year of service.
(c) Leave encashment at the end of tenure

(B) Additional perquisites available only to expatriate managerial
person (including NRIs) [Paragraph 2 of Section IV of Schedule
VI]
(a) Children’s education allowance up to Rs. 12,000 per
    month at actuals
    per child restricted to two children
(b) Return Holiday passage: for children /family from the
    place of study or
    staying outside India
    (i) once in a year by Economy class or
    (ii) once in two years by First class
(c) Leave travel concession: Return passage for self and
    family for spending leaves in home country as per
    Company Rules.

UNLISTED PUBLIC COMPANY
Unlisted public company is at par with the listed company as regards applicability of Section 197 as well as Schedule V of the
Act as a whole.

However, unlisted public company (except subsidiary of listed co.)
can pay remuneration even exceeding the limits under Part II of
Schedule V if the following conditions of Rule 7 of the Rules are
satisfied:

i. Approval by Nomination and Remuneration Committee of a Company if the company is required to constitute under section 178(1) of the Act read with Rule 6 of the Companies (Meetings of Board and its Power) Rules, 2014 with proper reason and justifications, and by the Board of Directors in rest of the cases.

ii. No default in repayment of any of
    - its debt (including public deposit) or
    - debentures or interest payable thereon or
    - preference shares and dividend on it for a continuous period of 30 days in preceding financial year before the date of payment to such managerial personnel

iii. (a) approval by special resolution
    (b) approval for remuneration for a period not more than 3 years.

iv. Explanatory Statement to the notice of general meeting to contain the information as per subclause (iv) of second proviso to Clause (B) of Section II of Part II of the Act including reasons and justifications for payment of remuneration beyond the Limit.

v. Up-to-date filing of due Balance sheet and Annual Return

Remuneration payable to a managerial person in two companies (Section V of Schedule V)

A managerial person may draw remuneration from one or both companies if
- it is not inconsistent with Sections I to IV (relating to remuneration) of Schedule V
- total remuneration from both companies not to exceed higher admissible limit of any one of the companies.

FEW CLARIFICATIONS RELATING TO REMUNERATION

Some of the aspects of remuneration are attempted to be clarified on the basis of clarification issued by the Central Government under the Companies Act, 1956 since intention of the Central Government does not appear to be inconsistent even under Companies Act, 2013.

Inadequate profit

It is understandable as to what is profit or loss. But, there does not appear to be any conclusive clarification/definition in respect of ‘inadequate profit’. However, Sr.No.(i) Clarification No. 2/94 dated 10th February, 1994 issued by then Department of Company Affairs throws some light on the aspect as follows:

“(i) with effect from 01.02.1994, remuneration payable by a company having adequate net profits to its managerial personnel shall be governed by Section I of Part II of Schedule XIII. In other words, there would be no restriction on the nature or quantum of remuneration paid by a company to its managerial personnel as long as the remuneration paid during any financial year is within 5% or 10% of the net profits as the case may be, of the financial year.”

Hence, it may be inferred that if remuneration in any financial year exceeds the limit of 5% or 10% as the case may be as contemplated under Section 197(1) of the Act, it may be considered as inadequate profit.

Automatic switchover from Section I to II of Part II of Schedule V it is suggested that even if the company is able to pay remuneration within 5% or 10% of the net profits as the case may be in any financial year, under Section I of Part II; it would be better to comply with the conditions as applicable to Section II (no profit or inadequate profit) in advance by abundant precaution while seeking approval of shareholders so that in future whenever the company has inadequate profit in any financial year during the currency of the term of a managerial person, it can pay remuneration in accordance with Section II of Part II of Schedule V.

Sr.No.(iv) of clarification no.2/94 dated 10th February, 1994 provided on this aspect as follows:

“(iv) Regardless of the fact that remuneration of a managerial person may have initially been fixed in accordance with the provisions of section II of part II of schedule XIII in view of availability of adequate net profits at the relevant time, the provisions of section II of part II shall become automatically applicable to him in any financial year in which the company has no profits or its profits are inadequate”.

This implies that switchover from Section I of Part II (Remuneration payable by having profits) to Section II of Part II (Remuneration payable by companies having no profit or inadequate profit without Central Government approval) is automatic.

However, it is suggested that even if the company is able to pay remuneration within 5% or 10% of the net profits as the case may be in any financial year, under Section I of Part II; it would be better to comply with the conditions as applicable to Section II (no profit or inadequate profit) in advance by abundant precaution while seeking approval of shareholders so that in future whenever the company has inadequate profit in any financial year during the currency of the term of a managerial person, it can pay remuneration in accordance with Section II of Part II of Schedule V.

Whether the limit of remuneration of 5%/10% of the net profit is absolute?

In spite of provisions relating to payment of remuneration exceeding 5%/10% as the case may be either with the approval of Central Government or in compliance with Schedule V (earlier Schedule XIII) are in the statute book since decades, many corporates/professionals surprisingly confront with the issue whether 5%/10%. Limits are absolute or not. But in fact, limit of remuneration for one managerial person up to 5% of net profit and for more than one managerial personnel taken together up to 10% under section 197
is not absolute. In case of absence of profit or inadequate profit, remuneration can be paid exceeding 5%/10% as the case may be but not exceeding the limits under Part II of Schedule V, even within the meaning of amended Section 197 yet to be effective.

In case of unlisted public company (which is not subsidiary of a listed company), remuneration can be paid exceeding 5%/10% under section 197 and even exceeding the limits of Schedule V subject to the fulfillment of conditions under Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Scaling down remuneration in case of reduction of effective capital Sr.No.(V) of clarification No.2/94 dated 12th February, 1994 provided on this aspect as follows:

“(V) In a case where section II of part II of schedule XIII is applicable, if the effective capital of a company is reduced in any financial year subsequent to the year of appointment (due to repayment of long term loans, further accumulation of losses or for any other reason), with the result that the remuneration payable in that financial year no longer corresponds to the effective capital, the remuneration will have to be scaled down appropriately unless approval of the Central Government is obtained to payment of remuneration in excess of the limits specified in Section II of Part II of Schedule XIII.”

Of course, once amended section 197 becoming effective, option of obtaining Central Government approval would not be available and the company would be left with no choice but to scale the remuneration in accordance with Schedule V in case of reduction of effective capital.

Waiver of recovery of excess remuneration (sub-sections (9) and (10) of Amended Section 197)
If any director draws remuneration in excess of the limit prescribed by Section 197 (including limit under Schedule V) or without the prior approval of Central Government, it is termed as excess remuneration and the director is required to refund the same to the company (without any time limit) and till then he is supposed to hold it in trust. Moreover, waiver of recovery of excess remuneration can only be with the approval of Central Government.

**However, in line with Section 197 as amended by the Amendments, 2017 (which is yet to be effective)**

i) approval of Central Government would no more be required in respect of remuneration to managerial personnel.
ii) excess remuneration would mean remuneration drawn in excess of limits prescribed under section 197 or without requisite approval as required under 197. (Like requisite approval of members or of secured creditors in case of default, etc.)
iii) excess remuneration shall be refunded within two years or such lesser period as allowed by the company. In other words, right of members to allow refund is also restricted to two years only.
iv) Power of approval to waiver of recovery of excess remuneration would be shifted from Central Government to members of the company by way of Special Resolution. Moreover, this right would be exercisable within two years from the date, excess remuneration becomes refundable.

**General Conditions Applicable to Part I and II of Schedule V (Part III of Schedule V)**
General conditions in respect of Part I (appointment) and Part II (remuneration) of Schedule V in respect of managerial person of public company are as follows:

(i) Approval of shareholders
(ii) certificate relating to compliance of the conditions under schedule from
- Auditor of the company or
- CS of the company or
- PCS, if the company is not required to appoint CS

**Exemption to certain Companies from the Applicability of Schedule V (Part IV of Schedule V)**
The Central Government has power to exempt any class (es) of the companies from any of the requirements of Schedule V.

**CONCLUSION**
Policies and procedures for managerial appointment and remuneration have witnessed sea change in last few years due to enactment of the Companies Act, 2013 and rules framed thereunder; exemption to private companies vide Notification dated 5th June, 2015; amendments in Schedule V and lastly by the Companies (Amendment) Act, 2017 mainly from virtual total Government governance to governance, of shareholders and in case of financial default of the secured creditors also.
The Companies (Amendment) Act, 2017: Panacea for Ease of Doing Business?

The Companies Bill passed by the Lok Sabha on 18th December, 2012, and by the Rajya Sabha on 8th August, 2013 received Presidential Assent on 29th August, 2013. The journey from the time changes in the then Companies Act, 1956 were initiated till enactment of The Companies Act, 2013 (hereinafter also referred to as “the 2013 Act”) was rather arduous and what is now probably a well-known fact that despite having been in the making for a long time, the Act appeared to have been catapulted in 2013. The twin objective of doing away with the old/redundant provisions of the then Companies Act, 1956 which were out of sync with the changed times as well as facilitate ease of doing business appeared to have been achieved in as much as the Act had fewer sections. However, shortly after the first set of sections were made effective in September, 2013 it transpired that there was indeed significant amount of clarity required in various parts of the 2013 Act. One may now comment that it could have been the natural human tendency of resistance to having to unlearn the Old Act and learn the new Act coupled with seemingly large size of Regulations that resulted in issue of various notifications that followed the phased implementation of the 2013 Act.

The implementation of the Companies Act, 2013 was thus turning out to be a challenge and at times, getting counter-productive. Various representations from the corporate world and other stakeholders facing difficulties in implementation of various provisions viz. Associate/Subsidiary relationships, further issue of shares, holding of Board meetings/shareholders’ meetings, appointment of Auditors, inter-company loans and investments particularly loan to subsidiaries, Related Party transactions, Managerial Remuneration etc. led to the issue by the Ministry of Corporate Affairs of various Notifications/Removal of difficulties Orders/Circulars/Amendments to simplify the aforesaid provisions, more notable ones being the Companies Amendment Act, 2015 and the Notification dated 5th June, 2015 providing certain exemptions to private limited companies.

The Companies (Amendment) Act, 2017 has since been passed by the Lok Sabha on 27th July, 2017 and Rajya Sabha on 19th December, 2017. It received the assent of the President of India on 3rd January, 2018 and subsequently was published in the Gazette of India. The amendments/provisions contained in the Companies (Amendment) Act, 2017 (hereinafter also referred to as “the Amendment Act”) shall probably again in a phased manner (as on the date of this article, two sections viz. Sections 1 and 4 of the Amendment Act have been made effective on and from January 26, 2018), come into force on such date(s) as the Central Government may, by notification in the Official Gazette, appoint. The Amendment Act seeks to improve ease of doing business in the country, strengthen corporate governance standards, achieve better harmonization with other statutes and address difficulties in implementation of the Companies Act, 2013.

Well, the Amendment Act, 2017 seeks to improve ease of doing business in the country, strengthen corporate governance standards, achieve better harmonization with other statutes and addresses the difficulties in implementation of the Companies Act, 2013. The present article in a tabular form gives a gist of some of the key provisions of the Companies Act, 2013; amendments made by the Companies (Amendment) Act, 2017 therein and the authors’ comments for such amendments.

The table below shows a gist of some of the key provisions of the Companies Act, 2013;
amendments made by the Companies (Amendment) Act, 2017 therein appear in the next column and the authors’ comments in the last column:

<table>
<thead>
<tr>
<th>The Companies Act, 2013</th>
<th>The Companies Amendment Act, 2017</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 2: Definition:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sub-section 6 defines “associate company” amongst other matters, based on control of at least 20% total share capital and includes “a joint venture company”. However, joint venture company has not been defined in the Act.</td>
<td>The expression ‘significant influence’ under the definition of an associate company has been defined as control of at least 20% of total voting power (instead of total share capital) or control or participation in business decision under an agreement.</td>
<td>Synchronization with Ind-AS is required in order to ensure that determination of “associates” and “joint ventures” pursuant to the Act and the accounting standards is clear and suitably aligned. The revised definition would impact the requirements of consolidation.</td>
</tr>
<tr>
<td><strong>Sub-section 30 defines:</strong> “debenture shall not include money market instruments, securities …. and such other instruments as may be prescribed by the Central Government in consultation with the RBI, issued by a company.”</td>
<td>Debenture shall not include money market instruments, securities …. and such other instruments as may be prescribed by the Central Government in consultation with the RBI, issued by a company.</td>
<td>This has rightly taken the following out of the ambit of ‘debenture’: Commercial papers and other money market instruments which are part of short-term fund mobilization program of many companies.</td>
</tr>
<tr>
<td><strong>Section 4:</strong> Name of the Company to be incorporated, shall be reserved by the ROC for 60 days from the date of application.</td>
<td>The period has been reduced to 20 days.</td>
<td>The amendment is in line with the fast track incorporation of a company (refer e-Form SPiCe) and aims to ensure that a name reserved should be used within a reasonable time instead of being blocked for 60 days. This would also enable others interested in the name to use it for incorporation of a company.</td>
</tr>
<tr>
<td><strong>Section 123(1): Interim Dividend</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year. In which such interim dividend is sought to be declared.</td>
<td>The Amendment Act provides that: The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from the closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of the profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.</td>
<td>The amendment has removed the rigidity of the earlier provision, thereby presenting more flexibility to the Board of Directors to declare interim dividend in order to reward the shareholders.</td>
</tr>
<tr>
<td><strong>Section 135 - Corporate Social Responsibility (CSR):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>What exactly is meant by ‘during any financial year’ used in section 135(1) was not clear as to whether a company should consider net worth/turbulence/net profit for the immediately preceding financial year or the current financial year to determine the applicability of CSR.</td>
<td>The Amendment Act has substituted the words “pecuniary relationship” with: “pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten percent of his total income or such amount as may be prescribed.”</td>
<td>The amendment has rightly corrected the position by introducing materiality in the absence of which even the remuneration received by an Independent Director could be treated as “pecuniary relationship”. However, the provision in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI (LODR)) needs to be aligned with the Amendment Act.</td>
</tr>
<tr>
<td><strong>Section 139: Appointment of Auditors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Amendment Act omits the Proviso to Section 139 (1) relating to ratification of appointment of Auditor</td>
<td>Proviso to section 139(1) requires the appointment of auditor to be placed before the members at every annual general meeting.</td>
<td>Such omission by the Amendment Act has removed the following concerns: 1. If the members do not ratify the appointment, it could have resulted in the company being required to comply with the provisions of Section 140 (1) dealing with removal of auditor before expiry of term - including special resolution at general meeting. 2. The Board being required to appoint another auditor pursuant to the Companies (Audit and Auditors) Rules, 2014 including passing of an ordinary resolution at general meeting.</td>
</tr>
<tr>
<td><strong>Section 140: Independent Directors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sub-section 6 (c) lays down that an Independent Director is a director who has or had no pecuniary relationship with the company, its holding company, subsidiary or associate company.</td>
<td>The Amendment Act has substituted the words “pecuniary relationship” with: “pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten percent of his total income or such amount as may be prescribed.”</td>
<td>The amendment has rightly corrected the position by introducing materiality in the absence of which even the remuneration received by an Independent Director could be treated as “pecuniary relationship”.</td>
</tr>
</tbody>
</table>

1 Simplified Proforma for Incorporating Company electronically
Section 185: Loan to directors…. 
The provisions restrict extending loan, guarantee or security directly or indirectly by a company to its directors or to any person in whom the director is interested.

The Section of the Act has been entirely substituted by a new Section 185 in the Amendment Act and removes the restriction of giving loan to any other person or parties in whom director is interested if the following conditions are met: 
1. A special resolution is passed by the company in the general meeting; and 
2. The loan is utilized by the borrowing company for its principal business activities.

Section 188: Related Party Transactions 
Second Proviso to the Section 188(1): No member of the company shall vote on such (special) resolution to approve any contract or arrangement which may be entered into by the company if such member is a related party.

The Amendment Act has aligned the restriction imposed on the members by the second proviso vis a vis Section 47 of the Companies Act, 2013 by making the latter provision subject to provisions of Section 188 (1).

A member holding shares in the company is entitled to vote on all resolutions placed before the shareholders as per Section 47. Now with removal of anomaly between Section 188 and Section 47 the restrictive provision applicable to a member being a related party stands removed. 

However, for listed entities the difference between definition of a related party transaction in the Act and the SEBI (LODR) still remain. Consequently a listed entity will continue to comply with both the Act and SEBI (LODR) on the basis of "more stringent of the two to prevail."

Moreover, unlike the Act, there is no exemption in the SEBI (LODR) for the transactions entered into in ordinary course of business and at arm’s length basis.

Apart from certain key points of the Companies (Amendment) Act, 2017 described in the table above, there are many other changes made in various provisions of the Companies Act, 2013 some of which may be classified into the following categories:

**AMENDMENTS TO FACILITATE EASE OF DOING BUSINESS**

Section 7 – Incorporation of Company
With reference to incorporation of a company, ‘affidavit’ has been replaced by "self-declaration" from the first subscribers to memorandum and first directors.

-This will ease the additional documentary burden and avoid delay in the incorporation process.

Section 96 – Annual General Meeting (AGM)
The Amended Section 96 allows an unlisted company to hold its AGM anywhere in India if consented by all members in writing or in electronic mode.

- The amendment provides flexibility by removing the restriction, another step in the direction of ease of doing business.

Section 110 - Postal Ballot
The items which were mandatorily required to be passed by postal ballot may now be transacted at the general meeting where the facility of electronic voting is provided by the Company.

- The amendment provides significant flexibility and would enable wider shareholder- participation and saving of cost.

Section 134 – Board’s Report
Instead of exact text of the policies, salient points of the CSR Policy, Remuneration Policy may be included in the Board’s report along with respective web link to be disclosed in Board’s report. Extract of Annual Return required to be incorporated under Board’s report can now be uploaded on website, if any, and web link provided in Board’s report.

- This removes redundancy as the information on the website is in public domain and just a click away for the interested reader.
Further, reduction in paper being environment friendly step, is always welcome.

**Section 160 - Deposit of Rs. 1 lakh in case of appointment of Director**

The requirement of deposit of Rs. One lakh under Section 160 shall not apply in case of appointment of Independent Directors or Directors recommended by Nomination and Remuneration Committee or Board.

- The amendment removes the burden of payment of such a significant sum by a shareholder though refundable upon success of resolution on appointment, and also recognizes the importance of independence inherent in a Nomination and Remuneration Committee which has been vested with the responsibility of identifying suitable persons as Directors.

**Section 173 - Participation in Board meeting through electronic mode**

The directors are allowed to participate on certain items which were restricted at Board meetings through video conferencing or other audio visual means if the quorum through physical presence of directors is in place at the meeting.

- An important step for improving the ease of doing business as in today’s technology savvy world, video conferencing is allowed for removing the distance from which a director may find it convenient to participate in a meeting. Hence restriction on participation in certain items on the agenda was an avoidable obstacle.

**AMENDMENTS FOR RECTIFYING OMISSIONS AND REMOVE INCONSISTENCIES AND DIFFICULTIES IN IMPLEMENTATION**

**Section 2(46) – Holding Company**

The Companies Act, 2013 defines a holding company as holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies. The definition does not contain any reference to a body corporate. A foreign company is not a company under the 2013 Act; rather, it is a body corporate. It may be argued that a foreign parent is not a holding company under the 2013 Act. The Amendment Act has stated that the expression “company” in the definition of holding company will include body corporate.

- This amendment has removed an anomaly by rectification of the relevant provision.

**Section 12 – Registered Office of Company**

The Amendment Act has increased the timeline for a newly incorporated Company to have its registered office from 15 days to 30 days.

- This removes the difficulty and gives more time to a new company to have its registered office.

**Section 143- Powers and duties of auditors and auditing standards**

Section 143(3) of the Companies Act, 2013 states that the auditor’s report, inter alia, will state “whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.” Since ‘internal financial controls’ was not defined, it imposed very wide responsibilities of reporting on financial reporting controls and business controls. The Amendment Act provides that the Auditors’ responsibility for reporting on internal financial controls will be limited to financial statements. They will not be required to report on the business controls.

- The amendment has rightly rectified the provision which imposed a complex and almost impractical responsibility on the auditor.

**Section 177 – Audit Committee**

Under Section 177 of the Companies Act, 2013, the Audit Committee is required to approve all Related Party Transactions (RPTs) and subsequent modifications thereto. However, Section 188 requires the Board and/or shareholders to pre-approve only specific RPTs. The Amendment Act clarifies that the RPTs other than those prescribed under section 188, if not approved by Audit committee, will require the approval of Board of Directors.

- The amendment seeks to rectify the inconsistency, however a note of caution here is required so far a situation is concerned wherein a RPT not approved by Audit Committee will be approved by the Board, for such a transaction will per se compel the Board members to test it very carefully for its merits before overriding disapproval of the Audit Committee. In other words, if the RPT did have the merits in the first place, then why did the Audit Committee not approve it?

**SOME OTHER SIGNIFICANT AMENDMENTS**

**Section 2(51) - Definition of Key Managerial Personnel (KMP)**

The Board is now empowered to designate Officers not more than one level below the directors who are in whole time employment, as KMP.

- The amendment provides flexibility to the Board to fix specific responsibility it chooses for the senior employee by according him/her the coveted but responsible position.

**Section 2(57) - Definition of ‘net worth’**

While calculating net worth debit/credit balance in the profit and loss account shall be considered.

- This has clarified the earlier doubt.

**Section 42 – Private Placement**

The arguments against Section 42 were that it is cumbersome, time consuming and impractical. The entire Section has been substituted by the Amendment Act, the major amendments are:

- Private Placement offer letter is replaced with Private Placement offer And Application (PPOA) and it shall not carry right of renunciation.
- Requirement to file offer letter in Form GNL-2 has been done away with.
- Companies can simultaneously take up more than one issue of securities.
- Companies cannot use funds till return of allotment has been filed with ROC within 15 days from the date of allotment.

- The last point regarding use of the funds until filing of return of allotment is fraught with practical difficulties the Issuers will face and is worth a review.

**Section 446A – Factors for determining level of punishment**

The following parameters have been provided which the court or special court will consider while determining level of punishment:
(a) Size of the company;
(b) Nature of business carried on by the company;
(c) Injury to public interest;
(d) Nature of the default; and
(e) Repetition of the default.

- The impact of the above amendment would be known after it is implemented because of the discretion involved.

Section 53 - Prohibition on issue of shares at discount
A new provision is inserted to enable companies to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India.

- The amendment has removed an anomaly and will provide deserving relief in debt restructuring.

Section 90 - Register of significant beneficial owners in a company
There is a new requirement of a declaration to the company by a significant beneficial owner i.e. every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2.

- The Amendment Act substitutes the entire Section 90 to introduce a new terminology for significant beneficial ownership, in line with the international governance standards and OECD principles.

Section 178 – Evaluation of Directors by NRC
Instead of carrying out evaluation of every Director’s performance, the Nomination and Remuneration Committee will specify methodology for effective evaluation of performance of Board and committees and individual directors either by the Board, NRC or an independent external agency and NRC can review the implementation of evaluation system.

- The amendment removes duplication of task/regulation.

Section 188 - Voting by Related Parties
The requirement of related party to abstain from voting has been removed in case of a company where 90 percent or more members, in number, are relatives of promoters or are related parties.

- This would obviate the practical difficulty faced by the companies with concentrated shareholding of the promoters and their relatives (in number).

SOME NOTABLE DELETIONS/OMISSIONS
The following provisions have been omitted by the Amendment Act understandably for the reasons mentioned below each of the deletions as per the authors’ view:

Section 93 relating to Return to be filed with Registrar of Companies in case promoters’ stake changes or there is a change in shareholding of top ten shareholders of the company.

- The provision was proving to be practically difficult and also duplication of regulation since the disclosures prescribed by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and/or the SEBI (Prohibition of Insider Trading) Regulations, 1992 as amended already ensured availability of the information in respect of the listed entities which generally witness transfer/trading on the platforms provided by the Stock Exchanges.

Section 194 relating to Prohibition on forward dealings in securities of company by director or Key Managerial personnel; and Section 195 relating to Prohibition on Insider Trading of Securities.

- As stated above, the SEBI (Prohibition of Insider Trading) Regulations, 1992 regulate the dealing in securities of the company by director or Key Managerial Personnel or other “Insiders” and almost all of such trading is found in the shares of listed entities only. Further, the Securities Contracts Regulation Act, 1956 declares any ‘off-market’ trading in securities of companies where Stock Exchange exists, void. With our country having nation-wide terminals, presence of Stock Markets can be taken as prevalent all over, thereby leaving only the transactions in securities on ‘Spot Delivery’ basis as the only alternative. Therefore, the provisions of Sections 194 and 195 being duplication of regulation, have been rightly omitted.

CONCLUSION
Response to the Amendment Act is positive, though the Rules for implementation of the amended provisions are awaited. The Amendment Act has largely succeeded in removing the difficulties faced following introduction of the Companies Act, 2013 while simultaneously taking care to bring in the requisite changes for ease of doing business, encourage disclosures, better level of governance and address various concerns of all stakeholders.

Whether the Amendment Act has been able to comprehensively cover all aspects requiring attention and eliminate the need for frequent notifications/disciplining, or in other words is the Amendment Act a panacea for ease of doing business would depend on reciprocating changes in the other laws/regulations including from the SEBI/other regulators/authorities concerned as well as response from the stakeholders by effective compliance as responsible corporate citizens, to take India to a higher and deserving position in the world.

REFERENCES:
Highlights of the Companies (Amendment) Bill, 2017 by The Institute of Company Secretaries of India.
Provisions Relating to Maintenance of Register of Significant Beneficial owners in a Company

INTRODUCTION
The Companies (Amendment) Act, 2017 (Amendment Act) inserted provisions relating to register of beneficial owners in a company (amended provision) by way of substitution for section 90 of the Companies Act, 2013 (the Act) dealing with investigation of beneficial ownership of shares in certain cases (existing provision). The precise purpose for which the amended provision has been sought to be brought into the Act is not stated either in the Statement of Objects and Reasons to the Companies (Amendment) Bill nor in the Notes on Clauses. It is somewhat unusual to insert a totally new subject matter not related to the existing provision by way of substitution. The amended provision is yet to be brought into force.

The Companies (Amendment) Act, 2017 has introduced provisions relating to register of significant beneficial owners in a company in section 90 of the Companies Act, 2013, by substituting the existing provision. It seeks to provide that a declaration is to be given to the company by every individual acting alone or together or through one or more person including a trust and persons resident outside India, who holds beneficial interest of not less than 25% or other prescribed percentage of shares of a company or the right to exercise or the actual exercising of significant beneficial influence or control. More clarity regarding this provision will emerge after the relevant rules are framed as contemplated in the amended provision. There are some grey areas and it is expected that those will be plugged before operationalisation of the new provision.

in the Statement of Objects and Reasons to the Companies (Amendment) Bill nor in the Notes on Clauses. It is somewhat unusual to insert a totally new subject matter not related to the existing provision by way of substitution. The amended provision is yet to be brought into force.

The amended provision contemplates two types of actions for collecting the information relating to significant beneficial owner in a company, namely:

i from the individual being the significant beneficial owner by requiring him to make a declaration; and

ii by the company concerned obtaining information in the manner contemplated in the amended provision.

There are also compliance related matters and penalty for violations.

MEANING OF BENEFICIAL INTEREST
“Beneficial interest” in a share for the purpose of this amended provision is found in sub-section (10) of section 89 – Clause 21 of the Amendment Act. It is defined in an inclusive manner. The right or entitlement of a person either alone or together with any person with respect to (i) exercising or causing exercise of any or all of the rights attached to such share; or (ii) receiving or participating in any dividend or other distribution in respect of such share, directly or indirectly, through any contract, arrangement or otherwise will be construed as having beneficial interest in a share of a company.

APPLICABILITY OF THE AMENDED PROVISION
The amended provision requires every individual who holds beneficial interest of not less than twenty-five per cent or such other percentage as may be prescribed in shares
“Beneficial interest” in a share for the purpose of this amended provision is found in sub-section (10) of section 89 – Clause 21 of the Amendment Act. It is defined in an inclusive manner. The right or entitlement of a person either alone or together with any person with respect to (i) exercising or causing exercise of any or all of the rights attached to such share; or (ii) receiving or participating in any dividend or other distribution in respect of such share, directly or indirectly, through any contract, arrangement or otherwise will be construed as having beneficial interest in a share of a company.

Such individual may exercise the beneficial interest (a) by himself; or (b) acting together or through one or more persons or trust including a trust and persons resident outside India.

The term “Control” shall include (a) a right to appoint majority of directors; or (b) to control the management or policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly. All these rights or powers can emanate from the shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

The contents of the declaration, the manner in which it shall be made and the period within which it should be made as well as the changes therein, will be prescribed by rules to be made pursuant to this amended provision.

The Central Government has the power to specify class or classes of persons which shall not be required to make a declaration in terms of the amended provision.

MAINTENANCE OF REGISTER AND INSPECTION OF IT

Every company is required to maintain a register of the interest declared by individuals and the changes therein. The details to be included in the register shall include the name of the individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed by rules to be framed.

The register is open for inspection by any member of the company on payment of such fees as may be prescribed. Persons other than members cannot make a request for the inspection of the register. Unlike some other provisions of the Act, the member intending to inspect the register shall have to pay the prescribed fee.

RETURN TO BE FILED WITH THE REGISTRAR

Every company shall have to file a return of significant beneficial owners of the company and the changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time in such manner as may be prescribed. The rules to be framed will set out the format of the return to be filed by the company. Though there is some ambiguity whether those companies where there are no significant beneficial owners would also be required to file a nil return, it appears as the maintenance of register is based on the declaration of collection of information, it is only those companies where there is/are significant beneficial owners that are required to file the return.

MANNER OF COLLECTION OF INFORMATION RELATING TO SIGNIFICANT BENEFICIAL OWNER

A company shall give a notice to any person (whether a member or not of the company) whom it knows or has reasonable cause to believe that he may be the significant beneficial owner of the company; or he has knowledge of the identity of significant beneficial owner or another person likely to have such knowledge; or he had been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued - but has not registered as a significant beneficial owner with the company by filing a declaration.
The manner of giving notice will be prescribed by the rules to be framed. It is expected that the rules will also have a provision regarding presumption of service of notice.

It is the responsibility of the person receiving notice to provide the information within a period not exceeding thirty days of the date of the notice. The period for furnishing the information is to be reckoned from the date of notice and not from the date of receipt of the notice.

ROLE OF TRIBUNAL

Where the person fails to give the company the required information within the time specified in the notice or where the information given is not satisfactory, the company shall apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

The Tribunal within a period of sixty days of receipt of the application or such other period as may be prescribed, after giving an opportunity of being heard to the parties concerned, may make such order restricting the rights attached with the shares.

If either of the parties, namely, the company or the person concerned, is aggrieved by the order of the Tribunal, may make an application to the Tribunal for relaxation or lifting of the restrictions placed by the Tribunal. It is akin to a review of its own orders by the Tribunal. Provision for appeal against the order of the Tribunal is not envisaged in the amended provision.

Absence of provision relating to appeal is not a defect as the amended provision contemplates review of the order. The time limit for filing application by the person aggrieved is not specified in the amended provision. It is not clear why the company which had previously made an application to the Tribunal for imposing restrictions should make an application for relaxation of the restrictions imposed by the Tribunal by its order on its application. If the Tribunal had rejected the application of the company or not granted all reliefs sought for from it and the company feels strongly that it has a good case, it should have recourse to approach the Tribunal to pass an order as requested by it in its application. The Tribunal should not turn down the application of the company for such a relief on the ground of absence of requisite powers.

Though there is some ambiguity whether those companies where there are no significant beneficial owners would also be required to file a nil return, it appears as the maintenance of register is based on the declaration of collection of information, it is only those companies where there is/are significant beneficial owners that are required to file the return.

PUNISHMENT

Individual having significant beneficial ownership failing to make a declaration is punishable with fine of not less than one lakh rupees, which may extend to ten lakh rupees. If the failure is a continuing one the individual is liable to further fine at the rate of Rs. 1000 for every day after the first during which the failure continues.

In the case of a company, if it fails to maintain the register of beneficial owners and file the return with the Registrar or denies inspection of the register to any member, the company and every officer who is in default shall be punishable with fine which shall not be less than Rs. 10 lakhs but may extend to Rs. 50 lakhs. In case the failure is a continuing one, a further fine which may extend to Rs. 1000 per day after the first day during which default continues is also leviable.

Maintenance of the register of significant beneficial owners and filing return with the Registrar are two distinct acts. However, as per the amended provision, it appears that the company and every officer of the company who is in default are liable to penalty only if both matters are not complied with. Non-maintenance of the register or non-filing of the return with the Registrar alone will not attract the penal provisions under the amended provision unless the Tribunal interprets the conjunction “and” to be read as “or”. The legislatures could have brought clarity, especially with regard to the penal provisions, instead of leaving it to the judiciary to clarify what someone else had intended. As the officer of the company who is in default is also liable to punishment, he is required to ensure that the company is not in default in compliance with the amended provision to avoid prosecution.

Any person wilfully furnishes any false or incorrect information or suppresses any material of which he is aware in the declaration made shall be liable to action under section 447 of the Act.

EXEMPTION TO GOVERNMENT COMPANIES

The Central Government by notification dated 5th June 2015 exempted the application of the existing provision (section 90) to Government companies. As the amended provision has been inserted by way of substitution, although it related to somewhat different subject matter than the existing provision, unless exemption notification is rescinded, modified or withdrawn, the exemption granted to Government companies will continue to be available to them.

CONCLUSION

It is to be borne in mind that the amended provisions apply to a company. Hence all companies, whether private, public etc., will have to comply with the amended provision. A better understanding of the amended provision will emerge after the rules are framed as contemplated in the amended provision. While there is no plausible reason to dispense with the maintenance of the register of significant beneficial owners by companies, it would be better to exempt those companies which do not have any significant beneficial owner from filing a return with the Registrar. There shall be clarity regarding the application (for review) to be filed by the company in terms of section 90(9) of the Amendment Act vis-à-vis the relief requested in the application. The rules may also provide for the time limit for filing an application under section 90 (9) of the Amendment Act.
Companies (Amendment) Act, 2017 w.r.t. Appointment and Qualifications of Directors and Meetings of the Board and its Power

INTRODUCTION

The Central Government notified the Companies (Amendment) Act, 2017 on 3rd January, 2018. The provisions of this Amendment Act shall come into force on the date or dates as the Central Government may appoint by notification(s) in the Official Gazette. The provisions with respect to amendments to the provisions relating to Appointment and Qualifications of Directors and Meetings of the Board and its Power, have been discussed here.

The Article aims at analyzing the amendments made by the Companies (Amendment) Act, 2017 to Chapter XI (Appointment and Qualifications of Directors ) and Chapter XII (Meetings of the Board and its Power) of the Companies Act 2013 and the rationale behind the amendments.

BACKGROUND

In order to understand any law, it is necessary that we understand the object of the law, the reason behind its enactment or its amendment. Hence before we actually go through the provisions of the Companies (Amendment) Act 2017, we need to understand the thought process involved and the reason why the amendments were necessary.

The enactment of the Companies Act, 2013 (Act) was one of the most significant legal reforms in India in the recent past, aimed at bringing Indian Company Law in tune with global standards. The Act introduced significant changes in the Company Law in India, especially in relation to accountability, disclosures, investor protection and corporate governance.

The Stakeholders took some time to get adjusted to the new regime, the new provisions, the additional disclosures required under the Act. Certain difficulties were encountered while implementing the Act and the rules framed thereunder. Several notifications, circulars, etc. were issued from time to time to deal with the problems faced by the stakeholders. The Government continued to receive representations from various sectors like the industry, professional bodies and it realized that the Act needed further review. In view of this, the Ministry of Corporate Affairs (MCA) constituted the Companies Law Committee (CLC) under the chairmanship of the Secretary, Ministry of Corporate Affairs vide an office order dated 4th June, 2015. The CLC comprised 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 the industry. The CLC co-opted representatives from RBI and SEBI as members.

After studying the recommendations and suggestions received from various stakeholders the CLC prepared a report, suggesting the amendments to the Companies Act 2013. The Guiding Principles while examining the suggestions received from the stakeholders were:-

a) Need to balance the interest of various stakeholders like companies, professionals, investors, regulators, etc.

b) Need to simplify processes or doing away with unnecessary procedures.

c) Need for greater transparency and disclosures in view of lesser regulatory interference and greater self-regulation.

d) Bringing greater clarity in language of the provisions of the Act, wherever required.
e) Pros and cons of addressing issues through subordinate legislation i.e. Rules versus amendment in the Act.

f) Compliance requirements for various classes of companies versus public interest.

g) Levels of punishment for non-compliance and the necessity to improve compliance.

An Overview of some of the provisions related to appointment of directors and the powers of the Board under the Companies (Amendment) Act 2017 have been given below:

### CHAPTER XI:- APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

<table>
<thead>
<tr>
<th>Section</th>
<th>Overview of the Provisions under the Companies (Amendment) Act 2017</th>
<th>Rationale behind the Amendment as per the CLC Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 149</td>
<td>Companies to have Board of Directors</td>
<td>The Company Law Committee (CLC) felt it more appropriate to consider the stay of the director during the immediately preceding financial year rather than during previous financial year.</td>
</tr>
</tbody>
</table>

**Section 149(3)** Every company shall have at least one director who stays in India for a total period of not less than 182 days during the current financial year.

"Previous calendar year" has been substituted with the words "current financial year" in order to determine the independence of a Director based on his pecuniary relationship the concept of materiality is now introduced.

Section 149 (8) - (c) one of the conditions to be fulfilled to become an independent director of a company is that he must not have had any pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed, 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;

In order to determine the independence of a Director based on his pecuniary relationship the concept of materiality is now introduced.

**Section 149 (8) (d)** A director, none of whose relative (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company in face value not exceeding fifty lakh rupees or two per cent of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

**Section 149 (6) (e)** An independent director must neither himself nor any of his relatives—

holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

**Section 152 & 153** Appointment of Directors and Application for allotment of DIN

Every person proposed to be appointed as a director must have a DIN or any other identification number which may be prescribed by the Central Government, which will be treated as a DIN for this Act. If the person has such identification number, he need not apply for DIN.

**Section 160** Right of a person other than retiring directors to stand for directorship

The requirement of deposit of Rs. one lac or such higher amount will not be required for appointment of independent director.

**Section 161** Appointment of Additional, Alternate and Nominee Director

A director of a company cannot be appointed as alternate director for any other director of the same company.

The appointment of director to fill in the casual vacancy, by the Board of directors, has to be approved by the shareholders in the immediately next general meeting. This is now applicable to private companies also.

**Sections 164 & 167** Disqualifications for appointment of director

Where a person is appointed as a director of a company which is in default of filing of annual returns financial statements for continuous three financial years or in repayment of deposits, debentures etc., he shall not incur the disqualification for a period of six months from the date of his appointment.

As per Section 164(2) a person who is or has been a director of a company which has not filed its financial statements/annual returns for a continuous period of three financial years OR a company which has failed to repay its deposit or debentures or interest thereon or pay any dividend declared and such failure continues for one year or more, he becomes disqualified for re-appointment as director of that company or appointment in any other company for a period of five years from the date of such disqualification.

If a person incurs such a disqualification then he will cease to be a director immediately in all the companies where he is a director. (Section 167).

Hence the office of all the directors will fall vacant in case of company which has committed default as above and new director cannot be appointed as he will also immediately be disqualified on appointment. Hence the amendment.
CHAPTER XII- MEETINGS OF THE BOARD AND ITS POWERS

Section 173 Meetings of the Board

As per Sec 173 (1) it is required to hold four board meetings every year with gap not more than 120 days between two consecutive meetings.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.

After the sub clause (4)(iv), following provisos now added,

Provided further that in case of transactions, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendation to the Board.

Provided also that in case any transaction involving an amount not exceeding one crore rupees, is entered into by a director or officer of the company, without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and it is not ratified by the Audit Committee if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 186, between a holding company and its wholly owned subsidiary.

Section 177 Audit Committee

In subsection (1), words “every listed Public Company” substituted for “every listed company”. Hence a private company that has listed its debt instruments as per SEBI Debt Regulations will not be covered.

Approval of Audit Committee is required for transactions of the Company with related party.

Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

This amendment was made to provide clarity as to the powers of Audit Committee (AC) to approve such transactions including on whether it had independent approving powers or has to pre-approve and give its recommendations to the Board.

AC will continue to pre-approve transactions under Section 188 subject to approval of Board and shareholders.

For transactions which are not covered under Section 188, Audit Committee may give recommendation to Board if it is not approving the transaction.

Under Sec 178 (2) instead of NRC carrying out evaluation of every director’s performance, it shall specify the manner for effective evaluation of performance of Board, its committees and individual directors and the evaluation will be carried out either by the Board, by the NRC or by an independent external agency. NRC will review its implementation and compliance.

Under Sec 178 (4) (e), instead of disclosing the remuneration policy in the Board report, it shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board’s report.

Under Sec 183 (8) now provides that inability to resolve or consider any grievance (instead of non-consideration of resolution of any grievance) by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Section 180(1)(c) Borrowing powers of the Board of Directors

Under Sec 180 (1)(c) in addition to paid up share capital, reserves, share premium will also be considered for deciding the maximum limit of borrowing powers of the Board of Directors.

Section 184(5)(b) Disclosure of Interest by Director

As per the amendment, provisions of Section 184 shall not be applicable to any contract or arrangement between two companies or one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company or the body corporate.

Section 185 Loan to Directors etc.

The entire Section 185 has been replaced by a new section. An overview of the new Section 185 is as follows:

1. A company shall not give, directly or indirectly any loan or guarantee or provide any security in connection with the loan taken by its director or director of its holding company or partner or relative of such director or firm in which such director or relative is partner.

2. A company may give a loan or guarantee or provide any security in connection with the loan taken by any person in whom any of the director of the company is interested provided

a. a special resolution is passed by company in general meeting.

b. The loans are utilized by the borrowing company for its principal business activities

3. Nothing contained in sub-sections above shall apply to —

a. giving of loan to a managing or whole-time director —

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

b. a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans and interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or

C. any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

Ease of doing business.

According to Section 185 of the CA 2013, a Company could not give loan, provide guarantee or security to any of its directors or any other person in whom the directors were interested. This gave rise to practical issue, where a company could not give loan to its subsidiary, associate or joint venture company.

The Committee, therefore, recommended that it may be considered to allow companies to advance a loan to any other person in whom director is interested subject to prior approval of the company by a special resolution.

Further, loans extended to persons, including subsidiaries, falling within the restrictive purview of Section...
d. any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company;

Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.

"Any person in whom any of the director of the company is interested" means—

(a) any private company of which any such director is a director or member;
(b) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

Sub-section 4 is relating to penalties for contravention of provisions of this section.

---

### Section 186

**Loan and investment by Company**

This section lays certain limits on giving of loan to any person or body corporate. As per the amendments

1. Employees now excluded from definition of “Person”.
2. As per the amended provisions the shareholders’ approval will not be required where a loan or guarantee is given or where a security has been provided by a company to its:
   - wholly owned subsidiary company
   - a joint venture company,
   - c. acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company.

The company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement.

3. Sub-section 11 has been substituted as follows:—

Nothing contained in this section, (except the provision relating to restriction on layers of subsidiaries) shall apply—

(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(b) to any investment—

(i) made by an investment company;
(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;
(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.]  

4. The meaning of the investment company has been clarified, which is in line with the explanation provided by the RBI in its FAQs on NBFC.

As per the amended provisions: “a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income”.

---

### Section 188

**Related Party transactions**

The second proviso to Section 188 (1) - No member of the company shall vote on such resolution to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

A third proviso has now been added to Section 188(1) stating that nothing contained in the second proviso shall apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.

Where any contract is entered into by a director or any other employee, without obtaining the consent of the Board or shareholders and the same is not ratified within three months from the date of such contract, apart from being voidable at the option of the Board or as the case may be, at the option of the shareholders.

---

### Sections 194 and 195

**Prohibition of forward dealing in securities of companies by Director or KMP**

As per Section 188 of the CA 2013, the related party transactions (RPTs) in excess of the prescribed limits are required to be approved by a resolution approved by disinterested shareholders.

Hence a member who is a related party for such a RPT cannot vote on this resolution.

The Companies are facing practical problems, in case of closely held companies or where there are two to three shareholders and almost all are related party.

Hence the amendment.

---

### References:

1) Companies (Amendment) Act 2017
2) Report of the Company Law Committee February 2016
INTRODUCTION

The Companies Act, 2013, the most significant law reforms in India, was enacted replacing Companies Act, 1956 which was failed to keep in pace with modern times. The Act aimed at introducing significant changes in the Indian company law, especially in relation to accountability, disclosures, investor protection and corporate governance in line with the global standards. Though the Act brought the much needed improved compliance and good corporate governance practices, constituents faced significant implementation challenges on many fronts. The government continued to receive representations from several quarters for further review and simplification of the 2013 Act.

The Companies (Amendment) Act, 2017 aims to clarify and simplify the provisions of the 2013 Act, omit unnecessary procedures and do away with unnecessary requirements in view of disclosures and compliance requirements. The present article covers key changes introduced by the 2017 Amendment Act including definitions, related party transactions, corporate social responsibility, managerial remuneration, private placement, appointment of auditors and other matters.

The Government considered many of the suggestions made by the Committee and introduced the Companies (Amendment) Bill 2016 in Lok Sabha in March 2016. It was later referred to Standing Committee on Finance for further examination. After considering the suggestions of Standing Committee and other related developments, the 2016 Bill renamed as Companies (Amendment) Bill 2017 was reintroduced in Lok Sabha and passed in July 2017. It was approved by Rajya Sabha on 19 December 2017 and got the President’s assent on 3 January 2018 and got the President's assent on 3 January 2018 and has been notified in the Official Gazette of the same date to be an Amendment to the 2013 Act. The article covers key changes introduced by the 2017 Amendment Act including definitions, related party transactions, corporate social responsibility, managerial remuneration, private placement, appointment of auditors and other matters. The Act seeks to strengthen corporate governance standards, initiate strict action against defaulting companies and help improve ease of doing business. It was broadly aimed at:

I. Addressing difficulties in implementation owing to stringent compliance requirements.
II. Facilitating ease of doing business in order to promote growth with employment.
III. Harmonization with accounting standards, the SEBI Act, 1992 and regulations made thereunder, and the RBI Act, 1934 and the regulations made thereunder.
IV. Rectifying omissions and inconsistencies in the Act.

DEFINITION OF ASSOCIATE COMPANY-SECTION 2(6)

Section 2(6) of the Act defines the term ‘associate company’, based on control of at least 20% of total share capital. For this purpose, ‘total share capital’ comprises the aggregate of paid up equity share capital and convertible preference share capital. Hence under the 2013 Act, a company may be treated as a subsidiary of the other company merely based on ownership of optionally convertible preference shares, which are in substance loan and contain conversion option only for security purposes.

To address the above issue, the Amendment Act states that ‘significant influence’ would mean control of at least 20% of total voting power or control or participation in business decision under an agreement.

KEY MANAGERIAL PERSONNEL- SECTION 2(51)

Pursuant to Section 2(51) read with section 203 of Act, every prescribed company is required to appoint following Key Managerial Personnel (‘KMP’):

I. Chief Executive Officer (‘CEO’) or the Managing Director (‘MD’) or the Manager;
II. Company Secretary (‘CS’);
III. Whole Time Director (‘WTD’);
IV. Chief Financial Officer (‘CFO’); an
V. Such other officer as may be prescribed.

Rule 8 of the ‘Appointment and Remuneration of Managerial Personnel Rules’ specifies that every listed company and every other public company having paid-up share capital of Rs10 crore or more will have whole-time KMP. The definition suggests that there is a limit on officers who can be designated as KMP. So, the Companies Law Committee was of the view that flexibility should be given to companies for designating whole-time officers as KMP of the company.

Further, though Board of Directors decides the desired goals and objectives of Company, KMPs assist the Board in implementation & achieving the same; and ensuring the compliance of applicable provisions of the laws.

Nonetheless, majority of large companies have various functions e.g. Operation, Manufacturing, Supply Chain, Marketing, R&D, Information Technology, HR etc., most of which are headed by respective Functional Heads. Majority of these functional Heads even directly report to Board level position. These heads are also responsible for the day-to-day working of their functions including compliances thereof. However, they were not legally responsible for non-compliances, if any, which would have occurred in their respective functions. Hence, there was a need to make them legally responsible for their respective functions and herein the Bill seeks to substitute sub-clause (v) of section 2(51) of the Act enabling the Board to appoint persons (i.e. other than CEO, CFO, CS) who are one level below the whole-time directors as KMP so that when the Board designate any person (who holds a position one level below the whole-time directors) as KMP, they will be responsible for their respective function(s) legally.

RELATED PARTY-SECTION 2(76)

With reference to company, the term ‘related party’ means and includes the following:
- a director or his relative
- KMP or their relative
- a firm in which a director, manager or his relative is a partner
- a private company in which a director or manager is a director or members
- a public company in which a director or Manager is a director or holds along with his relatives more than 2% of its paid up share capital
- a person on whose advice, directions or instruction (except given in professional capacity) a director or manager is a accustomed to act
- a holding/ subsidiary or associate company, subsidiary’s subsidiary, and such person as would be prescribed

The definition of the term ‘related party’ used the word ‘company’, e.g. it used the words ‘holding’, ‘subsidiary’ or ‘associate’ company. Foreign company is not a company under the 2013 Act; rather it is a body corporate. Thus, some may have interpreted the definition of the term ‘related party’ to include only companies/entities incorporated in India within its purview. Such an interpretation will have a consequence that companies/entities incorporated outside India, such as foreign holding/subsidiary/ associate/fellow subsidiary of an Indian company, were excluded from the purview of related party requirements for an Indian company. This was not the intention of the government and such an interpretation may have seriously diluted compliance with related party requirements under the 2013 Act.

To address this issue beyond any doubt, the 2017 Amendment Act has substituted the word ‘company’ with the word ‘body corporate’. Now it is clear that a body corporate that is a holding/subsidiary/associate/fellow subsidiary of an Indian company should be treated as related party.

Further, definition of term ‘related party’ under the 2013 Act says associate company is a related party for the investor in that company. However, for the associate company itself, investor is not a related party. The 2017 Amendment Act fixes this anomaly and requires that both associate company and investor should be treated as related to each other.

NUMBER OF MEMBERS FALLING BELOW MINIMUM-SECTION 3A

Section 3(1) of the Act lays down a requirement for a minimum number of persons for formation of a Company i.e. two in case of a Private Company and seven in case of a Public Company. The legal consequence in case the number of Members falls below minimum requirement is not prescribed in the Act. Now by insertion of a new Section 3A, the Amendment seeks to hold continuing Members severally liable for all the debts contracted by Company if the company carries business for more than six months after numbers of members have fallen below the statutory limits.

A Company, being an artificial person, can act only through its Board and takes the decisions for Company. They are representatives of Shareholders, engaged in dealing with the affairs of Company.

The proposed amendment conflicts with the concept of ‘Limited Liability’ of Members (in case the Company is limited by shares), wherein a Member(s) can be made liable up to the amount of his unpaid share capital. It would be apt if the Board of the Company is made responsible for carrying on the business, contracting the debt, etc. while the number of members has fallen below the required minimum instead of making continuing members of Company.

PRIVATE PLACEMENT-SECTION 42

The Company always requires funds to manage the day to day operations. The funds can be raised either through Debt or Equity. However, if the Company wishes to raise the Capital through Equity, then it can be done by Public Issue, Rights Issue, Private Placement or Bonus Issue.

Companies Act, 1956 didn’t provide for the process and definition of Private Placement allowing many Companies to get involved with the malpractices. That’s why, the Companies Act, 2013, introduced provisions of Private placement to regularize the process of issue and allotment of securities in Companies. The amendment made by Companies (Amendment) Act, 2017 is a further step to plug the loopholes of the Companies Act, 2013. As per Section 42 of Companies Act, 2013, Private placement is a process to offer securities or sending an invitation to subscribe securities to a selected group of persons identified by the
Board. There are certain conditions that need to be necessarily followed by the Company. The Companies (Amendment) Act, 2017 substitutes the entire Section with the major amendments mentioned below:

1. **Restriction regarding the usage of subscription money**
   - As per the Companies Act, 2013, the Company could have used the subscription money after the allotment. It was required to file the return of allotment (Form PAS-3) within 30 days of the allotment. However, the Companies (Amendment) Act, 2017 will make it mandatory for every Company to utilize the subscription money only after filing Form PAS-3 with the Registrar of Companies. The limit to file the Form has been reduced from 30 days to 15 days of the allotment.

   If the Company fails to do so, the directors and promoters are liable to pay Rupees One thousand per day till the day default continues but the penalty cannot exceed Rupees twenty five lakhs. The responsibility has been put on the directors and promoters so that management can take this seriously.

2. **Maintaining record of persons to whom Company offer securities**
   - As per the provisions of Companies Act, 2013, it was mandatory for Company to maintain the record of persons in Form PAS-5 to whom the invitation to subscribe the securities will be circulated through the letter of offer and the Company cannot send offer letter to the persons other than mentioned in Form PAS-5. The Companies (Amendment) Act, 2017 has omitted the requirement of Company to maintain the record in Form PAS-5. Also, there will be no requirement to file Form PAS-5 with the Registrar of Companies within 30 days of the circulation of letter of offer.

3. **Changes in the penalty provisions**
   - Earlier as per the Companies Act, 2013, if the Company fails to follow any of the provisions of private placement, the Company, its promoters and directors would be liable to pay the following penalties:
     - Amount involved in the offer or Rupees Two crores, whichever is higher and refund the amount to the subscribers within a period of thirty days of the order imposing the penalty.

   The Companies (Amendment) Act, 2017 seeks to change the penalty provisions. Now, if the Company fails to follow any of the provisions of private placement by allowing Companies to offer securities or allot securities to the person/body corporate other than whose name has been identified by the Board or whose names were mentioned in the record, that is, Form PAS-5.

   4. **Right of Renunciation**
      - As per Section 62(l)(a) of Companies Act, 2013, if a Company is issuing shares through Rights Issue, there is right of renunciation available to offeree. However, this is not applicable in case of Private Placement. The new provisions in Companies (Amendment) Act, 2017 clarified this wherein the Company is not allowed to offer securities or allot securities to the person/body corporate other than whose name has been identified by the Board or whose names were mentioned in the record, that is, Form PAS-5.

5. **More than one issue of securities**
   - As per the provisions of Companies Act, 2013, Company cannot offer shares through private placement unless the previous private placement offer has been closed or the same has been abandoned by the Board. Now, the Companies (Amendment) Act, 2017 eases the process of private placement by allowing Companies to issue different type of securities through private placement at one go.

**CORPORATE SOCIAL RESPONSIBILITY - SECTION 135**

The 2013 Act requires that every company with a net worth of Rs. 500 crore or more, turnover of Rs. 1,000 crore or more or a net profit of Rs. 5 crore or more during any financial year will constitute a CSR Committee which will consist of three or more directors, out of which at least one should be an independent director. The 2017 Amendment Act contains following key changes:

i. Meaning of words ‘during any financial year’ under Section 135(1) is not clear creating different views as to whether a company should consider net worth/turnover/net profit for the immediately preceding financial year or the current financial year. To address this issue, the 2017 Amendment Act replaces the words ‘during any financial year’ with the words ‘during the immediately preceding financial year’, i.e., CSR applicability will be decided based on net worth/turnover/net profit for the immediately preceding financial year.

ii. 2013 Act prescribed different criteria for applicability of CSR and appointment of Independent Directors. Based on prescribed criteria, a company that is not otherwise covered under the ID appointment requirements may also need to appoint an ID for purposes of including in CSR Committee. Considering this, CSR rules have stated that a non-listed public company or a private company, which is not required to appoint an ID, can have its CSR committee without an ID. Since the requirement to have an ID on CSR Committee was arising from 2013 Act, there was a concern that CSR rules may be overriding the 2013 Act. The 2017 Amendment Act addresses this concern by providing clarification in CSR rules stating that where a company is not required to appoint an ID under section 149(4), it will constitute the CSR Committee with two or more directors.

iii. For the purposes of Section 135(5) of the 2013 Act, the average net profit will be calculated in accordance with section 198 which deals with calculation of profit for managerial remuneration and requires specific addition/deduction to be made in the profit for the year. Additionally, CSR rules states that whilst calculating net profit, any profit...
arising from overseas branches of company and dividend received from other companies in India covered under Section 135 should be reduced. However, Section 198 does not contain any deductions, so there was an apparent conflict between the two requirements. To address these issues, the 2017 Amendment Act states that the Central Government may prescribe sums which will not be included for calculating net profit of a company under Section 135.

iv Rule 3 of CSR rules clarifies that foreign companies are also required to comply with the provisions of CSR. However, Section 384 of the 2013 Act, which prescribes the applicability of various provisions to a foreign company, does not specify the applicability of CSR requirements. To address the concern, the 2017 Amendment Act introduced a change in Section 384 of the 2013 Act stating that Section 135 relating to CSR will also apply to a foreign company if it meets the prescribed criteria for its Indian business.

APPOINTMENT OF AUDITORS - SECTION 139

Section 139 of the Act provides that Statutory Auditors of Company shall be appointed by Shareholders at the Annual General Meeting for a consecutive period of five years, subject to ratification of their appointment at every AGM of the Company held thereafter. The Bill proposes to do away with the requirement of ratification every year.

The need for an annual ratification after appointing the Auditors for a term of five years defeats the intent of legislation of giving Auditors a term of five years. It was an unwanted procedural requirement to seek Shareholders’ ratification every year when they have already approved the appointment of Auditors for a five years term so the amendment is a laudable proposed change.

PRE-APPROVAL OF RPT BY AUDIT COMMITTEE - SECTION 177

Under section 177 of the 2013 Act, the Audit Committee is required to pre-approve all RPTs and subsequent modifications thereto. In contrast, Section 188 requires the board and/or shareholders to pre-approve only specific RPTs. Also, Section 188 contains two exemptions from the approval process, viz., transactions are entered into by the company in its ordinary course of business and on an arm’s length basis, or they do not exceed prescribed materially threshold.

The 2017 Amendment Act does not prescribe changes to align the Audit Committee pre-approval requirements with the RPT approval requirements under Section 188. However, it clarifies that if Audit Committee does not approve transactions not covered under Section 188, the Audit Committee will make its recommendations to the Board. This will require Board to consider and approve these RPTs even if they were otherwise not covered under approval requirement of Section 188.

The 2017 Amendment Act somewhat relaxes Audit Committee pre-approval requirements for RPTs. Based on the relaxation given, a director or officer of the company may enter into a related party transaction for an amount not exceeding Rs1 crore, without obtaining prior approval of Audit Committee. However, such transaction should be ratified by Audit Committee within three months from the date of transaction. In the absence of such ratification, the transaction will be voidable at the option of Audit Committee. Also, if the transaction is with a related party to any director or is authorized by any other director, the director concerned will indemnify the company against any loss incurred by it.

Currently, the laws in countries such as the US, the UK, and Switzerland do not require a company to approach government authorities for approving remuneration payable to their managerial personnel, even in a scenario where the company has losses or inadequate profits. Rather, the board/shareholders of the company are typically empowered to decide on remuneration payable to directors. In line with global practices, the 2017 Amendment Act removes the requirement for the Central Government approval for paying remuneration exceeding 11% of net profits of company.

RELATED PARTY TRANSACTIONS - SECTION 188

Section 188 of the 2013 Act requires RPTs to be approved by an ordinary resolution of disinterested shareholders if they do not meet the prescribed exemption criteria. The 2013 Act states that no member of the company will vote on such ordinary resolution if such member is a related party. Compliance with this requirement will be challenging for companies that are closely held or are a joint venture between 2-3 shareholders since all shareholders will be related parties. To address this issue, the 2017 Amendment Act states that a company wherein 90% or more members in number are relatives of the promoter or are related parties, all shareholders will be entitled to vote on ordinary resolution.

Section 188 (3) of the 2013 Act deals with a scenario where any contract or arrangement is with a related party to any director, or is authorized by any other director, the directors concerned will indemnify the company against any loss incurred by it. The 2017 amendment Act states that apart from being voidable at the option of board, the contract/arrangement would also be voidable at the option of shareholders.

PROHIBITION ON FORWARD DEALINGS/INSIDER TRADING - SECTIONS 194 AND 195

The stock market scam of 1992 brought to light a wide prevalence of insider trading in India and hence the need of legislation for countering the malpractices in the market was felt. In the year 1992, SEBI (Prohibition of Insider Trading) Regulations 1992 was introduced by Securities and Exchange Board of India (‘SEBI’) which provides mechanisms to prohibit insider trading. Since then, SEBI has done a remarkable job to curb insider trading and in terms of SEBI Insider Trading Regulations, as amended, from time to time, the listed entities have been mandated to devise mechanism to prohibit insider trading. SEBI Insider Trading Regulations also contain provisions relating to forward dealings. As per the Bill, sections 194 and 195 in the Act which contain the provisions pertaining to prohibition on forward dealings and prohibition on Insider Trading respectively have been omitted. Provisions relating to Insider Trading in SEBI Regulations prohibits ‘Insider’/‘Connected Person’ which cover almost every person who are connected with the listed entity and have access
to Unpublished Price Sensitive Information ('UPSI') to trade in securities of the Company when in possession of UPSI. Moreover, MCA would require assistance of SEBI to investigate and arrive at conclusion whether any person including any director or KMP of a company has committed an act of insider trading.

In view of this, there is no need to retain the matter relating to prohibition of insider trading under the ambit of multiple Regulators, hence, certainly there was need to remove provisions relating to Insider Trading from the Act.

Further, section 194 of the Act prohibits Directors and KMP of company to deal in forwards of the company, or in its holding, subsidiary or associate company whereas SEBI Regulations state that any derivative contract that is cash settled on expiry shall be considered to be a contra trade. Further, Trading in index futures or such other derivatives where the scrip is part of such derivatives, need not be reported.

Since there is a contradiction in provisions of the Act and SEBI Insider Trading Regulations relating to dealings in forward, it is apt to remove its provisions from the Act.

**MANAGERIAL REMUNERATION - SECTION 197**

Section 197(1) of 2013 Act prescribes that total managerial remuneration payable by a public company should not exceed 11% of net profits of that company. However such limits may be exceeded with the approval of shareholders and the Central Government.

The second proviso to Section 197(1) of 2013 Act prescribes the following limits on remuneration payable to each managerial personnel/director and total remuneration payable to them. The company can exceed the limits only by passing an ordinary resolution at the general meeting:

- The remuneration payable to any one managing director, or whole-time director or manager will not exceed 5% of net profits of company. If there is more than one such director, then remuneration will not exceed 10% of net profits to all such directors and managers taken together.
- The remuneration payable to directors who are neither managing directors nor whole-time directors will not exceed:
  - 1% of net profits of the company, if there is a managing or whole-time director or manager
  - 3% of net profits, in any other case.

Currently, the laws in countries such as the US, the UK and Switzerland do not require a company to approach government authorities for approving remuneration payable to their managerial personnel, even in a scenario where the company has losses or inadequate profits.

Rather, the board/shareholders of the company are typically empowered to decide on remuneration payable to directors. In line with global practices, the 2017 Amendment Act removes the requirement for the Central Government approval for paying remuneration exceeding 11% of net profits of company. Rather, it requires the following:

- Where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, prior approval of bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, will be obtained by company before obtaining the approval in general meeting.
- For exceeding the limits of remuneration payable to each managerial personnel/director and total remuneration payable, which are prescribed in the second proviso to section 197(1), a company will need to pass a special resolution instead to an ordinary resolution at the shareholders’ meeting.

To avoid potential misuse and address potential concerns related to payment of excessive remuneration, the 2017 Amendment Act has incorporated adequate standards in the form of special resolution at the shareholders’ meeting and prior approval of lenders whose dues have been paid on time. Since these parties will be significantly impacted by the payment of excessive remuneration, they will be much better placed to evaluate the financial position/performance of the company and approve managerial remuneration justified in the scenario.

**VALUATION BY REGISTERED VALUERS - SECTION 247**

Section 247 of the 2013 Act requires that a registered valuer will not undertake valuation of any assets in which he or she has a direct or indirect interest or becomes so interested at any time during or after the valuation of asset. The 2013 Act does not prescribe any time period in this regard. This suggests that to undertake a valuation exercise, the registered valuer will be required to ensure independence for an indefinite period of time both before as well as after the valuation. This will be highly impractical and independence should be required only for reasonable period of time before and after the valuation.

The 2017 Amendment Act addresses this issue by providing that a registered valuer cannot be appointed for valuation of an asset in which he or she has a direct or indirect interest or becomes so interested during a period of three years prior to appointment as the valuer. Further, the valuer will be prohibited from obtaining any interest direct or indirect three years after valuation of assets by him or her. Hence, the valuer is required to ensure independence for three years and three years after the valuation of assets.

**CONCLUSION**

In view of the fact that companies are facing implementation challenges, the effort has now been made in the right direction to safeguard the interest of shareholders, better compliance of law and to enhance the global ranking of India in ‘Ease of Doing Business’. The Amendment Act aims to clarify and simplify the provisions of the 2013 Act, omit unnecessary procedures and do away with unnecessary requirements in view of disclosures and compliance requirements.
Related Party Transactions – Impact Assessment of the Amendment

The erstwhile Companies Act, 1956 did not have any express provision about Related Party and Related Party Transactions. Accounting Standard 18 alone laid down certain disclosure requirements. All such transactions, now described generally as Related Party Transactions, were governed by sections 297, 299, 300 and 301 of the 1956 Act.

Relaxation on voting in cases of closely held companies, refinement of pre-approval requirements by audit committee, extending the veto rights to shareholders and tuning the definition of Related Party – these amendments when come into effect will be able to encompass the spirit of provisions governing related party transactions better.

The extant Companies Act, 2013 (the Act) is very elaborate and specific on the issues of who is a Related Party, what are Related Party Transactions and what are the obligations of a company while entering into a Related Party Transaction. The following paragraphs attempt to identify only the changes brought about by the Amendment Act 2017 to various sections of the Act dealing with the subject matter.

FOUR CHANGES BY AMENDMENT ACT 2017

There are Four changes brought in by the Companies (Amendment) Act, 2017 (hereinafter referred to as the Amendment Act) vide notification dated 3rd January 2018. However, the amended sections dealing with Related Party Transactions, namely section 2(76), 177(4)(iv) and section 188, are yet to be made effective.

Amendment I - Definition of related party transaction tuned

One such changes has been made in the definition of Related Party. The existing sub-clause (viii) in the definition of Related Party in section 2(76) of the Act has been replaced by the following sub-clause (viii):

“(viii) any body corporate which is –
(A) a holding, subsidiary or an associate company of such company;
(B) a subsidiary of a holding company to which it is also a subsidiary; or
(C) an investing company or the venturer of the company;

Explanation - For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.”

Compared to the erstwhile sub-clause (viii), the new sub-clause (viii) is different in following two ways:
the term “Company” has been replaced with the term “body corporate” and
a sub-clause C has been added.

The above amendment is a wise move and is in line with the intention of the expression Related Party.

Amendment II – Restriction on voting for related party transactions relaxed

The second change relaxes the restriction on voting by a member who is a related party. For this, the following proviso has been inserted in sub-section (1) after section 188, after the second proviso:

“Provided also that nothing contained in the second proviso shall apply to a company in which ninety percent or more members, in number, are relatives of promoters or are
related parties:"

**Amendment III – Option to declare void can now also be exercised by shareholders**

The Third change has extended the right to abrogate the related party transactions, to the shareholders also apart from the Board of Directors. Now shareholders also can declare the related party transactions as void in case requirements of section 188 are contravened.

In sub-section (3), for the words “shall be voidable at the option of the Board”, the words “shall be voidable at the option of the Board or, as the case may be, of the shareholders” has been substituted by the Amendment Act.

However, it is not clear how will the shareholders exercise this right of declaring a related party transaction as void -

a. whether by requisitioning a meeting
b. simply writing a letter
c. whether a Special Resolution will be required
d. whether unanimous resolution of the shareholders will be required
e. whether all the shareholders should give consent

In the opinion of the authors, an ordinary resolution of the shareholders will serve the intention of the law. This is because, the first proviso to section 188(1) of the Act requires prior approval of the shareholders by way of ordinary resolution for approving related party transactions in case the prescribed limits are exceeded. Therefore, the same majority should also suffice for abrogation of the transaction.

**Amendment IV – Approval of Audit Committee**

All the transactions with related parties currently require approval of the audit committee by virtue of clause (iv) of sub-section 4 of section 177 of the Act. The Amendment Act 2017 has inserted the following three provisos after the existing proviso to clause (iv) of sub-section 4 of section 177 of the Act.

“Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.”

**Effect of the change in definition of Related Party (Amendment I)**

The Companies (Amendment) Act 2017 has substituted the word ‘company’ with the word ‘body corporate’ in sub-clause (viii). Hence a body corporate (being a foreign company) which is a holding/subsidiary/Associate/fellow subsidiary of
The Companies (Amendment) Act 2017 has substituted the word ‘company’ with the word ‘body corporate’ in sub-clause (viii). Hence a body corporate (being a foreign company) which is a holding/subsidiary/Associate/fellow subsidiary of an Indian company will also be treated as related party under the Act.

an Indian company will also be treated as related party under the Act. So far only a company being a holding company or a subsidiary company was covered within the definition of related party. This severely limited the scope of the definition only to the companies incorporated in India due to use of the word ‘company’. This limitation has now been removed by the amendment.

The definition of Related Party has now been expanded to include an ‘Investing Company’ or ‘theVenturer of a company’ also within the fold of Related Party. The meaning of the two terms has been explained by way of an explanation. Both these terms have been assigned the same meaning. The ‘Investing Company’ or ‘the venturer of a company’ means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

Therefore, the term ‘Investing Company’ or ‘the venturer of company’ has the following characteristics:

a. Only a body corporate can be considered within the meaning of the terms
b. The investment made by such body corporate in the company needs to be considered
c. By virtue of such investment, the company should become associate company of the body corporate

Due to this amendment in the definition, even the Investor (if a body corporate though not a holding company) in the company will become a related party if the Investor’s investment in the company is such that the company will become an associate of such Investor.

Prior to the amendment, the sub-clause (viii) of the definition stopped by covering holding company and subsidiary companies within the meaning of related parties. Now the amendment seeks to include even other Investors in the company, if such an investor is a body corporate and has ‘significant influence’.

Relaxation in voting (Amendment II)

The second proviso to section 188(1) provides that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. However, this restriction was not applicable to private companies by virtue of notification dated 5th June 2015 and in cases of transactions between two Government Companies.

The Amendment now seeks to relax this by inserting a proviso immediately after the above said second proviso. The new proviso states that nothing contained in the second proviso shall apply to a company in which ninety percent or more members, in number, are relatives of promoters or are related parties.

Accordingly, a member will still be able to vote on a related party transaction, even though he himself is a related party, if the members of the Company consist of ninety percent or more members, in number, who are relatives of promoters or are related parties.

This amendment is aimed at resolving the problems faced by joint venture companies and closely held companies. Since the private companies were anyway exempt from the voting restriction (refer notification dated 5th June 2015), the benefit of this relaxation will be felt only by closely held public companies - the sting felt by such companies has been removed.

Right of shareholders to declare the transaction void (Amendment III)

Hitherto, where a transaction with related party was entered into by a director or an employee without approval of the Board or the Shareholders, as applicable, the Board had a right/option to declare such a transaction void.

However, the amendment extends the right to abrogate such related party transactions, to the shareholders also apart from the Board of Directors. Now shareholders also can declare the related party transactions as void in case such transactions were entered into without approval of the Board or the Shareholders.

However, the first proviso to section 188(1) places a limitation on the circumstances under which the shareholders can exercise this right to declare the transactions void. The said first proviso states that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution. Therefore, the abrogation right of the shareholders can be exercised by the shareholders only where approval of the shareholders was not obtained though required under the first proviso read with rule 15(3) of the Companies (Meeting of Board and its Power) Rules, 2014. The said rule prescribes the limits as below:

For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into –

a. as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mention below-

i. sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the
The definition of Related Party has now been expanded to include an ‘Investing Company’ or ‘the Venturer of a company’ also within the fold of Related Party. The meaning of the two terms has been explained by way of an explanation. Both these terms have been assigned the same meaning. The ‘Investing Company’ or ‘the venturer of a company’ means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

ii. selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

iii. leasing of property of any kind amounting to ten percent or more of the net worth of company or ten per cent or more of turnover of the company or rupees fifty crore, whichever is lower as mentioned in clause (c) of sub-section (1) of section 188;

iv. availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company or rupees fifty crore, whichever is lower as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation - It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

b. is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188.

c. is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Approval of Audit Committee (Amendment IV)

All the transactions with related parties require approval of the audit committee by virtue of clause (iv) of sub-section 4 of section 177 of the Act. The proviso to the said clause, empowered the audit committee to grant omnibus approval for such transactions.

The Amendment Act 2017 has inserted three more provisos after the existing proviso to clause (iv) of sub-section 4 of section 177 of the Act. Therefore, the said clause is now followed by four provisos.

By inserting second proviso, the amendment Act 2017 clarifies that if the audit committee does not approve the transactions not covered under section 188, the audit committee would make its recommendations to the Board. This will require the board to consider and approve these related party transactions even if they were otherwise not covered under the approval requirement of section 188 of the Act.

The fourth proviso clarifies that related party transactions between a holding company and its wholly owned subsidiaries will not require the approval of the audit committee. However, if these transactions require board approval under section 188 of the Act, then they will require the approval of audit committee as well.

The third proviso relaxes the pre-approval requirements of audit committee for transactions with a director or officer of the company which does not exceed Rs. 1 Crore. In such cases the audit committee can ratify the transactions within three months.

CONCLUSION

Relaxation on voting in cases of closely held companies, refinement of pre-approval requirements by audit committee, extending the veto rights to shareholders and tuning the definition of Related Party – these amendments when come into effect will be able to encompass the spirit of provisions governing related party transactions better.
The Companies (Amendment) Act, 2017
Amendment that ensures further ease of doing Business

"The price of doing the same old thing is far higher than the price of change." ... Bill Clinton

INTRODUCTION
Shri Narendra Modi Ji, took oath as the Hon'ble Prime Minister of India about two months later when most of the provisions of the Companies Act, 2013 ("Act") and Rules made thereunder came into force. Difficulty in implementing the provisions of the new Act were bound to happen as the Act had replaced about six decades old Companies Act, 1956. Initially, the corporates found difficulty in implementing many provisions of the Act. Nonetheless, the present Government understood the hardship of the Corporates and swiftly 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 reduced substantially. Corporates particularly private companies, Section 8 companies and start-up etc. have been greatly benefited from such circulars/notifications etc. of the Ministry of Corporate Affairs ("MCA").

The Amendment Act primarily aims to simplify the provisions of the Act, remove unnecessary procedures and do away with unnecessary requirements under the facade of disclosures and/or compliance requirements. Enactment of the Companies (Amendment) Act, 2017, will ensure further ease of doing business India. The authors, in this article, have analysed some of the key amendments made in the Act.

ANNUAL RETURN [SECTION 92]
Enactment of the Companies Act, 2013 has, inter-alia, changed the disclosures requirement for Indian Corporates. Accordingly, there are numerous disclosures which were forming part of the Annual Report in terms of the requirement laid down in Section 92 of the Act. For large companies, disclosures under section 92(3) of the Act [i.e. Form No. MGT 9] which forms part of Board's report runs in about 25-30 pages.

Sub-section (3) of the Act is as under:-

<table>
<thead>
<tr>
<th>Sub-section (3) [Pre Amendment Act]</th>
<th>Sub-section (3) [Post Amendment Act]</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.&quot;</td>
<td>&quot;(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.&quot;</td>
</tr>
</tbody>
</table>

Pursuant to the above mentioned amendment, the companies are neither required to prepare the extract of Annual Return nor required to attach the same with Board’s report. Instead, the companies would be required to prepare Annual Return in terms of Section 92(1) of the Act and place the same on its website and provide the web-link of such annual return in the Board’s report.

Amendment in the said Section enabling the companies to publish the Annual Return on
their website and removing the requirement of making extract of the same as part of Board’s report will not only reduce the printing cost of Annual Report but also protect the environment to certain extent. This also reduces the duplication of work as the companies will be required to prepare only Annual Return (and not the extract) for placing on the website which will be subsequently filed with the MCA.

Above all, amendment in Section 92 also states that Central Government may prescribe abridged form of Annual return for “One Person Company, small company and such other class or classes of companies as may be prescribed”. This will ensure further ease of compliances for above mentioned companies as it is not apt to burden such companies with huge disclosure requirements.

**OMISSION OF SECTION 93**

Section 93 of the Act and notification of relevant Rules effective 24th July, 2014 virtually made most listed entities to file MGT10 every week. Listed entities have received huge relief in September 2016 when MCA made amendment in Rule 13 of the Companies (Management and Administration) Rules, 2014 mandating to file MGT10 only in case there is change in shareholding of promoters and top ten shareholders exceeds two percent or more of the paid-up share capital of the company.

Let us examine Section 93 read with relevant Rules, from time to time, and understanding thereof:

**Section 93 [Effective 1st April, 2014]:** “Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.”

Relevant Rule relating to said Section 93 read as under:

<table>
<thead>
<tr>
<th>Rule 13</th>
<th>Rule 13</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Effective 24-07-2014]</td>
<td>[Effective 23-09-2016]</td>
</tr>
<tr>
<td>“Every listed company shall file with the Registrar, a return in Form No. MGT-10 along with the fee, with respect to changes relating to either increase or decrease of two per cent or more in the shareholding position of promoters and top ten shareholders of the company, in each case, within fifteen days of such change.”</td>
<td>“Every listed company shall file with the Registrar, a return in Form No. MGT-10, with respect to changes in the shareholding position of promoters and top ten shareholders of the company, in each case, representing increase or decrease by two per cent or more of the paid-up share capital of the company, within fifteen days of such change.”</td>
</tr>
</tbody>
</table>

In listed entity, possibility always exists that there might be change of two or more percent in the shareholding, of one or more, of top ten shareholders (i.e. change of 2% or more in shareholder’s individual shareholding), as listed entities’ shares are frequently traded in the Stock Exchange(s). Further, information of such changes would be available to listed entities only upon receiving Beneficiary Position (‘BENPOS’), in case of Demat mode, at the end of week.

For example if in a listed Company ‘A’, one of the top 10 shareholders ‘X’ (i.e. other than Promoters) holds 50,000 shares. In case, one of the top 10 shareholder ‘Y’ sold or acquired more than 1,000 shares or more in Company ‘A’ (i.e. minuscule/ insignificant change), Company ‘A’ was required to file MGT10 with MCA.

Amendment in Section 92 also states that Central Government may prescribe abridged form of Annual return for “One Person Company, small company and such other class or classes of companies as may be prescribed”. This will ensure further ease of compliances for above mentioned companies as it is not apt to burden such companies with huge disclosure requirements.

Some of the further difficulties/conflicting view which existed till September 2016 were as under:

- As there was no obligation on the part of top ten shareholders to inform the companies about changes in their shareholding exceeding two percent or more, the companies would not come to know about actual date of such changes, in case of shares been dealt in Demat mode. Hence, listed companies were filing relevant Form MGT10 with MCA as if changes took place on last trading day of the week as they were becoming aware of such changes only upon receiving weekly BENPOS from the Depositories.
- Few companies were of the view that requirement of filing MGT10 arises only in case change exceeds two percent or more of the paid-up share capital of the Company; and not the change in individual shareholding of top ten shareholder(s).
- Assuming if one of top 10 shareholders holds more than 5% of total shareholding or voting rights in the target company, his obligation to disclose changes under SEBI Takeover Code arises if such change exceeds two percent of total shareholding or voting rights in the target company. Whereas till September 2016, listed entities were required to disclose the change to MCA even if such change would have been two percent or more of the shareholder’s individual shareholding in the target company.

Though most anomalies were removed when MCA amended said Rule 13 in September 2016, certainly there was need to remove the requirement laid down in Section 93 in its entirety as SEBI Takeover Code and/or SEBI Prohibition of Insider Trading Regulations aptly mandates the disclosure requirement for Promoters or Shareholders holding large shareholding (i.e. 5 percent or more) in case of change in their shareholding, in target company, is beyond certain threshold.

Omission of Section 93 from the Act, in entirety, is laudable which is not only a welcome step in ease of doing business in India but also do away with the undesirable filing burden of listed entities. At the same time, it also do away with the overlapping/ divergent requirement of disclosures of changes in the shareholding in listed entities prescribed by two regulators. With this, SEBI would alone continue to govern such dynamic requirement of disclosures.

**ANNUAL GENERAL MEETING [SECTION 96]**

In Sub-section (2) of Section 96 of the Act, the following proviso is inserted:

“Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by
Prior to the Amendment Act, all the companies were required to mandatorily hold its Annual General Meeting ("AGM") either at the registered office or some other place within the city, town or village in which registered office is situated. This was a big hardship for the companies whose registered office is in a remote place whereas its most shareholders are based in and around one city. Insertion of the above proviso in the Section 96 of the Act would certainly facilitate ease for unlisted company in conducting their AGM as it enables them to convene the AGM at the place of their choice in India once consent of all the members is received in advance. Consent of members here means consent of both equity and preference shareholders. This amendment would benefit more than 99 percent entities incorporated under the Act, particularly those entities which are not having large number of shareholders as it would be operationally convenient for them to obtain their members’ consent.

The above insertion not only demonstrate the intent of the Government that it is serious in providing ease of doing business in India but also protect the interest of members as without their consent, holding of AGM at a place other than the city, town or village where the registered office is situated, would not be possible.

Nonetheless, it may be noted that in case the company’s equity shares are not listed in any recognised Stock Exchange(s) but its other securities e.g. debt instrument, preference shares etc., are listed in recognised Stock Exchange(s) then such companies would fall under the definition of listed company in terms of section 2(52) of the Act. In view of this, companies whose debt instrument, preference shares, etc. are listed in Stock Exchange(s) will also need to hold their AGM within the city, town or village where their registered office is situated. It would have been apt if the companies which have listed only their debt instruments and/or preference shares (not equity shares) were also provided flexibility to hold their AGM at any place in India as the holder(s) of Debt instruments do not have right to either attend AGM or vote for any business being transacted at such meeting. Likewise, the preference shareholder has right to attend AGM only in certain sporadic event such as resolutions relating to winding up of the company, repayment/ reduction of share capital etc., if any, forming part of AGM notice.

**POSTAL BALLOT [SECTION 110]**

In terms of the requirement laid down in Section 110(1)(a) read with relevant Rules made thereunder, approval of the shareholders by means of voting through a postal ballot is mandatory for ten items as detailed in sub-rule 16 (a) to (j) of Rule 22 of the Companies (Management and Administration) Rules, 2014.

Vide Amendment Act, in section 110 (1) of the Act, the following proviso has been inserted:

"Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section."

Rule 20(2) of the Companies (Management and Administration) Rules, 2014 states that “Every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.”

Before insertion of the above proviso in Section 110(1) of the Act, listed entities and entities which have more than one thousand shareholders were required to seek approval of its shareholders for certain specified matters only through postal ballot even if approval for such matters is being sought nearer to the date of Annual General Meeting (“AGM”) or Extra-ordinary General Meeting (“EGM”) of the Company. This was not only an additional operational and financial burden on such entities but also had negative impact on environment as notice of postal ballot and notice of AGM / EGM were to be printed separately.

Insertion of the proviso as above, has significant impact on listed entities and entities which have more than one thousand shareholders as it gives them flexibility to seek the approval of its shareholders for matters detailed in sub-rule 16 (a) to (j) of Rule 22 of the Companies (Management and Administration) Rules, 2014 in general meeting. Apart from saving substantial money in seeking approval for such specified matters, it provides operational conveniences as requisite approval can be sought in general meeting also. Insertion of said proviso in Section 110 (1) (a) of the Act would further ensure ease of doing business in India.

**SIGNING OF FINANCIAL STATEMENTS [SECTION 134]**

In Section 134 of the Act, sub-section (1) is substituted with the following:

“(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.”

In terms of the above amended requirement, the Financial Statement including consolidated financial statement is required to be signed by two directors out of which one shall be MD, if any, and the Chief Executive Officer (“CEO”), the CFO and CS, wherever they are appointed.

Requirement of signing the financial statement by the CEO, the new requirement laid down in the Amendment Act, is certainly a
Requirement of signing the financial statement by the CEO, the new requirement laid down in the Amendment Act, is certainly a welcome step as many companies have appointed CEO (apart from MD) who is primarily responsible for business operation of the Company. Nonetheless, challenge arises for those companies which are having multiple business under single entity and appointed different CEO for different businesses. It would be correct to obtain signature(s) of CEO(s) on the financial statement only if the Company has appointed CEO for its business(es) in terms of Section 203 of the Act and filed requisite Form with MCA.

COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR [SECTION 137]

In Section 137, after the fourth proviso, the following proviso has been inserted:

“Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as “foreign subsidiary”), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.”

Insertion of above proviso in Section 137 is again a big relief for many Indian holding entities those having foreign subsidiary(ies). Requirement of auditing of financial statement in many countries arises only upon achieving certain threshold. However, in case an Indian entity which has foreign subsidiary(ies) then inspite of not having requirement of audit of financial statement in respective jurisdiction of foreign subsidiary, Indian holding entity was required to ensure that such subsidiary(ies) financial statement is audited to comply with the Act. This was forcing Indian holding entity to ensure that such foreign subsidiary(ies) financial statement are also audited either in the respective foreign jurisdiction or in India which was undesirable operational and financial burden. With the insertion of above proviso, the requirement of the compliance of Section 137 of the Act will be met if Indian holding entity while filing its financial statement with MCA also files unaudited financial statement of such foreign subsidiary(ies) along with a declaration to this effect. Indian holding entity would only require to ensure that if such financial statement of foreign subsidiary(ies) is in a language other than English, then English translated copy of such financial statement is filed.

KEY MANAGERIAL PERSONNEL [SECTION 2(51)]

Sub-clause (v) Section 2(51) of the Act [i.e. “(v) such other officer as may be prescribed.”] is substituted by the following:

“(v) Such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed.”

Insertion of above sub-clause (v) in Section 2(51) in the Act has great significance as it enables the companies to designate any of its officers, who report directly to whole-time director (‘WTD’), as KMP. Upon designating any such officer (e.g. Head of Operation, Human Resource, Supply Chain, Marketing, Sales, IT etc. as most of them directly report to MD or WTD) as KMP, such officers shall also be responsible for non-compliances, if any, in their respective Functions. As on date, in spite of authorising above such officer(s) by way of resolution passed by the Board of Directors, it would have been difficult to make them responsible legally for non-compliance, if any, in their respective Functions.

CONCLUSION

“Knowledge is a process of piling up facts; wisdom lies in their simplification.” [Martin H. Fischer]

“Ease of doing business” and “Digital India” continues to be the focus of the Govt. of India which are bound to improve the economy of India and create employment. Simplified laws and removal of obsolete laws will certainly help in “Ease of doing business”. This will enable India to achieve desired World Bank’s Doing Business rankings. While successive Governments could remove just 1,301 obsolete laws which came in the way of smooth administration and economic growth in 65 years, the present Government has managed to weed out as many as 1,200 Acts in just three years. As many as 1,824 more obsolete central Acts have been identified for repeal. [Source: http://indiatoday.intoday.in/story/narendra-modi-law-ministry-ravi-shankar-prasad/1/984539.html]

The Amendment Act primarily aims to simplify the provisions of the Act, remove unnecessary procedures and do away with unnecessary requirements under the facade of disclosures and/or compliance requirements. Enactment of the Companies (Amendment) Act, 2017, will ensure further ease of doing business India.

MCA vide notification dated 23rd January, 2018, has notified provisions of section 1 and section 4 of the Amendment Act. It would be apt if the remaining provisions of the Amendment Act are also enforced at the earliest which will be cogitated by the Corporates as New Year 2018 bonanza.

Disclaimer: 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.
The Companies (Amendment) Act, 2017 has brought about many changes and new provisions in the Companies Act, 2013. This was a comprehensive approach to ward off practical difficulties, give more clarity to the provisions and serve the intended purposes more prolifically. The author in this article has cast thoughts on some of the aspects of the Amendment Act and impacts thereof.

MANAGERIAL REMUNERATION

Section 197 of the Act has been amended to keep outside the purview of the Central Government’s approval payment of remuneration exceeding the applicable limits set out by that Section in respect of Managing Director, Whole Time Director, Manager (i.e., 5%/10%) or total overall remuneration (i.e. 11%) or other Directors (i.e. 1%/3%) provided Special Resolution is passed to this effect.

The amendment to this Section will certainly help companies in smooth sailing. More so because the Central Government’s approval which was originally conceived of to safeguard the interest of the country (economic and social) has been substituted not only by the requirement of approval by way of Special Resolution to be passed by the company Members who are the direct stakeholders of the company, but also takes into account other vital stakeholders as the following new proviso to sub-Section (1) of that Section is to come into effect:

‘Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.’

In fact, the above proviso has been imported (with modification) from the existing Schedule V to the Act. In view of the Amendment, this Schedule shall have to be overhauled because it is, in places, studded with the requirement of the Central Government’s approval which confronts the amended Section 197. But then the scale of remuneration on the basis of the ‘effective capital’ of the company (probably to stay with some variation) shall be the conditions governing the Special Resolution concerned.

Therefore, the Central Government is handing over the baton to the Members of the company attaching, conceivably, some conditions.

DEFINITION OF INDEPENDENT DIRECTOR

The Amendment made specific changes in the definition of Independent Director given in Section 149(6) of the Act. In a nut shell, it deals with the following negative covenants as under:
Delimits the meaning of the proposed appointee’s ‘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 by qualifying the plain words ‘pecuniary relationship’ with the following clause:

‘other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed’

Besides the ‘pecuniary relationship/transaction’ of the proposed appointee’s any relative considers such relative’s (i) holding of any security or interest, (ii) indebtedness and (iii) giving of any guarantee or provision of any security - in relation to the appointing company or its subsidiary or associate or promoter, etc. in terms of the Amendment. The Amendment has tried to take into account the remote but pertinent possibilities that may influence the independence of the appointee to act as an Independent Director of the company.

**THE CONFUSING PART**

The Amendment has added one Proviso to sub-Section (6)(e) (i) of Section 149 of the Act which, after the addition, reads as under as one of the negative conditions of being considered as ‘independent’ for the position of ‘Independent Director’:

‘who, neither himself nor any of his relatives –

‘(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

‘Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.’

Does the Proviso gives a clear cut picture? Does it intend to mean as under?

Provided that in case of his any relative being an employee as mentioned above during any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, this clause shall not apply.

**Proper wording makes the intention of a statute clear!**

**Deposit of Rs. 1 Lakh to Propose Appointment of a Director:**

While amending the definition of Independent Director by extending its reach given the conceivable areas, the Amendment quietly inserted a Proviso to sub-section 160 of the Act which deals with the right of persons other than retiring directors to stand for directorship to be appointed at General Meeting and inter alia, calls for deposit of Rs. 1 lakh to propose any such appointment.

The new proviso is reproduced below:

‘Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee’.

Let us examine on case to case basis the situations in respect of which the deposit of Rs. 1 Lakh will be applicable –

<table>
<thead>
<tr>
<th>Case</th>
<th>Applicability of the provision of Deposit of Rs. 1 Lakh according to Section 160</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Board of Directors to recommend the appointment of a person as a Director who will or will not be considered an Independent Director given the provisions of Section 149(6) (‘an Independent Director’) of the Act in which case the recommendation originally comes from the Nomination and Remuneration Committee of that company in view of the provision of Section 178(2) of the Act.</td>
<td>NA</td>
</tr>
<tr>
<td>2 Bearing in mind the provisions of Section 178 of the Act, in case the company concerned has not constituted (as not being so required) any Nomination and Remuneration Committee, its Board of Directors recommends the appointment of a person as a Director who will or will not be considered an Independent Director.</td>
<td>NA</td>
</tr>
<tr>
<td>3 A Member recommends the appointment of a Director who is to be considered as an Independent Director.</td>
<td>NA</td>
</tr>
<tr>
<td>4 A person proposes himself to be appointed as a Director (as it is so allowed in terms of Section 160 of the Act) who is to be considered as an Independent Director.</td>
<td>NA</td>
</tr>
<tr>
<td>5 A Member recommends the appointment of a person as a Director who is not to be considered as an Independent Director (the Board of Directors or the Nomination and Remuneration Committee does not recommend the appointment).</td>
<td>Applicable (This case sounds realistic)</td>
</tr>
<tr>
<td>6 A person proposes himself to be appointed as a Director who is not to be considered as an Independent Director and the Board of Directors or the Nomination and Remuneration Committee does not recommend the appointment.</td>
<td>Applicable (This also seems highly unlikely)</td>
</tr>
<tr>
<td>7 A person to be nominated by a lending Financial Institution for appointment on the Board of Directors of the borrowing company according to the Loan Agreement signed between them. He will not be considered as an Independent Director due to the express provision to this effect in Section 149(6) of the Act. The aforementioned appointment will take place by the Board of Directors and not at the General Meeting of Members.</td>
<td>NA (Section 160 is applicable in case of appointment in General Meeting only)</td>
</tr>
</tbody>
</table>

The following provision of the Act may be mentioned here:

Section 161(3): Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or by or any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company. Therefore, the appointment of a Nominee Director, subject to the Articles of Association of the company, is made by the Board of Directors at their Meeting or passing a Resolution by Circulation and not at a General Meeting of Members.

The following provision of the Act may be mentioned further:

Section 152(2): Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting. Certainly, such appointment may be opted/agreed to be made at a General Meeting of Members.
While amending the definition of Independent Director by extending its reach given the conceivable areas, the Amendment quietly inserted a Proviso to sub-section 160 of the Act which deals with the right of persons other than retiring directors to stand for directorship to be appointed at General Meeting and *inter alia*, calls for deposit of Rs. 1 lakh to propose any such appointment. The following cause and effect analysis emerges from the above (a) and (b) if closely observed:

<table>
<thead>
<tr>
<th>Cause</th>
<th>Effect</th>
</tr>
</thead>
</table>
| 1. The general conditions of service of the employees of a company do not include any provision for extension of loan by the company to its employees.  

There is no scheme in the company as per Section 185(3)(a) of the Act. | The company may, at the Management's own discretion, extend loan to any of its employees and Section 186 of the Act shall not apply.  

The company cannot extend loan to its Managing Director and Whole Time Director even though they are employees unless a Special Resolution is passed in terms of Section 185 of the Act.  

If the company has a Manager instead of a Managing Director, it can extend loan to the Manager who is an employee provided the terms of his appointment, as approved by the Members in accordance with Section 196 of the Act, so permit and Section 186 of the Act shall not apply. |
| 2. The general conditions of service of the employees of a company include provision for extension of loan by the company to its employees.  

There is no scheme in the company as per Section 185(3)(a) of the Act. | The company may extend loan to any of its employees in terms of such general conditions of service and Section 186 of the Act shall not apply.  

The company may extend loan to its Managing Director and Whole Time Director in terms of such general conditions of service and Section 185 of the Act shall not apply.  

If the company has a Manager instead of a Managing Director, it can extend loan to the Manager who is an employee provided the terms of his appointment, as approved by the Members in accordance with Section 196 of the Act, so permit and Section 186 of the Act shall not apply. |
| 3. The general conditions of service of the employees of a company do not include any provision for extension of loan by the company to its employees.  

There is scheme in the company as per Section 185(3)(a) of the Act. | The company may, at the Management's own discretion, extend loan to any of its employees and Section 186 of the Act shall not apply.  

The company may extend loan to its Managing Director and Whole Time Director in pursuance to the Scheme and Section 185 of the Act shall not apply.  

If the company has a Manager instead of a Managing Director, it can extend loan to the Manager provided the terms of his appointment, as approved by the Members in accordance with Section 196 of the Act, so permit and Section 186 of the Act shall not apply. |

Small shareholders to appoint their Director under Section 151 of the Act. This appointment does not attract Section 160 of the Act. Instead, Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 promulgated under Section 151 of the Act is applicable. The appointee may or may not be eligible to be considered as an Independent Director of the company as per Section 149(6) of the Act.

**Loan to Managing Director/Whole Time Director/Employee**

(a) Section 185: In respect of extension of loan by a company to Managing Director/Whole Time Director, the Amendment has maintained the same condition as before keeping the exemption provision in Section 185 of the Act intact (though the entire Section has been replaced). This means, as per sub-Section (3)(a) of the amended Section 185, a company may extend loan to its Managing Director/Whole Time Director provided the giving of such loan is—

(i) a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the Members by a Special Resolution;

(b) Section 186: The Amendment has created an Explanation to sub-Section (2) of Section 186 - dealing with loan and investment by a company - to establish that a company may extend loan to any person if he is an employee without the limit under that sub-Section being applicable. The new Explanation is reproduced hereunder:

*For the purpose of this sub-section, the word “person” does not include any individual who is in the employment of the company.*
The Amendment has created an Explanation to sub-Section (2) of Section 186 - dealing with loan and investment by a company - to establish that a company may extend loan to any person if he is an employee without the limit under that sub-Section being applicable.

Consequent to the amendment of sub-Section (1) Section 26 any unlisted company which is to issue prospectus offering securities shall have to comply with the SEBI requirements regarding the contents of the prospectus - even though the securities to be offered are not intended to be listed on any Stock Exchange.

The Act has a specific Section, i.e, Section 42 dealing with Private Placement of Securities which is equally applicable to listed as well as unlisted companies.

According to the amended Section 42 (in fact the whole Section has been replaced by a new Section - of course, keeping the substantial part of the earlier one intact). However the erstwhile title to Section 42 has been changed from 'Offer or invitation for subscription of securities on private placement' to 'Issue of shares on private placement basis' ! But at the very outset sub-Section (1) of the substituted Section 42 reads 'A company may, subject to the provisions of this section, make a private placement of securities'.

The substituted Section 42 when read with the amended Section 26 and also Section 23 of the Act, a situation as under may come into reality:

If an unlisted company -
» wishes to offer securities,
» it announces that the securities will not be listed on any Stock Exchange and
» the offer is open for acceptance by only 50 persons to the maximum on first come first served basis i.e., not made to any predetermined persons

then, the unlisted company must -
» issue a ‘prospectus’ which shall conform to the SEBI requirements as to its contents - though the offered securities shall not be listed on any Stock Exchange
» but, the draft form of the prospectus shall not have to be submitted to the SEBI for verification to comply with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 as the same Regulations do not apply to it.

POSTAL BALLOT

The Amendment has made Postal Ballot redundant inserting the following Proviso to sub-Section (1) of Section 110 of the Act:

‘Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.’

Referring to Section 108 in this context is a misdemeanor
because a company is not ‘required to provide the facility to members to vote by electronic means under section 108’. This Section gives only the manner of conducting voting by electronic means specifying the same through Rule 20 of the Companies (Management and Administration) Rules, 2014.

However, the message is obvious. This requirement is a phenomenon of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the above Explanation is to be understood accordingly.

**ANNUAL RETURN**

Section 92 of the Act before amendment called for a prescribed extract of the Annual Report to be annexed to the Directors’ Report. The Amendment has done away with the requirement. This is reasonable as the Annual Report is to be ultimately prepared and filed with the Registrar of Companies, which is a public domain, within 60 days after the concerned Annual General Meeting as per sub-Section (4) of that Section. So, an extract of the Annual Report (i.e. a selected part thereof) hurriedly annexed to the Directors’ Report served little practical purpose! But what follows next demands more hurried actions! The amended sub-Section states as under:

‘Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board’s report’.  

The above provision makes it mandatory to prepare the Annual Return in its entirety while preparing the Annual Report so that a copy thereof is posted on the company’s website and a web link is given in the Directors’ Report. This becomes more onerous! For this purpose, at least the aforesaid 60 days’ time or the date of filing with the Registrar of Companies, whichever is less - could have been allowed. Further, if a company does not have any website this provision is ineffective to them.

**Last but not the Least**

**UTILISATION OF THE PROCEEDS OF PRIVATE PLACEMENT AND FILING OF RETURN OF ALLOTMENT**

The newly substituted Section 42 of the Act (‘the Section’) provides, *inter alia*, in its sub-Section 4 that ‘a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8)’

The said sub-Section (8) lays down, ‘A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed’.

Further, Sub-Section (9) of the Section states, ‘If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.’

The above provisions of Section 42 of the Act speak for themselves which were not there before amendment and should be noted with great attention to the detail.
Budget 2018: Highlights Concerning Income Tax Proposals

Central Budget essentially is meant to show and project the revenue and expenditure of the Central Govt. for a FY and is intended to indicate how revenue for the next year is proposed to be raised, what expenditure is expected to arise in the context of Govt.’s functioning, how the income and expenditure match for the year gone and for the new year and in cases, where expenditure is more than the revenue, resulting in deficit financing, whether this is within reasonable limits and how it will be managed and various other related aspects. However, over the years, along with such matters, tax matters relating to income tax (earlier Central Excise and Service Tax also, which from 1st July, 2017, have been subsumed in CGST law), Customs duty are also included in the Budget proposals with the result that during the discussions in the two houses of the Parliament, focus gets shifted to tax proposals, which affect the people directly than allocation of funds to various strategic, social and welfare aspects and their utilization. Actually, like summer, rainy and winter seasons, the country has, over the years developed a Budget season also, which starts some 4-5 weeks before the date of the presentation of the Budget in Lok Sabha and lasts till the Finance Bill is passed by the Parliament and sent to President for his assent. In the season, there is hectic activity and numerous suggestions, mostly on tax matters, are sent to the Finance Ministry before and after the presentation of Finance Bill in the Parliament, where mostly various concessions, incentives and benefits in taxes are called for and practically no suggestions are made, which may augment revenue of the Govt. and help it in nation building activities. During discussions too, no threadbare analysis of the proposals is made and the past experience shows that many times, the Finance Bill got passed by voice votes. This, apparently, does not seem to be a happy state of affairs and in the Budget exercise mainly the revenue and expenditure aspects should be discussed and for making changes in tax laws, separate Amendment Bills should be brought before the Parliament. However, this suggestion is debatable in the context of well-set situation and in this write up, I do not wish to discuss this in detail. I leave the subject for the deliberation of the learned readers of Chartered Secretary to address the subject in greater details. In the present article, I propose to mention some salient aspects of the Finance Bill, 2018, placed in the Lok Sabha on 1st February, 2018.

[2] Some salient aspects of the Finance Bill, 2018

[a] Threshold limits and rates

The two aspects that directly affect the taxpaying section of the population are (i) threshold limit up to which no tax is payable; and (ii) tax brackets and rates. To the disappointment of taxpayers, no changes in these have been announced by the FM and these continue to be same as these were in the past. For ready reference, the position in respect of various categories of taxpayers is stated in later paragraphs.
[A] No changes in rates of tax

[a] Personal Income Tax - Individuals
There has been no change in the rates of taxes (except in the cases of companies with turnover up to Rs.250 crore, which shall be mentioned later) vis-à-vis last year. The last year’s rates are being mentioned in later paragraphs.

[b] Rates relating to personal income tax

<table>
<thead>
<tr>
<th>Assessee</th>
<th>Total income between (Rs.)</th>
<th>Tax rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessee less than 60</td>
<td>0-2,50,000</td>
<td>nil</td>
</tr>
<tr>
<td></td>
<td>2,50,000-5,00,000</td>
<td>5% of total income minus Rs.2,50,000</td>
</tr>
<tr>
<td></td>
<td>5,00,001-10,00,000</td>
<td>12,500 +20% of total income minus Rs.2,50,000</td>
</tr>
<tr>
<td></td>
<td>10,00,001 and above</td>
<td>1,12,500+(30% of total income minus Rs.10,00,000)</td>
</tr>
<tr>
<td>Assessee between 60 and 80 years</td>
<td>0-3,00,000</td>
<td>nil</td>
</tr>
<tr>
<td></td>
<td>3,00,001-5,00,000</td>
<td>5% of total income minus Rs.3,00,000</td>
</tr>
<tr>
<td></td>
<td>5,00,001-10,00,000</td>
<td>10,000 +(20% of total income minus Rs.5,00,000)</td>
</tr>
<tr>
<td></td>
<td>10,00,001 and above</td>
<td>1,10,000 +(30% of total income minus Rs.10,00,000/-)</td>
</tr>
<tr>
<td>Assessee above 80 years</td>
<td>0-5,00,000</td>
<td>nil</td>
</tr>
<tr>
<td></td>
<td>5,00,001-10,00,000</td>
<td>20% of total income minus Rs.5,00,000</td>
</tr>
<tr>
<td></td>
<td>10,00,001 and above</td>
<td>1,00,000 +(30% of total income minus Rs.10,00,000)</td>
</tr>
</tbody>
</table>

Notes

[i] Rebate u/s 87A – Resident individuals with income up to Rs.3.5 lakh can get a rebate of Rs.2, 500 or 100% of tax, whichever is less.

[ii] Standard Deduction (SD) of Rs.40,000 or actual amount of salary, whichever is less (in lieu of exemption for medical expenses reimbursements of Rs.15,000 and conveyance allowance of Rs.19,200) will be deductible.

[iii] The above are tax rates.

Besides these, surcharge and cess will be in addition to these. The same will be stated in later paragraph after mentioning the tax rates in respect of all categories of taxpayers.

[b] Tax rates in respect of HUFs, AOPs, BOIs and artificial juridical persons

These are akin to individuals (supra) and there have been no changes concerning these too.

[c] Cooperative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2017-18.

[d] Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for financial year 2017-18.

[e] Local authorities

The rate of income-tax in the case of every local authority has been specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the financial year 2017-18.

[f] Companies

The rates of income-tax in the case of companies have been specified in Paragraph E of Part III of the First Schedule to the Bill. In case of domestic company, the rate of income-tax shall be twenty five per cent. of the total income if the total turnover or gross receipts of the previous year 2016-17 does not exceed two hundred and fifty crore rupees and in all other cases the rate of Income-tax shall be thirty per cent. of the total income. In the case of company other than domestic company, the rates of tax are the same as those specified for the financial year 2017-18.

[g] Surcharges and cesses

These are almost on the same lines in respect of all categories of taxpayers as under:-

[i] Surcharge on income tax

The amount of income-tax shall be increased by a surcharge for the purposes of the Union –

[a] in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act –

[i] at the rate of ten per cent. of such tax, where the income or the aggregate of income paid or likely to be paid and subject to deduction exceeds fifty lakh rupees but does not exceed one crore rupees, and

[ii] at the rate of 15% of such tax, where the income or the aggregate of income paid or likely to be paid and subject to deduction exceeds one crore rupees;

[iii] surcharge will also be levied at the appropriate rates in cases where these persons are liable to tax u/s 115JC of the Act.

[ii] in the case of cooperative societies, firms or local authorities having total income exceeding one crore rupees, surcharge will be levied @12% of income-tax payable on total income. In the case of such persons having total income chargeable to tax u/s 115JC of the Act and such income ex-
ceeds one crore rupees, surcharge @12% shall be levied.

[iii] in the case of a domestic company -

[i] having total income exceeding one crore rupees but not exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated @7% such income tax;

[ii] having total income exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated @12% such income-tax; and

[iii] surcharge will also be levied at the appropriate rates in cases where the company is liable to tax u/s 115JB of the Act.

[d] in the case of a company, other than a domestic company –

[i] having total income exceeding one crore rupees but not exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated @2% of such income tax;

[ii] having total income exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of 5% of such income tax; and

[iii] surcharge will also be levied at the appropriate rates in cases where the company is liable to tax u/s 115JB of the Act.

[e] In other cases (including sections 115-O, 115QA, 115R, 115TA or 115TD), the surcharge shall be levied at the rate of 12%.

[b] Marginal relief

Marginal relief has also been provided in all cases where surcharge is proposed to be imposed.

[c] Education cess

For AY 2018-19, additional surcharge by way of “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of 2% and 1% respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such cesses.

[c-i] From the AY 2019-20, the education cess and other cesses (supra) shall be increased by 1% of tax found due and will be re-christened as Education and Health cess'. Thus, the cess rate will increase from the present 3% to 4% on tax found due.

[b] Other changes

These are mentioned in later sub-paras only in the context of personal and company taxation.

[b-1] Personal taxation

[i] Standard Deduction

The philosophy underlying the I.T. Act is that it is not levied on gross receipts but on receipts (income) left after deducting the expenses incurred in earning it. This policy was followed in respect of all 5 sources of incomes namely (i) salaries; (ii) house properties; (iii) business and profession; (iv) capital gains; and (v) other sources. However, in cases of salaries, instead of giving deduction for individual and varied expenditure, as a measure of simplicity for employment related expenses, instead of item-wise deductions, a fixed sum, based on income slabs, designated as Standard Deduction (SD) be deducted. However, the same was stopped abruptly by the former FM – P. Chidambaram – from the AY 2005-06 without giving any cogent reasons and the same continued till he was the FM and for 4 years in the present FM’s tenure. In his 5th Budget, the injustice done to honest section of taxpayers, salaried employees, has been realized and he has brought back the SD of Rs.40,000/- for such taxpayers, but this is
merely a delusion because simultaneously, he has withdrawn the conveyance and medical allowances, being availed of by these taxpayers.

Against the deduction of Standard Deduction (SD) of Rs.40,000/-, the following reliefs, already being availed of, stand withdrawn:-

[i] Transport allowance: Rs.19,200/-
[@ Rs.1,600/- p.m.]

[ii] Medical expenses reimbursement: Rs.15,000/-
-------------
Rs.34,200/-
-------------

The SD amount that remains after such deductions is Rs.5,800/- p.a. only, which translates to a total tax saving of Rs.1,810/- in tax payable on highest slab is @30% + 4% cess tax. On lower slabs, the tax saving would be marginal as under:-

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5 lakh to 5,00,000/-</td>
<td>Rs.301.60</td>
</tr>
<tr>
<td>5,00,001/- to 10,00,000/-</td>
<td>Rs.1,206.04</td>
</tr>
</tbody>
</table>

These savings in tax get further reduced by 1% extra cess and hence, there seems to be no basis for FM’s speaking loudly in his Budget speech and claim that he has given SD of Rs.40,000/- to salaried taxpayers?

Thus, the SD is more illusory than real. However, the benefit has been extended to pensioners also and they will be real beneficiaries of SD as they do not get any transport or medical allowance. To this extent, FM needs to be complimented.

[ii] Benefits for senior citizens

Several reliefs, as under, have been given to senior citizens. These are:-

[a] deduction for interest income from bank deposits, cooperative societies or post office up from Rs.10,000 to Rs.50,000;

[b] deduction for health insurance premium and medical expenditure up from Rs.30,000 to Rs.50,000; and

[c] deduction for treatment of specified diseases up from Rs.60,000 to Rs.1 lakh.

[d] deduction of Rs.40,000 in a year as Standard Deduction.

[iii] Misc. other changes

[a] Exemption on long term capital gains on sale of assets restricted to land or building. Holding period of notified bonds increased to 5 years. This reduces scope of claiming capital gains tax exemption on sale of securities, jewellery, art, etc.

[b] Withdrawal from National Pension Scheme is exempt from tax up to 40% of total amount payable for salaried individuals. This benefit is now extended to self-employed individuals also.

[c] No adjustments to sale consideration on transfer of immovable property where variation between stamp duty value and sale consideration is not more than 5% of latter. This will reduce hardship for genuine transactions in real estate.

[d] Long-term capital gains [LTCGs] exceeding Rs.1 lakh on sale of listed equity shares and listed equity oriented mutual funds to be taxed @10% without indexation benefit. However, this will not apply to appreciation up to fair market value as on Jan. 31, 2018. STT on such transaction continues to be levied. This will increase tax burden for long-term investors.

[e] Dividend distribution tax introduced @10% on dividend payouts to unit-holders of equity oriented funds.

[f] If income in IT return was lower than the figure in Form 26AS, Form 16A or Form 16, it led to issue of a demand notice. Now, for such mismatch, one will not receive a notice; this will reduce litigation. This beneficial amendment is retrospective from FY 2017-18.

[g] If you have been laid off and receive a compensation, it will now be taxed as other income. Earlier, one would have argued that it is a non-taxable capital receipt.

[h] Women employees have to contribute 8% of their monthly pay towards employee provident fund, for the first three years. This is a reduction from the existing 12% contribution. While it results in a higher take home, assuming the employee does not make additional investments, it will result in a lower tax deduction u/s 80C and correspondingly increase the tax liability. It is unclear whether the condition will apply to existing employees or those, who join the EPF scheme for the first time.

[i] 80C – The Rs.1.5 lakh tax saving window remains un-
changed. An individual taxable at 30% can save Rs.45,000 if he or she claims Rs.1.5 lakh as deduction u/s 80C. Some investments one can make are:-

1. Provident Fund (PF) contribution
2. Principal component of housing loan from prescribed institutions
3. Investment up from Rs.500 to Rs.1.5 lakh every year in a Public Provident Fund (PPF) account.
4. Tuition fees of two children
5. Life Insurance premiums for self, spouse and kids
6. Contribution to unit-linked insurance plan for self, spouse and kids
7. Invest in National Savings Certificates (NSC) schemes through post offices
8. A 5-year term deposit with a bank under a notified scheme or a post office
9. Investment up to Rs.1.5 lakh a year in Sukanya Samriddhi account in the name of your daughter (limited to 2 children)*

It is proposed that the provision of section 79 of the Income-tax Act (the Act) regarding restriction on shareholding for the purpose of carry forward loss shall not apply in case of change of shareholding pursuant to an approved resolution plan under IBC, 2016 where an opportunity of being heard has been given to the Principal Commissioner or Commissioner.

In respect of companies where an application under Insolvency and Bankruptcy Code (IBC), 2016 has been admitted, it is proposed to provide that for the purpose of computation of Minimum Alternative Tax (MAT) the aggregate amount of unabsorbed depreciation and brought forward loss shall be allowed to be reduced from the book profit.

It is proposed to extend the benefit of exemption for withdrawal up to 40% from National Pension System Trust (NPS) to all subscribers and not only to employees.

It is proposed to provide that in a case where premium for health insurance for multiple years has been paid in one year, the deduction shall be allowed proportionately over the years for which the benefit of health insurance is available.

[n] In order to encourage start-ups, the definition of ‘eligible business’ for a start-up is proposed to be aligned with the modified definition notified by DIPP. It is further proposed to extend the incorporation date for a start-up for availing benefit under section 80-IAC of the Act to 31st March, 2021 from 31st March, 2019 and rationalise the condition of turnover for availing the benefit.

[o] It is proposed to provide that trading in agricultural commodity derivatives on a recognized stock exchange shall not be treated as a speculative transaction even if no Commodities Transaction Tax (CTT) has been paid in respect of those derivative transactions.

[p] Considering the strategic nature of the transactions, it is proposed to provide that income arising to a non-resident from royalty or fees for technical services received from National Technical Research Organisation shall be exempt from tax.

[q] It is proposed to provide that the exemption of sale of leftover stock of crude oil shall also apply in respect of termination of the contract or arrangement in respect of a foreign company participating in a strategic oil reserve.

[r] It is proposed to provide that in addition to notifying any authority, Board, Trust or Commission under section 10(46) of the Act, the Government can also notify any class of such persons.

[s] It is proposed to provide similar tax regime as available to equity oriented funds to Fund or Funds investing only in exchange traded funds which only invest in listed equity shares of domestic companies.

[t] It is proposed to provide that no adjustments shall be made u/s 143 (1) (VI) of the Act while processing the return filed for the assessment year 2018-2019 and subsequent assessment years.

[u] It is proposed to provide that no expenditure or allowance or set off of any loss shall be allowed in respect of undisclosed income determined by the Assessing Officer under section 115BBE of the Act.

[v] It is proposed to provide that every entity, not being an individual, which enters into any financial transaction of an amount aggregating to Rs.2.50Lakh or more in a financial year shall be required to apply for a permanent account number (PAN). It is also proposed that directors, partners, principal officers, office bearer or any person competent to act on behalf of such entities shall also apply for PAN.

[w] It is proposed to make the order passed by the Commissioner of Income-tax (Appeals) under section 271J of the Act appealable before Appellate Tribunal.

[x] It is proposed to enhance the penalty from Rs.100/- to Rs.500/- and from Rs.500/- to Rs.1000/- u/s 271FA of the Act.

[y] It is proposed to mandate that in order to avail benefit of any deduction under
Chapter VIA-C, the persons have to file return within due date specified u/s 139(1) of the Act.

[2] It is proposed to provide that if stock-in-trade is converted into capital asset, the fair market value of the same on the date of conversion shall be taken into account for computing business income.

[aa] It is proposed to rationalise the existing provision relating to investment in capital gain bonds by providing that the exemption shall be available only in respect of long-term capital gains arising out of sale of immovable property and investment in the bond shall be for a minimum period of 5 year from the existing 3 years.

[bb] It is proposed to amend section 9 of the Act to align the scope of “business connection” with the modified dependent agent permanent establishment rule as per Multilateral Instrument signed by the Government.

[cc] It is proposed to amend section 9 of the Act to provide that significant economic presence of a non-resident shall constitute “business connection” with India. It is also proposed to define the phrase ‘significant economic presence’.

[dd] It is proposed to provide that compensation received in connection with termination or modification of business contract and employment contract shall be taxable.

[ee] It is proposed to provide that in respect of heavy goods vehicles (more than 12 tonnes), the presumptive income under section 44AE of the Act shall be computed at the rate of Rs.1000 per tonne per month.

[ff] In order to provide statutory backing and certainty to Income Computation and Disclosure Standards (ICDS), it is proposed to amend the provisions of Chapter IV-D of the Act relating to computation of business income and Chapter XIV of the Act.

[gg] It is proposed to provide that deemed dividend under section 2(22) (e) of the Act shall be subject to dividend distribution tax at the rate of 30% without grossing up.

[C] Corporate taxation

Corporate assessees

[i] Tax rates benefit

This has already been stated earlier.

[i] Base tax rate for companies with turnover less than Rs.250 Cr. in FY 2016-17 (MSMEs) has gone down to 25% from 30%. Their effective tax rate after application of surcharge and the new health and education cess will be 29% instead of 34.6%.

[iii] The tax holiday of 3 years in a block of 7 years for startups recognized by DIPP has been extended to entities incorporated before April 1, 2021.

[iii] Digital economy is now under the tax net. Non-residents with significant economic presence in India (sale of goods or services, providing of software or data) will have to pay tax on Indian profits in spite of not having physical presence here.

Tax treaties will need suitable amendments.

(iv) Compensation on termination or modification of terms of contracts, such as for marketing or distribution rights, will now be taxed as business income.

[v] Non-residents doing business through agents in India will be taxed where they play a principal role in conclusion of customer contracts even though they do not conclude contracts in India. Till date, non-residents were taxed only if agents habitually concluded contracts in India.

[vi] Transfer of capital assets (land, building, shares) between a holding and 100% subsidiary will be exempt from tax even when these are less than fair market value.

[vii] Tax deduction employment generation rationalized. Enhanced deduction of 30% of wages paid to new employees available even if he is employed for less than 240 days in the first year provided he remains in employment next year for the prescribed threshold.

[viii] Relief from MAT for companies undergoing insolvency proceedings under the IBC Code 2016. They will get a reduction of brought forward losses and unabsorbed depreciation from book profits on which MAT is computed.

[ix] Companies under insolvency under IBC Code 2016 can now carry forward losses even in case of substantial change in their ownership (51% or more) during the year.

[ix] Income was to be computed in accordance with Income Computation and Disclosure Standards (ICDS) from FY 2016-17, which resulted in an increase in taxable income. Delhi HC struck down the constitutional validity of certain ICDS. Now a retrospective amendment reintroduces it. Companies may have to revise tax returns for the past year and pay additional tax and interest.

[x] Companies will face additional dividend distribution tax (DDT) burden of 30% (basic rate) on loans or advances given to shareholders or related concerns (where the shareholder has substantial interest). Earlier, such loans were treated as deemed dividend and taxed in the hands of the shareholder.

[3] Concluding comments

The FM was expected to move a short Finance Bill concerning Income Tax because of a Task Force appointed by the Govt. for re-writing the Income Tax act, who has been asked to submit the report in six months by May 2018, and Central Excise & Service Tax having become a part of the GST. However, this expectation has not materialized and the Finance Bill is quite extensive, making some structural changes in the I.T. act, which could have been left for the examination of the Task Force, whose report is not far away.

[3.1] In the foregoing paras and sub-paras, I have given brief account of changes proposed to be made in the I.T. Act concerning the two category of taxpayers namely individuals and companies. The discussion merely gives glimpses of the relevant provisions and for the detailed contents of sections, the Finance Bill and the I.T. Ac can be referred.
RESEARCH CORNER

- ICSI – CCGRT INVITES EMPIRICAL RESEARCH PAPERS ON RELATED PARTY TRANSACTIONS AND DISCLOSURES
- ICSI – CCGRT INVITES UNIQUE RESEARCH PAPERS ON ‘CRYPTO ASSETS’ OR ‘CRYPTO CURRENCIES’
ICSI – CCGRT
INVITES
Empirical Research Papers on Related Party Transactions and Disclosures

ICSI-CCGRT is pleased to invite Empirical Research Papers on Related Party Transactions and Disclosures with an objective of creating knowledge reserve among its Members both in employment and practice. This invite is open for academicians, corporate professionals, students pursuing Company Secretary and other professional courses, and other interested folk in order to make them as epitome of knowledge and useful to corporate world.

The purpose of this initiative is to identify significant concepts and try to find out a comprehensive and definitive solutions in the specified area. Since research in all disciplines and subjects, must begin with a clearly defined goal, this activity is also designed keeping those objectives in mind.

Prologue
The need for transparency and accountability in corporate functioning has increased considerably over the years. Financial reporting, which is an integral part of good corporate governance, provides the shareholders and other stake holders financial information about the company. This, in turn, necessitates an appropriate financial reporting system, including disclosures regarding related party transactions.

A related-party transaction (RPT) refers to a transaction between two parties who are joined by a special relationship prior to the transaction, of course the transactions could be a business deal, a single or a series of financial contracts, or an arrangement. The parties involved on the two sides of the deal could be a parent company and its subsidiaries or affiliates, the employees, the principal owners, the directors or the management of the company and the subsidiaries, or members of their immediate families.

The Provisions

The Benefits
A RPT play a beneficial role by saving transaction costs and improving the operating efficiency of a company. There are several such transactions that are unavoidable because they make commercial sense for the company, if companies are prohibited from entering into such transactions, it might work against the principle of maximizing the shareholder value. Further, they enable member firms to share risks by transforming income flows and reallocating money from one affiliate to another whether needed.

The Problem
Several scandals in the U.S. and other parts of the world have cited RPTs as a means to manage earnings as well as divert resources from companies. Accounting frauds in Enron, Tyco,
Parmalat, and Satyam are glaring examples of the same. The potential to abuse RPTs is a cause for concern all over the world to both regulators as well as investors. If RPT is widespread and misused, it may lead to serious consequences. The reason behind that are such transactions not only reduce the return to outside shareholders but also raise doubts on the effectiveness of corporate governance, which in turn hinders growth in the equity market and the overall economic progress of a country.

**Objectives:**
Despite the importance of the topic, academic studies use indirect proxies to examine potential Related Party Transactions and their impact on investors and on economy. There are relatively few research papers that study the methods of the transactions through which expropriation occurs. Further, not many studies have attempted to provide evidence related to the consequences of RPTs in India although anecdotal evidence indicates that RPTs are being used to manipulate earnings and expropriate minority shareholders.

In light of the above derived causes, it generates significant interest to invite empirical research on the topic which could help the members, investors, regulators and others in identifying the gaps and also providing the solutions with the following objectives:

1. To analyse the regulatory framework on the RPTs
2. To make a comparison on the regulatory framework of India with Other Countries
3. To make a detailed analysis of the nature and frequency of RPTs
4. To empirically analyse the impact of RPTs on firms’ performance
5. To empirically examine the effect of certain governance factors that influence RPTs

**Coverage**
The study should contribute research based output by examining the transparency of disclosure as well as its impact on the operational performance of Indian companies. The researchers could consider following hypothesis as a guiding factor while developing their manuscripts. a) H0: RPTs negatively effect on the companies’ performance measured by return on assets
b) H0: In companies with higher concentrated ownership, RPTs are more
3. H0: The presence of more independent directors on the board will not limit RPTs.
4. H0: Involvement of higher FIIs deters RPTs.

**Research Paper Guidelines**

1. Original empirical research papers are invited from Company Secretaries in employment & practice, Chartered Accountants, Advocates, Academicians, merchant bankers, doyens from industry and interested folk.

2. The paper must be accompanied with the author’s name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.

3. Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.

4. The text should be typed in MS-Word.

5. The author/s’ name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.

6. Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.

7. All notes must be serially numbered. These should be given at the bottom of the page as footnotes.

8. The following should also accompany the manuscripts on separate sheets: A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI, if any, and other membership on editorial boards and companies, etc.

9. The research papers should reach on or before 31st March, 2018 by 12 noon (IST).

10. Participants should email their research papers on the following email id: prasant.sarangi@icsi.edu & ccgrt@icsi.edu.

11. The paper may be presented either in single section or multiple sections after chapters.

12. There is no restriction on number of papers. One participant can submit more than one Papers.

**Further Information for Authors / Participants**

1. The decision of the Committee will be final and binding on the participants.

2. The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI.

3. The papers will be scrutinized by an Committee.

4. For any query / assistance, kindly contact at: prasant.sarangi@icsi.edu & ccgrt@icsi.edu

5. ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.

6. ICSI reserve all the rights for finalization and selection of papers and awarding rewards, credit hours.
ICSI-CCGRT is pleased to invite unique Research Papers on ‘Crypto Assets’ or ‘Crypto Currencies’ with an objective of creating knowledge reserve among its Members—both in employment and practice. This invite is open for academicians, corporate professionals, students pursuing Company Secretary and other professional courses, and other interested folk in order to make them as epitome of knowledge and useful to corporate world.

The purpose of this initiative is to identify significant concepts and try to find out a comprehensive and definitive solutions in the specified area. Since research in all disciplines and subjects, must begin with a clearly defined goal, this activity is also designed keeping those objectives in mind.

Prologue
The matters on Crypto Currencies or Assets get a momentum soon after the Budget speech of Hon’ble Finance Minister of India recently. A crypto currency is a digital or virtual currency that uses cryptography for security, difficult to counterfeit because of its security features. These are organic by nature. This means, they are not issued by any country or central authority, thus rendering them immune to government interference or manipulation—at least in theory. These uses blockchain technology (distributed ledger)
which is by far touted as the most secure technology against the hacking threats. These are not physical currency, rather balances are kept on a ledger in the cloud. As per a study, there are currently more than 780 reported crypto currenies operating in the world.

**The Problem**
Virtual/digital currencies are not recognized by the Reserve Bank of India (RBI) or any other authority in India, as a ‘currency’. Hence, the government does not consider crypto currencies as currencies but could treat them as ‘assets’. It strictly says that use of word ‘currency’ is misnomers or wrong expression. The government is treating them as crypto assets. The government is making an elaborate policy to nip crypto currencies in the bud by constituting a committee.

**Objectives:**
There is lot of uncertainty and lack of clarity on the legal status of these currencies in India. Researchers are requested to prepare their manuscript on the light of any one or combinations of objective(s) from the following:

a) To define whether ‘crypto currency’ or ‘crypto asset’
b) To use crypto assets or currencies legally for paying for goods and services
c) To consider crypto assets or currencies as currencies or commodity
d) To consider crypto assets or currencies as an investment asset
e) To treat crypto assets or currencies as movable property
f) To consider crypto assets or currencies to be held in India or abroad depending on the location of the wallet

**Research Paper Guidelines**

* Original research papers are invited from Company Secretaries employment & practice, Chartered Accountants, Advocates, Academicians, merchant bankers, doyens from industry and interested folk.
* The paper must be accompanied with the author’s name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
* Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
* The text should be typed in MS-Word.

* The author/s’ name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
* Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
* All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
* The following should also accompany the manuscripts on separate sheets: A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI, if any, and other membership on editorial boards and companies, etc.
* The research papers should reach on or before 31st March, 2018 by 12 noon (IST).
* Participants should email their research papers on the following email id: prasant.sarangi@icsi.edu & ccgrt@icsi.edu.
* The paper may be presented either in single section of any chapter or multiple sections after chapters.
* There is no restriction on number of Papers. One participant can submit more than one papers.

**Further Information for Authors / Participants**

* The decision of the Committee will be final and binding on the participants.
* The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI.
* The papers will be scrutinized by a Committee.
* For any query / assistance, kindly contact at: prasant.sarangi@icsi.edu & ccgrt@icsi.edu
* ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
* ICSI reserve all the rights for finalization and selection of papers and awarding rewards, credit hours.
As the members are aware, the term of the existing Council and the Regional Councils will expire on 18th January 2019 and the elections for the new Council / Regional Councils will be held during the month of December 2018. In accordance with Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006, a member, whose name is borne on the Register of Members (Register) on the 1st day of April 2018 shall be eligible to vote in the election from the Regional constituencies within whose territorial jurisdiction his/her professional address falls on the said date provided that his/her name has not been removed from the Register on the date of publication of the list of voters.

If the professional address is not borne on the Register on the relevant date, the residential address borne on the Register shall be determining his/her Regional constituency.

In the case of members having their professional address outside India and eligible to vote, their Regional Constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register on the relevant date, whichever is later.

The names of the members, who have not paid the annual membership fee for the year 2017-18 and for the previous years (by the last date of the relevant year), stand removed from the Register with effect from 1st September of the relevant year. In order to exercise their franchise at the ensuing elections, the Members are requested to get their names restored by making an application in Form BB duly filled and signed and paying the arrears of the membership fee along with relevant entrance and restoration fee with applicable GST@18%. Form BB is available on the website of the Institute.

The members, who have not paid the annual membership fee for the years previous to 2017-18 (by the last date of the relevant year) can pay through Demand Draft payable at Delhi/Cheque at par favouring “The Institute of Company Secretaries of India” to the address given hereunder along with Form BB. The members, who have not paid the annual membership fee for the year 2017-18 only by the extended last date (i.e. 31st August, 2017), may pay online also. The payment (online/offline) should reach the Institute latest by 25th March, 2018.

Steps for making online payment for Restoration of Membership (only for members who had not paid the annual membership fee for the year 2017-18 by 31st August, 2017) are as under:

- Login to portal www.icsi.edu
- Click Online services on the right top corner and then click Member Login
- Fill the User name which is the membership number (e.g. A1234) and then the Password. (In case a member does not have/remember his/her password, he/she can get the password by clicking on to the Retrieve option. The password will be sent to his/her email registered with the Institute. Alternately, he/she may email at jitendra.kumar@icsi.edu from his/her email registered with the Institute to get the password on the said email id)
- After login, go to Members Option (from top menu) then click on Manage Account and then Restoration of Membership (on the left side under Place your Request)
- Click on proceed for payment.

The members are requested to check their professional and residential addresses and make changes online, if any, through Member Login. In case of any difficulty, they may write at neeru.pandey@icsi.edu from their email registered with the Institute to enable the Institute to make the necessary changes and include the names of the members in the voters list concerned.

The members who have not yet applied for the issue of the identity cards may apply for the same at kedarsingh@icsi.edu

For further clarification / information, if any, members may contact at jitendra.kumar@icsi.edu
DIVYA MANUFACTURING CO PVT LTD V. UNION BANK OF INDIA & ORS [SC]
INNOX WIND LTD V. THERMOCABLES LTD [SC]
INDIAN FARMERS FERTILIZER COOPERATIVE LTD V. M/S BHADRA PRODUCTS [SC]
TOYOTA JIDOSHA KABUSHIKI KAISHA V. PRIUS AUTO INDUSTRIES LTD & ORS. [SC]
ROYAL ORCHID HOTELS LTD V. KAMAT HOTELS (INDIA) LTD & ORS [SC]
NATIONAL KAMGAR UNION V. KRAN RADER PVT LTD & ORS. [SC]
BATRA HOSPITAL EMPLOYEES UNION V. BATRA HOSPITAL & MEDICAL RESEARCH [DEL]
DWARIKESH SUGAR INDUSTRIES LTD V. WAVE DISTILLERIES & BREWERIES LTD & ORS [CCI]
C.P. PAUL V. KERALA STATE ELECTRICITY BOARD & ANR [CCI]
DIVYA MANUFACTURING CO PVT LTD v. UNION BANK OF INDIA & ORS [SC]

Civil Appeal No.4706 of 1998 with Civil Appeal No.4707 of 1998

M.B.Shah & R.P. Sethi, JJ. [Decided on 11/07/2000]

Equivalent citations: (2000) 102 Comp Cas 66 (SC).

Companies Act, 1956- company in liquidation-sale of assets through public auction- principles of determining the sale value of the asset- Supreme Court explains.

Brief facts:
These appeals are filed against the judgment and order passed by the Division Bench of the High Court of Calcutta whereby the sale of the assets and properties of the Tirupati Woolen Mills Limited (Tirupati Mills for short) (under liquidation) confirmed on July 2, 1998 in favour of the appellant-Divya Manufacturing Co. (Divya for short) had been recalled and set aside on the application of respondent No.7, Sharma Chemical Works (For short Sharma) and respondent No.8, Jay Prestressed Products Ltd. (Jay for short) herein.

Decision: Appeals dismissed.

Reason:
In our view, on facts it is apparent that the Division Bench of the High Court has considered all the relevant facts including the fact that at the initial stage, the appellant Divya offered only Rs.37 lakhs to purchase the properties. That means, the appellant wanted to purchase at a throw away price. Thereafter, at the intervention of the Court, the price was increased to Rs.1.3 crores by the appellant. This indicates that appellant was keen to purchase the property, however by paying only the bare minimal amount and to take advantage of sale by the liquidator in the hope that if there are no other purchasers, it would purchase the Company at a price which is abnormally below the market price. It is also true that on 2nd July 1998, the offer made by the appellant was accepted and it was ordered that sale in its favour be confirmed, but at the same time, before possession of the property could be handed over, or before the sale deed could be executed in its favour, respondent Nos.7 and 8 pointed out that the assets and properties could be sold at Rs.2 crores. For showing their bona fides, they were directed to deposit Rs.40 lakhs each and also to pay Rs.70 thousand each as damages to the appellant. Further, the application for setting aside the sale was filed within a few days of the order accepting the bid of the appellant. In these set of circumstances, when correct market value of the assets was not properly known to the Court and the sale was confirmed at grossly inadequate price, it was open to the Court to set it at naught in the interest of the company, its secured and unsecured creditors and the employees. Appellant is also duly compensated by payment of Rs.70 thousand each by respondent Nos.7 & 8.

The law on this subject is well-settled. In the case of Navalkha & Sons v. Sri Ramanya Das & Ors (1969) 3 SCC 537, after appellants offer was accepted, a fresh offer from one Gopaldas Darak for higher amount was received by stating that he could not offer in time because he came to know of the sale only 2 days prior to the date of the application and there was possibility of higher bids. Instead of directing a fresh auction or calling for fresh offers, the learned Judge thought it proper to arrange an open bid in the Court itself on that very day as between M/s Navalkha and higher offeror Gopaldas Darak. M/s Navalkha thereafter offered higher bid at Rs.8,82,000 and its bid was accepted and the learned Judge concluded the sale in its favour with a direction to pay the balance amount. Thereafter an application was filed offering Rs.10 lakhs. A contention was raised that due publicity of the sale of the property was not made, but that application was rejected by the Court. Hence, an appeal was filed by the applicant who made an offer of Rs.10 lakhs and another by one contributory against the order of confirmation. Both appeals were allowed by the Division Bench and the order passed by the learned Judge was set aside with a direction to take fresh steps for sale of the property either by calling sealed tenders or by auction in accordance with law. That order was challenged before this Court by M/s Navalkha. It was contended that there was no justification for the Division Bench to interfere with the order of the learned Single Judge. In that context, after quoting Rule 273 of the Companies (Court) Rules, 1959, the Court observed: The principles which should govern confirmation of sales are well established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In Gوردhan Das Chuni Lal v. T. Sriram Kanthimathinatha Pillai (AIR 1921 Mad.286), it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in Rathnaswami Pillai v. Sadapathy Pillai (AIR 1925 Mad. 318) and S. Soundararajan v. M/s Roshan & Co. (AIR 1940 Mad. 42.) In A. Subbaraya Mudaliar v. K. Sundararajan (AIR 1951 Mad. 986) it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the
The parties are directed to bear their respective costs.

Haryana with a reserved price fixed at Rs.2 crores (as offered).

the newspapers having circulation in Delhi and in the State of

with law after giving due publicity in the newspapers, particularly,

property by calling sealed tenders or by auction in accordance

sale. Hence, the Liquidator is directed to take appropriate steps

from the Court for fixing the time-table for conduct of the auction

Court was stayed, fresh directions are required to be obtained

this appeal as the order passed by the Division Bench of the High

Interim order stands vacated. Pending hearing and disposal of

In the result, Civil Appeal No. 4706 of 1998 filed by Divya and Civil

Further, there is a specific condition No.11 in terms and conditions

of sale as quoted above which empowers the Court to set aside

the sale even though it is confirmed for the interests of creditors, contributories and all concerned and/or public interest. In this view

of the matter, it cannot be said that the Court became functus officio after the sale was confirmed. As stated above, neither

the possession of the property nor the sale deed was executed in favour of the appellant. The offer of Rs.1.30 crore is totally

inadequate in comparison to the offer of Rs.2 crores and in case

where such higher price is offered, it would be in the interest of

the Company and its creditors to set aside the sale. This may

cause some inconvenience or loss to the highest bidder but that

cannot be helped in view of the fact that such sales are conducted in Court precincts and not by a business house well versed with

the market forces and price. Confirmation of the sale by a Court at grossly inadequate price, whether or not it is a consequence of

any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial
discretion. In such cases, a meaningful intervention by the Court

may prevent, to some extent, underbidding at the time of auction through Court. In the present case, the Court has reviewed its

exercise of judicial discretion within a shortest time.

In the result, Civil Appeal No. 4706 of 1998 filed by Divya and Civil

Appeal No. 4707 of 1998 filed by the Samity stand dismissed. Interim order stands vacated. Pending hearing and disposal of

this appeal as the order passed by the Division Bench of the High

Court was stayed, fresh directions are required to be obtained from the Court for fixing the time-table for conduct of the auction

sale. Hence, the Liquidator is directed to take appropriate steps at the earliest, by obtaining an order from the Court for sale of the

property by calling sealed tenders or by auction in accordance with law after giving due publicity in the newspapers, particularly, the

newspapers having circulation in Delhi and in the State of Haryana with a reserved price fixed at Rs.2 crores (as offered). The parties are directed to bear their respective costs.
In the present case, the purchase order was issued by the Appellant in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The Respondent by his letter dated 15.12.2012 confirmed its acceptance of the terms and conditions mentioned in the purchase order except delivery period. The dispute arose after the delivery of the goods. No doubt, there is nothing forthcoming from the pleadings or the submissions made by the parties that the standard form attached to the purchase order is of a trade association or a professional body. However, the Respondent was aware of the standard terms and conditions which were attached to the purchase order. The purchase order is a single contract and general reference to the standard form even if it is not by a trade association or a professional body is sufficient for incorporation of the arbitration clause.

For the aforementioned reasons, the appeal is allowed and the judgment of the High Court is set aside. Justice Sushil Harkauli is appointed as the Arbitrator to adjudicate the dispute between the parties.

**LW 09:02:2018**

**INDIAN FARMERS FERTILIZER COOPERATIVE LTD v. M/s. BHADRA PRODUCTS [SC]**

Civil Appeal No. 824 of 2018 (Arising out of SLP (C) No.19771 of 2017)
R.F. Nariman & Navin Sinha, JJ. [Decided on 23/01/2018]

Arbitration and Conciliation Act, 1996- arbitrator deciding the issue of limitation-whether an interim award amenable to challenge under appeal- Held, Yes.

**Brief facts:**
An interesting question arises as to whether an award delivered by an Arbitrator, which decides the issue of limitation, can be said to be an interim award, and whether such interim award can then be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”).

**Decision:** Appeal allowed.

**Reason:**
Tested in the light of the statutory provisions and the case law cited above, it is clear that as the learned Arbitrator has disposed of one matter between the parties i.e. the issue of limitation finally, the award dated 23rd July, 2015 is an “interim award” within the meaning of Section 2(1) (c) of the Act and being subsumed within the expression “arbitral award” could, therefore, have been challenged under Section 34 of the Act.

However, Shri Sinha has argued before us that the award dated 23rd July, 2015 being a ruling on the arbitral tribunal’s jurisdiction would fall within Section 16 of the Act, and inasmuch as the decision taken on the point of limitation was rejected, the drill of Section 16 must be followed in which case all other issues have to be decided first, and it is only after such issues are decided that such an award can be challenged under Section 34 of the Act. Section 16 of the Act lays down what, in arbitration law, is stated to be the Kompetenz-kompetenz principle, viz. that an arbitral tribunal may rule on its own jurisdiction. At one time, the law was that the arbitrator, being a creature of the contract, could not rule on the existence or validity of the arbitration clause contained in the contract. This, however, gave way to the Kompetenz principle which was adopted by the UNCITRAL Model Law.

In our view, therefore, it is clear that the award dated 23rd July, 2015 is an interim award, which being an arbitral award, can be challenged separately and independently under Section 34 of the Act. We are of the view that such an award, which does not relate to the arbitral tribunal’s own jurisdiction under Section 16, does not have to follow the drill of Section 16(5) and (6) of the Act. Having said this, we are of the view that Parliament may consider amending Section 34 of the Act so as to consolidate all interim awards together with the final arbitral award, so that one challenge under Section 34 can be made after delivery of the final arbitral award. Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense.

The appeal is, accordingly, allowed and the impugned judgment is set aside. The Section 34 proceedings before the District Judge, Jagatsinghpur may now be decided. There shall, however, be no order as to costs.

**LW 10:02:2018**

**TOYOTA JIDOSHA KABUSHIKI KAISHA v. PRIUS AUTO INDUSTRIES LTD & ORS. [SC]**

Civil Appeal Nos.5375-5377 of 2017
Ranjan Gogoi & Navin Sinha, JJ. [Decided on 14/12/2017]

Trademarks Act- prior use of trademark- use in a particular territory- what to be established to claim prior user right- Supreme Court explains the law.

**Brief facts:**
The appellant is the owner of the trademarks ‘TOYOTA’, ‘TOYOTA INNOVA’, ‘TOYOTA DEVICE’ and the mark ‘Prius’ of which the plaintiff claimed to be a prior user. The dispute between the appellant and respondent with respect to the use of the above trademarks ultimately decided by the Delhi High Court which refrained the respondent to use the trademarks ‘TOYOTA INNOVA’, ‘TOYOTA DEVICE’ but allowed to use the trademark ‘Prius’. Aggrieved by the decision, the appellant had challenged the decision before the Supreme Court.

**Decision:** Appeal dismissed.

**Reason:**
At the very outset it must be clarified that in view of the virtual acceptance of the conditional order of injunction with regard to the ‘TOYOTA’, ‘TOYOTA INNOVA’ and ‘TOYOTA DEVICE MARKS’ by the defendants, the truncated scope of the present appeal would be confined to the correctness of the views of the Division Bench of the
High Court with regard to the use of the name ‘Prius’ and specifically whether by use of the said name/mark to market the automobile spare parts manufactured by them, the defendants are guilty of passing off their products as those of the plaintiff thereby injuring the reputation of the plaintiff in the market.

Indeed, the trade mark ‘Prius’ had undoubtedly acquired a great deal of goodwill in several other jurisdictions in the world and that too much earlier to the use and registration of the same by the defendants in India. But if the territoriality principle is to govern the matter, and we have already held it should, there must be adequate evidence to show that the plaintiff had acquired a substantial goodwill for its car under the brand name ‘Prius’ in the Indian market also. The car itself was introduced in the Indian market in the year 2009-2010. The advertisements in automobile magazines, international business magazines; availability of data in information-disseminating portals like Wikipedia and online Britannica dictionary and the information on the internet, even if accepted, will not be a safe basis to hold the existence of the necessary goodwill and reputation of the product in the Indian market at the relevant point of time, particularly having regard to the limited online exposure at that point of time, i.e., in the year 2001.

The news items relating to the launching of the product in Japan isolatedly and singularly in the Economic Times (Issues dated 27.03.1997 and 15.12.1997) also do not firmly establish the acquisition and existence of goodwill and reputation of the brand name in the Indian market. Coupled with the above, the evidence of the plaintiff’s witnesses themselves would be suggestive of a very limited sale of the product in the Indian market and virtually the absence of any advertisement of the product in India prior to April, 2001. This, in turn, would show either lack of goodwill in the domestic market or lack of knowledge and information of the product amongst a significant section of the Indian population.

While it may be correct that the population to whom such knowledge or information of the product should be available would be the section of the public dealing with the product as distinguished from the general population, even proof of such knowledge and information within the limited segment of the population is not prominent. All these should lead to us to eventually agree with the conclusion of the Division Bench of the High Court that the brand name of the car Prius had not acquired the degree of goodwill, reputation and the market or popularity in the Indian market so as to vest in the plaintiff the necessary attributes of the right of a prior user so as to successfully maintain an action of passing off even against the registered owner. In any event the core of the controversy between the parties is really one of appreciation of the evidence of the parties; an exercise that this Court would not undoubtedly repeat unless the view taken by the previous forum is wholly and palpably unacceptable which does not appear to be so in the present premises.

If goodwill or reputation in the particular jurisdiction (in India) is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff’s right in the action of passing off that it had brought against the defendants in the Delhi High Court. Consequently, even if we are to disagree with the view of the Division Bench of the High Court in accepting the defendant’s version of the origin of the mark ‘Prius’, the eventual conclusion of the Division Bench will, nonetheless, have to be sustained. We cannot help but also to observe that in the present case the plaintiff’s delayed approach to the Courts has remained unexplained. Such delay cannot be allowed to work to the prejudice of the defendants who had kept on using its registered mark to market its goods during the inordinately long period of silence maintained by the plaintiff.

For all the aforesaid reasons, we deem it proper to affirm the order(s) of the Appellate Bench of the High Court dated 23.12.2016 and 12.01.2017 and dismiss the appeals filed by the appellant/plaintiff.

**LW 11:02:2018**

**ROYAL ORCHID HOTELS LTD v. KAMAT HOTELS (INDIA) LTD & ORS [SC]**

Special Leave Petition (C) No.6131 of 2015

R Banumathi & R Gogoi, JJ. [Decided on 14/12/2017]

Copyrights Act- earlier registration under class 16 upheld- later classification under class 42 refused- facts proved that petitioner was not able to prove that it was the prior user of the logo- High Court held accordingly- whether requires interference by the Supreme Court- Held, No.

**Brief facts:**

The petitioner – “Royal Orchid Hotels Limited” got registration of its trademark “Royal Orchid” and “Royal Orchid Hotels” in class 16 sometime in the year 2005 and the dispute, between the parties, with regard to registration of the trademarks “Royal Orchid” and Royal Orchid Hotels in class 16, therefore, has attained finality in law in favour of the petitioner.

It appears that the petitioner sometime in the year 2004 applied for registration of its aforesaid trademarks in class 42. This was refused by the Deputy Registrar of the Trademarks and ultimately by the High Court also. Aggrieved, this special leave petition has been filed.

**Reason:**

A reading of the discussions by the High Court goes to show that the conclusion recorded in the impugned order is based on a detailed consideration of the materials brought on record by both the parties. The conclusion that the petitioner had not demonstrated that it was the first user of the logo/mark and that it is the respondent who is the first user was arrived at on such consideration.

The High Court was also of the view that notwithstanding the class of customers serviced by the parties before it, it cannot be said that the two logos/marks would not give rise to confusion amongst the customers using the Hotels. In this regard, the High Court observed that the view expressed by the IPAB that having regard to the class of customers serviced by the hotels (High Income) there could be no possibility of being misled cannot be accepted as a general proposition and will always depend on individual customers. As the marks/logos were largely similar, the High Court took the view that even on the second question formulated by it the wrt petition has to be allowed and the order of the IPAB set aside.

If the High Court on an elaborate consideration of the materials and evidence adduced by the parties before it had thought it proper to reach a conclusion consistent with the findings of the primary authority i.e. the Deputy Registrar and the reasons for reversal of the view of
the primary authority by the IPAB being summary, as noticed, the present petition really turns on the question of appreciation of the evidence on record. Having considered the matter we are of the view that the conclusions reached by the High Court cannot be said to be, in anyway, unreasonable and/or unacceptable. Rather, we are inclined to hold that the view recorded by the High Court is a perfectly possible and justified view of the matter and the conclusion(s) reached can reasonably flow from a balanced consideration of the evidence and materials on record. We will, therefore, not consider the present to be a fit case for interference with the order of the High Court. Accordingly, we dismiss the Special Leave Petition and refuse leave to appeal.

**Decision:** Appeal disposed of.

The primary authority by the IPAB being summary, as noticed, the present petition really turns on the question of appreciation of the evidence on record. Having considered the matter we are of the view that the conclusions reached by the High Court cannot be said to be, in anyway, unreasonable and/or unacceptable. Rather, we are inclined to hold that the view recorded by the High Court is a perfectly possible and justified view of the matter and the conclusion(s) reached can reasonably flow from a balanced consideration of the evidence and materials on record. We will, therefore, not consider the present to be a fit case for interference with the order of the High Court. Accordingly, we dismiss the Special Leave Petition and refuse leave to appeal.

**Reason:**

Having heard the learned counsel for the parties at length and on perusal of the record of the case, we find no good ground to interfere in the impugned judgment of the High Court. In other words, the reasoning assigned by the High Court appears to be just and reasonable calling no interference for the reasons mentioned herein below.

The main question, which arises for consideration in this appeal, is only one, viz., how many workers were working in the Unit of respondent No.1 at all relevant time, whether the strength of the workers was above 100 or below 100. In other words, the question, which arises for consideration, is whether the provisions of Section 25-K of Chapter VB of the ID Act were applicable to respondent No.1 at the relevant time.

In view of the foregoing discussion, we also hold that respondent No.1 had employed 99 workers in their manufacturing Unit at the time of declaring the closure of the Unit in 1990. Since the strength of workers was below 100, it was not necessary for respondent No.1 to ensure compliance of Chapter VB. In other words, in such circumstances, the provisions of Section 25-K had no application to respondent No.1.

This takes us to examine the next question as to how much compensation and under which heads the workers are entitled to receive from respondent No.1 (Company). It was also stated that now hardly 16 workers or so remain unpaid because they did not accept the compensation when offered to them and preferred to prosecute the present litigation.

Learned counsel for respondent No.1 stated that the total compensation paid to every worker in 1990-1991 varies between Rs.1 lakh to Rs.2 lakhs. Taking into consideration the aforementioned background facts and circumstances of the case, we consider it just and proper to award in lump sum a compensation of Rs.2,50,000/- (Rs. Two Lakhs and Fifty Thousand) to each worker who did not accept the compensation.

Let Rs.2,50,000/- (Rs. Two Lakhs and Fifty Thousand) be paid to each such worker after making proper verification. If any worker is not available for any reason, the amount payable to such worker be paid to his legal representatives or nearest relatives, as the case may be, after making proper verification.

Respondent No.1 will, accordingly, deposit the entire compensation payable to all such workers with details in the Industrial Court, Pune. A notice will then be served to each worker or his legal representatives, as the case may be, by the Industrial Court to enable the workers to withdraw the amount from the Industrial Court.

The amount will be paid to every worker or his nominee as the case may be by the demand draft issued in his/her name or in the name of legal representatives, as the case may be. It will be duly deposited in his/her Bank account to enable him/her to withdraw the same.

The appellant would submit necessary details of each such worker before the Industrial Court. The Industrial Court would ensure compliance of the directions of this Court and complete all formalities within three months from the date of this order. We make it clear that this order is applicable only to those workers who did not accept the compensation from respondent No.1. In other words, those workers who already accepted the compensation will not be entitled to get any benefit of this order.

**Brief facts:**

In 1990, respondent No.1 suffered business loss in running the said manufacturing unit and, therefore, decided to close down the said unit permanently. The appellant-Union, felt aggrieved of the closure notice issued by respondent No.1, filed complaint against respondent No.1 in the Industrial Court at Pune in October 1990 being Complaint (ULP) No.544/1990.

In substance, the grievance of the appellant in their complaint was that since respondent No.1 had employed more than 100 workers on an average per working day for preceding 12 months in their manufacturing unit, the provisions of Chapter VB (Section 25-K) of the ID Act and, in turn, all the relevant provisions contained therein were applicable to respondent No.1. Responded denied this and claimed that it had employed less than 100 workers. Industrial tribunal held that respondent had employed more than 100 workers and on appeal the High court held that the respondent had employed less than 100 workers. Appellant union challenged this before the Supreme Court.

**Decision:** Appeal disposed of.
Payment of Bonus Act, 1965 - exemption from coverage- charitable institution running hospital- whether entitled for exemption-Held, No.

**Brief facts:**
The Batra Hospital Employees Union claims, in this petition filed under Articles 226 and 227 of the Constitution of India, to be aggrieved by an award, passed by the Industrial Tribunal-I, Karkardooma (hereinafter referred to as the Tribunal), which holds that the provisions of the Payment of Bonus Act, 1965 do not apply to the Batra Hospital and Medical Research Centre.

**Decision:** Petition allowed.

**Reason:**
Reverting to the determinative tests, to decide whether an establishment is being run “not for the purpose of profit” and is, consequently, entitled to the benefit of Section 32 (V)(c) of the Act, as set out in para 42 supra, if one were to apply the said tests to the respondent-Hospital, it is difficult to accept, at face value, the contention, of the respondent-Hospital, that it could be regarded as established “not for the purpose of profit”. It is positively found, by the Tribunal, that profits were, in fact, earned by the respondent-Hospital, but the said aspect has been discounted on the reasoning that the profits were funnelled back into the respondent-Hospital to enhance its services. As a result thereof, the Tribunal holds that the Hospital had expanded, from a small institution in 1986 to a 312-bedded hospital as on the date of the Award. - which, needless to say, would have further expanded, manifold, over the period of nearly a decade and a half during which this litigation has remained pending before this court. The Tribunal has held in favour of the respondent by relying on the “object of the Trust”, as set out in its Bye-laws. Even on this aspect, all that is observed, in para 15 of the impugned Award, is that “one of the object of the trust is setting up of hospitals or other medical institutions for administrating medical relief to needy, carrying out medical and clinical research, grant of medical help to poor which clearly goes to show that the objective for which the society is formed and for which the hospital is established is not for earning profits”. The finding, in my view is totally presumptuous in nature. The Tribunal does not disclose how, or why, it presumes that a Trust, which sets up hospitals which, inter alia, provide free treatment to needy patients, is not working “for the purpose of profit”. It has to be realised, in this context, that expectation of profit, while running an enterprise, is not a sin. Neither is it immoral to run a hospital on commercial lines. However, earning of such profit would necessarily entail the responsibility of sharing some part of such profit with the employees or workmen, whose effort have significantly contributed towards the earning of the profit. That is all that the Act requires, and it would be ex facie unconscionable, for the enterprise, to shirk the said responsibility.

Ex facie, therefore, the respondent-Hospital cannot be regarded as established “not for the purpose of profit”, as required by Section 32(v) (c) of the Act. The impugned Award of the Tribunal, which proceeds on assumptions and presumptions, without considering the material evidence on record, in the form of, inter alia, the witnesses’/statements, and the contents of the affidavits filed by them, and, instead, applies tests that find no place in the Act, has necessarily to be characterised as perverse, and cannot sustain on facts or in law.

Resultantly, the impugned Award, of the Tribunal, is quashed and set aside. The respondent-Hospital is declared to be covered by the Payment of Bonus Act, 1965, and not entitled to the benefit of Section 32(v) (c) thereof. The reference, made by the Secretary (Labour), Government of National Capital Territory of Delhi, to the Tribunal, vide Notification No F.26 (66)/2002-Lab./2586-90, dated 1st February 2002, is answered in favour of the petitioner and against the respondent-Hospital. Consequential relief, to the workmen of the respondent-Hospital, who had petitioned the Tribunal, as well as to all other workmen of the respondent-Hospital, shall follow. In case of any default, by the respondent-Hospital, in disbursement thereof, in whole or in part, the workmen are at liberty to move the Tribunal by way of appropriate application(s) which, if moved, shall be decided expeditiously by the Tribunal, in view of the fact that, owing to the pendency of this matter before this court, the workmen of the respondent-Hospital have already been denied their legitimate right for nearly a decade and a half.

**Case No. 47 of 2014**


**Competition Act, 2002- sections 3 and 4- supply of reserved molasses under the government policy- informant supplied reserved molasses at negotiated price to OPs- whether OPs formed cartel and forced informant to sell reserved molasses at less price- Held, No.

**Brief Facts:**
The Informant is engaged in the manufacturing of crystal sugars through vacuum pan process. The OPs are Uttar Pradesh based manufacturers of country liquor.

It was stated that molasses is a natural by-product in the process of sugar manufacturing which is a basic raw material for manufacturing of alcohol based products, including potable liquor. The control, storage, gradation, regulation of supply and distribution of molasses in the State of Uttar Pradesh is governed by the U.P. Sheera Niyantran Adhiniyam, 1964 and the Molasses Policy (‘the Policy’) issued thereunder by the Controller of Molasses, Government of Uttar Pradesh.

That the Policy so issued mandates the sugar mills (like the Informant) to sell/ supply certain percentage of their molasses to the manufacturers of country liquor (‘reserved molasses’) within the State of Uttar Pradesh and rest of the molasses can be sold freely in the open market (‘unreserved molasses’).
It was alleged that the OPs are in a dominant position in the relevant market of reserved molasses in the State of Uttar Pradesh and have also been abusing the same by determining the purchase price of molasses at unreasonably low rates. The price at which reserved molasses was sold was 9 to 10 times lower than that of the unreserved molasses. The Informant, being bound by the State’s policies, had no other option but to accept the price offered by the OPs, which was unreasonably low as compared to the open market price.

Decision: Complaint dismissed.

Reason: On a careful perusal of the information, the report of the DG and the submissions made by the parties thereon and other materials available on record, the following issue arises for consideration and determination in the matter:

Whether there was an agreement between the OPs which directly or indirectly determined the purchase price of reserved molasses in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act?

The Commission is of the considered opinion that the Informant has not sold its reserved molasses to the OPs at the prices offered by them but it further entered into a process of negotiation with the OPs and ultimately sold its reserved molasses at the market determined and mutually negotiated varying prices to different OPs and third parties. No evidence of coordination amongst the OPs is found with regard to the purchase price of reserved molasses. The DG did not find any evidence to conclude that an agreement was entered into amongst OPs to directly or indirectly determine the purchase price of reserved molasses.

In view of the above discussion, the Commission is of the opinion that the allegations made by the Informant that the OPs have entered into an agreement to determine the purchase price of reserved molasses are not substantiated. Hence, no contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act is made out and the Commission is in agreement with the DG in this regard. Further, with regard to the allegations of the Informant regarding abuse of dominance by the OPs in contravention of the provisions of Section 4 of the Act, the Commission is of the view that the concept of collective dominance does not find a place under the Act. Hence, no case of contravention of Section 4 of the Act is also made out against the OPs.

It may, however, be pointed out that there is a need to review the controls over molasses’ distribution and dismantle them in a phased manner so that the industry can realize its full potential, emerging more competitive and competitive neutral. There is a need to do Competition Impact Assessment of the U.P. Sheera Niyamtran Adhiniyam, 1964 and the attendant Rules and Policy governing the entire value chain. A copy of this order hence, be forwarded to Chief Secretary of Government of Uttar Pradesh.

LW 15:02:2018

C.P. Paul v. Kerala State Electricity Board & Anr. [CCI]

Case No. 74 of 2017

THE COMPANIES (INCORPORATION) AMENDMENT RULES, 2018.
THE COMPANIES (COST RECORDS AND AUDIT) SECOND AMENDMENT RULES, 2017
DATE OF COMING INTO FORCE OF SECTIONS 1 AND 4 OF THE COMPANIES (AMENDMENT) ACT, 2017
TRANSACTION CHARGES BY COMMODITY DERIVATIVES EXCHANGES
SCHEMES OF ARRANGEMENT BY LISTED ENTITIES AND II RELAXATION UNDER SUB-RULE (7) OF RULE 19 OF THE SECURITIES CONTRACTS (REGULATION) RULES, 1957
BENCHMARKING OF SCHEME’S PERFORMANCE TO TOTAL RETURN INDEX
ELECTRONIC BOOK MECHANISM FOR ISSUANCE OF SECURITIES ON PRIVATE PLACEMENT BASIS
MARGIN PROVISIONS FOR INTRA-DAY CRYSTALLISED LOSSES
PREVENTION OF UNAUTHORISED TRADING BY STOCK BROKERS
PARTICIPATION BY STRATEGIC INVESTOR(S) IN INVITS AND REITS
ONLINE FILING SYSTEM FOR OFFER DOCUMENTS, SCHEMES OF ARRANGEMENT, TAKEOVERS AND BUY BACKS
ROLE OF THE INDEPENDENT OVERSIGHT COMMITTEE FOR PRODUCT DESIGN
ONLINE REGISTRATION MECHANISM AND FILING SYSTEM FOR DEPOSITORIES
REVIEW OF ADDITIONAL EXPENSES OF UP TO 0.30% TOWARDS INFLOWS FROM BEYOND TOP 15 CITIES (B15)
CHARGING OF ADDITIONAL EXPENSES OF UP TO 0.20% IN TERMS OF REGULATION 52 [6A] (C) OF SEBI (MUTUAL FUNDS) REGULATIONS, 1996
TOTAL EXPENSE RATIO – CHANGE AND DISCLOSURE

[Issued by the Ministry of Corporate Affairs vide [E No. 1/22/2013 CL-V-Part-III, dated 26.01.2018. 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 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2018.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules), in rule 9,
   (A) for the marginal heading, the following marginal heading shall be substituted, namely: -
   “Application for allotment of Director Identification Number before appointment in an existing company”;
   (B) for sub-rule (1), the following shall be substituted, namely: -
   “(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.
   Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe)”;
   (C) in sub-rule (3),
   (I) In sub-clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely: -
   “(iiiia) board resolution proposing his appointment as director in an existing company”;
   (II) for clause (b), the following clause shall be substituted, namely: -
   “(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company.”;

3. In annexure to the principal rules, (A) for form No. DIR-3 the following form shall be substituted, namely:-

K. V. R. MURTY
Joint Secretary

Form No. DIR-3, DIR-12 not published here for want of space. Readers may log on to mca.gov.in.


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

1. (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2018.
   (2) They shall come into force from the 26th day of January, 2018.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), for rule 9, the following rule shall be substituted, namely: -
   “9. Reservation of name.- An application for reservation of name shall be made through the web service available at www.mca.gov.in by using RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre”.

3. In the Principal rules, in rule 10, the words, letters and figure “Form No.INC-7” shall be omitted.

4. In the principal rules, for rule 12, the following rule shall be substituted, namely: -
   “12. Application for incorporation of companies. An application for registration of a company shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC-32 (SPICe) along with the fee as provided under the Companies (Registration offices and fees) Rules, 2014;
   Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as the Reserve Bank of India, the Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the
proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company”.

5. In the principal rules, in sub-rule (1) of rule 38, the following proviso shall be inserted:
   (i) in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:
   “provided further that in case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with INC-32 (SPICE) in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34”;
   (ii.) In sub-rule (2), after the proviso, the following proviso shall be inserted, namely:
   “Provided further that in case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICE) shall not be applicable”.

6. In the annexure to the principal rules, -(i.) for Form No. INC-1, the following form shall be substituted, namely:-

   K. V. R. MURTY
   Joint Secretary
   Form No. RUN, FORM No. INC-3, INC-12, INC-22, INC-24, Spice not published here for want of space. Readers may log on to mca.gov.in.

The Companies (Registration Offices and Fees) Amendment Rules, 2018.

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/16/2013 CL-V (Pt.-I)] dated 20.01.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section[i]]

In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Amendment Rules, 2018.
   (2) They shall come into force from the 26th January 2018

2. In the Companies (Registration Offices and Fees) Rules, 2014, (herein after refer to as the principal rules), in rule 10, in sub-rule (3), the following proviso be inserted, namely:-
   “provided that no re-submission of the application is allowed in the case of reservation of a name through web service-RUN”.

3. in the principal Act, in the Annexure, in item I (Fee for filings etc. under section 403 of the Companies Act, 2013) for the Table of Fees to be paid to the Registrar, the following shall be substituted namely:-

(1) A Table of Fees to be paid to the Registrar

<table>
<thead>
<tr>
<th>(i) in respect of a company having a share capital:</th>
<th>Other than OPCs and Small Companies (in rupees)</th>
<th>OPC and Small Companies (in rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (a) For registration of OPC and small companies whose nominal share capital is less than or equal to Rs.10,00,000.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>(b) For registration of OPC and small companies whose nominal share capital exceed Rs. 10,00,000., the fee of Rs.2000 with the following additional fees regulated according to the amount of nominal capital:</td>
<td>--</td>
<td>200</td>
</tr>
<tr>
<td>For every Rs.10,000 nominal share capital</td>
<td></td>
<td></td>
</tr>
<tr>
<td>part of Rs.10,000 after the first Rs.10,00,000 and upto Rs.50,00,000.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. (a) For registration of a company (other than OPC and small companies) whose nominal share capital is less than or equal to Rs. 10,00,000 at the time of incorporation.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>b) For registration of a company (other than OPC and small companies) whose nominal share capital exceed Rs. 10,00,000, the fee of Rs.36,000 with the following additional fees regulated according to the amount of nominal capital:</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>(i) for every Rs.10,000 of nominal share capital or part of Rs.10,000 after the first Rs.10,00,000 upto Rs.50,00,000.</td>
<td>300</td>
<td>-</td>
</tr>
<tr>
<td>(ii) for every Rs.10,000 of nominal share capital or part of Rs.10,000 after the first Rs.50,00,000 upto Rs. one crore.</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>(iii) for every Rs.10,000 of nominal share capital or part of Rs.10,000 after the first Rs.1 crore.</td>
<td>75</td>
<td>-</td>
</tr>
<tr>
<td>Provided further that where the additional fees, regulated according to the amount of the nominal capital of a company, exceed a sum of rupees two crore and fifty lakhs, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crore and fifty lakhs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) For OPC and small companies whose nominal share capital does not exceed Rs. 10,00,000.</td>
<td>--</td>
<td>2000</td>
</tr>
<tr>
<td>(b) For OPC and small companies, for every Rs.10,000 of nominal share capital or part of Rs.10,000 after the first Rs.10,00,000 and upto Rs.50,00,000</td>
<td>--</td>
<td>200</td>
</tr>
<tr>
<td>Other than OPC and small companies</td>
<td></td>
<td>5000</td>
</tr>
<tr>
<td>(c) For increase in nominal capital of a company whose nominal share capital does not exceed Rs.1,00,000.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) For increase in nominal capital of a company whose nominal share capital exceed Rs. 1,00,000, the above fee of Rs.5,000 with the following additional fees regulated according to the amount of nominal capital:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) for every Rs.10,000 of nominal share capital or part of Rs.10,000 after the first Rs.1,00,000 upto Rs.5,00,000.</td>
<td>400</td>
<td>-</td>
</tr>
</tbody>
</table>
### Table of Fees for Various Registrations

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) For registration of any increase in the number of members of a company.</td>
<td>100</td>
</tr>
<tr>
<td>(ii) For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 5,00,000 up to Rs. 50,0,000.</td>
<td>300</td>
</tr>
<tr>
<td>(iii) For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,000 up to Rs. 1 crore.</td>
<td>100</td>
</tr>
<tr>
<td>(iv) For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore.</td>
<td>75</td>
</tr>
<tr>
<td>Provided further that where the additional fees, regulated according to the amount of the nominal capital of a company, exceed a sum of rupees two crore and fifty lakhs, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crore and fifty lakhs.</td>
<td></td>
</tr>
<tr>
<td>4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new company.</td>
<td></td>
</tr>
<tr>
<td>5. For submitting, filing, registering or recording any document by this Act required or authorised to be submitted, filed, registered or recorded:</td>
<td></td>
</tr>
<tr>
<td>(a) in respect of a company having a nominal share capital of less than Rs. 1,00,000.</td>
<td>200</td>
</tr>
<tr>
<td>(b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs. 5,00,000.</td>
<td>300</td>
</tr>
<tr>
<td>(c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs. 25,00,000.</td>
<td>400</td>
</tr>
<tr>
<td>(d) in respect of a company having a nominal share capital of Rs. 25,00,000 or more but less than Rs. 1 crore or more.</td>
<td>500</td>
</tr>
<tr>
<td>(e) in respect of a company having a nominal share capital of Rs. 1 crore or more.</td>
<td>600</td>
</tr>
<tr>
<td>Provided that in case of companies to be incorporated with effect from 26.01.2018 with a nominal capital which does not exceed rupees ten lakhs fee shall not be payable.</td>
<td></td>
</tr>
<tr>
<td>6. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar:</td>
<td></td>
</tr>
<tr>
<td>(a) in respect of a company having a nominal share capital of less than Rs. 1,00,000.</td>
<td>200</td>
</tr>
<tr>
<td>(b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs. 5,00,000.</td>
<td>300</td>
</tr>
<tr>
<td>(c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs. 25,00,000.</td>
<td>400</td>
</tr>
<tr>
<td>(d) in respect of a company having a nominal share capital of Rs. 25,00,000 or more but less than Rs. 1 crore or more.</td>
<td>500</td>
</tr>
<tr>
<td>(e) in respect of a company having a nominal share capital of Rs. 1 crore or more.</td>
<td>600</td>
</tr>
</tbody>
</table>

#### (II) In respect of a company not having a share capital:

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. For registration of a company whose number of members as stated in the articles of association, does not exceed 20.</td>
<td></td>
</tr>
<tr>
<td>8. For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 200.</td>
<td>5000</td>
</tr>
<tr>
<td>9. For registration of a company whose number of members as stated in the articles of association, exceeds 200 but is not stated to be unlimited, the above fee of Rs. 5,000 with an additional Rs. 10 for every member after first 200.</td>
<td></td>
</tr>
<tr>
<td>10. For registration of a company in which the number of members is stated in the articles of association to be unlimited.</td>
<td>10000</td>
</tr>
<tr>
<td>11. For registration of any increase in the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration: Provided that no company shall be liable to pay on the whole a greater fee than Rs. 10,000 in respect of its number of members, taking into account the fee paid on the first registration of the company.</td>
<td></td>
</tr>
<tr>
<td>12. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.</td>
<td></td>
</tr>
<tr>
<td>13. For filing or registering any document by this Act required or authorized to be filed or registered with the Registrar. Provided that in case of companies to be incorporated with effect from 26.01.2018 whose number of members as stated in the articles of association, does not exceed 20, fee shall not be payable.</td>
<td></td>
</tr>
<tr>
<td>14. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar.]</td>
<td>200</td>
</tr>
</tbody>
</table>

1. The above table prescribed for small companies (as defined under section 2(85) of the Act) and one person companies defined under Rule related to Chapter II read with section 2(62) of the Act shall be applicable provided the said company shall remain as said class of company for a period not less than one year from its incorporation.

2. The above table of fee shall be applicable for any such intimation to be furnished to the Registrar or any other officer or authority under section 159 of the Act, filing of notice of appointment of auditors or Secretarial Auditor or Cost Auditor.
(3) The above table of fee and calculation of fee as applicable for increase in authorised capital shall be applicable for revised capital in accordance with sub-section (11) of 233 of the Act, (after setting off fee paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company).

(4) The above table of fee shall be applicable for filing revised financial statement or board report under section 130 and 131 of the Act.

K. V. R. MURTY
Joint Secretary

The Companies (Cost Records and Audit) Second Amendment Rules, 2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/40/2013 CL-V] dated 20.12.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

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

1. These rules may be called the Companies (Cost Records and Audit) Second Amendment Rules, 2017.

2. In the Companies (Cost Records and Audit) Rules, 2014 (hereinafter referred to as the principal rules), in rule 2, for clause (aa) the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:-

(aa) “Customs Tariff Act Heading” means the heading as referred to in the Additional Notes in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

3. In the principal rules, in rule 3, for the words “Central Excise Tariff Act Heading”, occurring at both the places, the words “Customs Tariff Act Heading” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

4. In the principal rules, in the Annexure, in Form CRA-2, Form CRA-3 and Form CRA-4, for the words “CETA Heading”, wherever it occurs, the words “CTA Heading” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

AMARDEEP SINGH BHATIA
Joint Secretary

Transaction Charges by Commodity Derivatives Exchanges

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2018/1 dated 03.01.2018]

1. SEBI vide its circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/82 dated September 07, 2016 had prescribed norms to be followed by the commodity derivatives exchanges while levying transaction charges for the commodity derivatives trade.

2. In this regard, in consultation with the exchanges, clause ‘1.b’ of the said SEBI Circular stands substituted as under:

“1.b The Exchanges will ensure that the ratio between highest to lowest transaction charges in the turnover slab of any contract is not more than 2:1”.

3. The provisions of this circular shall come into force from 30 days from the date of this circular.

4. The Exchanges are advised to:

i. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same.

ii. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website.

5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular is available on SEBI website at www.sebi.gov.in under the category “Circulars”, “Info for Commodity Derivatives”.

VIKAS SUKHWAL
Deputy General Manager

Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957

[Issued by the Securities and Exchange Board of India vide Circular No. CFD/DIL3/CIR/2018/2 dated 03.01.2018]

2. SEBI has received representations suggesting improvements to the existing regulatory framework governing scheme of arrangement. Considering the above and in order to expedite the processing of draft schemes and to prevent misuse of schemes to bypass regulatory requirements, it has been decided to make certain amendments to the Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017, as provided in the Annexure.

3. 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.

4. This circular is issued under Section 11 of the SEBI Act, 1992 and Regulations 11, 37 and 94 read with Regulation 101(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Rule 19(7) of Securities Contracts (Regulation) Rules, 1957.

5. This circular is available on SEBI website at www.sebi.gov.in under the category “Legal / Circulars”.

NARENDRA RAWAT  
Deputy General Manager

Annexure

Amendments to Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 (‘the circular’)

1. Amendment to Para 7
Para 7 of the circular shall be replaced with the following:
“7. The Provisions of this circular shall not apply to schemes which solely provides for merger of a wholly owned subsidiary or its division with the parent company. However, such draft schemes shall be filed with the Stock Exchanges for the purpose of disclosures and the Stock Exchanges shall disseminate the scheme documents on their websites.”

2. Insertion of Para (I)(A)(2A)
Following Para shall be inserted after Para (I)(A)(2) of Annexure I to the circular:
“The valuation report referred to in Para 2(b) above and the Fairness opinion referred to in Para 2 (d) above shall be provided by Independent Chartered Accountant and Independent SEBI Registered Merchant Banker respectively. The chartered accountant and the merchant banker referred herein shall not be treated as independent in case of existence of any material conflict of interest among themselves or with the company, including that of common directorships or partnerships.”

3. Amendment to Para (I)(A)(3)(b)
Para (I)(A)(3)(b) of Annexure I of the circular shall be replaced with the following:
“The percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the “merged” company on a fully diluted basis shall not be less than 25%.”

4. Deletion of Para (II)
Para (II) of Annexure I to the circular shall stand repealed.

5. Amendment to Para (III)(A)(3)
Para (III)(A)(3) of Annexure I of the circular shall be replaced with the following:
“3. In case of a scheme involving merger of a listed company or its division into an unlisted entity, the entire pre-scheme share capital of the unlisted issuer seeking listing shall be locked in as follows:
(a) Shares held by Promoters up to the extent of twenty percent of the post-merger paid-up capital of the unlisted issuer, shall be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer;
(b) The remaining shares shall be locked-in for a period of one year from the date of listing of the shares of the unlisted issuer.
(c) No additional lock-in shall be applicable if the post scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.
Provided that the shares locked-in under this clause may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if pledge of shares is one of the terms of sanction of the loan;
Provided further that the shares locked-in under this clause may be transferred ‘inter-se’ among promoters in accordance with the conditions specified under Regulation 40 of ICDR Regulations.
Provided further that shares presently under lock-in as per the provisions of earlier circulars shall also be governed by the provisions of this clause”

6. Deletion of Para (III)(A)(4)
Para (III)(A)(4) of Annexure I to the circular shall stand repealed.

7. Amendment to Para (III)(A)(5)
Para (III)(A)(5) of Annexure I of the circular shall be replaced with the following:
“5. It shall be ensured that steps for listing of specified securities are completed and trading in securities commences within sixty days of receipt of the order of the Hon’ble High Court/ NCLT, simultaneously on all the Stock Exchanges where the equity shares of the listed entity (or transferor entity) are/were listed. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving following details:”

FEBRUARY 2018 | CHARTERED SECRETARY
Benchmarking of Scheme’s performance to Total Return Index

1. Mutual Funds are required to disclose the name(s) of benchmark index/indices with which the AMC and trustees would compare the performance of the scheme in scheme related documents.

2. At present, most of the mutual fund schemes (other than debt schemes) are benchmarked to the Price Return variant of an Index (PRI). PRI only captures capital gains of the index constituents. On the other hand, Total Return variant of an Index (TRI) takes into account all dividends/interest payments that are generated from the basket of constituents that make up the index in addition to the capital gains. Hence, TRI is more appropriate as a benchmark to compare the performance of mutual fund schemes.

3. With an objective to enable the investors to compare the performance of a scheme vis-à-vis an appropriate benchmark, it has been decided that:
   (a) Selection of a benchmark for the scheme of a mutual fund shall be in alignment with the investment objective, asset allocation pattern and investment strategy of the scheme.
   (b) The performance of the schemes of a mutual fund shall be benchmarked to the Total Return variant of the Index chosen as a benchmark as stated in para (a) above.
   (c) (i) Mutual funds shall use a composite CAGR figure of the performance of the PRI benchmark (till the date from which TRI is available) and the TRI (subsequently) to compare the performance of their scheme in case TRI is not available for that particular period(s).
      (ii) The calculation of composite CAGR is elaborated with an example in the following paragraph.

For instance, ABC scheme had been launched on August 2, 1995. The benchmark PRI values are available from the date of inception of the fund. The benchmark TRI values are available from June 30, 1999. The calculation of a composite benchmark performance return in CAGR terms would be as given below:

\[
CAGR = \left( \frac{1187.70}{1007.57} \times \frac{13966.58}{1256.38} \right)^{\frac{1}{22.3452}} - 1
\]

Thus, in the above example (for advertisements in the month of December, 2017 the last of the preceding month would be November 30, 2017),

\[
CAGR = \left( \frac{1187.70}{1007.57} \times \frac{13966.58}{1256.38} \right)^{\frac{1}{22.3452}} - 1
\]

CAGR= 12.20%

(iii) Mutual funds shall use the composite CAGR as explained above, subject to making the following disclosure

“As TRI data is not available since inception of the scheme, benchmark performance is calculated using composite CAGR of XYZ (name of the benchmark index) PRI values from date…. to date… and TRI values since date....”

4. This circular is applicable to all schemes of Mutual Funds with effect from February 1, 2018.

This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

DEENA VENU SARANGADHARAN
Deputy General Manager

Electronic book mechanism for issuance of securities on private placement basis

1. SEBI vide circular No. CIR/IMD/DF1/48/2016 dated April 21, 2016, mandated usage of electronic book mechanism for issuance of debt securities on private placement basis

2. Subsequently, on receiving feedback from the market participants to further streamline the process, SEBI issued a consultation paper and sought public comments on the matter. On the basis of the market feedback and the feedback received on SEBI consultation paper, it has been decided to make suitable revisions to the existing framework for Electronic Book Mechanism.

3. The revisions made to the existing framework are aimed at further streamlining the procedure for private placement of debt securities, allowing private placement of other classes of securities which are in the nature of debt securities and enhancing transparency in the issuance, resulting in better discovery of price. The revised guidelines for the Electronic Book Mechanism are placed at Schedule-A annexed to this circular.

4. This circular shall come in to force with effect from April 01, 2018 and the SEBI circular CIR/IMD/DF1/48/2016 dated April 21, 2016 shall stand repealed from the date of the enforcement of this circular.
5. Recognized Stock Exchanges are directed to:
   5.1. comply with the conditions laid down in this circular;
   5.2. put in place necessary systems and infrastructure for implementation of this circular;
   5.3. make consequential changes, if any, to their bidding portal and respective exchange bye-laws; and
   5.4. communicate and create awareness about these revised guidelines amongst issuers, arrangers and investors.

6. This Circular is issued in exercise of powers conferred under Section 11(1) read with regulation 31(2) of ILDS Regulations of the Securities and Exchange Board of India Act, 1992.

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”.

RICA G. AGARWAL
Deputy General Manager

Schedule-A

1. Definition
1.1. For the purpose of this circular, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below and shall be construed accordingly—

1.1.1. “Arranger” means a SEBI registered Merchant Banker, broker or a RBI registered Primary Dealer, who on behalf of the eligible participants bid on the EBP platform.

1.1.2. “Bidder” means eligible participant bidding on EBP platform.

1.1.3. “Cut off yield” means the final yield so determined in an issue. In other words, it is the highest yield at which a bid is accepted.

1.1.4. “Eligible participant” means following:

a) Qualified Institutional Buyers (QIBs), defined as per Regulation 2(zd) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

b) Any non-QIB investor including arranger(s), who/which has been authorized by the issuer, to participate in a particular issue on EBP Platform.

1.1.5. “Electronic Book Provider” or “EBP” means a recognized stock exchange(s), which pursuant to obtaining approval from SEBI, provides an electronic platform for private placement of securities.

1.1.6. “EBP Platform” or “Electronic Platform” means the platform provided by an EBP for private placement of securities.

1.1.7. “Estimated cut off yield” means yield so estimated by the issuer, prior to opening of issue.

1.1.8. “Securities” for the purpose of this circular shall mean following:

a) debt securities as defined under Regulation 2(e) of Issue and Listing of Debt Securities Regulations, 2008 (“ILDS Regulations” hereinafter);

b) non-convertible redeemable preference shares (“NCRPS” hereinafter) as defined under Regulation 2(k) of SEBI (Non-Convertible Preference Shares) Regulations, 2013 (“NCRPS Regulations” hereinafter);

c) debt securities as defined under 2(e) of SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015 (“ILDM Regulations” hereinafter)

d) ‘Commercial paper’ and/or ‘Certificate of Deposits’ as defined under RBI guidelines

1.1.9. “Term Sheet” means summary of important terms and conditions related to an issue.

2. Securities eligible for issuance on EBP Platform
2.1. All private placement of debt securities and NCRPS as per the provisions of ILDS and NCRPS Regulations, respectively, shall be required to be made through EBP Platform if it is:

2.1.1. a single issue, inclusive of green shoe option, if any, of Rs 200 crore or more;

2.1.2. a shelf issue, consisting of multiple tranches, which cumulatively amounts to Rs 200 crore or more, in a financial year;

2.1.3. a subsequent issue, where aggregate of all previous issues by an issuer in a financial year equals or exceeds Rs 200 crore.

2.2. An issuer, irrespective of issue size, if desires, may choose to access EBP platform for private placement of:

2.2.1. Debt securities as per provisions of ILDM Regulations

2.2.2. Commercial Paper; and

2.2.3. Certificate of Deposits.

3. Obligations of Issuer
3.1. The issuer, to the extent applicable, shall ensure compliance with all requisite laws, rules, regulations, etc. with respect to private placement of securities including ensuring compliance with Section 42 of Companies Act, 2013 and other relevant statutes.

3.2. Issuer shall provide the private placement Memorandum (PPM)/ Information memorandum (IM) and term sheet to the EBP at least two working days prior to the start of issue opening date.

3.3. The issuers shall ensure that the PPM/IM and the term sheet, inter-alia, discloses following:

3.3.1. Details of size of issue including green shoe option, if any.

3.3.2. Bid opening and closing date.

3.3.3. Minimum Bid Lot.

3.4. The issuer may choose to disclose estimated cut off yield to the EBP, however the same has to be disclosed at least one hour prior to opening of the bidding for the issue.

3.5. Subsequent to closure of the issue, the issuer shall provide to the EBP, details of the issue in following manner:

Table 1

| Details of Investors to whom allotment has been made |
3.6. Issuers, which have done private placement of debt securities in terms of ILDS Regulations or ILDM Regulations or private placement of NCRPS as per NCRPS regulation and for whom accessing the platform is not mandatory (in terms of para 2.2 above), shall also upload details of the issue in the format as prescribed at Table 1 above. The said information has to be uploaded with any one of the EBPs within one working day of such issuance.

4. Withdrawal of offer by an Issuer
4.1. An issuer, at its discretion, may withdraw from the issue process at any time, however subsequent to such withdrawal, the issuer shall not be allowed to access any of the EBPs platform for a period of 7 days from the date of such withdrawal.

4.2. If an issuer withdraws from the issue because of any of the reasons as outlined below, provisions of clause 4.1 shall not be applicable:
4.2.1. issuer is unable to receive the bids upto base issue size; or
4.2.2. bidder has defaulted on payment towards the allotment, within stipulated timeframe, due to which the issuer is unable to fulfill the base issue size; or
4.2.3. cutoff yield in the issue is higher than the estimated cut off yield disclosed to the EBP, where the base issue size is fully subscribed.

4.3. Disclosure of estimated cut off yield by EBP to the eligible participants, pursuant to closure of issue, shall be at the discretion of the issuer.

4.4. For issuers who have withdrawn the issue in terms of provisions of clause 4.2.3 above, EBP shall mandatorily disclose the estimated cut off yield to the eligible participants.

5. Participants
5.1. Participants, prior to entering into the bidding process shall be required to enroll with EBP. Such enrollment of a participant on an EBP will be one time exercise and shall be valid till the time such enrolment is annulled or rescinded.

5.2. The know your client (KYC) verification and enrolment of the eligible participants on the EBP platform shall be done in the following manner:
5.2.1. KYC verification shall be undertaken by obtaining/ utilizing existing KYCs of clients from KRAs registered with SEBI or on the basis of the guidelines as prescribed by SEBI from time to time.
5.2.2. For QIB investors bidding directly or through arranger(s), KYCs and enrolment shall be done by the EBP.
5.2.3. For Non QIB investors bidding directly, KYCs shall be done by the issuer and enrolment shall be done by the EBP.
5.2.4. For Non QIB investors, which are bidding through arranger(s), KYC and enrolment on EBP shall be ensured by arranger(s).

5.3. All eligible participants shall have access to PPM/IM, term sheet and other issue specific information available on EBP.

5.4. Eligible participants bidding on proprietary basis, for an amount equal to or more than Rs.15 crore or 5% of the base issue size, whichever is lower, shall bid directly i.e. shall enter the bids directly on EBP platform. Provided that the foreign portfolio investors may bid through their custodians.

5.5. For bids made by an arranger for any particular issue, an arranger shall disclose following to the EBP at the time of bidding:
5.5.1. Specify that whether the bid is proprietary bid or is being entered on behalf of an eligible participant or is a consolidated bid i.e. an aggregate bid consisting of proprietary bid and bid(s) on behalf of eligible participants.
5.5.2. For consolidated bid, arranger shall disclose breakup between proprietary bid and bid(s) made on behalf of eligible participants. Further, for bids entered on behalf of eligible participants, following shall be disclosed:
   a) Names of such eligible participants;
   b) category (i.e. QIB or non-QIB); and
   c) quantum of bid of each eligible participant.

5.6. An arranger shall not bid on behalf of eligible participants if the amount exceeds the limits as specified in clause 5.4 above.

5.7. Pay-in towards the allotment of securities shall be done from the account of the bidder, to whom allocation is to be made. Provided that for the bids made by the arranger on behalf of eligible participants, pay-in towards allotment of securities shall be made from the account of such eligible participants.

5.8. In case of non-fulfilment of bidding obligations by bidders, such bidders shall be debarred from accessing the bidding platform across all EBPs for a period of thirty days from the date of such default.

5.9. Pay in shall be done through clearing corporation of Stock Exchanges.

6. Bidding Process
6.1. Bidding timings & period
6.1.1. In order to ensure operational uniformity across various EBP platforms, the bidding on the EBP platform shall take place between 9 a.m. to 5 p.m. only, on the working days of the recognized Stock Exchanges.

6.1.2. The bidding window shall be open for the period as specified by the issuer in the bidding announcement, however the same shall be open for at least one hour.

6.2. Bidding Announcement
6.2.1. Issuer shall make the bidding announcement on EBP at least one working day before initiating the bidding process.
6.2.2. Bidding announcement shall be accompanied with details of bid opening and closing time, and any other details as required by EBP from time to time.
6.2.3. Any change in bidding time and/ or date by the Issuer shall be intimated to EBP, ensuring that such announcement is made within the operating hours of the EBP, at least a day before the bidding date.
Provided that such changes in bidding date or time shall be allowed for maximum of two times.

6.3. Bidding & Allotment process
6.3.1. Bidding process on EBP platform shall be on an anonymous order driven system.
6.3.2. Bid shall be made by way of entering bid amount in Rupees (INR) and coupon/ yield in basis points (bps) i.e. up to four decimal places.
6.3.3. Modification or cancellation of the bids shall be allowed i.e. bidder can cancel or modify the bids made in an issue, subject to following:
   a) such cancellation/modification in the bids can be made only during the bidding period;
   b) no cancellation of bids shall be permitted in the last 10 minutes of the bidding period;
   c) in the last 10 minutes of the bidding period, only revision allowed would for improvement of coupon/yield and upward revision in terms of the bid size.
6.3.4. Multiple bids by a bidder shall not be permitted. Provided that an arranger making multiple bids, where each bid is on behalf of different investor(s), the aforesaid provision shall not be applicable.
6.3.5. The bid placed in the system shall have an audit trail which includes bidder’s identification details, time stamp and unique order number. Further against such bids, EBP shall provide an acknowledgement number.
6.3.6. All the bids made on a particular issue, should be disclosed on the EBP platform on a real time basis in following format:

**Table 2**

<table>
<thead>
<tr>
<th>Yield (%)</th>
<th>Demand at that particular yield (in Rs. Crore)</th>
<th>Cumulative Demand (in Rs. Crore)</th>
</tr>
</thead>
</table>

6.3.7. Allotment to the bidders shall be done on yield priority basis in the following manner:-
   a) All the bids shall be arranged in the ascending order of the yields, and a cut-off yield shall be determined.
   b) All the bids below the cut-off yield shall be accepted and full allotment should be made to such bidders.
   c) For all the bids received at cut-off yield, allotment shall be made on pro-rata basis.

7. **Electronic Book Provider and its Obligations**
7.1. A recognized stock exchange identified to act as an EBP:
   7.1.1. shall provide an on-line platform for placing bids;
   7.1.2. shall have necessary infrastructure like adequate office space, equipments, risk management capabilities, manpower and other information technology infrastructure to effectively discharge the activities of an EBP;
   7.1.3. shall ensure that the private placement memorandum/information memorandum, term sheet and other issue related information is available to the eligible participants on its platform immediately on receipt of the same from issuer;
   7.1.4. has adequate backup, disaster management and recovery plans are maintained for the EBP;
   7.1.5. shall ensure safety, secrecy, integrity and retrievability of data.
7.2. The EBP platform so provided by the EBP shall be subject to periodic audit by Certified Information Systems Auditor (CISA).
7.3. EBP, shall make information related to the issue available on its website, in the format as under:

**Table 3**

<table>
<thead>
<tr>
<th>Name of the issuer</th>
<th>Date of the issuance</th>
<th>Amount raised (Rs. in crore)</th>
<th>No. of Investors</th>
<th>Category of Investor (QIB/ Non QIB)</th>
<th>Tenor (In months)</th>
<th>Coupon</th>
<th>Credit Rating</th>
</tr>
</thead>
</table>

7.4. Obligations and duties
7.4.1. EBP shall ensure that all details regarding issuance is updated on the website of the EBP.
7.4.2. EBPs shall together ensure that the operational procedure is standardized across all EBP platforms and the details of such operational procedure are disclosed on their website.
7.4.3. Where an issuer has disclosed estimated cut-off yield/range to the EBP, the EBP shall ensure its electronic audit trail and secrecy. Further, the same shall be disclosed on EBP platform in terms of clause 4.3 and 4.4 of this circular.
7.4.4. All EBPs shall ensure coordination amongst themselves and also with depositories so as to ensure that the cooling off period for issuers and debarment period for investors is adhered to.
7.4.5. EBP shall ensure that bidding is done in the manner as specified in the provisions of this circular.
7.4.6. The EBP shall be responsible for accurate, timely and secured bidding process of the electronic bid by the bidders.
7.4.7. The EBP shall be responsible for addressing investor grievances arising from bidding process.
7.4.8. EBP shall ensure that the pay-in of funds towards allotment of securities, placed through EBP platform, are done through clearing corporation mechanism.

10 **Margin provisions for intra-day crystallised losses**

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DRMNP/008/2018 dated 08.01.2018]

1. The margining system of Clearing Corporations currently levies margin based on net buy value (Buy – Sales value of underlying) of unsettled trades in the cash segment and based on the net open positions (Open Interest) in the derivatives segments. As such, the risk of crystallised obligations (Profit/Loss on trade) incurred due to intra-day trades does not get fully captured in the margining system and consequently in the clearing corporation’s risk management system for the purpose of providing further exposure to the clearing member.

2. In this regard, the issue of risk arising out of accumulation of crystallised obligations incurred on account of intra-day squaring off of positions was discussed in SEBI’s Risk Management Review Committee meeting. Based on the recommendation of the Risk Management Review Committee, in order to mitigate such risk, the following has
been decided:
(a) The intra-day crystallised losses shall be monitored and blocked by Clearing Corporations from the free collateral on a real-time basis only for those transactions which are subject to upfront margining. For this purpose, crystallised losses can be offset against crystallised profits at a client level, if any.
(b) If crystallised losses exceed the free collateral available with the Clearing Corporation, then the entity shall be put into risk reduction mode as specified in Para 7 of SEBI Circular no. CIR/MRD/DP/34/2012 dated December 13, 2012.
(c) Crystallised losses shall be calculated based on weighted average prices of trades executed.
(d) Adjustment of intraday crystallised losses shall not be done from exposure free liquid networth of the clearing member.

3. The recognised Clearing Corporations are advised to:-
(a) implement the directions of this circular latest within three months from the date of issue of this circular.
(b) bring the provisions of this circular to the notice of its clearing members and also to disseminate the same through their website; and
(c) communicate to SEBI, the status of implementation of this circular in the Monthly Development Reports to SEBI.

4. This circular is issued in exercise of the powers conferred under Section 11 (1) of 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.

5. This circular is available on SEBI website at www.sebi.gov.in.

SANJAY PURAO
General Manager

11 Prevention of Unauthorised Trading by Stock Brokers

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/HO/ MIRSD/MIRSD2/CIR/P/2018/09 dated 11.01.2018]


2. SEBI has now received representations from BSE Brokers Forum and Association of National Exchanges Members of India, expressing difficulties faced by stock brokers in the implementation of the aforesaid circulars and seeking extension for the implementation of the same.

3. In view of the above, it has been decided to make the aforesaid circulars effective from April 01, 2018. Other provisions shall remain unchanged and no further extension shall be granted for the implementation of the said circulars.

4. The Stock Exchanges are directed to:
(a) bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites
(b) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above directions in co-ordination with one another to achieve uniformity in approach
(c) communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

5. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

SURABHI GUPTA
Deputy General Manager

12 Participation by Strategic Investor(s) in InvITs and REITs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ DDH5/CIR/P/2018/10 dated 18.01.2018]

1. SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) define strategic investors under Regulation 2(1)(zza) of the InvIT Regulations and allows them to participate in InvITs. Further, SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) vide amendment notification dated December 15, 2017, inter-alia, define strategic investors under Regulation 2(1) (ztb) of the REIT Regulations and allows them to participate in REITs.

2. In this regard the operational modalities, for the participation by the strategic investors in InvITs and REITs shall be as under:
2.1. An InvIT/REIT, if chooses to invite subscriptions from the strategic investors shall undertake the same in the following manner:
   i. The strategic investor(s) shall, either jointly or severally, invest not less than 5% and not more than 25% of the total offer size.
   ii. The investment manager or manager on behalf of the InvIT/REIT, shall enter into a binding unit subscription agreement with the strategic investor(s), which propose(s) to invest in the public issue of InvIT/REIT.
   iii. Subscription price per unit, payable by the strategic investor(s) shall be set out in the unit subscription agreement and the entire subscription price shall be deposited in a special escrow account prior to opening of the public issue.
   iv. The price at which the strategic investor(s) has/have agreed to buy units of the InvIT/REIT shall not be less than the issue price determined in the public
issue. Thus, if the price determined in the public issue is higher than the price at which the allocation is to be made to strategic investor(s), the strategic investor(s) shall bring in the additional amount within two working days of the determination of price in the public issue. However, if the price determined in the public issue is lower than the price at which the allocation is to be made to strategic investor, the excess amount shall not be refunded to the strategic investor and the strategic investor shall take allotment at the price at which allocation was agreed to be made to it in unit subscription agreement.

v. The draft offer document or offer document, as applicable, shall disclose details of the unit subscription agreement. Such details shall include name of each strategic investor, the number of units proposed to be subscribed by it or the investment amount, proposed subscription price per unit, etc.

vi. The unit subscription agreement shall not be terminated except in the event the issue fails to collect minimum subscription.

2.2. The units subscribed by strategic investors, pursuant to the unit subscription agreement, will be locked-in for a period of 180 days from the date of listing in the public issue.

3. This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 read with Regulation 33 of REIT Regulations and Regulation 33 of InvIT Regulations.

4. This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and under the drop down “Circulars”.

RICA G. AGARWAL
Deputy General Manager

13
Online Filing System for Offer Documents, Schemes of Arrangement, Takeovers and Buy backs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CMDRD/DMP/CIR/P/2018/12 dated 22.01.2018]

1. In order to facilitate ease of operations in terms of seeking observations on draft offer documents, draft letter of offers and draft schemes of arrangement under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Buy Back of Securities) Regulations, 1998 and various circulars issued thereunder, SEBI has introduced an online system for filings related to public issues, rights issues, institutional placement programme, schemes of arrangement, takeovers and buy backs.

2. All Merchant Bankers that are required to file the offer documents and related documents in physical form with SEBI under the provisions of aforesaid Regulations shall simultaneously file the same online through SEBI Intermediary Portal at https://siportal.sebi.gov.in.

3. Recognized stock exchanges filing the draft scheme of arrangement and related documents in physical form with SEBI under the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 shall simultaneously file the same online through SEBI Intermediary Portal at https://siportal.sebi.gov.in.

4. Link for SEBI Intermediary Portal is also available on SEBI website - www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the Portal Helpline at +9122-26449364 or email at portalhelp@sebi.gov.in.

5. The simultaneous filing of documents as mentioned above i.e. physical and online shall start from February 1, 2018 and continue till March 31, 2018. Thereafter, from April 1, 2018 physical filing of the aforesaid documents shall be discontinued and only online filing will be accepted.

6. SEBI registered Merchant Bankers and recognized stock exchanges have already been advised to activate their online accounts.

7. 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.

NARENDRA RAWAT
Deputy General Manager

14
Role of the Independent Oversight Committee for Product Design

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CMDRD/DEA/03/2015 dated November 26, 2015, has prescribed “Timelines for compliance with various provisions of securities laws by commodity derivatives exchanges”. In the said circular, on the issue of oversight committees, SEBI has advised all the commodity derivatives exchanges as under-

“21. Commodity derivative exchanges shall comply with the requirements of Regulation 29 read with Regulation 44D (1) (b) of SECC Regulations within three months. National commodity derivatives exchanges shall constitute an oversight committee for ‘Product design’, chaired by a Public Interest Director, within three months.”

2. It is observed that the commodity derivatives exchanges have been adopting varied approach in complying with the above requirement both in the constitution and the functioning of such oversight committees. In order to bring uniformity with respect to the role of the oversight committee on product design, and after having discussions with commodity derivatives exchanges on this issue, it is decided that the
functions of the oversight committee for ‘Product Design’ in all the commodity exchanges shall be as under-  
2.1. To oversee matters related to product design such as introduction of new products/contracts, modifications of existing product/contract designs etc. and review the design of the already approved and running contracts.  
2.2. To oversee SEBI inspection observation on Product Design related issues.  
2.3. To estimate the adequacy of resources dedicated to Product design related function.  
3. The head(s) of department(s) handling the above matters shall report directly to the committee and also to the Managing Director. Any action of the Exchange against the aforesaid head(s) shall be subject to an appeal to the committee, within such period as may be determined by the governing board.  
4. The recognized stock exchanges operating in the IFSC shall also be required to constitute an oversight committee for product design and discharge their functions enumerated at para ‘2’ and ‘3’ above.  
5. The provisions of this circular shall come into effect from the 30 days from the date of the circular.  
6. The Exchanges are advised to:  
   i. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same.  
   ii. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website.  
7. 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.  
8. This circular is available on SEBI website at www.sebi.gov.in.

VIKAS SUKHWAL  
Deputy General Manager

Online Registration Mechanism and Filing System for Depositories

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DSA/CIR/P/2018/13 dated 29.01.2018]

1. In order to ease the process of application for recognition / renewal, reporting and other filings in terms of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and other circulars issued from time to time, SEBI has introduced a digital platform for online filings related to Depositories.  
2. All applicants desirous of seeking registration as a Depository in terms of Regulation 3 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, shall now submit their applications online, through SEBI Intermediary Portal at https://siportal.sebi.gov.in.  
3. The applicants would be required to upload scanned copy of relevant documents such as any declaration or undertaking or not arised copy of documents as may be prescribed in Securities and Exchange Board of India (Depositories and Participants) Regulations 1996, and keep hard copy of the same to be furnished to SEBI whenever required.  
4. Further, all other filings including Annual Financial Statements and Returns, Monthly Development Report, Rules, Bye-laws, etc., shall also be submitted online.  
5. The aforesaid online registration and filing system for Depositories is operational. Recognised Depositories are advised to note the same for immediate compliance.  
6. Link for SEBI Intermediary Portal is also available on SEBI website – www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the SEBI Portal helpline on 022-26449364 or may write at portalhelp@sebi.gov.in.  
7. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with Regulation 72 and 73 of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.  

BITHIN MAHANTA  
Deputy General Manager

Review of additional expenses of up to 0.30% towards inflows from beyond top 15 cities (B15)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2018/16 dated 02.02.2018]

1. Presently, in terms of para A(1) of SEBI circular CIR/IMD/DF/21/2012 dated September 13, 2012, additional TER can be charged up to 30 basis points on daily net assets of the scheme as per regulation 52 of SEBI (Mutual Funds) Regulations, 1996, if the new inflows from beyond top 15 cities are at least (a) 30% of gross new inflows in the scheme or (b) 15% of the average assets under management (year to date) of the scheme, whichever is higher.  
2. The additional TER for inflows from beyond top 15 cities (B15 cities) was allowed with an objective to increase penetration of mutual funds in B15 cities. Since more than five years have elapsed and on review, it is now decided that the additional TER of up to 30 basis points would be allowed for inflows from beyond top 30 cities instead of beyond top 15 cities.  
3. Accordingly, (i) para A of SEBI circular CIR/IMD/DF/21/2012 dated September 13, 2012; (ii) para A(1)(b) and Annexure A1 mentioned at para A(2) of SEBI Circular CIR/IMD/DF/05/2014 dated March 24, 2014, are modified, whereby at all relevant
places, the terms “15 cities”, “T15” and “B15” would be substituted with “30 cities”, “T30” and “B30” respectively, while keeping the other provisions of the circulars unchanged.

4. This circular shall be applicable with effect from April 1, 2018.

5. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulation, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager

17 Charging of additional expenses of upto 0.20% in terms of Regulation 52 (6A) (c) of SEBI (Mutual Funds) Regulations, 1996

[Issued by the Securities and Exchange Board of India vide Circular No.SEBI/HO/IMD/DF2/CIR/P/2018/15 dated 02.02.2018]

1. Regulation 52 (6A) (c) of SEBI (Mutual Funds) Regulations, 1996, allows an AMC to charge additional expenses, incurred towards different heads mentioned under Regulation 52 (2) and Regulation 52 (4), not exceeding 0.20 per cent of daily net assets of the scheme.

2. In this respect, it is clarified that Mutual Fund schemes including close ended schemes, wherein exit load is not levied / not applicable, the AMCs shall not be eligible to charge the above mentioned additional expenses for such schemes.

3. Further, existing Mutual Fund schemes including close ended schemes, wherein exit load is not levied / not applicable, shall discontinue, with immediate effect, the levy of above mentioned additional expenses, if any.

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 the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager

18 Total Expense Ratio – change and disclosure

[Issued by the Securities and Exchange Board of India vide Circular No.SEBI/HO/IMD/DF2/CIR/P/2018/18 dated 05.02.2018]

1. It is observed that there are frequent changes carried out in Total Expense Ratio (TER) and such changes are not prominently disclosed to investors. In order to bring uniformity in disclosure of actual TER charged to mutual fund schemes and to enable the investor to take informed decision, the following has been decided:

a. AMCs shall prominently disclose on a daily basis, the TER of all schemes under a separate head – “Total Expense Ratio of Mutual Fund Schemes” on their website in downloadable spreadsheet format as per Annexure A.

b. Any change in the base TER (i.e. TER excluding additional expenses provided in Regulation 52(6A)(b) and 52(6A)(c) of SEBI (Mutual Funds) Regulations, 1996) in comparison to previous base TER charged to any scheme shall be communicated to investors of the scheme through notice via email or SMS at least three working days prior to effecting such change. (For example, if changed TER is to be effective from January 8, 2018, then notice shall be given latest by January 2, 2018, considering at least three working days prior to effective date). Further, the notice of change in base TER shall be updated in the aforesaid section of website at least three working days prior to effecting such change.

However, any decrease in TER due to decrease in applicable limits as prescribed in Regulation 52 (6) (i.e. due to increase in daily net assets of the scheme) would not require issuance of any prior notice to the investors. Further, such decrease in TER shall be immediately communicated to investors of the scheme through email or SMS and uploaded on the website in terms of clause (a) above.

c. The above change in the base TER in comparison to previous base TER charged to the scheme shall be intimated to the Board of Directors of AMC along with the rationale recorded in writing.

d. The changes in TER shall also be placed before the Trustees on quarterly basis along with rationale for such changes.

2. SEBI circular SEBI/IMD/CIR No. 5/126096/08 dated May 23, 2008, and SEBI Circular CIR/IMD/DF/7/2013 dated April 23, 2013, inter-alia, have prescribed the formats for Scheme Information Document and Placement Memorandum respectively, wherein, the following is mentioned under the head “ANNUAL SCHEME RECURRING EXPENSES”:

“The mutual fund would update the current expense ratios on the website within two working days mentioning the effective date of the change.”

In partial modification to the aforesaid circulars the above provision has been substituted by the following:

“The mutual fund would update the current expense ratios on the website at least three working days prior to the effective date of the change. Additionally, AMCs shall provide the exact weblink of the heads under which TER is disclosed in their website.”

3. This circular shall be applicable – (i) immediately for new schemes to be launched on or after the date of this circular and (ii) for all the existing schemes with effect from March 1, 2018.

4. This circular is issued in exercise of the power conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision 77 of SEBI (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager
Institute News from the Institute

- Members restored from 1/12/2017 to 31/12/2017
- Certificate of Practice surrendered during the month of December, 2017
- Know Your Member (KYM)
CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2017

ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2017 is available in the Institute on payment of Rs. 280/-* for members and Rs. 560/-* for non-members (*including GST@12%). Request along with payment may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries if any, please contact on telephone no: 0120-4082133 or at email id rajeshwar.singh@icsi.edu

NOTICE

The last date for payment of annual membership fee was 31-08-2017 and for renewal of certificate of practice was 30-09-2017. 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 rajeshwar.singh@icsi.edu (for restoration of certificate of practice).

Know Your Member (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf

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.in/Members.aspx

MEMBERS RESTORED FROM 1/12/2017 TO 31/12/2017

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2017

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>A/F</th>
<th>MEM. NO.</th>
<th>MEM. NAME</th>
<th>PLACE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A</td>
<td>14851</td>
<td>CS GAUTAM VOHRA</td>
<td>NIRC</td>
</tr>
<tr>
<td>2</td>
<td>A</td>
<td>14200</td>
<td>CS ANKUR JOLLY</td>
<td>NIRC</td>
</tr>
<tr>
<td>3</td>
<td>A</td>
<td>35775</td>
<td>CS PURSHOTAM VYAS</td>
<td>NIRC</td>
</tr>
<tr>
<td>4</td>
<td>A</td>
<td>23543</td>
<td>CS VIKAS GUPTA</td>
<td>NIRC</td>
</tr>
<tr>
<td>5</td>
<td>A</td>
<td>25711</td>
<td>CS RISHI VYAS</td>
<td>WIRC</td>
</tr>
<tr>
<td>6</td>
<td>A</td>
<td>34024</td>
<td>CS SUJIT KUMAR JHA</td>
<td>NIRC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>NAME</th>
<th>MEMB. NO.</th>
<th>COP NO.</th>
<th>RGON</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CS DINESH D KAVTHEKAR</td>
<td>ACS 8459</td>
<td>19393</td>
<td>WIRC</td>
</tr>
<tr>
<td>2</td>
<td>CS SAKSHI ARORA</td>
<td>ACS 42033</td>
<td>17145</td>
<td>NIRC</td>
</tr>
<tr>
<td>3</td>
<td>CS ARVIND KUMAR DUTT</td>
<td>ACS 42033</td>
<td>18956</td>
<td>NIRC</td>
</tr>
<tr>
<td>4</td>
<td>CS MUNI SHEKHAR</td>
<td>ACS 32053</td>
<td>17776</td>
<td>NIRC</td>
</tr>
<tr>
<td>5</td>
<td>CS TUSHAR SANJAY DANGRE</td>
<td>ACS 37310</td>
<td>17848</td>
<td>WIRC</td>
</tr>
<tr>
<td>6</td>
<td>CS CHHAYA WALIA</td>
<td>ACS 42947</td>
<td>16403</td>
<td>NIRC</td>
</tr>
<tr>
<td>7</td>
<td>CS DISHA MAHESHWARI</td>
<td>ACS 43525</td>
<td>18287</td>
<td>NIRC</td>
</tr>
<tr>
<td>8</td>
<td>CS SUNIL KUMAR DEO</td>
<td>ACS 34281</td>
<td>12802</td>
<td>EIRC</td>
</tr>
<tr>
<td>9</td>
<td>CS NISHITA HANNA</td>
<td>ACS 29404</td>
<td>11666</td>
<td>NIRC</td>
</tr>
<tr>
<td>10</td>
<td>CS AMIT KUMAR BHARDWAJ</td>
<td>ACS 42037</td>
<td>19001</td>
<td>NIRC</td>
</tr>
<tr>
<td>11</td>
<td>CS KAWAL KISHORE KHURANA</td>
<td>ACS 30800</td>
<td>15938</td>
<td>NIRC</td>
</tr>
<tr>
<td>12</td>
<td>CS LIJESH KRISHNAN</td>
<td>ACS 44880</td>
<td>16918</td>
<td>SIRC</td>
</tr>
<tr>
<td>13</td>
<td>CS PAWAN KUMAR</td>
<td>FCS 7951</td>
<td>17828</td>
<td>NIRC</td>
</tr>
<tr>
<td>14</td>
<td>CS MITALI YOGESH SHAH</td>
<td>ACS 32871</td>
<td>18708</td>
<td>WIRC</td>
</tr>
<tr>
<td>15</td>
<td>CS SMT KUMAR</td>
<td>ACS 39431</td>
<td>16282</td>
<td>NIRC</td>
</tr>
<tr>
<td>16</td>
<td>CS MEGHA GUPTA</td>
<td>ACS 32294</td>
<td>11930</td>
<td>EIRC</td>
</tr>
<tr>
<td>17</td>
<td>CS SHILPI SHARMA</td>
<td>FCS 4058</td>
<td>2359</td>
<td>NIRC</td>
</tr>
<tr>
<td>18</td>
<td>CS PRIYANKA GUPTA</td>
<td>ACS 45430</td>
<td>16936</td>
<td>NIRC</td>
</tr>
<tr>
<td>19</td>
<td>CS SUHASI BANTHIA</td>
<td>ACS 47757</td>
<td>17648</td>
<td>EIRC</td>
</tr>
<tr>
<td>20</td>
<td>CS RAMACHANDRA MURTHY GOLLAKOTA</td>
<td>ACS 7594</td>
<td>17511</td>
<td>SIRC</td>
</tr>
<tr>
<td>21</td>
<td>CS RAGOMO I, NARLAR</td>
<td>ACS 51142</td>
<td>19165</td>
<td>EIRC</td>
</tr>
<tr>
<td>22</td>
<td>CS DR SATYA PAL NARANG</td>
<td>FCS 3350</td>
<td>13817</td>
<td>SIRC</td>
</tr>
<tr>
<td>23</td>
<td>CS KAVITA BARFA</td>
<td>ACS 38921</td>
<td>16597</td>
<td>WIRC</td>
</tr>
<tr>
<td>24</td>
<td>CS PALANISAMY SATYANANDU</td>
<td>ACS 47341</td>
<td>17393</td>
<td>SIRC</td>
</tr>
<tr>
<td>25</td>
<td>CS MADHU TYAGI</td>
<td>ACS 52740</td>
<td>19358</td>
<td>NIRC</td>
</tr>
<tr>
<td>26</td>
<td>CS AKSHESHWAR KUMAR SHAILESH KUMAR DAVE</td>
<td>ACS 39353</td>
<td>19098</td>
<td>WIRC</td>
</tr>
<tr>
<td>27</td>
<td>CS YASHPAL BANSAL</td>
<td>FCS 8980</td>
<td>17551</td>
<td>NIRC</td>
</tr>
<tr>
<td>28</td>
<td>CS DEEPAK KUMAR SAHA</td>
<td>ACS 39661</td>
<td>14728</td>
<td>EIRC</td>
</tr>
<tr>
<td>29</td>
<td>CS ANIL KUMAR JABALPUR</td>
<td>ACS 13133</td>
<td>10205</td>
<td>SIRC</td>
</tr>
<tr>
<td>30</td>
<td>CS MEGHA SHARMA</td>
<td>ACS 25912</td>
<td>9316</td>
<td>NIRC</td>
</tr>
<tr>
<td>31</td>
<td>CS JAANVI POARTH JOSHI</td>
<td>ACS 37934</td>
<td>14210</td>
<td>WIRC</td>
</tr>
<tr>
<td>32</td>
<td>CS ADITYA JAIN</td>
<td>ACS 47723</td>
<td>17686</td>
<td>WIRC</td>
</tr>
<tr>
<td>33</td>
<td>CS NEHA JAIN</td>
<td>ACS 23417</td>
<td>16688</td>
<td>NIRC</td>
</tr>
<tr>
<td>34</td>
<td>CS MANOJ KUMAR PANIGRAHI</td>
<td>ACS 42261</td>
<td>15703</td>
<td>EIRC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>NAME</th>
<th>MEMB. NO.</th>
<th>COP NO.</th>
<th>RGON</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>CS PRIYANKA BASANT JAIN</td>
<td>ACS 40848</td>
<td>19187</td>
<td>WIRC</td>
</tr>
<tr>
<td>36</td>
<td>CS AYUSHI RASTOGI</td>
<td>ACS 33536</td>
<td>15358</td>
<td>NIRC</td>
</tr>
<tr>
<td>37</td>
<td>CS TANVI MALHOTRA</td>
<td>ACS 46127</td>
<td>17624</td>
<td>NIRC</td>
</tr>
<tr>
<td>38</td>
<td>CS PAYAL KUMARI BANSAL</td>
<td>ACS 41377</td>
<td>15839</td>
<td>NIRC</td>
</tr>
<tr>
<td>39</td>
<td>CS NITIN KUMAR GARG</td>
<td>FCS 8047</td>
<td>1908</td>
<td>NIRC</td>
</tr>
<tr>
<td>40</td>
<td>CS PRERNA BANSAL</td>
<td>ACS 48292</td>
<td>18239</td>
<td>NIRC</td>
</tr>
<tr>
<td>41</td>
<td>CS SAMANT DIPTI DILIP</td>
<td>ACS 22474</td>
<td>17633</td>
<td>WIRC</td>
</tr>
<tr>
<td>42</td>
<td>CS KUSH KUMAR</td>
<td>ACS 46698</td>
<td>17110</td>
<td>NIRC</td>
</tr>
<tr>
<td>43</td>
<td>CS KANCHAN BHATIA</td>
<td>ACS 40838</td>
<td>18430</td>
<td>NIRC</td>
</tr>
<tr>
<td>44</td>
<td>CS ABHISHEK SHUKLA</td>
<td>ACS 27253</td>
<td>14769</td>
<td>NIRC</td>
</tr>
<tr>
<td>45</td>
<td>CS AMRITA SINGH</td>
<td>ACS 38444</td>
<td>15292</td>
<td>EIRC</td>
</tr>
</tbody>
</table>
NEW SYLLABUS FOR EXECUTIVE AND PROFESSIONAL PROGRAMMES

GST CORNER

CG CORNER

ETHICS & SUSTAINABILITY CORNER
New Syllabus for Executive and Professional Programmes

ICSI Notification No. 01 of 2018
Introduction of New Syllabus for the Executive and Professional Programmes of the Company Secretaryship Course

The Council of the Institute of Company Secretaries of India in exercise of the powers vested under clause (a) of sub-section (2) of Section 15 of the Company Secretaries Act, 1980, as amended by the Company Secretaries (Amendment) Act, 2006 approved the new syllabus (Syllabus 2017) for the Executive and Professional Programmes of the Company Secretaryship Course.

The New Syllabus shall comprise of Eight papers at Executive Programme and Nine papers at Professional Programmes including one Paper to be opted by the students out of eight elective papers namely, (i) Banking – Law & Practice; (ii) Insurance- Law & Practice; (iii) Intellectual Property Rights- Laws and Practices; (iv) Forensic Audit; v) Direct Tax Laws & Practice; vi) Labour Laws & Practice; vii) Valuations & Business Modelling and viii) Insolvency- Law and Practice.

The nomenclature of eight papers of the Executive Programme & nine papers of Professional Programme including electives under the new syllabus are as under:

<table>
<thead>
<tr>
<th>Module – 1</th>
<th>Professional Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Company Law</td>
<td>2. Advanced Tax Laws</td>
</tr>
<tr>
<td>3. Setting up of Business Entities and Closure</td>
<td>3. Drafting, Pleadings and Appearances</td>
</tr>
<tr>
<td>4. Tax Laws</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Module – 2</th>
<th>Module – 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Corporate &amp; Management Accounting</td>
<td>4. Secretarial Audit, Compliance Management and Due Diligence</td>
</tr>
<tr>
<td>8. Financial and Strategic Management</td>
<td></td>
</tr>
</tbody>
</table>

| Module – 3 | |
|------------||
| 7. Corporate Funding & Listings in Stock Exchanges | |
| 8. Multidisciplinary Case Studies (The examination for this paper will be open book examination) | |
| 9. Electives 1 paper out of below 8 papers | |

| The examination for this paper will be open book examination | |

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Syllabus (2013)</td>
<td></td>
</tr>
<tr>
<td>MODULE 1</td>
<td></td>
</tr>
<tr>
<td>Company Law</td>
<td>Module 1; Paper 2- Company Law</td>
</tr>
<tr>
<td>Cost and Management Accounting</td>
<td>Module 2, Paper 5- Corporate and Management Accounting</td>
</tr>
<tr>
<td>Economic and Commercial Laws</td>
<td>Module 2; Paper 7- Economic, Business and Commercial Laws</td>
</tr>
<tr>
<td>Tax Laws and Practice</td>
<td>Module 1; Paper 4- Tax Laws</td>
</tr>
</tbody>
</table>
NEW SYLLABUS FOR EXECUTIVE AND PROFESSIONAL PROGRAMMES

MODULE 2

<table>
<thead>
<tr>
<th>Course</th>
<th>Module</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company Accounts and Auditing Practices</td>
<td>Module 2, Paper 5- Corporate and Management Accounting</td>
</tr>
<tr>
<td>Capital Markets and Securities Laws</td>
<td>Module 2; Paper 6- Securities Laws &amp; Capital Markets</td>
</tr>
<tr>
<td>Industrial, Labour and General Laws</td>
<td>Module 1; Paper 2- Jurisprudence, Interpretation and General Laws</td>
</tr>
</tbody>
</table>

PROFESSIONAL PROGRAMME

MODULE 1

<table>
<thead>
<tr>
<th>Course</th>
<th>Module</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advanced Company Law and Practice</td>
<td>Module 2; Paper 6 - Resolution of Corporate Disputes, Non-Compliances &amp; Remedies</td>
</tr>
<tr>
<td>Secretarial Audit, Compliance Management and Due Diligence</td>
<td>Module 2; Paper 4 - Secretarial Audit, Compliance Management and Due Diligence</td>
</tr>
<tr>
<td>Corporate Restructuring, Valuation and Insolvency</td>
<td>Module 2; Paper 5 - Corporate Restructuring, Insolvency, Liquidations &amp; Winding-up</td>
</tr>
</tbody>
</table>

MODULE 2

<table>
<thead>
<tr>
<th>Course</th>
<th>Module</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Technology and Systems Audit</td>
<td>No Exemption</td>
</tr>
<tr>
<td>Financial, Treasury and Forex Management</td>
<td>Module-3, Paper- 7- Corporate Funding &amp; Listings in Stock Exchanges</td>
</tr>
<tr>
<td>Ethics, Governance and Sustainability</td>
<td>Module 1; Paper 1- Governance, Risk Management, Compliance and Ethics</td>
</tr>
</tbody>
</table>

MODULE 3

<table>
<thead>
<tr>
<th>Course</th>
<th>Module</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advanced Tax Laws and Practice</td>
<td>Module 1; Paper 2 - Advanced Tax Laws</td>
</tr>
<tr>
<td>Drafting, Appearances and Pleadings</td>
<td>Module 1; Paper 3 - Drafting, Pleadings and Appearances</td>
</tr>
<tr>
<td>Elective Subjects</td>
<td>Module 3; Paper 9 - Elective Paper</td>
</tr>
</tbody>
</table>

The objective of the course is to develop a cadre of Company Secretaries by imparting professional knowledge and training considered pre-requisite for functioning of a Company Secretary - whether in employment or in practice. The syllabus for the examination as set out gives the broad framework within which questions may be asked. The questions may not be necessarily restricted to specific wordings or nomenclature of any terms and legislative enactments contained therein. The field of business being in a constant flux, the candidates are expected to be thoroughly conversant with the latest developments in different areas, amendments to the laws or the corresponding provisions of any statutory modification or re-enactment thereof and judicial pronouncements related and relevant to the stated course contents. The Candidates are expected to keep track of and have intelligent grasp of the latest developments in the relevant areas that have taken place up to six months preceding the date of examination.

Each paper at the Executive and Professional Programme Examination will be of three hours duration and will carry 100 marks. The examination for the Paper 16: Multidisciplinary Case Studies and Paper 17: Elective Paper will be open book examination.

Further, students registered under Executive and Professional syllabus (2017) shall have to successfully complete a Pre-Examination Test to become eligible to enrol and appear in the Executive and Professional Examinations.

Applicability of New Syllabus for the Executive Programme Candidates

1. The first examination of the Executive Programme under the new syllabus shall be held in December, 2018.
2. Candidates registered effective from 1st March, 2018 shall be examined under the new syllabus.
3. Candidates registered prior to 1st March, 2018 shall be allowed to appear in the Executive Program Examination under the old syllabus up to including December, 2019.
4. Candidates registered prior to 1st March, 2018 will be permitted to appear in the Executive Program Examination under the new syllabus if they so opt.
5. The last examination of the Executive Programme under the old syllabus shall be held in December, 2019.
6. From and including June 2020, Executive Program Examination shall be held under the new syllabus only.

Applicability of New Syllabus for the Professional Programme Students

1. The first examination of the Professional Programme under the new syllabus shall be held in June, 2019.
2. Candidates registered effective from 1st September, 2018 shall be examined under new syllabus.
3. Candidates registered prior to 1st September, 2018 will be permitted to appear in the Professional Programme Examination under the old syllabus up to and including June 2020.
4. Candidates registered prior to 1st September, 2018 will be permitted to appear in the Professional Programme Examination under the new syllabus if they so opt.
5. The last examination of the Professional Programme under the old syllabus shall be held in June, 2020.
6. From and including December 2020, Professional Programme Examination shall be held under the new syllabus only.

Detailed Syllabus for Executive and Professional Programme of ICSI Syllabus (2017) is as under:

---

**SCHEME OF SYLLABUS**

<table>
<thead>
<tr>
<th>Executive Programme</th>
<th>Professional Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Module – 1</strong></td>
<td><strong>Module-1</strong></td>
</tr>
<tr>
<td>2. Company Law</td>
<td>2. Advanced Tax Laws</td>
</tr>
<tr>
<td>3. Setting up of Business Entities and Closure</td>
<td>3. Drafting, Pleadings and Appearances</td>
</tr>
<tr>
<td>4. Tax Laws</td>
<td></td>
</tr>
<tr>
<td><strong>Module – 2</strong></td>
<td><strong>Module – 2</strong></td>
</tr>
<tr>
<td>5. Corporate &amp; Management Accounting</td>
<td>4. Secretarial Audit, Compliance Management and Due Diligence</td>
</tr>
<tr>
<td>8. Financial and Strategic Management</td>
<td></td>
</tr>
<tr>
<td><strong>Module – 3</strong></td>
<td></td>
</tr>
<tr>
<td>7. Corporate Funding &amp; Listings in Stock Exchanges</td>
<td></td>
</tr>
<tr>
<td>8. Multidisciplinary Case Studies <em>(The examination for this paper will be open book examination)</em></td>
<td></td>
</tr>
<tr>
<td><strong>9. Electives 1 paper out of below 8 papers</strong></td>
<td></td>
</tr>
<tr>
<td>9.1 Banking – Law &amp; Practice</td>
<td></td>
</tr>
<tr>
<td>9.2 Insurance – Law &amp; Practice</td>
<td></td>
</tr>
<tr>
<td>9.3 Intellectual Property Rights – Laws and Practices</td>
<td></td>
</tr>
<tr>
<td>9.4 Forensic Audit</td>
<td></td>
</tr>
<tr>
<td>9.5 Direct Tax Law &amp; Practice</td>
<td></td>
</tr>
<tr>
<td>9.6 Labour Laws &amp; Practice</td>
<td></td>
</tr>
<tr>
<td>9.7 Valuations &amp; Business Modelling</td>
<td></td>
</tr>
<tr>
<td>9.8 Insolvency – Law and Practice</td>
<td></td>
</tr>
<tr>
<td><em>(The examination for this paper will be open book examination)</em></td>
<td></td>
</tr>
</tbody>
</table>

**Papers under Executive Programme**

**Executive Programme**

**Module 1**

**Paper 1**

**Jurisprudence, Interpretation and General Laws (Max Marks 100)**

---

**Objective**

To provide understanding and working knowledge of sources of law, Constitution, legislative environment, interpretation of statutes and general laws.

**Detailed Contents**

1. **Sources of Law**: Meaning of Law and its Significance; Relevance of Law to Civil Society; Jurisprudence & Legal Theory; Schools of Law propounded by Austin, Dean Roscoe Pound, Salmond, Kelsen and Bentham; Statutes, Subordinate Legislation, Custom, Common Law, Precedent, Stare decisis.

2. **Constitution of India**: Broad Framework of the Constitution of India; Fundamental Rights, Directive Principles of State Policy and Fundamental Duties; Legislative framework and Powers of Union and States; Judicial framework; Executive/Administrative
framework; Legislative Process; Money Bill; Finance Bill and Other Bills; Parliamentary Standing Committees and their Role; Writ Jurisdiction of High Courts and the Supreme Court; Different types of writs.

3. **Interpretation of Statutes**: Need for interpretation of a statute; Principles of Interpretation; Aids to Interpretation; Legal Terminologies; Reading a Bare Act & Citation of Cases.

4. **General Clauses Act, 1897**: Key Definitions; General Rule of Construction; Retrospective Amendments; Powers and Functions; Power as to Orders, Rules etc., made under Enactments.

5. **Administrative Laws**: Conceptual Analysis; Source and Need of Administrative Law; Principle of Natural Justice; Administrative Discretion; Judicial Review & Other Remedies; Liability of Government, Public Corporation.

6. **Law of Torts**: General conditions of Liability for a Tort; Strict and Absolute Liability; Vicarious Liability; Torts or wrongs to personal safety and freedom; Liability of a Corporate Entity/Company in Torts; Remedies in Torts.

7. **Limitation Act, 1963**: Computation of the Period of Limitation; Bar of Limitation; Effect of acknowledgment; Acquisition of ownership by Possession; Classification of Period of Limitation.

8. **Civil Procedure Code, 1908**: Structure and Jurisdiction of Civil Courts; Basic Understanding of Certain Terms - Order, Judgment and Decree, Stay of Suits, Cause of Action, Res Judicata, Summary Proceedings, Appeals, Reference, Review and Revision; Powers of Civil Court and their exercise by Tribunals; Institution of Suit; Summary Procedure.

9. **Indian Penal Code, 1860**: Introduction; Offences against Property-Criminal Misappropriation of Property, Criminal Breach of Trust, Cheating, Fraudulent Deeds and Dispositions of Property; Offences relating to Documents and Property Marks- Forgery; Defamation; Abetment and Criminal Conspiracy.

10. **Criminal Procedure Code, 1973**: Classes of Criminal Courts; Power of Courts; Arrest of Persons; Mens Rea; Cognizable and Non-Cognizable Offences; Bail; Continuing Offences; Compounding of Offences; Summons and Warrants; Searches; Summary Trial.

11. **Indian Evidence Act, 1872**: Statements about the facts to be proved; Relevancy of facts connected with the fact to be proved; Opinion of Third Persons; Facts of which evidence cannot be given; Oral, Documentary and Circumstantial Evidence; Burden of proof; Presumptions; Estoppel; Witness; Improper admission & rejection of evidence.

12. **Special Courts, Tribunals under Companies Act & Other Legislations**: Constitution; Powers of Tribunals; Procedure before Tribunals; Powers of Special Courts; Power to punish for contempt; Overview of NCLT Rules; Quasi-Judicial Authorities.

13. **Arbitration and Conciliation Act, 1996**: Arbitration Law in India; Appointment of Arbitrators; Judicial Intervention; Award; Recourse against Award; Conciliation and Mediation.

14. **Indian Stamp Act, 1899**: Key Definitions; Principles of Levy of Stamp Duty; Determination, Mode and timing of Stamp Duty; Person responsible; Consequences of Non-Stamping and Under-Stamping; Adjudication; Allowance and Refund; Concept of E-Stamping.

15. **Registration Act, 1908**: Registration of Documents: Compulsory, Optional; Time and Place of Registration; Consequences of Non-Registration; Prerequisites for Registration.

16. **Right to Information Act, 2005**: Key Definitions; Public Authorities & their Obligations; Role of Central/State Governments; Central Information Commission; State Information Commission.

17. **Information Technology Act, 2000**: Introduction, definition, important terms under the Act; Digital Signatures, Electronic Record, Certifying Authority, Digital Signature Certificate; Cyber Regulation Appellate Tribunal; Offences and Penalties; Rules relating to sensitive personal data under IT Act.

Case Laws, Case Studies & Practical Aspects

**Executive Programme**

**Module 1**

**Paper 2**

**Company Law (Max Marks 100)**

**Objective**

To impart expert knowledge of the various provisions of the Companies Act, its schedules, rules, notifications, circulars including secretarial practice, case laws and Secretarial Standards.

**Detailed Contents**

**Part I: Company Law, Principles & Concepts (50 Marks)**

1. **Introduction to Company Law**: Jurisprudence of Company Law; Meaning, Nature, Features of a company; Judicial acceptance of the company as a separate legal entity; Concept of Corporate Veil, Applicability of Companies Act; Definitions and Key Concepts.

2. **Shares and Share Capital**: Meaning and types of Capital; Concept of issue and allotment; Issue of Share certificates; Further Issue of Share Capital; Issue of shares on Private and Preferential basis; Rights issue and Bonus Shares; Sweat Equity Shares and ESOPs; Issue and Redemption of preference shares; Transfer and Transmission of securities; Buyback of securities; dematerialization and re-materialization of shares; Reduction of Share Capital.

3. **Members and Shareholders**: How to become a member; Register of Members; Declaration of Beneficial Interest; Rectification of Register of Members; Rights of Members; Variation of Shareholders’ rights; Shareholders Democracy; Shareholder agreement, Subscription Agreements, Veto powers.

4. **Debt Instruments**: Issue and redemption of Debentures and Bonds; creation of security; Debenture redemption reserve;
debenture trust deed; conversion of debentures into shares; Overview of Company Deposits.

5. Charges: Creation of Charges; Registration, Modification and Satisfaction of Charges; Register of Charges; Inspection of charges; Punishment for contravention; Rectification by Central Government in Register of charges.

6. Distribution of Profits: Profit and Ascertainment of Divisible Profits; Declaration and Payment of Dividend; Unpaid Dividend Account; Investor Education and Protection Fund; Right to dividend; rights shares and bonus shares to be held in abeyance.

7. Corporate Social Responsibility: Applicability of CSR; Types of CSR Activities; CSR Committee and Expenditure; Net Profit for CSR; Reporting requirements.

8. Accounts, Audit and Auditors: Books of Accounts; Financial Statements; National Financial Reporting Authority; Auditors-Appointment, Resignation and Procedure relating to Removal, Qualification and Disqualification; Rights, Duties and Liabilities; Audit and Auditor’s Report; Cost Audit; Secretarial Audit; Special Audit; Internal Audit.

9. Transparency and Disclosures: Board’s Report; Annual Return; Annual Report; Website disclosures; Policies.

10. An overview of Inter-Corporate Loans, Investments, Guarantees and Security, Related Party Transactions.


12. An overview of Corporate Reorganization: Introduction of Compromises, Arrangement and amalgamation, Oppression and Mismanagement, Liquidation and winding-up; Overview of Registered Valuers; Registration Offices and Fees; Companies to furnish information and statistics.

13. Introduction to MCA 21 and filing in XBRL.


Part II: Company Administration and Meetings – Law and Practices (40 Marks)

15. Board Constitution and its Powers: Board composition; Restriction and Powers of Board; Board Committees- Audit Committee, Nomination and Remuneration Committee, Stakeholder relationship Committee and other Committees.

16. Directors: DIN requirement, Types of Directors; Appointment / Reappointment, Disqualifications, Vacation of Office, Retirement, Resignation and Removal, and Duties of Directors; Rights of Directors; Loans to Directors; Disclosure of Interest.

17. Key Managerial Personnel (KMP’s) and their Remuneration: Appointment of Key Managerial Personnel; Managing and Whole-Time Directors; Manager, Chief Executive Officer and Chief Financial Officer; Company Secretary – Appointment, Role and Responsibilities, Company Secretary as a Key Managerial Personnel; Functions of Company Secretary; Officer who is in default; Remuneration of Managerial Personnel.

18. Meetings of Board and its Committees: Frequency, Convening and Proceedings of Board and Committee meetings; Agenda Management; Management Information System; Meeting Management; Resolution by Circulation; Types of Resolutions; Secretarial Standard – 1; Duties of Company Secretaries before, during and after Board/ Committee Meeting.

19. General Meetings: Annual General Meeting; Extraordinary general meetings; Other General Meetings; Types of Resolutions; Notice, Quorum, Poll, Chairman, Proxy; Meeting and Agenda; Process of conducting meeting; Voting and its types-vote on show of hands, Poll, E-Voting, Postal ballot; Circulation of Members’ Resolutions etc.; Signing and Inspection of Minutes; Secretarial Standard – 2; Duties of Company Secretaries before, during and after General Meeting.

20. Virtual Meetings: Technological Advancement in conduct of Board Committee & General Meetings; e-AGM. Case Laws, Case Studies and Practical Aspects.

Part III: Company Secretary as a Profession (10 Marks)


22. Secretarial Standards Board: Secretarial Standards Board of ICSI; Process of making Secretarial Standards; Need and Scope of Secretarial Standards.

23. Mega Firms: Concept of mega firms; Benefits of mega firms, Eligibility criteria for partner, Agreement between partners; management of Firm; Collective multidisciplinary expertise; Public Relation and Brand Building. Case Laws, Case Studies and Practical Aspects.

Executive Programme
Module 1
Paper 3
Setting up of Business Entities and Closure(Max Marks 100)

Objective
To provide working knowledge and understanding of setting up of business entities and their closure.

Detailed Contents

Part A: Setting up of Business (40 Marks)

1. Choice of Business Organization: Key features of various structures and issues in choosing between business structures including identification of location; tax implications etc.

2. Company: Private Company; Public Company; One Person Company; Nidhi Company; Producer Company; Foreign Company-
3. **Charter documents of Companies**: Memorandum of Association and Articles of Association; Doctrine of ultra-vires; Doctrine of indoor management; Doctrine of constructive notice; Incorporation Contracts; Alteration in MOA & AOA- Change of name; registered office address; objects clause; alteration in share capital and alteration in articles of association.

4. **Legal status of Registered Companies**: Small Company; Holding Company; Subsidiary Company & Associate Company; Inactive Company; Dormant Company; Government Company.

5. **Limited Liability Partnership**: Concept of LLP; Formation and Registration; LLP Agreement; Alteration in LLP Agreement; Annual and Event Based Compliances.

6. **Other forms of business organizations**: Partnership; Hindu Undivided Family; Sole Proprietorship; Multi State Co-operative Society; Formation; Partnership Agreement and its registration.

7. **Institutions Not For Profit & NGOs**: Section 8 Company; Trust and Society- Formation and Registration.

8. **Financial Services Organization**: NBFCs; Housing Finance Company; Asset Reconstruction Company; Micro Finance Institutions (MFIs); Nidhi Companies; Payment Banks; Registration.

9. **Start-ups**: Start-up India Policy; Registration Process; Benefits under the Companies Act and other Government Policies; Different types of capital- Seed Capital; Venture Capital; Private Equity; Angel Investor; Mudra Bank.

10. **Joint Ventures; Special Purpose Vehicles**: Purpose and Process.

11. **Setting up of Business outside India**: Issues in choosing location; Structure and the processes involved.

12. **Conversion of existing business entity**: Conversion of private company into public company and vice versa; Conversion of Section 8 company into other kind of Company; Conversion of Company into LLP and vice versa; Conversion of OPC to other type of company and vice versa; Company authorised to be registered under the Act (Part XXI Companies); and other types of conversion.

Part B: Registration; Licenses & Compliances (35 Marks)

13. **Various Initial Registrations and Licenses**: Mandatory Registration - PAN; TAN; GST Registration; Shops & Establishments; SSI/MSME; Additional Registration-License - ESI/PF; FCRA; Pollution; Other registration as per requirement of sector; IE Code; Drug License; FSSAI; Trademark; Copyright; Patent; Design; RBI; Banking; IRDA; Telecom; I & B; MSME Registration; UdyogAadhar Memorandum; Industrial License, Industrial Entrepreneurs Memorandum (IEM); State Level Approval from the respective State Industrial Department.

14. **Maintenance of Registers and Records**: Register and Records required to be maintained by an enterprise.

15. **Identifying laws applicable to various Industries and their initial compliances**: Compliance of industry specific laws applicable to an entity at the time of setting up of the enterprise.


17. **Compliances under Labour Laws (Provisions applicable for setting up of business)**: Factories Act; 1948; Minimum Wages Act; 1948; Payment of Wages Act; 1936; Equal Remuneration Act; 1976; Employees’ State Insurance Act; 1948; Employees’ Provident Funds and Miscellaneous Provisions Act; 1952; Payment of Bonus Act; 1965; Payment of Gratuity Act; 1972; Employees Compensation Act; 1923; Contract Labour (Regulation and Abolition) Act; 1970; Industrial Disputes Act; 1947; Trade Unions Act; 1926; Maternity Relief Act; 1961; Child and Adolescent Labour (Prohibition and Regulation) Act; 1986; Persons with Disabilities (Equal Opportunities; Protection of Rights and Full Participation) Act, 1995; Prevention of Sexual Harassment of Women at Workplace (Prevention; Prohibition and Redressal) Act, 2013.


Part C: Insolvency; Winding up & Closure of Business (25 Marks)

19. **Dormant Company**: Obtaining dormant status and dormant to active status.

20. **Strike off and restoration of name of the company and LLP**.

21. **Insolvency Resolution process; Liquidation and Winding-up**: An overview.
1. **Direct Taxes at a Glance**: Background of Taxation system in India; Vital Statistics; Layout; Administration.
2. **Basic concepts of Income Tax**: An overview of Finance Bill, Important definitions under Income Tax Act, 1961; Distinction between Capital and Revenue Receipts and Expenditure; Residential Status & Basis of Charge; Scope of Total Income; Tax Rates.
3. **Incomes which do not form part of Total Income**: Incomes not included in Total Income; Tax holidays.
4. **Computation of Income under Various Heads**: Income from Salary; Income from House Property; Profit and Gains of Business or Profession; Capital Gains; Income from Other Sources; Fair Market Value.
5. **Clubbing provisions and Set Off and/or Carry Forward of Losses**: Income of other persons included in Assessee’s Total Income; Aggregation of Income; Set off and/or Carry forward of losses.
6. **Deductions from Gross Total Income & Rebate and Relief**: Deductions in respect of certain payments; Specific deductions in respect of certain income; Deductions in respect for donations for expenditure under CSR activities; Rebates and Reliefs.
7. **Computation of Total Income and Tax Liability of various entities**: Individual; Hindu Undivided Family ‘HUF’; Alternate Minimum Tax (AMT); Partnership Firm / LLP; Co-operative Societies; Association of Person ‘AOP’ and Body of Individual ‘BOI’; Political Parties; Electoral Trusts; Exempt organization – Registration u/s 12A/12AA;
8. **Classification and Tax Incidence on Companies**: Computation of taxable income and tax liability of Company; Dividend Distribution Tax; Minimum Alternate Tax ‘MAT’; Other Special Provisions Relating to Companies; Equalization Levy.
9. **Assessment, Appeals & Revision**: Assessment; Types of Assessment; Appeals; Revisions; Search, Seizure, Penalty and Offences.

**Part II: Indirect Taxes (50 marks)**

(A) **Goods and Service Tax**

11. **Concept of Indirect Taxes at a glance**: Background; Constitutional powers of taxation; Indirect taxes in India – An overview; Pre-GST tax structure and deficiencies; Administration of Indirect Taxation in India; Existing tax structure.
12. **Basics of Goods and Services Tax ‘GST’**: Basics concept and overview of GST; Constitutional Framework of GST; GST Model – CGST / IGST / SGST / UTGST; Taxable Event; Concept of supply including composite and mixed supply; Levy and collection of CGST and IGST; Composition scheme & Reverse Charge; Exemptions under GST.
13. **Concept of Time, Value & Place of Taxable Supply**: Basic concepts of Time and Value of Taxable Supply; Basics concept of Place of Taxable Supply.
14. **Input Tax Credit & Computation of GST Liability - Overview**.
15. **Procedural Compliance under GST**: Registration; Tax Invoice, Debit & Credit Note, Account and Record, Electronic way Bill; Return, Payment of Tax, Refund Procedures; Audit.
16. **Basic overview on Integrated Goods and Service Tax (IGST), Union Territory Goods and Service tax (UTGST), and GST Compensation to States**.

(B) **Customs Act**

17. **Overview of Customs Act**: Overview of Customs Law; Levy and collection of customs duties; Types of Custom duties; Classification and valuation of import and export goods; Exemption; Officers of customs; Administration of Customs Law; Import and Export Procedures; Transportation, and Warehousing; Duty Drawback; Demand and Recovery; Confiscation of Goods and Conveyances; Refund.

**Case Laws, Case Studies & Practical Aspects.**

**Executive Programme**

Module 2

Paper 5

Corporate & Management Accounting(Max Marks 100)

**Objectives**

Part I: To provide knowledge and understanding of the concepts, principles and practices in Corporate Accounting and Indian and International Accounting Standards.

Part II: To acquire knowledge and understanding of the concepts, techniques and practices of management accounting and to develop skills for decision making and to acquire knowledge of the concepts, principles and methods of valuation.

**Detailed Contents**

**Part I: Corporate Accounting (60 marks)**

1. Introduction to Financial Accounting.
2. Introduction to Corporate Accounting: Records of accounts to be maintained by a company.

3. Accounting for Share Capital: Issue of Shares; Forfeiture and Re-issue of Shares, Accounting treatment of premium, Buyback of Shares; Redemption and Conversion; Capital Redemption Reserve, Bonus Shares; Rights Issue, ESOPs, ESPS, Sweat Equity Shares; and Underwriting; Book Building.


5. Related Aspects of Company Accounts: Accounting for ESOP, Buy-back, Equity Shares with differential rights, Underwriting and Debentures.

6. Financial Statements Interpretation: Preparation and Presentation of Financial Statements; Quarterly, Half-yearly and Annual Financial Statement pursuant to Listing Regulations; Depreciation provisions and Reserves; Determination of Managerial Remuneration, Corporate Social Responsibility spend, various disclosures under the Companies Act, 2013, LODR & applicable accounting standards; Related party and segment reporting, Audit Queries; How to Read and interpret Financial Statements.

7. Consolidation of Accounts as per Companies Act, 2013: Holding Company, Subsidiary Companies, Associate Companies and Joint Venture; Accounting Treatment and disclosures.


11. National and International Accounting Authorities.

12. Adoption, Convergence and Interpretation of International Financial Reporting Standards (IFRS) and Accounting Standards in India.

Case Studies & Practical Aspects.

Part II: Management Accounting and Valuation (40 marks)


15. Budget, Budgeting and Budgetary Control: Preparation of various types of Budgets; Budgetary Control System; Zero Based Budgeting; Performance Budgeting


17. Management Reporting (Management Information Systems)

18. Decision Making Tools: Marginal Costing; Transfer Pricing


20. Valuation of Shares, Business and Intangible Assets: Regulatory Valuations; Companies Act; Insolvency and Bankruptcy Code; Income Tax Act; SEBI law; FEMA and RBI guidelines.

21. Accounting for Share based payments (IndAS 102)

22. Business and Intangible Assets

23. Methods of Valuation: Net Assets Valuation: Relative Valuation (Comparable Companies/Transactions); Discounted Cash Flow Valuation; Other Methods

Case Studies & Practical Aspects
3. Depositories Act, 1996: Depository System in India; Role & Functions of Depositories; Depository Participants; Admission of Securities; Dematerialization & Re-materialisation; Depository Process; Inspection and Penalties; Internal Audit and Concurrent Audit of Depository Participants.


6. An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

7. SEBI (Buyback of Securities) Regulations, 1998: Conditions of buy-back; Buy back Methods: Tender Offer, Open Market (Book building and Stock Exchange); General obligations; Penalties.

8. SEBI (Delisting of Equity Shares) Regulations, 2009: Delisting of Equity Shares; Voluntary Delisting; Exit Opportunity; Compulsory Delisting.


11. SEBI (Prohibition of Insider Trading) Regulations, 2015: Unpublished price sensitive information (UPSI); Disclosures; Codes of fair disclosure and conduct; Penalties and Appeals.


13. Collective Investment Schemes: Regulatory Framework; Restrictions on Business Activities; Submission of Information and Documents; Trustees and their Obligations.


Case Laws, Case Studies & Practical Aspects

Part II: Capital Market & Intermediaries (30 Marks)

15. Structure of Capital Market

I. Primary Market
   a. Capital Market Investment Institutions-Domestic Financial Institutions (DFI), Qualified Institutional Buyers (QIB), Foreign Portfolio Investors (FPI), Private Equity, Angel Funds, HNIs, Venture Capital, Pension Funds, Alternative Investment Funds.
   c. Aspects of Primary Market- book building, ASBA, Green Shoe Option.

II. Secondary Market
   Development of Stock market in India; Stock market & its operations, Trading Mechanism, Block and Bulk deals, Grouping, Basis of Sensex, Nifty; Suspension and Penalties; Surveillance Mechanism; Risk management in Secondary market, Impact of various Policies on Stock Markets such as Credit Policy of RBI, Fed Policy, Inflation index, CPI, WPI, etc.


Case Laws, Case Studies & Practical Aspects.

Executive Programme
Module 2
Paper 7
Economic, Business and Commercial Laws (Max Marks 100)

Objectives

Part I: To provide expert knowledge in Foreign Exchange Management and NBFCs.
Part II: To provide expert knowledge in Competition Law.
Part III: To provide working knowledge in Business and Commercial Laws.

Detailed Contents

Part I

Foreign Exchange Management &NBFCs (40 Marks)

1. Reserve Bank of India Act, 1934: Central Banking functions; Monetary policy; Penalties.
2. Foreign Exchange Management Act, 1999: Introduction
3. Foreign Exchange Transactions & Compliances: Current and Capital Account Transactions; Acquisition & Transfer of Immoveable Property in India and Abroad; Realization and Repatriation of Foreign Exchange; Brief information of other FEMA
Regulations.


5. Foreign Direct Investments – Regulations & FDI Policy: Automatic and Approval Route of FDI; Setting up of Subsidiary/Joint Venture/Liaison Office/ Branch Office by Non-residents; Foreign Portfolio Investments.


7. Liberalized Remittance Scheme: Investment Outside India by Indian Residents.


9. Foreign Trade Policy & Procedure: Merchandise Exports from India Scheme (MEIS); Service Exports from India Scheme (SEIS); Duty exemption / remission schemes; Export oriented units (EOUS); Electronics Hardware Technology Parks (EHTPS); Software Technology Parks (STPS); Bio-Technology Parks (BTPS).Imports and related policies.

10. Non Banking Finance Companies (NBFCs): Definition; Types; Requirement of Registration as NBFC and exemptions from registration as NBFC; Micro Finance Institutions, Activities of NBFCs; Compliances by the NBFCs and requirements of approvals of RBI; Deposit Accepting and Non-deposit Accepting NBFCs; Deemed NBFC; Core Investment Company and Systemically Important Core Investment Companies; Peer to Peer Lending; Defaults, Adjudication, prosecutions and penalties.

11. Special Economic Zones Act, 2005: Establishment of Special Economic Zones; Approval and Authorization to Operate SEZ; Setting up of Unit; Special Economic Zone Authority.

Case Laws, Case Studies & Practical Aspects

Part II

Competition Law (25 Marks)

12. Competition Act, 2002: Competition Policy; Anti-Competitive Agreements; Abuse of Dominant Position; Overview of Combination and Regulation of Combinations; Competition Advocacy; Competition Commission of India; Appellate Tribunal.

Case Laws, Case Studies & Practical Aspects

Part III

Business & Commercial Laws (35 Marks)

Consumer Protection

13. Consumer Protection Act, 1986: Consumer Protection in India; Rights of Consumers; Consumer Dispute Redressal Forums; Nature and Scope of Remedies.

14. Essential Commodities Act, 1955: Essential Commodities; Powers of Central Government; Authorities responsible to administer the Act; Delegation of powers; Nature of Order passed under the Act; Seizure and Confiscation of Essential Commodities; Offences by Companies.

15. Legal Metrology Act, 2009: Standard weights and measures; Power of inspection, seizure; Declarations on pre-packaged commodities; Offences and penalties.

Property Law

16. Transfer of Property Act, 1882: Types of Properties; Properties which cannot be Transferred; Rule Against Perpetuities; Lis Pendens; Provisions Relating to Sale; Mortgage, Charge, Lease, Gift and Actionable Claim; Specific Performance.

17. Real Estate (Regulation and Development) Act, 2016: Registration of Real Estate Project; Real Estate Agents; Real Estate Regulatory Authority; Central Advisory Council; The Real Estate Appellate Tribunal; Offences, Penalties and Adjudication. Specimen Agreement for Sale between the Promoter and the Allottee; Due Diligence Reporting.

Anti-Corruption Laws


19. Prevention of Money Laundering: Problem and adverse effect of money laundering; Methods of money laundering; Offence of money laundering; Attachment, adjudication and confiscation.

Business Laws

20. Indian Contracts Act, 1872: Essential elements of a Valid Contract; Indemnity and Guarantee; Bailment and Pledge; Law of Agency; E-Contract; Landmark judgments.

21. Specific Relief Act, 1963: Specific reliefs and defense; specific performance and defense; unenforceable contracts; Rescission of Contracts; Cancellation of Instruments; Decleratory Decrees; Preventive Reliefs.


23. Partnership Act, 1932: Rights and Liabilities of Partners; Registration of Firms; Dissolution of Firms and Partnership; Landmark judgments.
24. **Negotiable Instrument Act, 1881**: Negotiable Instruments and Parties; Material Alteration; Crossing and bouncing of Cheques; Dishonour of Cheques & Its Remedies; Presumption of Law as to Negotiable Instruments; Landmark judgments.

**Case Laws, Case Studies & Practical Aspects**

---

**Executive Programme**

**Module 2**

**Paper 8**

**Financial and Strategic Management (Max Marks 100)**

---

**Objective**

**Part I:** To provide knowledge of practical aspects of financial management so as to develop skills in taking financial and investment decisions.

**Part II:** To enable students to acquire multidimensional skills as to equip them to comprehend the process of strategy formulation.

---

**Detailed Contents**

**Part I: Financial Management (60 marks)**


2. **Capital Budgeting**: Compounding and Discounting techniques- Concepts of Annuity and Perpetuity; Capital Budgeting Process; Techniques of Capital Budgeting- Discounted and Non-Discounted Cash Flow Methods; Capital Rationing; Risk Evaluation and Sensitivity Analysis.

3. **Capital Structure**: Introduction- Meaning and Significance; Optimal Capital Structure; Determinants of Capital Structure; Theories of Capital Structure; EBIT - EPS Analysis; EBITDA Analysis; Risk and Leverage; Effects of Leverage on Shareholders’ Returns.

4. **Sources of raising long-term finance and Cost of Capital**: Sources, Meaning, Factors Affecting Cost of Capital; Methods for Calculating cost of capital; Weighted Average Cost of Capital (WACC); Marginal Cost of Capital.

5. **Project Finance**: Project Planning – Preparation of Project Report, Project Appraisal under Normal Inflationary and Deflationary Conditions; Project Appraisal by Financial Institutions – Lending Policies and Appraisal Norms by Financial Institutions and Banks; Project Review and Control; Social Cost and Benefit Analysis of Project. Term loans from Financial institutions and Banks; Lease and Hire Purchase Finance; Venture Capital Funds; Private Equity; International Finance and Syndication of Loans, Deferred Payment Arrangements; Corporate Taxation and its Impact on Corporate Financing; Financing Cost Escalation.

6. **Dividend Policy**: Introduction- Types; Determinants and Constraints of Dividend Policy; Forms of Dividend; Different Dividend Theories.

7. **Working Capital**: Meaning, Types, Determinants and Assessment of Working Capital Requirements, Negative Working Capital; Operating Cycle Concept and Applications of Quantitative Techniques; Management of Working Capital – Cash Receivables Inventories; Financing of Working Capital; Banking Norms and Macro Aspects; Factoring and Forfaiting.


9. **Portfolio Management**: Meaning, Objectives; Portfolio Theory -Traditional Approach; Markowitz Portfolio Theory; Modern Approach - CAPM Model; Economic Value Added; Sharpe Single & Multi Index Model; Risk Adjusted Measure of Performance.

**Part II: Strategic Management (40 Marks)**


11. **Introduction to Strategic Management**: An Overview- Meaning & Process; Strategic Leadership; Functions and Importance for Professionals like Company Secretaries; Environmental Influences of Business-Characteristics and Components of Business Environment, Factors of Micro & Macro Environment of Business; Competitive Environment and Porter’s Five Force Model.

12. **Business Policy and Formulation of Functional Strategy**: Introduction to Business Policy; Framework of Strategic Management; Strategic Decision Model; Vision; Mission; Objectives and Goals; Strategic Levels of the Organization; Formulation of Functional Strategy-Formulation of Financial; Marketing; Production; Human Resource and Logistics strategies.

13. **Strategic Analysis and Planning**: Situational Analysis, Strategic Choices-SWOT and TOWS Analysis; PERT (Programme Evaluation Review Technique) and CPM (Critical Path Method); Portfolio analysis-Boston Consulting Group (BCG) growth-share Matrix, Ansoff’s Product Growth Matrix, ADL Matrix and General Electric (GE) Model; Strategic Planning; Strategic Alternatives-Glueck and Jauch and Michael Porter’s Generic Strategies.

14. **Strategic Implementation and Control**: Issues in Strategy Implementation; Various Organizational Structures and Strategy Implementation; Leadership and its forms ; Strategic Change and Control.

15. **Analysing Strategic Edge**: Introduction to Business Process Reengineering; Concept of Benchmarking; Introduction to Total Quality Management and Six Sigma.

---

**Papers under Professional Programme**
Objective

Part-I : To develop skills of high order so as to provide thorough knowledge and insight into the corporate governance framework, best governance practices.

Part–II : To develop skills of high order so as to provide thorough knowledge and insight into the spectrum of risks faced by businesses.

Part-III : To develop the ability to devise and implement adequate and effective systems to ensure compliance of all applicable laws.

Part-IV : To acquire knowledge of ethics in business and framework for corporate sustainability reporting.

Detailed Contents

Part I: Governance (50 Marks)


2. Legislative Framework of Corporate Governance in India: Listed Companies, Unlisted Companies, PSUs, Banks and Insurance Companies.


4. Board Processes through Secretarial Standards.

5. Board Committees: Composition & Terms of Reference, Roles and Responsibilities.

6. Corporate Policies &Disclosures: Various policies and disclosures to be made as per regulatory requirements / voluntarily made as part of good governance.


8. Performance Evaluation of Board and Management: Evaluation of the performance of the Board as a whole, individual directors (including independent directors and Chairperson), various Committees of the Board and of the management.

9. Role of promoter/controlling shareholder, redressal against Oppression and Mismanagement.

10. Monitoring of group entities and subsidiaries.

11. Accounting and Audit related issues.


15. Corporate Governance and other Stakeholders: Employees, Customers, Lenders, Vendors, Government and Regulators, Society, etc.


17. Corporate Governance Forums.

18. Parameters of Better Governed Companies: ICSI National Award for Excellence in Corporate Governance.

19. Dealing with Investor Associations, Proxy Services Firms and Institutional Investors.

20. Family Enterprise and Corporate Governance.

Case Laws, Case Studies & Practical Aspects.

Part II: Risk Management (20 Marks)


Case Studies & Practical Aspects.

Part III: Compliance (20 Marks)

22. Compliance Management: Essentials of successful compliance program, Significance of Compliance, devising proper systems to ensure compliance, ensuring adequacy and effectiveness of compliance system, internal compliance reporting mechanisms, use of technology for compliance management.


25. **Website Management**: Meeting through Video Conferencing.

**Part IV: Ethics & Sustainability (10 Marks)**


28. **Models / Approaches to measure Business Sustainability**: Altman Z-Score Model, Risk Adjusted Return on Capital, Economic Value Added (EVA), Market Value Added (MVA), Sustainable Value Added Approach.


**Professional Programme**

**Module 1**

**Paper 2**

**Advanced Tax Laws (Max Marks 100)**

**Objectives**

**Part I**: To acquire expert subject knowledge, interpretational skills and practical application on Customs and GST Laws.

**Part II**: To acquire expert knowledge on practical application of Corporate taxation including International Taxation.

**Detailed Contents**

**Indirect Taxes (70 Marks)**

**Part I: GST and Customs Laws**

**Goods and Service Tax ‘GST’ (60 Marks)**

1. **An Overview on Goods and Services Tax ‘GST’**: Introduction; Constitutional Aspects & Administration; GST models; Levy and collection of CGST and IGST; Composition scheme & Reverse Charge; Exemptions.

2. **Supply**: Meaning & scope, types of supply (composite/mixed inter/ intra); Time, Place and Value of Taxable Supply; Import and Export of Goods or Services under GST; Classification of Goods and Services; Job work provisions, agency contracts, e-commerce & TCS.

3. **Input Tax Credit & Computation of GST Liability**: Input tax credit; Computation of GST liability.

4. **Procedural Compliance under GST**: Registration; Tax Invoice, Debit & Credit Note, Account and Record; Electronic way Bill, Payment of Tax, TDS, Returns & Refund; Valuation, Audit & Scrutiny; Assessment.

5. **Demand and Recovery, Advance Ruling, Appeals and Revision**.

6. **Inspection, search, seizure, offences & penalties**.

7. **Compliance rating, anti-profiteering, GST practitioners, authorised representative, professional opportunities**.

8. **Integrated Goods and Service Tax (IGST)**.

9. **Union Territory Goods and Service tax (UTGST)**.

10. **GST Compensation to States**.

11. **Industry/ Sector Specific Analysis**.

**Customs Law (10 Marks)**

12. **Basic Concepts of Customs Law**: Introduction; Levy and collection of customs duties; Taxable Events; Custom duties.

13. **Valuation & Assessment of Imported and Export Goods & Procedural Aspects**: Classification and Valuation of Import and Export Goods; Assessment; Abatement and Remission of Duty; Exemptions; Refund and recovery.

14. **Arrival or Departure and Clearance of Goods, Warehousing, Duty Drawback, Baggage and Miscellaneous Provisions**: Arrival and departure of goods; Clearance of Import and Export Goods & Goods in Transit; Transportation and Warehousing provisions; Duty Drawback provisions; Baggage Rules & provision related to prohibited goods, notified goods, specified goods, illegal importation / exportation of goods.
15. Advance Ruling, Settlement Commission, Appellate Procedure, Offences and Penalties: Advance Ruling; Appeal and Revision; Offences and Penalties; Prosecution; Settlement of Cases.

16. Foreign Trade Policy (FTP) to the extent relevant to Indirect tax: Export promotion scheme under FTP; Salient features, administration & Other miscellaneous provisions.

Case Laws, Case Studies & Practical Aspects.

Part II: Direct Tax & International Taxation (30 Marks)


16. Taxation of Companies, LLP and Non-resident: Tax incidence on Companies including foreign company; Minimum Alternate Tax ‘MAT’; Dividend Distribution Tax; Alternate Minimum Tax ‘AMT’; Tax incidence on LLP; Taxation of Non-resident Entities.

17. General Anti Avoidance Rules ‘GAAR’: Basic concept of GAAR; Impermissible avoidance arrangement; Arrangement to lack commercial substance; Application of GAAR Rule; GAAR v/s SAAR.

18. Basics of International Taxation
   ii. Place of Effective Management (POEM): Concept of POEM; Guidelines of determining POEM.


20. Income Tax Implication on specified transactions: Slump Sale; Restructuring; Buy Back of shares; Redemption of Preference shares; issue of shares at Premium; Transfer of shares; Reduction of share Capital; Gifts, cash credits, unexplained money, investments etc.

Case Laws, Case Studies & Practical Aspects.

Professional Programme
Module 1
Paper 3
Drafting, Pleadings and Appearances(Max Marks 100)

Objective
To provide expert knowledge of drafting, documentation and advocacy techniques.

Detailed Contents

1. Judicial & Administrative framework: Procedure; Jurisdiction and Review; Revisions; Reference; Appellate forum.

2. General Principles of Drafting and relevant Substantive Rules: Drafting: Concept, General Principles and relevant substantive rules thereof; Drafting in simple language, nuances of drafting, common errors and its consequences like litigation, liability. Drafting policies, code of conduct, guidance note, waivers, releases, disclaimers, Basic Components of Deeds, Endorsements and Supplemental Deeds, Aids to Clarity and Accuracy, Legal Requirements and Implications; Supreme Court Rules and other guiding principles for drafting.

3. Secretarial Practices & Drafting: Principles relating to Drafting of various resolutions; Drafting of notices & Explanatory Statements; Preparation of Agenda for meetings; Drafting and recording of minutes.

4. Drafting and Conveyancing relating to Various Deeds and Agreements: Conveyancing in General, Object of Conveyancing-Drafting of Conveyancing agreements, wills, encumbrances and gift deeds.

5. Drafting of agreements, documents and deeds: Drafting of various Commercial Agreements, Guarantees, Counter Guarantees, Bank Guarantees, Outsourcing Agreements, Service Agreements, E-Contracts, Legal License, IPR Agreements; General and Special Power of Attorney; Pre-incorporation Contracts; Share Purchase Agreement; Shareholders Agreements and Other agreements under the Companies Act, 2013; Drafting of Memorandum of Association and Articles of Associations; Drafting of Provisions for Entrenchment of Specified Provision of Articles; Joint Venture and Foreign Collaboration Agreement, Non-disclosure Agreements; Drafting of Limited Liability Partnership Agreement, Drafting of Bye Laws for Societies; Drafting Replies to Regulatory Show Cause Notices; Review of critical business documents and press releases; Responding to proxy Advisory Reports, Drafting Response to Media Reports; Drafting and review of crisis communications, presenting complex legal subjects to simple business oriented language.

6. Pleadings: Pleadings in General; Object of Pleadings; Fundamental Rules of Pleadings; Civil: Plain Structure; Description of Parties; Written Statements, Interlocutory Applications, Original Petition, Affidavit, Execution Petition and Memorandum of Appeal and Revision, Petition under Articles 226 and 32 of Constitution of India, Special Leave Petition; Criminal: Complaints, Criminal Miscellaneous Petition, Bail Application and Memorandum of Appeal and Revision; Drafting of Affidavit in Evidence; Arguments on Preliminary Submissions; Arguments on Merits; Legal Pleadings and Written Submissions, Application, Petitions, Revision Petitions, Notice of Motion, Witness, Improper Admission, Rejection, Appeal, Review, Suits, Undertakings, Indemnity Bonds, Writs, Legal Notices, Response to Legal Notices.

7. Art of Writing Opinions: Understanding facts of the case; case for opinion writing, Application of relevant Legal Provisions to the
8. **Appearances & Art of Advocacy:** Requisites for entering appearances; Appearing before Tribunals/Quasi-judicial Bodies such as NCLT/NCLAT/CCI/TRAI/Tax Authorities and Appellate Tribunals/authorities such as ROC/RD/RBI/ED/Stock Exchange/SEBI/RERA; Art of advocacy.

Case Laws, Case Studies & Practical Aspects.
d) Insider Trading Audit  
e) Industrial and Labour Laws Audit  
f) Cyber Audit  
g) Environment Audit  
h) Systems Audit  
i) Forensic Audit  
j) Social Audit.

12. Audit Engagement: Audit engagement; Appointing authority; communication to previous Auditor; Terms & conditions; Audit fees & expenses; Independence & conflict of interest; confidentiality; Auditing standard on Audit engagement.

13. Audit Principles and Techniques: Audit Planning; Risk Assessment; Collection of information/Records of Audit, Audit Checklist; Audit Techniques, Examination & its process; Enquiry; Confirmation; Sampling; Compliance Test of Internal Control System; Substantive Checking; Dependence on other Expert, Verification of documents/records; Collection of audit evidences; Creation of Audit trails; Analysis of Audit findings; Documentation; materiality; record keeping;

14. Audit Process and Documentation: Preliminary Preparations; Questionnaire; Interaction; Audit program; Identification of applicable laws; creation of master checklist; Maintenance of Work-sheet, working papers and audit trails; Identification of events/corporate actions; Verification; Board composition; Board process; systems and process; identification of events having bearing on affairs of the Company, Auditing standard on Audit process & documentation.


16. Secretarial Audit – Fraud detection & Reporting: Duty to report fraud; Reporting of Fraud by Secretarial Auditor; Fraud vs. Non-compliance; speculation; suspicion; Reason to believe; knowledge; Reporting; Professional Responsibilities and Penalties; Record keeping; Reporting of fraud in Secretarial Audit Report.

17. Quality Review: Peer Review; Monitoring of Certification and Audit Work by Quality Review Board.


19. Due Diligence: Overview and Introduction; Types of Due Diligence; Financial Due diligence; Tax Diligence; Legal Due Diligence; Commercial or Business Diligence – including operations, IT systems, IPRs; Human Resources Due Diligence; Due Diligence for Merger; Amalgamation; Slump Sale; Takeover; Issue of Securities; Depository Receipts; Competition Law Due Diligence; Labour Laws Due Diligence; Due Diligence Report for Bank; FEMA Due Diligence; FCRA Due Diligence; Techniques of Due Diligence and Risk Assessment; Non-Disclosure Agreement.


Case Laws, Case Studies & Practical Aspects.

Objective

Part I: To provide expert knowledge of legal, procedural and practical aspects of Corporate Restructuring, M & A, Insolvency, Liquidation & Winding-up.

Part II: To acquire knowledge of the legal, procedural and practical aspects of Insolvency and its resolution.

Detailed Contents

Part I: Corporate Restructuring (50 Marks)

1. Types of Corporate Restructuring: Key definitions, Compromises, Arrangements, Mergers & Amalgamations; Demergers & Slump Sale, Business Sale; Joint Venture, Strategic Alliance, Reverse Merger Disinvestment; Financial Restructuring (Buy-back, Alteration & Reduction).


3. Planning & Strategy: Case Studies pertaining to Merger, Amalgamation, Restructuring; Funding for M&A, Studies of Judicial pronouncements; Planning relating to acquisitions & takeovers; Protection of minority interest; Succession Planning; Managing Family Holdings through Trust.

4. Process of M&A transactions: Key Concepts of M&A; Law & Procedure; M&A Due Diligence; M&A Valuation; M&A Structure finalization; Post transaction integration.

5. Documentation–Merger & Amalgamation: Drafting of Scheme; Drafting of Notice and Explanatory Statement; Drafting of...
6. **Valuation of Business and Assets for Corporate Restructuring**: Type of Valuations; Valuation Principles & Techniques for Merger, Amalgamation, Slump Sale, Demerger; Principles & Techniques of Reporting; Relative valuation and Swap ratio.

7. **Accounting in Corporate Restructuring—Concept and Accounting Treatment**: Methods of Accounting for Amalgamations - AS-14/ IndAS 103; Treatment of Reserves, Goodwill; Pre-Acquisition & Post-Acquisition Profit; Accounting in Books of Transferee and Transferee; Merger and De-Merger; Acquisition of Business and Internal Reconstruction.

8. **Taxation & Stamp Duty aspects of Corporate Restructuring**: Capital Gain; Set-off and carry forward under section 2(14) of Income Tax Act; Deemed Dividend; Payment of Stamp Duty on scheme, payment of stamp duty on movable and immovable properties.

9. **Competition Act**: Regulation of combinations under the competition Act, Kinds of combinations, Exempted combinations, Concept of relevant market and its importance, Determination of combinations and any appreciable adverse effect, Role of CCI.

10. **Regulatory approvals of scheme**: From CCI, Income Tax, Stock Exchange, SEBI, RBI, RD, ROC, OL and Sector Regulators such as IRDA, TRAI, etc.

11. **Appearance before NCLT / NCLAT**.

12. **Fast Track Mergers**: Small companies, Holding and wholly owned companies.

13. **Cross Border Mergers**.

**Case Laws/ Case Studies/ Practical aspects**

**Part II: Insolvency & Liquidation (50 Marks)**

14. **Insolvency**: Historical Background; Pillars of IBC, 2016 [IBBI, IPA, IP, AA, Information Utility]; Key Definitions and Concepts; Insolvency Initiation/Resolution under sections 7, 8 and 10.

15. **Petition for Corporate Insolvency Resolution Process**: Legal Provisions; Procedure, Documentation; Appearance, Approval; Case Laws.

16. **Role, Functions and Duties of IP/ IRP/ RP**: Public announcement, Management of affairs and operations of company as a going concern, Raising of Interim Finance, Preparation of Information Memorandum.

17. **Resolution Strategies**: Restructuring of Equity & Debt; Compromise & Arrangement; Acquisition, Takeover & Change of Management; Sale of Assets; Valuation.

18. **Convening and Conduct of Meetings of Committee of Creditors**: Constitution of Committee of Creditors; Procedural aspects for meeting of creditors.

19. **Preparation & Approval of Resolution Plan**: Contents of resolution plan; Submission of resolution plan; Approval of resolution plan.

20. **Individual/ Firm Insolvency**: Application for insolvency resolution process; Report of resolution professional; Repayment plan; Discharge Order.

21. **Fresh Start Process**: Person eligible to apply for fresh start; Application for fresh start order; Procedure after receipt of application; Discharge order.

22. **Debt Recovery & SARFAESI**: Non-Performing Assets; Asset Reconstruction Company; Security Interest (Enforcement) Rules, 2002; Evaluation of various options available to bank viz. SARFAESI, DRT, Insolvency Proceedings; Application to the Tribunal/Appellate Tribunal.

23. **Cross Border Insolvency**: International Perspective and Global Developments; UNCITRAL Legislative Guide on Insolvency Laws; US Bankruptcy Code, Chapter 11 reorganization; Enabling provisions for cross border transactions under IBC.

24. **Liquidation on or after failing of RP**: Initiation of Liquidation; Distribution of assets; Dissolution of corporate debtor.

25. **Voluntary Liquidation**: Procedure for Voluntary Liquidation; Powers and duties of the Liquidator; Completion of Liquidation.

26. **Winding-up by Tribunal under the Companies Act, 2013**: Procedure of Winding-up by Tribunal; Powers and duties of the Company Liquidator; Fraudulent preferences.

**Case Laws, Case Studies and Practical aspects.**
2. Corporate Disputes: Oppression & Mismanagement- Law & Practice; Refusal of registration of transfer of securities & appeal against refusal; Wrongful withholding of property of company; corporate criminal liability.

3. Fraud under Companies Act and IPC.


7. Fines, Penalties and Punishments under various laws.


9. Relief and Remedies: Compounding of offences under Companies Act, SEBI & FEMA; Mediation and Conciliation; Settlement and Proceeding (Consent order under SEBI law); Appeal against the order of Adjudicating officer, SAT, NCLT, NCLAT, Enforcement Directorate, IT Commissioner, GST Commissioner; Revision of order; Appearance before Quasi-judicial and other bodies- NCLT, NCLAT, SAT, SEBI, RD, ROC, RBI, CCI.


Case Laws, Case Studies and Practical aspects.

---

**Professional Programme**

**Module 3**

**Paper 7**

**Corporate Funding & Listings in Stock Exchanges (Max Marks 100)**

---

**Objective**

Part I: To provide practical knowledge of means of finance available to corporates at their various stages of journey, their suitability, pros and cons, process, compliances etc.

Part II: To acquire knowledge of legal & procedural aspects of various types of listing, eligibility criteria, documentation, compliances etc.

---

**Detailed Contents**

**Part-A: Corporate Funding (60 Marks)**

1. **Indian Equity- Public Funding:** Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; Initial Public Offer (IPO)/ Further Public Offer (FPO); Preferential Allotment; Private Placement; Qualified Institutional Placement; Institutional Private Placement; Rights Issue; Fast Track Issue; Real Estate Investment Trust (REIT); Infrastructure Investment Trust (InvIT).

2. **Indian Equity - Private funding:** Venture Capital; Alternative Investment Fund; Angel Funds; Seed Funding; Private Equity.

3. **Indian equity - Non Fund based:** Bonus issue; Sweat Equity, ESOP.

4. **Debt Funding – Indian Fund Based:** Debentures, Bonds; Masala Bonds; Bank Finance; Project Finance including machinery or equipment loan against property, Loan against shares; Working Capital Finance- Overdrafts, Cash Credits, Bill Discounting, Factoring etc. Islamic Banking.

5. **Debt Funding – Indian Non fund Based:** Letter of Credit; Bank Guarantee; Stand by Letter of Credit etc.

6. **Foreign Funding - Instruments & Institutions:** External Commercial Borrowing (ECB); American Depositary Receipt (ADR)/ Global Depository Receipt (GDR); Foreign Currency Convertible Bonds (FCCB); Foreign Currency Exchangeable Bonds (FCEB); International Finance Corporation (IFC), Asian Development Bank (ADB), International Monetary Fund (IMF).

7. **Other Borrowings Tools:** Inter-corporate Loans; Commercial Paper etc.; Deposits under Companies Act; Customer Advances/ Deposits.

8. **Non-Convertible Instruments- Non-Convertible Redeemable Preference Shares (NCRPs) etc.**

9. **Securitization.**

**Part B: Listing (40 Marks)**

10. **Listing–Indian Stock Exchanges:** Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; Equity Listing (SME, ITP, Main):Debt Listing; Post listing disclosures.

11. **International Listing:** Applicability of Listing Regulations, Singapore Stock Exchange; Luxembourg Stock Exchange; NASDAQ-NGSMA, NCM, NGM; London Stock Exchange- Main, AIM; U S Securities and Exchange Commission.

12. **Various Procedural requirements for issue of securities and Listing.**

13. **Preparing a Company for an IPO and Governance requirements thereafter, Appraising the Board and other functions in the organisations regarding the Post IPO/Listing Governance changes.**
Case studies and Practical aspects.

Professional Programme
Module 3
Paper 8
Multidisciplinary Case Studies(Max Marks 100)

Objective
To test the students in their theoretical, practical and problem solving abilities.

Detailed Contents
Case studies mainly on the following areas:

1. Corporate Laws including Company Law
2. Securities Laws
3. FEMA and other Economic and Business Legislations
4. Insolvency Law
5. Competition Law
6. Business Strategy and Management
7. Interpretation of Law

Elective Papers

Professional Programme
Module 3
Elective Paper 9.1
Banking – Law & Practice(Max Marks 100)

Objective
To develop a robust knowledge base pertaining to significant facets of Banking Sector among those students who wish to pursue a career in Banking Sector.

Detailed Contents
1. Overview of Indian Banking System: Indian Banking System – Evolution; RBI and its role; Structure of Banks in India; Commercial Banks; Co-operative Banking System; Development Banks; NBFCs.
2. Regulatory Framework of Banks: Constitution, Objectives, Functions & powers of RBI; Tools of Monetary Control; Regulatory Restrictions on Lending; Business of Banking; Constitution of Banks; RBI Act, 1934; Banking Regulation Act, 1949; Role of RBI; Govt. as a Regulator of Banks; Control over Co-operative Banks; Regulation by other Authorities.
3. Control over Organization of Banks: Licensing of Banking Companies; Branch Licensing; Paid up Capital and Reserves; Shareholding in Banking Companies; Subsidiaries of Banking Companies; Board of Directors; Chairman of Banking Company; Appointment of Additional Directors; Restrictions on Employment; Control over Management; Directors and Corporate Governance.
4. Regulation of Banking Business: Power of RBI to Issue Directions; Acceptance of Deposits; Nomination; Loans and Advances; Regulation of Interest Rate; Regulation of Payment Systems; Internet Banking Guidelines; Regulation of Money Market Instruments; Reserve Funds; Maintenance of CRR, SLR; Assets in India.
5. Banking operations: Preparation of Vouchers, cash receipt and payment entries, clearing inward and outward entries, transfer debit and credit entries, what is KYC and what are the different documents to satisfy KYC, verify KYC and authenticity of documents, operational aspects in regard to opening of all types of accounts, scrutiny of loan applications / documents, allowing drawals and accounting entries involved at various stages, operational aspects of CBS environment etc., Back office operations in banks, handling of unreconciled entries in banks.
6. IT in Banking: Overview of Banking services and IT related risk and controls, components and architecture of CBS, Core Business processes Flow and relevant risks and controls Reporting System and MIS, data analytics and business intelligence.
7. Payment and Collection of Cheques and Other Negotiable Instruments: NI Act; Role & Duties of Paying & Collecting Banks; Endorsements; Forged Instruments; Bouncing of Cheques; Its Implications; Return of Cheques; Cheque Truncation System.
8. Case Laws on Responsibility of Paying Bank: Negotiable Instruments Act and Paying Banks; Liability of Paying Banker;
1. **Concept of Insurance**: Risk Management; The Concept of Insurance and its Evolution; The Business of Insurance; The Insurance Market; Insurance Customers; The Insurance Contract; Insurance Terminology; Life Assurance products; General Insurance Products.


3. **Life Insurance – Practices**: Life Insurance Organization; Premiums and Bonuses; Plans of Life insurance; Annuities; Group Insurance; Linked Life Insurance Policies; Applications and Acceptance; Policy Documents; Premium payment, Life Insurance Corporation (L.I.C) of India; Policy Lapse and Revival; Assignment, Nomination and Surrender of policy; Policy Claims.

4. **Life Insurance – Underwriting**: Underwriting: Structure and Process; Financial Underwriting; Occupational, Avocational and Residential Risks; Reinsurance; Blood Disorders; Nervous System; Diabetes Mellitus; Thyroid diseases; Urinary system; The Respiratory System; Gastrointestinal (Digestive) System; Cardiovascular system; Special Senses: Disorders of the eyes, ears and nose; Law of contract; Life Insurance Contract; Protection of Interest of Consumers.

5. **Applications of Life Insurance**: Financial Planning and Life Insurance; Life Insurance Planning; Health Policies; Pensions and Annuities; Takaful (Islamic Insurance).

6. **Life Insurance – Finance**: Accounting Procedures - Premium Accounting; Accounting Procedures–Disbursements; Accounting Procedure: Expenses of Management; Investments; Final Accounts, Revenue Account and Balance Sheet; Budget and Budgetary Control; Innovative Concepts in Financial Reporting; Accounting Standard Applicable to Life Insurance Companies; Financial Analysis; Management Environment in India; Application of Financial Management Concepts in Insurance Industry; Taxation.
7. **Health Insurance** : Introduction to Health Insurance and the Health system in India; Health Financing Models and Health Financing in India; Health Insurance Products in India; Health Insurance Underwriting; Health Insurance Policy Forms and Clauses; Health Insurance Data, Pricing & Reserving; Regulatory and legal aspects of health insurance; Customer service in health insurance; Health Insurance fraud; Reinsurance.

8. **General Insurance - Practices and Procedures** : Introduction to General Insurance; Policy Documents and forms; Underwriting; Ratings & Premiums; Claims; Insurance Reserves & Accounting.


10. **Marine Insurance** : Basic Concepts; Fundamental Principles; Underwriting; Types of Covers; Marine Claims; Marine Recoveries; Role of Banker’s in marine Insurance; Loss Prevention, Reinsurance, Maritime Frauds.

11. **Agricultural Insurance** : Glossary of Terms for Agriculture Insurance; Introduction to Indian Agriculture; Risk in Agriculture; History of Crop Insurance in India; Crop Insurance Design Considerations; Crop Insurance - Yield Index based Underwriting and Claims; Weather Based Crop Insurance; Traditional Crop Insurance: Underwriting and Claims; Agriculture Insurance in Other Countries; Livestock / Cattle Wealth in Indian Economy; Types of Cattle & Buffalo; Cattle Insurance in India; Poultry Insurance in India; Miscellaneous Agriculture Insurance Schemes; Agriculture Reinsurance.

12. **Motor Insurance** : Introduction to Motor Insurance; Marketing in Motor Insurance; Type of motor vehicles, documents and policies; Underwriting in Motor Insurance; Motor Insurance Claims; IT Applications in Motor Insurance; Consumer Delight; Third Party Liability Insurance Procedures For Filing And Defending; Quantum Fixation; Fraud Management and Internal Audit; Legal aspects of Third party claims; Important Decisions on Motor Vehicle Act.

13. **Liability Insurance** : Introduction to Liability Insurance; Legal Background; Liability Underwriting; Statutory Liability; General Public Liability (Industrial/Non-industrial Risks); Products Liability Insurance; Professional Indemnity Insurance; Commercial General Liability; Directors and Officers Liability; Other Policies & Overseas Practices; Reinsurance.

14. **Aviation Insurance** : Introduction; Aviation Insurance Covers; Underwriting-General Aviation; Underwriting Airlines; Underwriting-Aerospace; Aviation Laws; Aviation Claims; Aviation Finance.


16. **Corporate Governance for Insurance Companies**.


9. Patent Infringement: Literal Infringement; Doctrine of Equivalence and Doctrine of Colourable Variation; Contributory Infringement; Defences to Infringement including Experimental Use; Inequitable Conduct; Patent Misuse; Legal Aspects (Act, Rules, and Procedures).

10. Recent Developments in Patent System: Software and Business Method Patenting in India & other Jurisdiction; Patentable Inventions with Special Reference to Biotechnology Products entailing Creation of New Forms of Life.

11. Trademarks: Introduction to Trademarks; The rationale of protection of trademark as (a) an aspect of commercial and (b) of consumer rights; Definition and concept of Trademarks; Kinds of marks (brand names, logos, signatures, symbols, well known marks, certification marks and service marks); International Legal Instruments on Trademarks; Indian Trademarks Law (The Trade and Merchandise Marks Act, 1958 and Trademarks Act, 1999); Non Registrable Trademarks; Procedure for Registration of Trademarks; Opposition Procedure; Procedural Requirements of Protection of Trademarks; Content of the Rights, Exhaustion of Rights; Assignment/Transmission / Licensing of Trademarks; Infringement of Trademarks and Right of Goodwill; Passing off Action; Offences and Penalties; International Conventions- Madrid Protocol; Domain Names – (Domain Names and Effects of New Technology (Internet); WIPO Internet Domain Name Process).

12. Copyrights: Introduction to Copyright - Conceptual Basis; International Protection of Copyright and Related rights- An Overview (International Convention/Treaties on Copyright); Nature of Copyright; Indian Copyright Law; The Copyright Act, 1957 with its amendments; Copyright works; Author & Ownership of Copyright; Rights Conferred by Copyright; Assignment, Transmission, Licensing of Copyrights; Neighbouring Rights; Infringement of Copyrights; Remedies & Actions for Infringement of Copyrights; Copyright Societies, Office, Board, Registration of Copyrights & Appeals; International Conventions; Copyright pertaining to Software/Internet and other Digital media; Remedies, especially, possibility of Anton Pillar Injunctive Relief in India.

13. Industrial Designs: Need for Protection of Industrial Designs; Subject Matter of Protection and Requirements; What is a Registrable Design; What is not a Design; Novelty & Originality; Procedure for Registration of Designs; Copyright under Design; Assignment, Transmission, Licenses; Procedure for Cancellation of Design; Infringement; Remedies.


16. The Protection of Plant Varieties and Farmers’ Rights: The Protection of Plant Varieties and Farmer’s Rights Act, 2001; Protection of Plant Varieties and Farmers’ Rights, Authority and Registry; Registration of Plant Varieties and Essentially derived variety; Duration, Effect of Registration and Benefit Sharing; Surrender and revocation of Certificate; Farmers’ Rights; Plant Varieties Protection Appellate Tribunal; Infringement, Offences, Penalties and Procedure.

17. Protection of Trade Secrets.


Objectives

To understand and analyze the concept of Corporate Fraud and Forensics Audit in the contemporary world along with the legal mechanism to counter the corporate fraud and understanding Forensic Audit and its methods.

1. Introduction: What is Fraud: Meaning and Definition under the Companies Act, 2013 and Criminal Procedure Code, 1973; Elements of Fraud; What is Audit; Forensic Audit; Need and Objectives; Fraud and Forensic Audit; Forensic Audit vis-a-vis Audit.

2. Fraud and Audit: Modern Day Scenario: Fundamentals of Forensic Audit; Fraud related Concepts; Kinds of Frauds; Corporate Frauds: An Insight; Live Cases; Directors’ Responsibilities.

3. Audit and Investigations: Tools for handling Forensic Audit and the Role of Company Secretary; Investigation Mechanism; Field Investigations; Methods of Investigations; Red Flags; Green Flags.


5. Forensic Audit and Indian Evidence Law: Finding Facts; Relevant Facts; Admission of Evidence; Methods to Prove Cases.

6. Cyber Forensics: Introduction to Cyber Crime; International Guidance to Cyber Forensics Laws; Digital Forensics and Cyber Laws; Introduction to Data Extraction; Digital Forensics and Cyber Crime; Ethical Hacking, Digital Incident Response; Case Laws:

**Objective**

To provide advanced knowledge on practical application of Direct Tax Practice.

**Detailed Contents**

1. **An Overview of Income Tax Act, 1961**: Background, Important definitions, Residential Status, Basis of Charge, Scope of Total Income, Tax Rates in accordance with the applicable Finance Act for the relevant assessment year.
2. **Computation of Income under the head of Salary**: Salary – Coverage, Employer and Employee Relationship, Allowances, Monetary and Non-Monetary Perquisites – Valuation and Taxability, Profits in lieu of Salary, Deductions against Salary, Incomes exempt from Tax and not includible in ‘Salary’, Deduction to be made from salary in respect of Provident Fund under the provisions of the Provident Fund and Miscellaneous Provisions of Act 1952 and tax treatment of employers’ contribution to Provident Fund, Tax Deducted at Source on Salary Income and Compliances, Practical Case Studies.
3. **Computation of Income under the head of House Property**: Chargeability, Owner of house property, Determination of Annual Value, Deduction from Net Annual Value, Treatment of Unrealized Rent, Arrears of Rent, Exemptions, Computation of Income from a let out House Property, Self-Occupied Property, Practical Case Studies.
6. **Computation of Income from Other Sources**: Taxation of Dividend u/s 2(22)(a) to (e), Provisions relating to Gifts, Deductions, Other Miscellaneous Provisions, Practical Case Studies.
7. **Exemptions/Deduction, Clubbing provisions, Set Off and/or Carry Forward of Losses, Rebate and Relief**: Income’s not included in Total Income, Tax holidays, Clubbing of Income, Aggregation of Income, Set off and/or Carry forward of losses, Deductions (General and Specific), Rebates and Reliefs.
8. **Computation of Total Income and Tax Liability**


5. **Law of Wages:** Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Equal Remuneration Act, 1976.


7. **The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.**


9. **Industrial and Labour Laws Audit covering the above Acts and other Industry Specific Acts.**

**Case laws, Case Studies and Practical Aspects.**

### Professional Programme

**Module 3**

**Elective Paper 9.7**

**Valuations & Business Modelling (Max Marks 100)**

#### Objectives

**Part I:** To develop a reservoir of knowledge on valuation which can assist the Company Secretaries in undertaking valuation assignments as a Registered Valuer under Companies Act, 2013 including for Mergers and Acquisitions, Issue of Shares, Winding up of Business and during Distressed Sale.

**Part II:** To assist the student in comprehending the concept of Business Modelling, its vital components, steps involved in preparation of a Business Model and Business Models for varied magnitude of business organizations.

#### Part I: Valuations (70 Marks)

1. **Overview of Business Valuation:** Genesis of Valuation; Need for Valuation; Hindrances/ Bottlenecks in Valuation; Business Valuation Approaches; Principles of Valuation (Cost, Price and Value).

2. **Purpose of Valuation:** M&A, Sale of Business, Fund Raising, Voluntary Assessment; Taxation; Finance; Accounting; Industry perspective; Statutory Dimension; Society Angle.

3. **International Valuation Standards Overview.**

4. **Valuation guidance resources in India.**

5. **Business Valuation Methods:** Discounted Cash Flow Analysis (DCF); Comparable transactions method; Comparable Market Multiples method; Market Valuation; Economic Value Added Approach; Free Cash Flow to Equity; Dividend Discount Model; Net Asset Valuation; Relative Valuation; Overview of Option Pricing Valuations.

6. **Steps to establish the Business Worth:** Planning and Data Collection; Data Analysis and Valuation including review and analysis of Financial Statements; Industry Analysis; Selecting the Business Valuation Methods; Applying the selected Valuation Methods; Reaching the Business Value Conclusion.

7. **Valuation of Tangibles:** Overview of Valuation of Immovable Properties; Plant & Machinery; Equipments; Vehicles; Capital Work-in-Progress; Industrial Plots; Land and Buildings; Vessels, Ships, Barges etc.

8. **Valuation of Intangibles:** Definition of Intangible Assets; Categorization of Intangibles- Marketing Related (Trademarks, Trade names, Certification marks, Internet domains etc.), Customer or Supplier Related (Advertising Agreements, Licensing, Royalty Agreements, Servicing Contracts, Franchise Agreements), Technology Related (Contractual or non-contractual rights to use: Patented or Unpatented Technologies, Data Bases, Formulae, Designs, Softwares, Process), Artistic Related (Royalties from artistic works: Plays, Books, Films, Music).

9. **Accounting for share based payment (Ind AS102).**

10. **Valuation during Mergers & Acquisitions.**

11. **Valuation of various magnitudes of Business Organizations:** Large Companies, Small Companies, Start-Ups, Micro Small and

**Part- II: Business Modelling (30 Marks)**

13. Introduction to Business Modelling: Genesis, Meaning; Features; Significance; Usage; Spreadsheet Techniques (Effective use of spreadsheets for modelling, Review of key Excel Functions like building Macros, Decisions involving Time Value of Money); Report and analyze historical data, Prepare future projections and present integrated financial statements, Key financial ratios and Outputs in a logical, summarized and effective manner.


**Objective**

To acquire expert knowledge of the legal, procedural and practical aspects of Insolvency and its resolution.

**Detailed Contents**

1. Insolvency – Concepts and Evolution: Bankruptcy/Insolvency-- the Concept; Historical Developments of Insolvency Laws in India; A Brief on Historical Background on UK Insolvency Framework; US Bankruptcy Laws.

2. Introduction to Insolvency and Bankruptcy Code: Historical Background; Report of the Bankruptcy Law Reforms Committee, Need for the Insolvency and Bankruptcy Code, 2016; Overall scheme of the Insolvency and Bankruptcy Code; Important Definitions; Institutions under Insolvency and Bankruptcy Code, 2016.

3. Corporate Insolvency Resolution Process: Legal Provisions; Committee of Creditors; Procedure; Documentation; Appearance; Approval.

4. Insolvency Resolution of Corporate Persons: Contents of resolution plan; Submission of resolution plan; Approval of resolution plan.

5. Resolution Strategies: Restructuring of Equity and Debt; Compromise and Arrangement; Acquisition; Takeover and Change of Management; Sale of Assets.


7. Liquidation of Corporate Person: Initiation of Liquidation; Powers and duties of Liquidator; Liquidation Estate; Distribution of assets; Dissolution of corporate debtor.

8. Voluntary Liquidation of Companies: Procedure for Voluntary Liquidation; Initiation of Liquidation; Effect of liquidation; Appointment; remuneration; powers and duties of Liquidator; Completion of Liquidation.

9. Adjudication and Appeals for Corporate Persons: Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons; Jurisdiction of NCLT; Grounds for appeal against order of liquidation; Appeal to Supreme Court on question of law; Penalty of carrying on business fraudulently to defraud traders.

10. Debt Recovery and Securitization: Non-performing assets; Asset Reconstruction Companies [ARC]; Security Interest (Enforcement) Rules, 2002; Options available with banks e.g. SARFAESI, DRT, etc., Application to the Tribunal/Appellate Tribunal.

11. Winding-Up by Tribunal: Introduction; Is winding up and dissolution are synonymous? Winding up under the Companies Act, 2013; Powers of the Tribunal; Fraudulent preferences.

12. Cross Border Insolvency: Introduction; Global developments; UNCITRAL Legislative Guide on Insolvency Laws; UNCITRAL Model Law on Cross Border Insolvency; US Bankruptcy Code; World Bank Principles for Effective Insolvency and Creditor Rights; ADB principles of Corporate Rescue and Rehabilitation; Enabling provisions for cross border transactions under IBC, Agreements with foreign countries.

13. Insolvency Resolution of Individual and Partnership Firms: Application for insolvency resolution process; Procedural aspects; Discharge order.

14. Bankruptcy Order for Individuals and Partnership firms: Bankruptcy if insolvency resolution process fails; Application for bankruptcy; Conduct of meeting of creditors; Discharge order; Effect of discharge order.

15. Bankruptcy for Individuals and Partnership Firms: Background; Overview of the provisions; Adjudicating Authority; Appeal against order of DRT; Appeal to Supreme Court.

16. Fresh Start Process: Background; Application for fresh start order; Procedure after receipt of application; Discharge order.

17. Professional and Ethical Practices for Insolvency Practitioners: Responsibility and accountability of Insolvency Practitioners; Code of conduct; Case laws; Case Studies; and Practical aspects.
GST in News:

1. **25th meeting of GST Council concludes**
   - The day-long 25th GST Council meet ended in Delhi on January 18, 2018. The key points picked up in the meet included:
     » GST Council rejigs rates of 29 items, 53 services including cuts in the rates on 20-litre packaged drinking water, biodiesel, diamonds and precious stones, sugar candies, tailoring services, amusement parks and low-cost housing construction services
     » It approved a definition for handicrafts and the designation of 40 items as handicrafts
     » E-way bill system testing continues till January 25, loading will be made must from Feb 1,2018
     » 3B Returns filing may continue and suppliers may continue to load invoices
     » 15 states agree on intra-state e-way bill
     » 29 Handicraft items have been put in 0% slab
     » GST rates have also been reduced in few agricultural products
     » The GST Council also discussed how buyers should upload purchases invoices, and the sellers should upload sale invoices
     » Collection under composite scheme Rs 307 crore.
     » The fitment committee will fix the rates for about 40 handicraft items.
     » Rs 35,000 crore of Integrated GST will be provisionally divided between the Centre and states

2. **Government relaxes norms for rectification of returns under GST**
   - The Finance Ministry has permitted businesses to rectify mistakes in their monthly returns - GSTR-3B - and adjust tax liability, a move that will help them fee correct returns without fear of penalty
   - CBEC said while making adjustments in the output tax liability or input tax credit, there can be no negative entries in GSTR-3B
   - The amount remaining for adjustment, if any, may be adjusted in the returns in Form GSTR-3B of subsequent months and, in cases where such adjustment is not feasible, refund may be claimed

3. **Government notifies 1 per cent GST for manufacturers under composition scheme**
   - The government has notified lower 1 per cent GST rates for manufacturers who have opted for composition scheme as against 2 per cent earlier as well as easier norms for traders opting for it
   - Besides, traders opting for composition scheme would now have to pay the tax at 1 per cent on their turnover of taxable supplies instead of total turnover, which included turnover from exempt supplies like fruits, vegetables
   - Over 15 lakh businesses opted for composition scheme

4. **Standard procedure for GST profiteering complaints soon**
   - Faced with increasing number of complaints under the anti-profiteering rules, the Finance Ministry will soon come out with a standard operating procedure (SOP) for handling grievances relating to over-charging after GST roll out
   - As many as 170 complaints have been filed before the standing committee and screening committee by consumers against businesses for not passing on benefits of tax rate reduction since the roll out of GST
   - The Standard Operating Procedure (SOP) being worked out by the Ministry will lay down guidelines for the Standing Committee and the screening committee for handling of consumer complaints

5. **GST panel proposes centralised registration of big service providers**
   - The GST Council’s law review committee has recommended centralised registration for large service providers operating across ten or more states with an annual aggregate turnover exceeding Rs 500 crore, which could offer big compliance-related relief for big service sector firms
   - The 10-member committee has also recommended broadening of certain categories for availment of input tax credit

6. **Centre puts e-way bill on hold**
   - The Government deferred the implementation of the e-way bill system because of the technological glitches faced by businesses and the transporter on the way first day it rollout.
   - However, the Government has not notified the date of its implementation.

**OBITUARIES**

Chartered Secretary deeply regrets to record the sad demise of the following Members:

- **CS K L Jaisingh** (11.07.1935 – 03.09.2017), a Fellow Member of the Institute from Noida.
- **CS P Gopidasan** (13.03.1931 – 27.06.2017), a Fellow Member of the Institute from Palakkad.
- **CS Manoj Agarwal** (25.11.1969 – 08.07.2017), a Fellow Member of the Institute from Mathura.
- **CS Dilip S Pendse** (26.11.1955 – 05.07.2017), an Associate Member of the Institute from Mumbai.
- **CS Sharathchandra Kusumba** (03.04.1982 – 22.07.2017), an Associate Member of the Institute from Karimnagar.
- **CS K Achuthan** (02.04.1931 – 18.10.2017), an Associate Member of the Institute from Chennai.
- **CS Lakshmana Somayajulu Nuti** (01.06.1960 – 08.11.2017), an Associate Member of the Institute from Hyderabad.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

The Dutch Corporate Governance Code contains principles and specific provisions regarding the relations between the management board, the supervisory board and the general meeting of shareholders of a company. The Code applies to all companies with registered office in the Netherlands and whose shares or certificates are traded at the stock exchange.

*Dutch listed companies are required to report in 2018 on compliance with the new Code in the Management Report for 2017.* The new Code is also based on the ‘comply or explain’ principle.

The new Dutch Corporate Governance Code entails the following significant changes:

- There will be a greater focus on long-term value creation for listed companies.
- Managers and supervisory directors are to create a culture that stimulates the desired conduct and standards for integrity within the listed company.
- The risk management of the listed company has to obtain a stronger basis.
- The supervisory board will be involved more closely in the appointment, evaluation and potential dismissal of the internal auditor.
- The management board and supervisory board have to take into account higher standards regarding checks and balances, good corporate governance and independence of monitoring.
- Members of the supervisory board will in principle be appointed for a maximum of two periods of four years.
- If the listed company has an executive committee, the collaboration with the supervisory board has to be included in the annual report.
- Directors and supervisory board members will gain more responsibility regarding the remuneration policy (that has to focus on the company’s long-term value-creation).

The revised Dutch Corporate Governance Code 2016 is available at: [https://www.icsi.edu/WebModules/TheDutch_CorporateGovernanceCode2016.pdf](https://www.icsi.edu/WebModules/TheDutch_CorporateGovernanceCode2016.pdf)

The Corporate Governance Council (Council), which was established by the Monetary Authority of Singapore in February 2017 to review the Code of Corporate Governance, released a consultation paper on its recommendations to revise the Code of Corporate Governance. The recommendations aim to support sustained corporate performance and innovation, and strengthen investor confidence in capital markets.

The Council believes that a well-rounded board with the appropriate mix of skills, experience and independence is critical to good corporate governance. Hence, a key focus of the Code revisions is to reinforce board competencies through encouraging board renewal, strengthening director independence and enhancing board diversity. Other proposed Code revisions include greater emphasis on disclosures of the relationship between remuneration and value creation, and the need for companies to consider and balance the needs of all stakeholders.

Beyond Code revisions, the Council is also proposing to clarify the intent of the “comply-or-explain” regime and the expectations on listed companies’ corporate governance disclosures. Given the importance of a conducive eco-system to support companies in implementing good corporate governance practices, the Council is recommending the establishment of an industry-led Corporate Governance Advisory Committee. The recommendations are baseline corporate governance requirements that the Council expects all listed companies to comply with.


**DRAFT CODE OF CORPORATE GOVERNANCE FOR SIERRA LEONE**

With the passing of the Public Financial Management Act of Sierra Leone in 2016, the Corporate Affairs Commission deemed it necessary to develop a National Corporate Governance Code for Sierra Leone so as to guide Boards and Management on their governance functions, roles and responsibilities.

The Corporate Affairs Commission has published for consultation a draft Corporate Governance Code. The Code is intended to apply to companies, partnerships, state-owned enterprises, non-governmental organisations and trade unions. It will operate on the basis of ‘comply or explain’ or, where legislation requires it, ‘comply or else’.

ICSI unveiled its New Syllabus for Executive and Professional Programmes on November 22, 2017 on the occasion of 45th National Convention held at Thiruvananthapuram, Kerala, India. Apart from various significant facets of the New Syllabus, some of its salient features are-

i) Innovative concept of Core Areas for Company Secretaries, Ancillary to Core- Areas allied to Core Areas and Hybrid- Combination of Core and Allied areas.
ii) Metamorphosis from Theoretical approach to Practical approach.
iii) Contemporary and expected future profile of Company Secretaries.

Now ICSI has started the process of developing the Study Material and its review in order to ensure pristine contents in all the subjects for our ‘Governance Professionals-in-Making’.

To attain the aforesaid academic objective, ICSI invites applications from Company Secretaries/ Chartered Accountants/Cost and Management Accountants/ Advocates and Academicians to be part of the panel for Writing the Study Lessons / Reviewing of the Study Lessons / Critical assessment of Study Lessons as Moderators of various subjects covered under the ICSI New Syllabus (2017).

The list of Subjects covered under ICSI New Syllabus (2017) is as follows-

**Executive Programme**


**Professional Programme**

**Module-1:** 9. Governance, Risk Management, Compliances and Ethics; 10. Advanced Tax Laws; 11. Drafting, Pleadings and Appearances.

**Eligibility Criteria**

1) Minimum 10 years of experience as Company Secretary / Chartered Accountant / Cost and Management Accountant / Advocate..
2) Academicians from Management/ Finance / Human Resources / Law / Economics / Accountancy discipline preferably Ph D with minimum 10 years experience of Teaching and Research.

Professionals / Academicians fulfilling above criteria and interested to be part of the panel of Writers / Reviewers of Study Lessons, may kindly send their recent Bio data indicating the subject / (s) of interest for writing study lessons or review of study lessons on the following email id: akinchan.sinha@icsi.edu, on or before February 25, 2018.

Please find the ICSI New Syllabus (2017) on the following link: https://www.icsi.edu/WebModules/SYLLABUS_20_NOV_2017.pdf
“Try not to become a person of success, but rather try to become a person of value.”
- Albert Einstein

In order to understand the importance of values in life, first and foremost we have to recognize what do values mean? It is a word much used but never explored contextually. As I see it, values are essential belief systems that we have developed over time for our personal, social and spiritual development. Values belief systems and ethics are inextricably connected together. Values are sometimes acquired since our childhood through our parents, schooling and immediate surroundings. Values reflect our intention or motive behind our actions and decision-making process. The way we value people and things in life, there is a set of ideals that we have developed over the years which are our priorities; and we are not willing to compromise with them at any given situation. These could be identified as our moral values such as honesty, truthfulness and integrity. However, these set of values have started to recede in today’s world and extremely difficult to sustain. Values are also the guiding force behind how we actually behave in a given situation. However, the word of caution here is that we cannot misread values to being judgmental. The difference lies in that; values are the principles on which one’s character depends and are meant for making the quest to find the higher self. Values are more concerned with our personal credence rather than of other people. Our reactions and decision-making process is seldom determined by the external environment but are mostly guided by the intrinsic values that we have within which reflects the strength of our personal character. Thus, values signify the real spirit of our character over petty personal gains.

Spirituality can help us become better human beings if we follow the general moral codes with sincerity. It prepares our mind, intellect and behavior to be aligned and be synced to act in situations. It also transforms our thinking, speech, and our actions that form virtuous habits that determine our moral character. Values reflect our character; and spiritualism is a guiding force that helps us deal with values relating to human conduct, with respect to our intentions and actions. However, of late we are deviating from our true virtues and values and focusing more on external environment.

Even though most religions preach a set of value system, however, having individual values has got nothing to do with being religious. It is about some basic credentials that you have in daily life. Integrity, sincerity commitment and humility can improve our community as well as our quality of life. If we can live our lives according to moral values that are based on honesty, compassion, and modesty we can also form positive bonds with other people. It is our values that form our thoughts, words, intention and actions. Our values are important because they help us to grow and develop. They help us to create the future we want to experience. Every individual and every organization is involved in making hundreds of decision-making every day. The decisions we make are a reflection of our values and beliefs, and they are always directed towards a specific purpose. That purpose is the satisfaction of our individual or organizational needs. When we use our values to make decisions, we make a deliberate choice to focus on what is important to us. When values are shared, they build internal cohesion in a group. Values can be segregated into different categories like organizational, individual, relationship, and societal.

Humanity and the world order is experiencing economic, political and material issues because there has been a gradual decline in the moral, ethical and spiritual consciousness of individuals. The call for spiritual values is a call of time. The world order is witnessing an increased intolerance, global terrorism, crime, corruption and violence against women and children. What does this reflect; a decline in the individual value, at every sphere resulting in global disturbance. We need to build in a common and shared value system to address complex problems. By deriving a common set of values and principles across world; we can build an integrative and holistic framework for universal values. It is our moral values that determine our actions. Moral values are the standards of good and evil, which govern an individual’s behavior and choices. This is where spiritualism features to determine our value system and guide us through the right and wrong.
Spirituality is about recognition and acceptance of a Higher Power; connection with which determines your way of thinking and life. Whenever we feel insecure, or tempted to succumb to any situation, we can resort to your relationship with the Higher Power and ask for strength and assistance to help you cope with your problems and worries. That is when we end up not taking up measures that can hurt our own self and also others. Spirituality does not mean that you have to stick to any particular religion or faith. Spirituality refers to the common experience and values that we can share as individuals. No matter which religion you belong to but if you are a spiritual person, you will realize that your values are in sync with the original universal world order. It provides the moral support and guidance. Further, you are at peace, a value that is so much needed in the present times. And with peace, you are better-abled to face challenges of life, because you have stability and security. Several researches suggest that people with strong spiritual faith are better able to sustain themselves and recover faster than people who lack spiritual faith. It also helps in better decision making and problem-solving abilities. This can be acquired through regular practice of meditation. The essential purpose of meditation is to develop trust and belief in yourself and the Supreme Power. You might want to start practicing it with an initial 10 minutes of investment everyday day thereby increasing it to half an hour to 45 minutes in order to feel the difference. With spirituality, you gain your self-confidence which eventually helps you in dealing with the everyday challenges of life in a better manner. Moreover, when you believe in higher values, it gives you an experience of compassion for others without judging them. Through this, you begin to experience greater degrees of unconditional love, which begins to reflect in your increased capacity to give love to others. Your fears are lessened and you are able to enjoy life more. Associated with the value of unconditional love is respect. It is only when you are able to respect others that you receive respect in return. By respecting others, you would be enhancing your self-respect and turning into a better person with each passing day. It follows the simple rule of give and take. The more respect you give, the more respect you earn!

We all face challenges in life related to our work, relationships, education, and personal situations. If we do not have these hardships, we will not grow and learn. By facing adversities in life, we become stronger and better equipped to handle stress. But we need to have the tools to be able to face our life challenges and spirituality is the way. What matter the most is how you deal with your stress at times of adversities. You have two choices; either to breakdown or face the challenge with courage and enthusiasm. Becoming depressed and anxious will not solve the matter. When you feel discouraged, stuck and confused, you may resort to your spiritual faith and uncover the meaning and purpose of your life. You will see that life will appear more beautiful and your attitude and perception about viewing life challenges will change. You will be able to fill that inner void that was created when you did not have any meaning and purpose to your life. Anyone can live a life for oneself, but living for others and doing community service needs courage, determination, and a capacity to rise above oneself to get the full potential. This kind of fulfillment will result in ultimate happiness, and absence of worries and tension in life. When you become self-actualized, your self-esteem will be higher and you will be able to deal with your problems better. Determination is also a value. When life is difficult and challenging and nothing seems easy for you; if you stay determined and positive, you can fight back the adversities of this life and achieve success. Without determination, achieving goals would be difficult and most of you would easily give up to the circumstances or look out for simpler paths that proffer temporary greener pastures. However, if you continue to emphasize on your will power and determination, things will start falling into place sooner or later and you would reap long-term benefits. So, irrespective of how tough or impossible the situation seems, do not give up and be prepared to face any challenge that comes your way.

Russell W. Gough, author of book titled: ‘Character Is Destiny,’ describes the steps to personal growth from examining our lives to taking responsibility for our actions, from discarding selfishness to embracing the greater good, from becoming a better role model for our loved ones to finding the courage to do the right thing naturally and consistently. By cultivating the value of virtues, we will strengthen not only ourselves but, more important, our families and our world. Individual values reflect how you show up in your life and your principles you live by and what you consider important for your self-interest which in turn reflects on your relationship values and how you treat other people in your life, be they friends, family or colleagues in your organization. Relationship values include openness, trust, generosity and caring. This is the basis to form healthy organizational values which reflect how an organization shows up and operates in the world. Thus, values are shared
from the individual level to the global level and that is how we contribute to build the world we live in.

The challenge of the times would seem to involve a call for personal transformation through which social and conceptual frameworks can be viewed anew. Willingness to sacrifice inherited perspectives is an indication of the dimension of the challenge -most dramatically illustrated by willingness to risk death.

Values are our powerhouse. So, living a life where you keep compromising your values is like an everyday disaster that you are doing to your conscience and personal self. Nothing is a better consultant than your own personal values in while dealing with your inner and outer self.

If you do not respect yourself and your value system, how and why should anyone else do it? It’s that simple. If you are unhappy with yourself, then this is oftentimes directly reflected onto others around us. So, communicating your values will not only give you your self-respect back, it will also improve your relationships and overall happiness. Your personal values play an important role in your personal life, but especially in your job search and career decision making. Values help us to sort out priorities of our life for example, recognition, achievement, independence, or support.

The crucial point is that we need to KNOW the values that are of great importance to us first and then avoid compromising them in any way. Being born the so called “Generation Y,” a generation seen as being ‘blessed’ with many opportunities and possibilities, however, decision making process seems to be more difficult than ever. So, if you don’t know what your values are, and then you will have a hard time figuring out what it is that you are actually looking for to be satisfied and happy at work or in a relationship. And if you don’t know what you want, then most likely won’t know when you have it. In the words of Alice Waters, “The decisions you make are a choice of values that reflect your life in every way.”

When you become self-actualized, your self-esteem will be higher and you will be able to deal with your problems better.

By cultivating the value of virtues, we will strengthen not only ourselves but, more important, our families and our world.

If you do not respect yourself and your value system, how and why should anyone else do it?

---

APPOINTMENTS

A Company Secretary is required for Azure Jouel Private Limited, having its registered office in Mumbai and engaged in the business of Studded Diamond Jewellery.

Candidate should be a qualified Company Secretary with minimum 2 (two) years of experience preferably having worked in a similar company.

Should have skills of writing, drafting and vetting of legal documents, agreements and contracts.

Candidate should be capable of liaising with various Government Authorities also.

Interested candidates can email their resume to: accounts@azurejouel.com or can send their resume to: Unit No. GJ-8, 1st Floor, SDF - VII, Phase - II, Seepz-Sez, Andheri (East), Mumbai- 400 096.

---

Job Description:

We are looking for Trainees in CS and legal (2 vacancies) having a minimum of one year experience in Secretarial, Compliance and Legal affairs. Candidates from the real estate industry with strong communication, presentation and interpersonal skills will be preferred.

Job Duties:

Responsible for ensuring compliances with standard financial and legal practice, maintaining high standards of corporate governance. Must have a thorough understanding of the laws applicable to the real estate sector, especially the RERA. Candidate will hold a strategic position and act as a point of communication between the board of directors and the company shareholders.

Candidates who are interested in the profile, do share your CV/Resume at recruitment@embassyindia.com
**Tariff**

**BACK COVER (COLOURED)**

| Non - Appointment | Per Insertion | ₹75,000 |
| 4 Insertions | ₹2,70,000 |
| 6 Insertions | ₹3,96,000 |
| 12 Insertions | ₹7,95,000 |

**COVER II/III (COLOURED)**

| Non - Appointment | Per Insertion | ₹50,000 |
| 4 Insertions | ₹1,80,000 |
| 6 Insertions | ₹2,64,000 |
| 12 Insertions | ₹5,10,000 |

**FULL PAGE (COLOURED)**

| Non - Appointment | Per Insertion | ₹40,000 |
| 4 Insertions | ₹1,44,000 |
| 6 Insertions | ₹52,800 |
| 12 Insertions | ₹4,08,000 |

**HALF PAGE (COLOURED)**

| Appointment | Per Insertion | ₹10,000 |
| 4 Insertions | ₹36,000 |
| 6 Insertions | ₹52,800 |
| 12 Insertions | ₹204,000 |

**PANEL (QTR PAGE) (COLOURED)**

| Non - Appointment | Per Insertion | ₹10,000 |
| 6 Insertions | ₹52,800 |
| 12 Insertions | ₹204,000 |

**EXTRA BOX NO. CHARGES**

| For ‘Situation Wanted’ ads | ₹50 |
| For Others | ₹100 |

**MECHANICAL DATA**

- Full Page - 18x24 cm
- Half Page - 9x24 cm or 18x12 cm
- Quarter Page - 9x12 cm

*The Institute reserves the right not to accept order for any particular advertisement.*

*The Journal is published in the 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

Please contact:
Dess Digital Meetings
The Trusted Meetings Solution Used By The Leading Boards

CS. S. Ramprasad, Senior Manager Legal & Internal Audit
TRIL INFOPARK LIMITED (A Tata Group Company)

We find Dess Digital Meetings to be very easy to use and happily recommend it for others.

---

**Advertisement**

**VOL 47**

**NO. : 11**

**Pg. 1-132**

**NOVEMBER 2017**

100/- (Single Copy)

**EMPOWERING NATIONAL GOVERNANCE**

**VOL 47**

**NO. : 12**

**Pg. 1-124**

**DECEMBER 2017**

100/- (Single Copy)

**ANTI-BRIBERY AND CHARITY GOVERNANCE**

**LET’S UNIVERSALIZE TREASURED ‘GOVERNANCE MANTRAS’ OF OUR ANCIENT INDIAN LITERATURE**

**THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

www.icsi.edu

30% Spl. Attraction on the total billing for 36 insertions in 3 years in any category

---

For further information write to: The Editor

CHARTERED SECRETARY
Diligent Board Evaluations

Diligent Board Evaluations is designed to meet mandatory board evaluation requirements under Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

Administrators can prepare a board assessment with multiple question types, evaluating the board at all required levels, generate custom reports and cross-link content.

To book a demo, please visit: diligent.com/ICSI

FIND OUT MORE

- Singapore +65 99 1912 1585
- India +91 96869 02287
- Hong Kong +852 3008 5657
- info@diligent.com

Diligent is a trademark of Diligent Corporation, registered in the US Patent and Trademark Office. "Diligent Boards," "Diligent D&O," "Diligent Evaluations," "Diligent Messenger," and the Diligent logo are trademarks of Diligent Corporation. All third-party trademarks are the property of their respective owners.

©2017 Diligent Corporation. All rights reserved.

Malaysia +60 (3) 9212 1714
Hong Kong +852 3008 5657