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VISION 2022
Shaping New ICSI

THE INSTITUTE OF Company Secretaries of India
भारतीय कमर्सी शास्त्री संस्थान

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For further information write to:
The Editor
CHARTERED SECRETARY

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भारतीय कम्पनी सचिव संघ

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CHARTERED SECRETARY GREET AND CONGRATULATES
CS RANJEET PANDEY AND CS ASHISH GARG ON THEIR ELECTION AS PRESIDENT AND
VICE PRESIDENT RESPECTIVELY OF THE INSTITUTE FOR THE YEAR 2019-20

CS Ranjeet Pandey, President, The ICSI

A Fellow Member of The Institute of Companies Secretaries of India, a Law Graduate from Faculty of Law, University of Delhi and a Graduate in Science (B.Sc), CS Ranjeet Pandey is also an Insolvency Professional, registered with IBBI and has over 15 years of experience in the field of Corporate and Commercial Laws. An ex-officio member of the Advisory Board of Sri Aurobindo Foundation for Integral Management (SAFIM), CS Pandey has also been a member of the Working Committee of MCA for streamlining ‘Working under the Companies Act, 2013’. He is also a Member of the Steering Committee of National Foundation for Corporate Social Responsibility (NFCSR) constituted by the Ministry of Corporate Affairs, Govt. of India to prepare a roadmap, oversee the functioning and steer the activities of NFCSR for providing policy inputs and policy advocacy in the area of Corporate Social Responsibility (CSR).

His journey to the Chair began from the Regional Council of NIRC of ICSI wherein he served as a member for two consecutive terms i.e. 2007-2010 and 2011-2014. It was during his able Chairmanship that NIRC received the Best Regional Council Award in 2011. Setting benchmarks and achieving feats he further was elected to the Central Council of ICSI for the terms 2015-2018 and re-elected for the term 2019-2022. During his first term, his membership in Boards like the Secretarial Standards Board (SSB) and designation as Chairman at various Committees including the Golden Jubilee Organising Committee evidently proves his leadership skills as well as his knack for not just corporate laws but allied arenas as well. His role played in the carving of ICSI Vision 2022 too has been well acclaimed.

A firm believer in the significance of quality education, training and continuous training and skill upgradation and above all right amount of motivation in the effective and efficient dispensing off of responsibilities by professionals, CS Ranjeet Pandey is a regular speaker at various seminars, conferences and workshops organized by Banks, Industry Chambers, ICSI and ICAI.

A Company Secretary since 2004, he is a prominent advisor in the area of Corporate Restructuring, Insolvency & Bankruptcy, Commercial Contract and Agreements, SEBI and Capital Market matters, Audits, Compliances & Due-diligence of Business.

CS Ashish Garg, Vice-President, The ICSI

A Fellow Member of the ICSI, a Post Graduate in Economics (M.A.) and Commerce (M.Com.) and a Graduate in Law (LL.B.) from the Vikram University, Ujjain, CS Ashish Garg was elected to the Central Council of the ICSI for the term 2015-2018 and re-elected for the term 2019-2022.

During his first stint with the Central council, he was the Chairman of Practicing Company Secretaries Committee of the ICSI for the year 2015 and 2016 and it was under his leadership that the PCS Day was celebrated with full gusto on 15th June every year. While holding Chairmanships of the Core Group of GST of ICSI and Centre of Corporate Governance, Research and Training (CCGRT), he was also nominated by the ICSI as a member at the Cost Accounting Standards Board of the Institute of Cost Accountants of India.

A nominated Director on the Board of ICSI Institute of Insolvency Professionals, he has also chaired several in-house Committees of the ICSI of the likes of Placement Committee, PMQ Committee and Direct Tax Code Committee.

Extremely passionate and driven towards the betterment and growth of the profession, CS Garg has proved his dedication since his days as the Secretary and Vice Chairman of Indore Chapter of the ICSI in 2004 and 2005 and later on as a member of the Western India Regional Council of the ICSI for two consecutive terms from 2007-14 and even further as Secretary, WIRC in 2013 and 2014.

With almost over 18 years of experience and specialization in Corporate Laws, organizational restructuring and corporate legal counseling to companies, he is a sought after faculty at conferences and seminars of CA, CS and MBAs in India and abroad and is zealous when it comes to connecting with and motivating members and students. Having authored number of Articles for magazines and newspapers and extensively travelled across the length and breadth of the India, he feels pleasure in having visited four continents of the Globe and getting a chance of getting acquainted with varied cultures thereat.
1. Outgoing President CS Makarand Lele putting the President’s Collar to CS Ranjeet Pandey, the newly elected President of the ICSI.
2. Newly elected President of the Institute CS Ranjeet Pandey pinning the ICSI insignia to CS Ashish Garg, the newly elected Vice President of the Institute.
3. CS Ashok Kumar Dixit presenting photo albums to CS Makarand Lele, the outgoing President of the Institute.
4. CS Ranjeet Pandey, the newly elected President of the Institute addressing at the occasion.
5. Felicitation of newly elected President and Vice President of ICSI for the Year 2019-20 – A view of the Council Members.
6. Meeting of CS Ranjeet Pandey, the newly elected President & CS Ashok Kumar Dixit with M. Venkaiah Naidu (Hon’ble Vice President of India) to brief him about New Initiatives of ICSI.

7. ICSI delegation led by CS Ranjeet Pandey, President, The ICSI with Suresh Prabhu (Hon’ble Minister for Commerce & Industry and Civil Aviation).

8. ICSI delegation led by CS Ranjeet Pandey met with V.P. Singh Badnore (Hon’ble Governor of Punjab & Administrator, UT Chandigarh) and discussed about CS profession and role of ICSI in supporting various initiatives of the government.

9. CS Ranjeet Pandey and CS Manish Gupta met M M Kumar (Hon’ble Chief Justice (Rtd.), President, NCLT) and discussed various practical issues faced by stakeholders as well as upcoming opportunities for the members of the profession.

10. ICSI delegation led by CS Ranjeet Pandey met S.J. Mukhopadhaya (Hon’ble Justice Chairperson, NCLAT).

11. CS Ranjeet Pandey, President, ICSI and CS Ashish Garg, Vice-President, ICSI met Ajay Tyagi (Chairman, SEBI) and discussed matter of Professional development.
12-13. CS Ranjeet Pandey met with R. P. Nagrath (Hon’ble Member (J), Justice, Member, NCLT, Chandigarh Bench) and with Pradeep R. Sethi (Hon’ble Member (T), Member, NCLT, Chandigarh Bench).

14. CS Ranjeet Pandey with CS Manish Gupta met Amardeep Singh Bhatia (Director, SFIO) and deliberated upon the role of CS professionals and ICSI in various Government and regulatory initiative.

15. Delegation of The Institute of Cost Accountants of India, ICMAI with Newly elected President and Vice - President of ICSI.

16. ICSI delegation led by CS Ranjeet Pandey, President, ICSI in a meeting with senior officials of Insurance Institute of India.

17. 42nd Foundation day celebration of Chapter and Seminar on “Rediscover the Power Within” on 31st January, 2019 at Chandigarh. Sitting on dais from L to R: CS Puneet Tangri, CS NPS Chawla, Prof. P S Rathore (Motivational Speaker), CS Ranjeet Pandey, Sanjay Tandon (President BJP, Chandigarh), CS Rahul Jogi, CS G S Sarin.
18. Group photo of ICSI RVO COP Training for Registered Valuers.

19. CS Ranjeet Pandey meeting with ICSI Jaipur Chapter team- Sitting from Left: CS Makarand Lele, CS Ranjeet Pandey, CS Ashish Garg, CS (Dr.) Shyam Agrawal & CS Ashok Kumar Dixit and others seen in the picture.


Dear Professional Colleagues,

John Lennon says and I quote, “A dream you dream alone is only a dream. A dream you dream together is a reality”. While feeling truly humbled and enthralled to the core on being designated as the President of my Alma Mater, I on behalf of the entire Council and all the Office Bearers across the nation would like to extend our heartfelt gratitude towards all our members who have instilled their faith in us by placing their precious votes in our favour and giving us an opportunity to realise and achieve the dreams that each one of us have envisioned for this Institute while putting in our wholehearted efforts to live up to the expectations laid by all the members as well as all our stakeholders.

An Institution or an organisation with a legacy which is half a century strong is the result of the tirelessly persistent efforts of a great deal of luminaries. Each of the Past Presidents, Council members, Secretaries, members of the Team ICSI and all the members as well, who have played their designated roles, fulfilled their assigned responsibilities with immense zeal and unfathomable ethical and moral conduct, all these and many more form part of this brigade. Each year gone past has been a year of new achievements, opening of new doors of opportunity and creating new grounds. While self-reflection may dawn upon the dreams for future, it not only gives an enormous amount of courage but fills us with passion when our stakeholders, our regulatory authorities commend us for our efforts and perseverance. Their words alight the road ahead, illuminate our paths and lead us to paths untreaded as well.

Blessings and benedictions...
For me, well I feel extremely blessed to have begun my stint as the President with the kind words and benediction from some of the nation’s coveted dignitaries. Meetings and greetings from the month gone by have brought with them both enlightenment and unequivocal eagerness...

Enlightenment of the opinion of such personages for the profession and a keenness to live up to the commitments hopes and aspirations, both of which have been equally fulfilling.

While we all as a Council have started off our journey with our own visions for this worthy Institution of ours coupled with the ‘New ICSI Vision 2022’ which in itself has been developed with a complete 360° Approach; and yet a simple ‘Congratulations’, or Best Wishes coupled with a pat on the back from visionaries like Shri M. Venkaiah Naidu, our Hon’ble Vice President of India, Shri Suresh Prabhu, Hon’ble Minister of Commerce and Industry, Civil Aviation, Shri V. P. Singh Badnore, Hon’ble Governor of Punjab & Administrator, UT Chandigarh; lays out their expectations from the Institute as partners in not just government initiatives but in shaping the entire corporate culture of the nation and fills us with a zeal par comparison.

Celebrations during the month...
The month of January has indeed been a month of celebrations, exchanging pleasantries, working out synergies, planning collaborations and indeed looking out for newer opportunity grounds and even further...
FROM THE PRESIDENT

became a

FEBRUARY 2019

Circulars/guidelines. The circular originating from the
with respect to all the applicable SEBI Regulations and
examining the compliances made by the listed entities
an annual secretarial compliance report from a PCS
has also mandated the listed companies to obtain
include all material unlisted subsidiaries of listed entities
Secretarial Audit by Company secretaries in Practice to
Regulation 24A pertaining to expanding the ambit of
audit Report in consonance with the newly inserted
Circular while rolling out the Format for annual secretarial
that the Securities and Exchange Board of India has in its
Achievements to cherish...

I indeed feel extremely pleasured and delighted to share
that the Securities and Exchange Board of India has in its
Circular while rolling out the Format for annual secretarial
audit Report in consonance with the newly inserted
Regulation 24A pertaining to expanding the ambit of
Secretarial Audit by Company secretaries in Practice to
include all material unlisted subsidiaries of listed entities
has also mandated the listed companies to obtain
an annual secretarial compliance report from a PCS
examining the compliances made by the listed entities
with respect to all the applicable SEBI Regulations and
Circulars/guidelines. The circular originating from the

Youthful Rendezvous...
Convocation Ceremonies of the Institute have always
been momentousness are events rendering them worthy
to mark their mention in the pages of history of the Institute.
The very recent Convocation Ceremony in the heart of
Bengaluru in the presence of Shri N K Sudhindra Rao, Hon’ble Justice, High Court of Karnataka became a
day to remember primarily for the fervour and enthusiasm
that was visible in the eyes and attitude of each and every
member present to receive their Certificate.

In another youthful rendezvous, it was a delight to have
the members of Jaipur Chapter of NIRC visiting the
ICSI Headquarters at Lodi Road during their visit to the
Parliament of India. Meeting members of the Institute
from two different corners of the nation, imitating similar
passion and effervescence, all this and more assured me
of the fact that the future of this Institute and more so the
Corporate India is in safe hands...

Meetings and greetings...
Meetings round the month ranged from members of
Regulatory Authorities of the likes of Shri Ajay Tyagi,
Chairman, Securities and Exchange Board of India and
Shri Amardeep Singh Bhatia, Director, Serious Frauds
Investigation Office where expectations were in order
for the members of the Institute to play our roles with
complete diligence and achieve the desired goals for the
nation. On the other hand, during pleasanties exchanged
with members of sister concerns like Shri Amit Anand
Apte, President, ICAI-CMA and other senior officials of
the Insurance Institute of India, avenues of collaborations
and for enhancing professional opportunities for the
members and creating synergies were discussed at
length.

In other significant meetings with Hon’ble Justice Shri S.
J. Mukhopadhyaya, Chairperson, NCLAT, Hon’ble Chief
Justice (Rtd.) Shri M. M. Kumar, President, NCLT, Mr.
Justice R. P. Nagrath and Mr. Pradeep R. Sethi, Hon’ble
Members, NCLT (Chandigarh Bench), the an open
and positive attitude of these dignitaries towards the
representations made on behalf of our stakeholders was
quite heartening.

Achievements to cherish...
I indeed feel extremely pleasured and delighted to share

suggestions made by the Kotak Committee on Corporate
Governance shall definitely have a long-term positive
impact on the governance culture in the Indian corporate
arena.

Taking this opportunity to place on record by heartfelt
appreciation for CS (Dr.) Shyam Agrawal, Past President,
ICSI; CS Mahavir Lunawat, Former Chairman, Financial
Services Committee and Council Member and the entire
Task Force constituted to work upon this initiative under
the Chairmanship of Shri J. N. Gupta for their efforts in
securing this tremendous recognition for the profession,
I am assured that the members of the fraternity shall
understand their responsibility and accountability
stemming from this stupendous opportunity. My best
wishes to all of you...

The Road Ahead...
With every new person placed in this designation of
the President, one of the chief questions that crop up is
that of their Vision and approach. As a firm believer in
Team effort and holding on to collaborative approach,
I am sure that it is not just me as a person but we as
a Council and together as a Professional fraternity and
Body of immense vigour shall put forth our goals for this
wondrous Institute of ours.

The activities and initiatives to follow shall definitely be
founded on four pillars – Knowledge and skill up-scaling
of students, skill development of young members, enhancing
Brand equity of the Profession and Discovering new and
alternative avenues of employment and practice. These
coupled with the guiding pointers placed under Vision
New ICSI 2022 shall form the agenda for the year to
follow and I am hopeful that holding tight to each of these,
we shall together be able to achieve and meet up the
expectations and aspirations of our members, students
and all our multifarious stakeholders.

For as the old saying goes, “Coming together is
beginning, keeping together is progress and working
together is success”; I am sure that with the support of my
Council Colleagues, members of Team ICSI, benediction
of our regulatory authorities and the faith of our entire
fraternity, we shall definitely be able to achieve our
dreams envisioned for not just the New ICSI of 2022 but
a New ICSI of tomorrow...

Happy Reading !!!

Yours Sincerely

CS Ranjeet Pandey
President, ICSI

FROM THE PRESIDENT
Recent Initiatives Taken by ICSI

Further to the details published in January, 2019 issue of Chartered Secretary, we are pleased to share the following initiatives taken by the Institute:

1. Meeting with Dignitaries
   - Shri M. Venkaiah Naidu, Hon’ble Vice President of India.
   - Shri V.P. Singh Badnore, Hon’ble Governor of Punjab & Administrator, UT Chandigarh.
   - Shri Suresh Prabhu, Hon’ble Minister of Commerce and Industry and Civil Aviation, Government of India.
   - Shri Piyush Goyal, Hon’ble Minister of Finance, Corporate Affairs, Railways and Coal, Government of India.
   - Shri Navdeep Suri, Hon’ble Ambassador of India to UAE.
   - Shri Vipul, Hon’ble Consul General of India, Dubai.
   - Justice Shri S.J. Mukhopadhyaya, Hon’ble Chairperson, National Company Law Appellate Tribunal.
   - Justice Shri R. P. Nagrath, Hon’ble Member (Judicial), National Company Law Tribunal, Chandigarh Bench.
   - Shri Pradeep R. Sethi, Hon’ble Member (Technical), NCLT, Chandigarh Bench.
   - CMA Amit Anand Apte, President, Institute of Cost Accountants of India.

2. 18th ICSI National Awards For Excellence In Corporate Governance & 3rd ICSI CSR Excellence Awards, 2018
   The Institute organized its 18th ICSI National Awards for Excellence in Corporate Governance and 3rd ICSI CSR Excellence Awards on January 10, 2019 at Mumbai, in the august presence of Shri Dr. Mohan Kaul, President, India Professionals Forum, United Kingdom and Shri G N Bajpai, Former Chairman, SEBI as the Guest of Honour of the Day.
   In the 18th edition of ICSI National Awards for Excellence in Corporate Governance, Cipla Limited and Dabur India Limited were adjudged as Best Governed Companies and the Certificates of Recognition were presented to ACC Limited, Hindustan Unilever Limited, Indian Oil Corporation Limited, Tata Metaliks Limited and The Indian Hotels Company Limited.
   The prestigious ICSI Lifetime Achievement Award was conferred on Shri Adi Godrej, Chairman, Godrej Group for Translating Excellence in Corporate Governance into Reality.
   The 3rd CSR Excellence Awards were conferred upon GMR Hyderabad International Airport Ltd. (Emerging Category), The Tata Power Company Limited (Medium Category), and Ambuja Cements Limited (Large Category) respectively.
   To commemorate this Mega Event, following publications were released:
   **Publications Released**
   1. CS as Corporate Saviour– NBFC
   2. CS as Corporate Saviour - Pharmaceutical Sector
   3. CS as Corporate Saviour - Insurance Sector
   4. CS as Corporate Saviour - Automobile Sector
   5. CS as Corporate Saviour - Education Sector
   6. Golden Years of ICSI Journey
   7. Guidance Note on Dividend
   8. ICGN Global Governance Principles: Indian Scenario and Learning for Betterment
   9. Referencer on Secretarial Audit under SEBI LODR, 2015

3. Courses Launched
   1. Certified Corporate Compliance Assistant
   2. Certified MSME Professional

4. Logos Launched
   1. Chamber Connect

5. Embassy Connect

6. ICSI- CSIA Corporate Secretaries Toolkit Training of Trainers Programme
   The Institute organised three day Corporate Secretaries Tool Kit Training of Trainers (TOT) in association with Corporate Secretaries International Association (CSIA) which is a joint project of CSIA and International Finance Corporation (IFC), on January 14-16, 2019 at New Delhi. The three days joint program was aimed to clarify the duties of Corporate Secretaries, develop their skills and emphasise their role in developing good corporate governance practices in organisations.

7. ICSI Task Force on Insurance Laws
   With the broad objective of developing the format of a compliance certificate issued by an independent professional (Company Secretary in Practice) on the lines of Secretarial Audit and also to recommend to IRDA, a Compliance mechanism pertaining to all laws, rules and regulations applicable to insurance companies and other intermediaries working as corporate entities in the Insurance arena, the Institute constituted a Task Force on Insurance Laws. This Task Force consists of eminent experts from the insurance sector.

8. Launch of Insurance Portal for Members and Students
   As you are aware that with a view to provide better Professional and Personal safety cover like Professional Indemnity Cover, Medical Insurance, Motor Insurance and others to its Members, Students and other Stakeholders at discounted premium, the Institute entered into MoUs with various Insurance Companies for different Insurance Products. In order to facilitate the members to avail the benefits with ease and proficiency, the Institute launched a web portal to access various Insurance Products on January 10, 2019 at Mumbai. The Insurance Products can be purchased online at the weblink: http://bit.ly/icsiinsurance or alternatively, access ‘Insurance’ under ‘Useful Links’ at www.icsi.edu.

9. ICSI enters MoUs with NSE Academy Limited
   As part of strengthening the role and capacities of its members and students, Institute entered into Memorandum of Understandings (MoUs) with various institutes and organizations of national as well as international repute. In a step forward to fortify the aspects of professional expertise of our stakeholders, the Institute entered into a Memorandum of Understating with NSE Academy Limited on January 10, 2019 at Mumbai.

10. ICSI IIP Webinar on Judicial and Regulatory Interpretation
   The Institute organized three day Corporate Secretaries Tool Kit Training of Trainers (TOT) in association with Corporate Secretaries International Association (CSIA) which is a joint project of CSIA and International Finance Corporation (IFC), on January 14-16, 2019 at New Delhi. The three days joint program was aimed to clarify the duties of Corporate Secretaries, develop their skills and emphasise their role in developing good corporate governance practices in organisations.

11. Golden Years of ICSI Journey
   The Institute celebrated 70th Republic Day, 2019 on January 26, 2019 through the flag hosting at the Head Quarters, Regional Offices and Chapters Pan India.

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under Insolvency and Bankruptcy Code, 2016
The ICSI Institute of Insolvency Professionals organized its 10th webinar on, “Judicial and Regulatory Interpretations under the Insolvency and Bankruptcy Code, 2016” on 12th January 2019 with thought provoking deliberations by Hon’ble Justice Shri M M Kumar, President, NCLT, Dr. M S Sahoo, Chairperson, IBBI and other experts from the profession and Institute.

9. Webcast on Goods & Services Tax (GST)
In order to strengthen the understanding of students about the basics of Goods and Services Tax along with contemporary changes in the field of GST, the Institute organized a Webcast on ‘Goods & Services Tax (GST)’ exclusively for the CS students on January 5, 2019. The webcast was applauded by the students and to further the academic interest of the students who could not attend the same, the webcast has been made available on “You tube” at https://youtu.be/ON2MIOLHstA

10. ICSI Initiatives towards GST
In standing shoulder to shoulder with the government towards directed implementation of GST, the Institute has been committed to building the capacity of its members, students and related stakeholders by advancing their understanding about GST and also by constantly apprising them with updates in GST through various initiatives. Some of the major initiatives in this direction are listed below:
• GST Newsletter – Initiated from April, 2017, the GST Newsletter has been published in 20 issues so far, with December, 2018 issue being the latest.
• GST Educational Series – 409 Issues have been brought so far.
• GST Point - Around 142 sessions of GST Point have successfully been completed so far.
• GST App – Has almost 19831 active users on its rolls till now.

In addition to this, the Institute is regularly organising workshops, seminars and programmes on GST in order to keep its members & students updated on developments in GST.

11. Release of ICSI Study Material for Professional Programme under ICSI New Syllabus
You are aware that based on the recommendation of the Syllabus Review Board, the Institute implemented new curriculum for Executive and Professional Programme. Accordingly the Study Material for Executive Programme under New Syllabus was launched in the month of April, 2018. Further, it is heartening to share that the study material of Professional Programme has been released in the month of January, 2019.

12. Pre – Exam Test
In order to qualify for enrolment in the June 2019 session of CS Executive / Professional Programmes (New Syllabus) Examinations, all the registered students of Executive and Professional Programmes (New Syllabus) stage(s) of CS Course are required to successfully complete a Pre-Examination Test. Hence, the students desirous of appearing in June, 2019 session of CS Executive / Professional Programmes (New Syllabus) examination are advised to complete the Pre-Examination Test well in advance as the examination enrolment for June, 2019 Session is scheduled to commence on February 26, 2019. After successfully completing the Pre-Examination Test, they may submit the examination form through the Online Portal https://smash.icsi.in/Scripts/login.aspx. For any clarification, students may submit the query at ICSI Support Portal http://support.icsi.edu under the head Pre-Examination Test.

As you are aware that consequent upon the magnificent success of First (1st) and Second (2nd) International CS Olympiad, the First Phase of the 3rd International Company Secretaries Olympiad for Academic Year 2018-2019 was successfully held on December 20, 2018. Accordingly, the Second Phase of the International Company Secretaries Olympiad is being held on January 30, 2019 respectively.

14. ICSI Convocation
Under the benign presence of eminent dignitaries as the Chief Guest and Guest of Honour, the second Bi-annual Convocations of 2018 were successfully held in the eastern, northern and western regions for awarding certificate of membership to Associate & Fellow members admitted during the period from April 1, 2018 to September 30, 2018 and to award prizes / medals to meritorious students (National) and winner students of national level competitions.
• For Eastern Region, Convocation was held on December 17, 2018 wherein the number of ACS was 112, of FCS was 4 and Student Awardees were 2.
• For Northern Region, Convocation was held on January 2, 2019 in two sessions, the Morning Session and the Afternoon Session. For Morning Session, the number of ACS was 199, of FCS was 13 and Student Awardees were 7. For Afternoon Session, the Certificate was awarded to 232 ACS.
• For Western Region, Convocation was held on January 11, 2019 wherein the Morning Session witnessed the award to 177 ACS, 7 FCS and 9 Student Awardees. For Afternoon Session, the Certificate was awarded to 194 ACS.

15. ICSI Study Centre Scheme
As you are aware that so far 95 Study Centres have been established in collaboration with reputed colleges in different locations under the ICSI Study Centre Scheme, which was launched by the Institute to break the distance barrier for students belonging to cities / locations in which the representative offices of the Institute are not in existence. In the month of January 2019, the following study centres have been opened.
• Nobel College, NH-26, Rajakhedi, Makronia, Sagar, Madhya Pradesh.
• St. Xavier's College, Palayamkottai, Near Palali Bus Stand, Tamilnadu.
• Nayagarh (Autonomous) College, Jadumanichhatrabas, Nayagarh, Odisha.
• Gyanodaya Institute of Management and Technology, Gram Kanawati, Mhow- Nasirabad Highway, District Neemuch, Madhya Pradesh.
• Tata College, Behind Kamal Filling Station Ward PO- 8, Jamodi Khurd, Sidhi, Madhya Pradesh.

16. ICSI Signature Award Scheme
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 Twenty Seven (27) Universities and Gold Medals have been presented under this scheme. In the month of January 2019, One (1) Gold Medal was awarded during the Convocation of Savitribai Phule Pune University, Pune, Maharashtra on January 11, 2019.
The Institute of Company Secretaries of India (ICSI) applauds the Interim Budget 2019 presented by the Finance Minister Piyush Goyal focusing on state of economy, tax reforms and GST, unorganized sectors, assured income to farmers, developing infrastructure, real estate, rural health and sanitation and such many other areas.

The budget covers almost all the aspects of living starting from providing safe drinking water to ensuring safety of living. The budget tries to benefit all the three constituents of our economy the labourers, the salaried and the business. One of the most important achievements is the focus on middle and lower income community. The setting up of committee under NITI Aayog for denotified nomadic and semi nomadic community to allocation of increased budget for the welfare of SCs/STs and development of North East region proves the above intention of the Government.

The Institute appreciates the initiatives taken by Government in announcing various social schemes for unorganized workers, assured income for farmers, interest subvention for farm loans, Kamdhenu scheme for animal husbandry, coverage of 1 lakh digital villages, separate department for fishing community.

The Institute is also proud to be a part of the Government’s ‘Swatch Bharat Abhiyan’ mission which covers 98% rural sanitation coverage making it as the world’s largest sanitation coverage. The Institute is also a true follower of RERA Act and other such reforms undertaken by the government from time to time.

The Institute welcomes Government’s decision on rollover of capital tax gains to be increased from investment in one residential house to that of two residential houses for a tax payer having capital gain up to 2 crore rupees. This will benefit more than 3 crore middle income group who are because of various reasons frequently shifts from one place of the country to the other part. It will also facilitate the growth of real estate sector.

The announcement of Mega Pension Yojana, namely Pradhan Mantri Shram Yogi Maandhan, to provide assured monthly pension of Rs. 3000/- per month, with contribution of Rs. 100/- per month, for workers in unorganized sector after 60 years of age, is one of the landmark announcement of the budget.

On the state of the economy, as India is poised to become a $5 trillion economy in next 5 years, $10-trillion economy in the next eight years, is a good sign of effective financial management. Other achievements such as the current account deficit which is likely to be only 2.5 percent of the GDP for this financial year, coverage of more than 70 percent of women beneficiaries in PM Mudra Yojana, enhancement of defence budget to Rs. 3.5 lakh crore for the first time, increase in number of operational airports in the country to more 100, fastest highway developers in the world so on and so forth would certainly give the positive signals to foreign investors and build confidence in Indian economy.
Election of ICSI President and Vice President for the year 2019-20
ICSI Convocation 2018 Southern Region held at Bengaluru
70th Republic Day
PAN INDIA Celebrations
70th Republic Day
PAN INDIA Celebrations
Dear Professional Colleagues,

**Subject: Registrations Open for Educational Course on ‘Valuation of Securities or Financial Assets’ at AHMEDABAD**

We are pleased to inform you that the Classroom training of ICSI Registered Valuers Organisation (ICSI RVO) Educational Course on ‘Valuation of Securities or Financial Assets’ has been successfully completed at various cities.

In continuation of the above, ICSI RVO is planning to conduct Classroom training of its 50 hour course for its next batch at Ahmedabad:

<table>
<thead>
<tr>
<th>Venue</th>
<th>Dates</th>
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<tr>
<td>Ahmedabad Management Association</td>
<td>The 50 hour course shall be conducted as follows:</td>
</tr>
<tr>
<td>AMA Management House, ATIRA Campus, AMA Complex, Dr. V S Marg, Vastrapur, Ahmedabad – 380 015</td>
<td>12th March, 2019 to 18th March, 2019</td>
</tr>
<tr>
<td>Phone : 079-40038581</td>
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Any individual willing to register for the Educational Course, which is a pre-requisite for appearing in the IBBI examination, may fill-in the online application in the form available at the link below with the requisite attachments:

[http://www.icsirvo.in/Member/Login](http://www.icsirvo.in/Member/Login)

After the successful submission of application, the payment link shall be sent to the candidates.

- **Enrolment Fee:** Rs. 8,850 (Rs. 7,500 + GST @18%)
- **Educational Course Fee:** Rs. 26,550 (Rs. 22,500 + GST @ 18%)

**Educational course Fee (for members who have successfully completed online Course on Valuation conducted by ICSI):** Rs.20,650 (Rs.17,500 + GST @ 18%)

For more details, please visit the website [www.icsirvo.in](http://www.icsirvo.in)

Regards

CS Samir Raheja
CEO (Designate)
Dear Professional Colleagues,

**Sub: Insurance Portal for ICSI Stakeholders**

With a view to provide better Professional and Personal safety cover like Professional Indemnity Cover, Medical Insurance, Motor Insurance and others to its Members, Students and other Stakeholders, the Institute entered into MoUs of tie-up with various Insurance Companies for different Insurance Products as per the following details:

<table>
<thead>
<tr>
<th>1. The Oriental Insurance Company</th>
<th>2. New India Insurance</th>
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<tbody>
<tr>
<td>a. Professional Indemnity</td>
<td>a. Professional Indemnity</td>
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<tr>
<td>b. Office Package Policy</td>
<td>b. Medical Insurance</td>
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<tr>
<td>c. Other general products</td>
<td>c. Motor Insurance</td>
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<tr>
<td>a. Cyber Insurance – for Individuals</td>
<td>a. Super Top up Health Insurance Policy</td>
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<tr>
<td>b. Director’ and Official’s Liability Policy</td>
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</table>

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<tr>
<th>5. Tata AIG General Insurance Company</th>
<th>6. SBI Life Insurance</th>
</tr>
</thead>
</table>

The Portal to access various Insurance Products was launched on 10th of January, 2019 during the 3rd ICSI CSR Excellence Awards Ceremony at Mumbai. Please visit the insurance Portal for detailed offers and coverage of policies at the following link: [http://bit.ly/icsiinsurance](http://bit.ly/icsiinsurance)

I wish you safer and tension free years ahead.

CS Makarand Lele

President

*Disclaimer: ICSI is a facilitator between its Stakeholders and the Insurance Companies. The interested stakeholders are advised to exercise their own discretion in buying the Insurance products and compare the final offer of these Insurance Companies with market offering before making a purchase. ICSI shall not be a party to the contract between the Buyers and Insurance Companies.*
Role of Company Secretary in building Responsible business

Dr. S.K. Gupta & Jyotsna Kakkar

In the wake of rapid changes and emerging dynamic scenario in the business world in recent years, stakeholders of companies are increasingly concerned with the conduct of the affairs of the company with focus on disclosure, transparency, accountability, stakeholders engagement and internal controls. Responsible Business is about successfully integrating responsible business issues into the core strategy and the day to day operations of the company, including aspects relating to corporate governance, corporate social responsibility, risk management, code of conduct and ethics, sustainability reporting, and annual business responsibility reporting. It aims at maximization of creation of shared value for all stakeholders.

Infusion of Artificial Intelligence into Corporate Board

Dr. Joffy George

At first blush, the idea of Artificial Intelligence (AI) in the boardroom may seem far-fetched. After all, board decisions are exactly the opposite of what conventional wisdom says can be automated. Judgment, shrewdness and acumen acquired over decades of hard-won experience are required for the kinds of complicated matters boards wrestle with. But AI is already filtering into use in some extremely nuanced, complicated, and important decision processes. In one sense, AI doesn’t change a board’s role or create new responsibilities. Boards have fiduciary duties, and those duties don’t change just because their company is undertaking AI-focused digital transformation. Just as artificial intelligence is helping doctors make better diagnoses and deliver better care, it is also poised to bring valuable insights to corporate leaders - if they’ll let it. No one knows the organization like the Board. AI is a vehicle for staying relevant and engaged.

Directors of Suspended Board of Directors of Debtor Company Entitled to get Documents/Resolution Plan

Delep Goswami & Anirudd Goswami

The Hon’ble Supreme Court of India has passed an important judgement which upholds the rights of the suspended Board of Directors of a debtor company under the Insolvency and Bankruptcy Code, 2016 to receive notice of the meetings of the Committee of Creditors along with the documents including the resolution plan in relation to the debtor company. This is a very significant judgement for the company secretaries both in practice and in service and considering the relevance of the same, the article will be very useful for all the corporate professionals including Company Secretaries.

Professional Accountability: The Key Factor in Underpinning the Integrity and Efficiency of a Company

Simranjeet Kaur

Considering the growing significance of Corporate Governance and also keeping in mind the interest of various stakeholders and investors in India, the Companies Act, 2013 raised the bar on Corporate Governance through enhanced accountability and transparency on part of corporate and professionals. The word “accountability” is used in different parts of society, most often it is used in the realm of government and politics. Moreover, the word has also been increasingly employed in the field of corporate governance. In fact the Corporate Governance structure under the Companies Act, 2013 is standing on five pillars, namely transparency, accountability, responsibility, independency and fairness. Keeping in mind the Vision New ICSI-2022, this article talks about one such pillar i.e. accountability and helps in understanding first, the concept of accountability in general, second, phases of accountability, third, the concept of accountability in corporate governance and why accountability is important in corporate governance and lastly, accountability of a professional towards various stakeholders.

Vision New ICSI-2022: A welcome move

Surendra U. Kanstiya

Recent changes in the regulatory regime effected by numerous rules, notifications, circulars and impacted by the interpretations caused by various judgments has converted the Company Law into a voluminous document. Many of the same have retrospective effect and many are to be effective from a future date. The professionals dealing with the same are at times baffled as to what provisions are applicable on a given time. Such issues, according to this article, be dealt through the Vision New ICSI-2022, a document designed to take the ICSI and profession to the new heights.

Profession Company Secretary – Accomplish ICSI Vision 2022

Narendra Singh & Prativa Jena

ICSI, became statutory body about four decades ago and since then continues to thrive. From being mere statutory officer, CS now leads important functions of the organization viz. Compliance, Audit & Certifications and Corporate Governance etc. Constitution of NCLT and Insolvency and Bankruptcy Code widened the opportunities for CS immensely. Above all, more than four dozen Universities in India have recognised CS qualification as equivalent to post graduate degree to pursue Ph.D course under disciplines such as Commerce, Management and Law. Now, profession CS have enormous responsibility to fulfill the trust reposed by the Regulators on profession CS. This would ultimately lead to accomplish the vision of ICSI in becoming global leader to promote good Corporate Governance.
Revamping of Corporate Governance Standards – A Detailed Analysis Under Sebi LODR Amendment Regulations, 2018

Mithun B. Shenoy

The Market Regulator has notified SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations, 2018 on May 9, 2018 to give effect to various recommendations proposed by the Uday Kotak Committee in their report dated October 5, 2017 and suggestions made by various stakeholders. The amendments made in the SEBI LODR Regulations mainly to standardise corporate governance in several areas including composition & terms of reference of Board and its Committee, Disclosure of Related Party Transactions, reclassification of Promoters as Public, Transparency, Financial Reporting and Members involvement. Certain amendments have already been effective from last year onwards whereas other recommendations shall be effective in different phases from April 1, 2019. A new certification has been introduced for Practising Company Secretaries on disqualification of directors, to check whether Board of Directors of the company have not been debarred or disqualified from being appointed or continuing as directors of companies by SEBI/ MCA/ any such statutory authorities. The article attempts to unfold various key amendments in the regulations.

Setting up of MSMEs

Ramadevi R. Iyer

Micro, Small and Medium Enterprise is a sector in which several government initiatives have been taken for promoting the growth and development of the sector. Central Government has involved the State Governments as well as several Ministries and Departments for this purpose. Many laws are applicable to these enterprises such as MSME Act, FEMA etc. which need to be thoroughly studied by persons running them. Twelve key initiatives and digital initiatives have been elaborated on in this article. One such focus area is the National Competitiveness Program since entrepreneurial and managerial development as well quality management is an issue which MSME managements encounter. The process of setting up an MSME comprises of several steps and is required to be done systematically. The challenges faced by the entrepreneurs are sought to be covered along with practical insights into this issue. Some solutions have also been proposed.

Role of Company Secretaries in Labour Laws and Compliance Calendar

Anu Amodia

Labour law (also known as labor law or employment law) mediates the relationship between workers, employing entities, trade unions and the government. Collective labour law relates to the tripartite relationship between employee, employer and union. Laws need to be reviewed from time to time. Hence, review or updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy including high levels of productivity and competitiveness, increasing employment opportunities, attracting more investment for growth, etc. In order to improve and abide by law, CS can play significant role in the field of Labour Laws.

Interim Budget 2019-20

Ashok Kumar Dixit

Interim Budget 2019-20 is a progressive budget and paved the path towards expansion of employment and high growth rate. It is a well-balanced budget with its primary focus on farm economy along with transformational reforms to address socio-economic challenges to ensure that the Indian economy is on a solid track. The article gives a snapshot of various qualitative reforms in the Interim Budget.

Research Paper

STATE REAL ESTATE REGULATIONS: AN ANALYSIS IN PERSPECTIVE OF COMPANY SECRETARIES PROFESSION

Dr. Prasant Sarangi

The real estate sector is enhancing to the growth of the Indian economy by the means of infrastructure development pertaining to residence, office space, factory space, etc. The sector is expected to reach a market size of US$ 1 trillion by 2030 from US$ 120 billion in 2017 and contribute 13 per cent of the country’s GDP by 2025. The Real Estate Regulatory Act (RERA) is the most potent of these expectations. The Act is implemented for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. The present study is an attempt to analyse existing differences in Acts implemented by state governments. An analysis has been carried out between states and also with central Act. To observe differences, ten common criteria on which most of the state Acts differ between each other have been identified and considered in the study.
National Company Law Tribunal Amendment Rules, 2019

Companies (Acceptance of Deposits), Amendment Rules, 2019

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019

The Companies (Amendment) Ordinance, 2019

Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019

Notification under Section 465 of Companies Act, 2013

Disclosures by Stock Exchanges for commodity derivatives

Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered and used by market intermediaries

Acceptance of Probate of Will or Will for Transmission of Securities held in dematerialized mode

Portfolio Concentration Norms for Equity Exchange Traded Funds (ETFs) and Index Funds

Cyber Security and Cyber Resilience framework for Mutual Funds / Asset Management Companies (AMCs)

Uniform membership structure across segments

Guidelines for public issue of units of InvITs - Amendments

Guidelines for public issue of units of REITs - Amendments

Norms for investment and disclosure by mutual funds in derivatives

Clarifications in SEBI (Depositories and Participants) Regulations, 2018

Alignment of Trading Lot and Delivery Lot size

Revised Monthly Cumulative Report (MCR)

Committees at Market Infrastructure Institutions (MIIs)

Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered and used by Market Infrastructure Institutions (MIIs)

From the Government

MEMBERS RESTORED DURING THE MONTH OF DECEMBER 2018

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2018

KNOW YOUR MEMBER (KYM)

ETHICS & SUSTAINABILITY CORNER

GST CORNER

CG CORNER

GLOBAL CONNECT

HAND BOOK OF COMPANY LAW PROCEDURES

WIRC GAZETTEE NOTIFICATION
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.

For more details please visit www.icsi.edu/csbf
ARTICLES

- ROLE OF COMPANY SECRETARY IN BUILDING RESPONSIBLE BUSINESS
- INFUSION OF ARTIFICIAL INTELLIGENCE INTO CORPORATE BOARD
- DIRECTORS OF SUSPENDED BOARD OF DIRECTORS OF DEBTOR COMPANY ENTITLED TO GET DOCUMENTS/RESOLUTION PLAN
- PROFESSIONAL ACCOUNTABILITY: THE KEY FACTOR IN UNDERPINNING THE INTEGRITY AND EFFICIENCY OF A COMPANY
- VISION NEW ICSI-2022 : A WELCOME MOVE
- PROFESSION COMPANY SECRETARY – ACCOMPLISH ICSI VISION 2022
- REVAMPING OF CORPORATE GOVERNANCE STANDARDS – A DETAILED ANALYSIS UNDER SEBI LODR AMENDMENT REGULATIONS, 2018
- SETTING UP OF MSMEs
- ROLE OF COMPANY SECRETARIES IN LABOUR LAWS AND COMPLIANCE CALENDAR
- INTERIM BUDGET 2019-20
Articles in Chartered Secretary
Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to nitin.jain@icsi.edu
11. The article shall be accompanied by a ‘Declaration-cum-Undertaking’ from the author(s) as under:

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor........................... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
   a. the article titled“...........” is my original contribution and no portion of it has been adopted from any other source;
   b. this article is an exclusive contribution for Chartered Secretary and has not been/nor would be sent elsewhere for publication; and
   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
Role of Company Secretary in building Responsible business

With the increasing focus in recent years on Responsible business the role of the company secretary has grown in importance. The company secretaries have now more than ever to do in bigger and more significant roles as the guardian and conscience keeper of the company’s reputation, sustainability and credibility.

WHAT IS RESPONSIBLE BUSINESS?

Responsibility means “response-able” or possessing the capability and the accountability needed to respond. A variety of terms are used when talking about companies and their responsibility to society, such as corporate social responsibility, responsible business conduct, business and human rights, sustainability, and more. A number of these terms are used interchangeably such as corporate social responsibility and responsible business conduct.

According to Joel Bakan’s (2004) in his book “The Corporation” – corporations “are now often expected to deliver the good, not just the goods; to pursue values, not just value; and to help make the world a better place”

Responsible Business is about successfully integrating responsible business issues into the core strategy and the day to day operations of the company, including inter-alia aspects relating to Corporate Governance, Corporate Social Responsibility, Risk Management, Code of Conduct and Ethics, Sustainability Reporting, and Annual Business Responsibility Reporting. It aims at maximization of creation of shared value for all stakeholders. The prosperity of business and society is inextricably linked. If every individual business strives to be the best it can be in all areas as a responsible business, there will be a positive multiplier effect that will benefit society, the economy and the environment

“There is one and only one social responsibility of business- to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”

- Milton Friedman

In the wake of rapid changes and emerging dynamic scenario in the business world in recent year’s stakeholders of companies are increasingly concerned with the conduct of the affairs of the company with focus on disclosure, transparency, accountability, Stakeholders engagement and Internal Controls.

“There is one and only one social responsibility of business- to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”

- Gerald Amos

There is no reason why it should be any different for companies as well. The Organization for Responsible Businesses is very much pro-business. It is essential that businesses are profitable and ensuring this must be the first responsibility. But profitability should not override all other considerations. “How” profits are made is extremely important and therein lies the key to other areas of responsibility that should never be overlooked.

Responsible business is one that puts creating healthy communities and a healthy environment at the centre of its strategy to achieve long-term financial value Businesses should actively integrate responsible business practices in their decision making and core business strategy and promote that thinking across the whole of their business and further through to their entire value chain for engaging actively with wider society with focus on Triple Bottom Line i.e People, Profits and Planet, in the pursuit of building a sustainable and responsible business.

Responsible business has two main facets. First, businesses should make a positive contribution to economic, environmental and social progress with a view to achieving sustainable
“There is one and only one social responsibility of business-to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.” - Milton Friedman

Some companies go beyond regulations and initiate green projects in various work areas. **Community**: Considering the needs of the local community can boost your reputation and have a considerable positive impact on your business. **The Marketplace**: How well do you look after your suppliers, distributors and customers? Can you make any improvements to improve your businesses efficiency and reputation? **Values and Transparency**: Do you operate in an open, honest and transparent way with employees, customers, suppliers, distributors and other stakeholders? Do you bring your personal ethics in to your business? A new value culture is now imperative for business success.

**COMPANY SECRETARY – THE EMERGING ROLE**

The responsibilities of the modern day company secretary have evolved from that of a “note taker” at board meetings or “administrative servant of the Board” to one which encompasses a much broader role of acting as “Board advisor” and having responsibility for the organisation’s corporate governance. In recent years, the role of the Company Secretary has expanded and greater responsibility than ever is being placed on the Secretarial function. The role has become multifaceted and global, with Company Secretaries adding value through solutions designed to protect boards and maximize shareholder engagement. The growing clamour for effective responsible business has increased focus on the role of the company secretary. Company Secretary is aptly christened as the Corporate Governance Officer (CGO).

The growth of Indian businesses, new regulatory prescriptions, intense antagonism and emergence of multifaceted business models expect the Company Secretary to rapidly expand their understanding of emerging business and governance scenarios and acquire requisite skills to provide exacting solutions on business issues with efficient service deliverables. Not only the businesses, the Company Secretary - Governance professional as we are popularly known, are also required to meet the progressively growing expectations of the stakeholders. The growth of corporate world has led to increased responsibilities for company secretaries. The role of a company secretary is changing and is increasingly outward-focussed now on incorporating investor engagement and corporate communications. Company secretary Commands high position in the value chain and acts conscience seeker of the company. Company Secretaries add value to the business by their facilitation skills and by intellectually handling, surviving, and flourishing in the world of ambiguity smartly.

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice and has identified Company secretary as a key managerial person in a company. However, defining the profession has become even tougher due to the way in which the challenges of enhanced stakeholder’s expectations, business structures and intensely dynamic scenarios, have unfolded affording an opportunity and challenge for the Company Secretary to take on and juggle a number of responsibilities that were never a part of their original jobs. With growing complexities, the stakeholders expects the companies to be transparent and averse to any potential risks. It is not just a professional opportunity now but a duty of company secretaries to contribute to the society by ensuring risk management and maintaining highest level of corporate governance.

**RESPONSIBLE BUSINESS = PROFITABLE BUSINES**

Responsible Business activities can be classified in to five key areas: **Workplace**: Employees, culture, ethics, Code of Conduct, Trust, Team Work **Environment**: Businesses are required to adhere to specific Environmental rules and regulations.
COMPANY SECRETARY AND RESPONSIBLE BUSINESS

Following are the key tenets and levers for building a responsible business and the Company Secretary is expected to play a pivotal role in bringing about the desired responsible business culture in the corporate world.

RISK MANAGEMENT

The world has changed in the last decade. From an explosion of information, technological revolutions, digital transformations to the rise and fall of large business institutions, the global economic meltdown, regulatory tightening, all only outpaced by the evolution of newer and more ominous forms of risk. Risk management has always been regarded as an inherent or integral feature of sound business management. The board of a company is responsible for the management of risk. The board must have a clear understanding of the risks facing the company; it must ensure that the organization has effective risk management and control processes; and it must be provided with assurance that the processes and key risks are being effectively managed. The company secretary has a pivotal role to play in the provision of appropriate guidance/advice to the board regarding its duties and responsibilities pertaining to risk management.

Companies Act 2013 has greatly contributed to enhanced awareness about risk management by clearly delineating the responsibilities for Board members. It is up to the Boards now to be proactive and lead from the front on risk matters, not just for value protection but also value creation by considering the risk-based strategy approach. Also, as per Section 134(3)(n) of the Companies Act, 2013 the Directors Report shall include a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.

As a top level officer and board confidante, a Company Secretary can play a vital role in ensuring that a sound Enterprise wide Risk Management [ERM] which is effective throughout the company is in place. As a key managerial personnel responsible for coordination and communication of processes and mechanisms for effective corporate functioning and governance, a Company Secretary should ensure that there is an Integrated Framework on which a strong system of internal control is built. Such a Framework will become a model for assessing and evaluating risk management efforts in the organization.

Company Secretary should ensure that the following questions are properly addressed
• Clarity on Risk management policy of the organization
• Whether policy is clearly understood by all concerned
• What are the relationships among ERM, performance and value
• How is ERM integrated with Organizational activities
• What is the risk appetite of the organization and whether risk is managed accordingly
• Are proper controls in place and risk response is appropriate
• Is the risk policy and actions communicated throughout the organization

Company Secretary, needs to interact with all the company’s business divisions so they can explain the risks in a unit far away that the board may not be familiar with. You need to translate it into why it’s important for me as a director. When speaking with managers of individual business units about risks they’re confronting, Company Secretary needs to be on alert for any filtering out of negative information. Think of yourself as a deputized auditor. People in the departments may not want to tell you about something because they haven’t figured out how to handle it yet. Company Secretary should take an inventory of all the events over the past year that impacted the company and assess whether or not the management team was prepared for each event. The company secretary has a pivotal role to play in the provision of appropriate guidance and advice to the board regarding its duties and responsibilities pertaining to Risk Management.

REPORTING OF FRAUDS

If during the course of their professional duties, a practicing professional has reason to believe that an offence involving fraud is being or has been committed by a company, it is his duty to report the fraud. Section 143 (12) of the Companies Act, 2013 provides that notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. As per section 143 (14), the provision of section 143 shall mutatis mutandis apply to a company secretary in practice conducting secretarial audit under section 204. The Company Secretary must be vigilant and if something abnormal comes to his knowledge then he must discharge his duty and comply with the reporting requirements prescribed under the Companies Act, 2013.

CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility has been described as the concept that an enterprise is accountable for its impact on all relevant stakeholders. It is the continuing commitment by business to behave fairly and responsibly, and contribute to economic development while improving the quality of life of the work force and their families as well as of the local community and society at large.

“Corporate social responsibility is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it because it is good for our business.”

-Niall Fitzgerald

With a view to provide a framework for companies to implement need-based CSR activities, A new provision has been put in place under Section 135 of the Companies Act, 2013 which provides for constitution of a CSR committee, drafting of CSR policy, collection and collation of CSR data and reporting of the same to the stakeholders which is supposed to modify behaviour of those companies which are covered by the provisions and ensure that they behave in a socially desirable way.

Company Secretary can play a key and instrumental role in formulation and implementation of CSR strategy. For this first of all a Company Secretary must have a feeling, a desire from the bottom of the heart to do something good for the society, to participate in the welfare of the underprivileged section of the society. Then only one can leverage such attitude and
effectively encourage and drive others for CSR actions. A Company Secretary should influence CSR activities within the organization since he has direct nexus to the Board of Directors. Once CSR is initiated and directed from the top level of the pyramid it will automatically be followed effectively down the line in the hierarchy across the organization.

Company Secretary should actively get involved with CSR in terms of:
- Conceptualization of the CSR Policy
- Deciding the CSR program structure
- Drafting association agreements
- Identification of CSR projects based on scope, need and budget
- Budgeting and allocation of funds for CSR projects
- Monitoring progress of CSR projects – MIS
- Conducting Post CSR project completion audit
- Company Secretary should act as an interface between CSR department, Committee and the Board

The Company Secretary can, right from conceptualization, deciding the legal form, structure of CSR program, identification of CSR projects, budgeting and allocation of funds, monitoring progress of CSR projects, and conducting Post CSR project completion audit can contribute a lot to ensuring effective assimilation of CSR philosophy into the DNA of the Organization.

BUSINESS ETHICS
Today, the corporate world as a whole is in the process of acquiring a moral conscience. The new and emerging concepts in management like corporate governance, business ethics and corporate sustainability are some of the expressions through which this emerging ethical instinct in the corporate world is trying to express or embody itself in the corporate life. Business ethics comprises the principles and standards that guide behaviour in the conduct of business. Businesses must balance their desire to maximize profits against the needs of the stakeholders. Companies must be run ethically in a manner such that all stakeholders-creditors, distributors, customers, employees, competitors, the society at large and governments-are dealt with in a fair and equitable manner. A code of ethics should reflect top managements’ desire for compliance with the values, rules, and policies that support an ethical climate.

Business ethics, also called corporate ethics, is a form of applied ethics or professional ethics that examines the ethical and moral principles and problems that arise in a business environment. It is defined as the written and unwritten codes of principles and values, determined by an organization’s culture, that govern decisions and actions within that organization. It applies to all aspects of business conduct on behalf of both individuals and the entire company. In the most basic terms, a definition for business ethics boils down to knowing the difference between right and wrong and choosing to do what is right.

Regulation 17(5), 26(3) of SEBI LODR regulations, 2015 states that:
- The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.
- The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.
- All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.

“Responsible Business is about successfully integrating responsible business issues into the core strategy and the day to day operations of the company, including inter-alia aspects relating to Corporate Governance, Corporate Social Responsibility, Risk Management, Code of Conduct and Ethics, Sustainability Reporting, and Annual Business Responsibility Reporting. It aims at maximization of creation of shared value for all stakeholders.”
Company Secretary should ensure that
• Code of Conduct is in place
• It is communicated throughout the organization
• Awareness programs are conducted for making people aware

A major step in developing an effective ethical culture in the organization is constituting an Ethics Committee of the Board and implementing an education program and communication system to bring about the desired awareness amongst the employees about the firm’s ethical standards and the Company Secretary has a key role to play in this regard.

CORPORATE SUSTAINABILITY
Corporate sustainability indicates a new business philosophy as an alternative to the traditional growth and profit maximization model under which sustainable development comprising environmental protection, social justice and equity, and economic development are given more significant focus while recognizing simultaneous corporate growth and profitability. It is a business approach that creates long-term shareholder value by embracing opportunities and managing risks emanating from economic, environmental and social developments. Corporate sustainability describes business practices built around social and environmental considerations. Corporate sustainability encompasses strategies and practices that aim to meet the needs of the stakeholders today while seeking to protect, support and enhance the human and natural resources that will be needed in the future. Many companies have started preparing and releasing Sustainability Reports which report on economic, environmental, and social impacts of business. Sustainability reporting is a practice to measure, disclose, and be accountable to internal and external stakeholders for organizational, environmental, social and economic performance. Company Secretary should guide and enlighten the management and encourage them to embrace Sustainability practices which has today become a key distinguishing factor in corporate branding.

BUSINESS RESPONSIBILITY REPORTING
Realizing that adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance, Securities and Exchange Board of India (SEBI) in its LODR Regulations, 2015 inserted a regulation 34(2)(f) mandating inclusion of Business Responsibility Report as part of the Annual Report. It is mandatory for the top five hundred listed entities based on market capitalization at BSE and NSE.

Business Responsibility Report give details on areas such as environment, governance and stakeholder’s relationships. The report provide insight into the nature and quality of the organisation’s relationships with its key stakeholders, including how and to what extent the organisation understands, takes into account and responds to their legitimate needs and interests. A Business Responsibility Report contains a standardized format for companies to report the actions undertaken by them towards adoption of responsible business practices. Business Responsibility Report has been designed to provide basic information about the company, information related to its performance and processes, and information on principles and core elements of the Business Responsibility Reporting. Company Secretaries must drive the processes within an organization which culminate in the form of ABRR in true spirit by providing necessary thrust and direction within the organization for compliance and reporting on the mandated social, economic and environmental parameters. CS should make efforts to ensure that the practical guidance in respect of all the 9 parameters on which reporting is to be done is appropriately and effectively implemented with the organization.

VIGIL MECHANISM
Whistle blowing mechanism plays a critical role in implementing Corporate Governance Practices. The effective implementation of Vigil mechanism not only reduces the fraudulent activities but also sends a signal to both internal and external agencies that organization exercises good corporate governance.

According to Section 177(9) of the Companies Act, 2013, every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board’s report. The Whistle Blower Policy should include mechanism to encourage employees, vendors, to report evidence of fraudulent activities. It should properly address the processes that the employees should follow in filing their representation alleging suspected impropriety.

Whistle Blower Policy in a company has been provisioned with a view to provide a mechanism for employees of the Company to raise concerns on any violations of legal or regulatory requirements, incorrect or misrepresentation of any financial statements and reports, etc. The Whistle Blower policy intends to cover serious concerns that could have grave impact on the operations and performance of the business of the Company.

“The World suffers a lot not because of the violence of bad people but because of the silence of good people.”

Company Secretary has a key role to play in the Vigil Mechanism
• CS is the recipient of all information flowing to the Board – should sense out suspected improper activities/ unethical practices
• CS should ensure that informers are not victimized
• CS must ensure that the processes laid down in the Vigil Mechanism are duly followed
• CS must ensure that the Vigil Mechanism is effectively communicated to all concerned

Company Secretary can be instrumental in implementing whistle blowing mechanism as an internal regulator. As he is a part of Board decision making process and recipient of all important information flowing in the organization, he should sense out suspected improper activities/ unethical practices adopted by individuals / groups within the organization. He can also support the ombudsman function with the Board by establishing a symbiotic relationship between the governance and compliance. Company Secretary as a key recipient of vigil sensitive information can face reprisal, sometimes at the hands of the organization or group, which he accused, sometimes under law. There is often a fear of straining their relationship at work or outside work. If this tool of Corporate Governance is used in true letter and spirit, it can be saviour for protecting the stakeholders and the larger public interest and Company Secretary has a vital role to play in making Whistle Blowing an
As a key managerial personnel responsible for coordination and communication of processes and mechanisms for effective corporate functioning and governance, a Company Secretary should ensure that there is an Integrated Framework on which a strong system of internal control is built. Such a Framework will become a model for assessing and evaluating risk management efforts in the organization.

DISCLOSURE AND REPORTING
In recent years there has been increased emphasis on the quality of corporate reporting and calls for increased transparency. The company secretary has the responsibility for drafting the governance section of the company’s annual report and must ensure that all the requisite information is communicated through this vital document for building the desired trust with the stakeholders. The disclosure requirements under the Companies Act, 2013 with regard to Board of Director Report, Annual Return, Prospectus, notices of meetings and the requirement of hosting the specific information on the website of the company must be duly complied with by the Company Secretary by compiling and encompassing all relevant information. Company secretaries need to develop commercial and management acumen and drafting and communication skills for ensuring due disclosures for building the desired trust with the stakeholders.

COMMUNICATION WITH STAKEHOLDERS
The company secretary occupies a position which entails a unique opportunity of interface between the Board, management and stakeholders and as such they act as an important link between the Board and the business. Through effective co-ordination and communication they can provide to the management an opportunity to understand the expectations of the stakeholders. Company Secretary must advise and implement an effective communication system for ensuring appropriate level of engagement with the stakeholders of the company. Regular updation of information on the website of the company, periodic release of newsletter and periodically organizing stakeholders meet could help an organization in establishing an effective interface with the stakeholders.

CORPORATE GOVERNANCE
With the increasing focus in recent years on corporate governance, the role of the company secretary has grown in importance. The pace of regulatory change and public mistrust of institutions, means that company secretaries have more than ever to do in bigger and more significant roles as the guardians and leaders of good governance.

As per The Institute of Company Secretaries of India (ICSI), Corporate Governance is defined as “The application of best management practices, compliances of law in letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.” Driven by Chapter IV of LODR Regulations, 2015, Indian companies have gradually scaled up their corporate governance practices over the years. Provisions of the Companies Act, 2013 have further attempted to mandate and shore up good governance in companies.

It is important that robust governance arrangements are in place, are clearly documented and communicated within the organization. The position of the company secretary enables them to have a holistic view of the governance framework and as a result they are generally tasked with the responsibility of ensuring that this framework and any supporting policies and procedures are duly structured, implemented and explicitly documented. The company secretary plays a leading role in good governance by helping the Board and its committees function effectively and in accordance with their terms of reference and best practices.

The top five mechanisms, which are vital for implementing an effective Corporate Governance in any organization are: Independence and appropriate composition of the Board, Role of Auditors (Internal and Statutory) and Audit Committee, Whistle Blowing, Shareholder engagement, Transparency, trust, and accountability towards stakeholders. Regulations on corporate governance can only provide the framework or structure to ensure that companies are governed in the best interest of stakeholders at large but its effective assimilation and implementation is to be ensured by the Company Secretary by active participation in Strategic Planning process, Risk Management process, Internal Control process, MIS, Corporate Communications, Succession Planning, CSR, Board performance evaluation process. This will ensure high level corporate administration in accordance with best governance practices which would result in well governed and sustainable business for the benefit of its stakeholders at large. The Company Secretary has an important role to play in helping businesses improve their credibility through responsible business practices.

As an initiative to promote better corporate governance and transparency in order to protect interest of investors and other stakeholders, the provisions for corporate governance are specified in Chapter IV of LODR Regulations, 2015 which are aligned with the provisions under Companies Act, 2013. The company secretary works closely with a company’s Board of Directors, its CEO, and senior officers, providing information on board best practices and tailoring the board’s governance framework to fit the needs of the company and its directors, as well as the expectations of shareholders.

CONCLUSION
With the increasing focus in recent years on responsible business the role of the company secretary has grown in importance. The pace of regulatory change and public mistrust of institutions, means that company secretaries have more than ever to do in bigger and more significant roles as the guardians and leaders of good governance. Company secretaries can add real value to their role and increase their impact by bringing commercial acumen, strategic understanding and softer people skills in addition to their already much sought after legal and governance knowledge. With increasing focus in recent years on responsible business, the company secretary is now seen as the guardian and conscience keeper of the company’s reputation, sustainability and credibility. Company Secretaries must provide value added services to the company and play a proactive role in creating structure and processes which facilitate building a responsible business.
Infusion of Artificial Intelligence into Corporate Board

Boards have fiduciary duties, and those duties don’t change just because their company is undertaking AI-focused digital transformation. Just as AI is helping Doctors make better diagnoses and deliver better care, it is also poised to bring valuable insights to corporate leaders - if they’ll let it. No one knows the organization like the Board. AI is a vehicle for staying relevant and engaged.

INTRODUCTION

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olloquially, the term “Artificial Intelligence” is applied when a machine mimics “cognitive” functions that humans associate with other human minds, such as “learning” and “problem solving”. At first blush, the idea of Artificial Intelligence (AI) in the boardroom may seem far-fetched. After all, board decisions are exactly the opposite of what conventional wisdom says can be automated. Judgment, shrewdness, and acumen acquired over decades of hard-won experience are required for the kinds of complicated matters boards wrestle with. But AI is already filtering into use in some extremely nuanced, complicated, and important decision processes.

As companies rush into digital transformation, even traditional bricks-and-mortar companies are turning to Artificial Intelligence to reach new customers and create new products and business models. We only have to look at the global spending on digital transformation – expected to exceed $1 trillion this year – to realize the scale of this movement. Data, the heart of AI is now widely recognized as the most valuable resource companies have. AI is not just a slick set of algorithms – it demands fundamentally new human capital, technological skills and investment.

What does this mean for boards of directors overseeing ambitious digital transformation agendas at their company? In one sense, AI doesn’t change a board’s role or create new responsibilities. Boards have fiduciary duties, and those duties don’t change just because their company is undertaking AI-focused digital transformation. Boards should still be guided by their basic duties of care and loyalty in this context. A board’s responsibility for overseeing management, versus managing the enterprise itself, is not changed. When seen through this lens, AI requires special attention. Just as artificial intelligence is helping doctors make better diagnoses and deliver better care, it is also poised to bring valuable insights to corporate leaders — if they’ll let it.

COMPLEX DECISIONS DEMAND INTELLIGENT SYSTEMS

Business has become too complex and is moving too rapidly for boards and CEOs to make good decisions without intelligent systems. The solution to this complexity will be to incorporate AI in the practice of corporate governance and strategy. This is not about automating leadership and governance, but rather augmenting board intelligence using AI. Artificial intelligence for both strategic decision-making (capital allocation) and operating decision-making will come to be an essential competitive advantage, just like electricity was in the industrial revolution or ERP is in the information age.

AI is going to have a major impact on corporate governance mainly because AI will be better able to understand the context of the environment of an organization. Generally, when a decision is made within an organization, it is made based on a limited amount of data. But, with AI you are capable of including more data sources to get a much better picture of what’s going on and how the context of the organization is changing and influencing decision-making.

Since AI is completely dependent upon data, one thing that boards need to keep in mind when wading into the AI waters is that there are real foundational investments that need to be made around the data their company is going to be using as part of this process. That data needs to be properly understood and labelled and then you can begin this process of moving down the path of AI. Most organizations don’t have great data hygiene at this point. Since they don’t have great data management in foundation, they struggle with analytics and consequently struggle with AI.

When AI is involved in decision-making, it might be that decisions will become less emotional and more based on the facts of what’s going on. But AI will have difficulty in making decisions related to complex human issues, such as harassment or gender equality in the coming years. First of all, we need to teach AI ethics, which is very, very difficult. It’s called machine ethics, and it’s a highly challenging and there is even a philosophical debate about what ethics are today, and how ethics change over time, and what happens if AI is more ethical than us humans.

But AI also has pitfalls. AI doesn’t always do what we expect it to do. There are a lot of examples already where AI behaved differently from what we wanted, and that can cause significant harm to an organization, or even worse, to humans. So, AI in itself requires governance and the more AI will be implemented in organizations, the more AI governance will become important as well.

IT’S TIME TO ASK NEW QUESTIONS

From a board perspective, data creates a frustrating dissonance.
It has become every company’s most valuable asset, and yet there is no ‘data’ category or line item on the balance sheet, which can challenge a board’s traditional approach to overseeing critical company assets. Another difficulty for directors can be found in assessing the company’s digital transformation strategy itself. In an area where technology is changing at record speed, and where few standard practices exist, it may be hard for directors even to know what questions to ask.

Boards will need to balance patience with urgency. The hard truth is that most companies have a long road ahead of them to become ‘data-mature’; there is no such thing as an overnight AI strategy. Success demands sustained action from management that will test companies without deep skills sets and experience in the space, and thus will test boards’ oversight responsibilities.

à Have we considered how AI could transform our products or services and which aspects of our business could benefit from increased automation or machine learning?
à Have we considered the potential efficiency and productivity benefits that may come with adopting AI?
à How might AI fit with other emerging technologies we are investing in?
à Does the company have the computing power and infrastructure to support the use of AI?
à Will the AI projects be performed in the company’s data centers on-site or in the cloud? What precautions will be taken to aggregate, move, secure and manage the vast amounts of data required to perform the projects?
à Does the company have the digital skills and talent to move forward? How will the company gain the trust of stakeholders if it uses AI? How is the company building or acquiring the skills needed to deploy AI projects and use their results? The demand for talent is most acute in terms of data scientists and others who can deploy AI solutions, and the global talent war for these skills will not abate anytime soon
à How is management measuring progress and gauging success? How is the data being used? What is being prioritized? What is being deprioritized?
à Does the company have established practices and controls in place to minimize any reputational or other risks?

LOOK IN THE MIRROR

Boards are well versed in assessing risks and opportunities even in complex, rapidly changing areas. They now need to rise to the challenge when it comes to overseeing AI-driven digital transformation. Among the many strategic, operational and legal questions directors will ask, perhaps the most important of all is not about management’s plans, but about the board itself: do we as a board still possess the necessary talent and skill to exercise our fiduciary duties in this area?. Just as digital transformation is pressuring companies to assess and adjust their human capital needs, data-driven AI may require new types of expertise not represented in a board’s current composition. Just as there is a talent war among companies deploying AI, so there may be competition for such skills and perspectives at board level. Now is the time for directors to look in the mirror and consider whether they need to address potential deficiencies by augmenting the board with new people who have new backgrounds and perspectives.

CONCLUSION

No one knows the organization like the Board. Without a strategy or reasoning behind why and how to incorporate AI, or which problems it should be applied to, AI technology will become a doormat solution and its true potential will remain locked. AI strategy cannot simply be bought from a vendor, just as responsibility cannot be outsourced. AI is a vehicle for staying relevant and engaged. Each organization’s AI Strategy will be unique based on its approach to capitalizing on the opportunities AI provides. An organization’s AI strategy might be an obvious extension of the organization’s overall digital or big data strategy. The AI strategy should clearly articulate the intended result of AI activities. Now, it is time to have our own AI strategy for staying relevant and engaged.
Directors of Suspended Board of Directors of Debtor Company Entitled to get Documents/Resolution Plan

In a significant judgement delivered on 31st January, 2019 the Hon’ble Supreme Court of India decided on an important aspect connected with the rights of the Directors of the suspended Board of Directors (“BOD”) of a “Debtor Company” to receive copies of documents/resolution plans, whose case has been admitted by the Adjudicating Authority (“AA”) under the relevant provisions of the Insolvency & Bankruptcy Code, 2016 (“IBC”). From the point of view of company secretaries, both in practice and in service, the aforesaid Judgement is of significant relevance. The authors through this article analyses the highlights of the judgement.

BRIEF FACTS OF THE CASE

Brief facts leading to the aforementioned Judgement are that the Appellant before the Supreme Court challenged the judgement of the National Company Law Appellate Tribunal (“NCLAT”) rejecting the Appellant’s prayer for directions to the Resolution Professional (“RP”) to provide all relevant documents including the Resolution Plans in question to the members of the suspended BOD of the Corporate Debtor in each case so that they may meaningfully participate in meetings held by the Committee of Creditors (“COC”).

In respect of the debtor company vs M/s XYZ Limited, the Standard Chartered Bank and DBS Bank Limited, being the financial creditors of the aforesaid corporate debtor, filed company petitions which were admitted on 8th and 15th December, 2017, respectively, by the National Company Law Tribunal (“NCLT”) and one person was appointed as the Interim Resolution Professional in both the said petitions. The COC was constituted u/s 21 of IBC and the Appellant, being a member of the suspended BOD of the debtor company, was given notice and the agenda for the first COC meeting held on 12th January, 2018, and was permitted to attend the aforesaid meeting of COC. The Appellant alleged that subsequent meetings of the COC were held in which he was denied participation. As a result, the Appellant filed miscellaneous application before the NCLT to allow the Appellant to effectively participate in COC meetings and that the Appellant also executed a non-disclosure agreement (NDA) to keep information received in respect of resolution plans strictly confidential and even undertook to indemnify the RP. However, by order dated 1st August, 2018, the NCLT dismissed the said Application, with liberty to the Appellant to attend the COC meetings, but not to insist upon being provided information considered confidential, either by the RP or the COC. Against the said order, the Appellant filed an appeal before the NCLAT, which recognized the Appellant’s right to attend and participate in the COC meetings, but denied the Appellant’s prayer to have access to certain documents, most particularly, the Resolution Plans.

Thereafter, the Appellant filed an application before the NCLAT for modification/clarification of its earlier order but the same was also dismissed by the NCLAT. Aggrieved by the NCLAT’s order, the Appellant filed the appeal before the Hon’ble Supreme Court of India. In the meanwhile, on 23rd August, 2018, the Resolution Plan of one M/s ABC Limited was approved by majority of 96.86% of the COC and on 24th August, 2018, the RP submitted the said plan to the Adjudicating Authority (“AA”). On 27th August, 2018, the Supreme Court, by an interim order, stated, while issuing notice, that the bids will not be finalized by the AA without the leave of the Supreme Court. On 10th September, 2018, the Supreme Court clarified on the application filed by the RP that the AA could continue with the proceedings, but no order could be passed on the same until the Supreme Court adjudicated the present appeal filed by the Appellant.

ARGUMENTS BY THE APPELLANT

During argument before the Supreme Court, the Appellant’s counsel contended that u/s 24(3) of the IBC, the RP has to give notice of each meeting of the COC to the members of the suspended BOD and under Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short “CIRP Regulations”), the notice of these meetings shall not only contain an agenda of the meetings, but shall also contain copies of all
documents relevant to the matters to be discussed and issues to be voted upon at the meeting. This necessarily means that access to the Resolution Plans and other relevant documents under consideration at these meetings must be supplied together with the notice of the meeting to the members of the suspended BOD of the debtor company.

It was also argued by the Appellants that even though such directors were “participants” in the meetings of the COC, albeit without voting rights, yet, they are persons who, in order to participate effectively, must be given the necessary documents so that their views can also be considered by the COC. It was also contended that as per Section 31(1) of the IBC, once the Resolution Plan is approved by the AA, it shall be binding on the corporate debtor, together with guarantors and other stakeholders. This being the case, it is clear that the erstwhile BOD, which consists of persons who may have given personal guarantees for the debts owed by the corporate debtor, will be bound by the Resolution Plan and therefore have a vital stake in what ultimately gets passed by the COC. Apart from this, u/s 60(5) of IBC, such persons have a right to challenge the terms of a proposed Resolution Plan before the AA and u/s 61 of IBC to file an appeal therefrom. To buttress their submissions, the Appellant’s counsels also relied on the Bankruptcy Law Committee Report of 2015.

ARGUMENTS BY THE RESPONDENTS

On behalf of the RP, arguments were advanced that Section 30(3) of IBC and Regulation 39(2) of the CIRP Regulations make it clear that Resolution Plans were only to be given to the COC for its consideration and that the terms “committee” and “participant” are differently defined under the Regulations and that participants are expressly excluded by Regulation 39 and further that if the Regulations go beyond the provisions of the IBC, they must be struck down as ultra-vires, as under section 30(3) of the IBC, the RP is required to present Resolution Plans only to the COC. The Respondents also argued that Notes to Clauses to Section 24 of the IBC make it clear that the reason for the participation of the erstwhile BOD in meetings of the COC is so that they may give information to assess the financial position of the corporate debtor and such Directors cannot go into the merits and demerits of the Resolution Plans which affect the creditors only. Reliance was placed on the Supreme Court’s judgement in Mobilox Innovations Private Limited-vs-Kirusa Software Private Limited (2018-1 SCC 353) for the proposition that Notes on Clauses are important parliamentary material that may be relied upon to understand the object of the Section in question. The Respondents also relied strongly upon Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with the First Schedule thereto, according to which it is clear that confidential information can only be shared with the consent of the relevant parties. They further argued that the persons like the Appellant are not persons aggrieved and since no prejudice is caused to them, they do not have a right to file any application under Section 60(5) of the IBC or appeals to the NCLAT from orders of the AA under section 61 of the IBC.

On behalf of the COC, learned counsels argued that the expressions “information memorandum” and “resolution plan” are separately defined and a specific procedure has been laid down in the IBC and the Regulations dealing with them and thus, the Resolution Plan cannot be said to be “documents” within the meaning of Regulation 21 of CIRP Regulations. They also strongly relied upon the Notes on Clauses and stated that the role of members of the suspended BOD is that of information givers and not information seekers. They further relied upon the proviso to Section 21(2) of the IBC which make it clear that a director, who is also a financial creditor, has no right to participate in a meeting of the COC. They also argued that the Legislature in its wisdom has created differentiation between the terms “participant” and the expression “committee” and that the confidentiality requirements would be breached if a copy of the Resolution Plan were to be given to the members of the suspended BOD and some members of the suspended BOD may attempt to sabotage the corporate insolvency resolution process, for which reason also, the resolution plans should be kept hidden from them. The counsel for the COC also argued that the term “persons aggrieved” as used per section 61 of the IBC would necessarily refer to the persons aggrieved for the purpose of section 60(5) of the IBC, and as members of the suspended BOD cannot be said to be persons aggrieved, they cannot possibly approach the AA under section 60(5) or the Appellate Tribunal under section 61 of the IBC.

SUPREME COURT’S OBSERVATIONS AND FINDINGS

After advertming to the relevant provisions of the IBC and the Regulations, the Supreme Court noted, inter-alia, that under section 24(3)(b) of the IBC, notice of each meeting of the COC will have to be given to the members of the suspended BOD though they will not have any voting right at such meetings. Further, Section 25(2)(f) mandates the RP to convene all meetings of the COC and 25(2)(i) thereof postulates the RP to present all resolutions at the meetings of the COC. Further, Regulation 21(3)(iii) of CIRP Regulations stipulates that notice of the COC meeting shall contain copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting. The Supreme Court also noted that the statutory scheme of IBC makes it clear that though the erstwhile BOD are not members of the COC, yet, they have a right to participate in each and every meeting held by the COC and also have a right to discuss along with members of the COC all resolution plans that are presented at such meetings under section 25(2)(i). It cannot be gainsaid that operational creditors, who may participate in such meetings, but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans.
NCLAT against the orders of the AA. Quite apart from this, Section 31(1) of the IBC would make it clear that such members of the erstwhile BOD, who are often guarantors, are vitally interested in resolution plans as they affect them. The Resolution Plan may impact/affect the guarantor, who may be member of the erstwhile BOD. Further, under Regulation 38(1)(a), a resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, and under sub-clause 3(a), a resolution plan shall demonstrate that it addresses the cause of default. This regulation also, therefore recognizes the vital interest of the erstwhile BOD vis-à-vis a resolution plan together with the cause of default. Therefore, a combined reading of the IBC as well as the Regulations leads to the conclusion that members of the erstwhile BOD, being vitally interested in resolution plans that may be discussed at the COC meeting must be given a copy of such plans, as part of “documents” that have to be furnished along with the notice of such meeting.

So far as confidential information is concerned, it is clear that the resolution professional can take an undertaking in the form of a Non-Disclosure Agreement from members of the erstwhile BOD to maintain strict confidentiality. The Supreme Court also rejected the arguments of the Respondents on the proviso to Section 21(2) and clarified that directors, simplicitor, are not the subject matter of the proviso, but only those directors who are related parties of the corporate debtor and such persons do not have any right of representation, participation or voting in a meeting of the COC.

The Supreme Court further made it clear that the time that has been utilized in these proceedings must be excluded from the period of the resolution process of the corporate debtor, as has been held in Arcelor Mittal India Private Limited –vs- Satish Kumar Gupta & Others. The Court made it clear that in each of these cases, the appellants will be given copies of all resolution plans submitted to the COC within a period of two weeks from the date of the judgement. The meetings of the COC will be convened within two weeks thereafter, which would include the appellants as participants. The COC will then deliberate on the resolution plans afresh and either reject them or approve of them with the requisite majority, after which, the further procedure detailed in the IBC and the Regulations will be followed. The Supreme Court therefore allowed the appeal and set aside the impugned judgement of the NCLAT.

CONCLUSION

The aforesaid judgement would now clear the doubts over the rights of the members of the suspended BOD of the debtor company, particularly with regard to the Resolution Plan being finalised by the COC for approval by the AA as such a Resolution Plan vitally affects members of the erstwhile BOD. The RP and the COC cannot therefore ignore the principles of natural justice in so far as the members of the suspended BOD of the debtor company are concerned.
Professional Accountability: The Key Factor in Underpinning the Integrity and Efficiency of a Company

Considering the growing significance of Corporate Governance and also keeping in mind the interest of various stakeholders and investors in India, the Companies Act, 2013 raised the bar on Corporate Governance through enhanced accountability and transparency on part of corporate and professionals. The word “accountability” is used in different parts of society, most often it is used in the realm of government and politics. Moreover, the word has also been increasingly employed in the field of corporate governance. In fact the Corporate Governance structure under the Companies Act, 2013 is standing on five pillars, namely transparency, accountability, responsibility, independency and fairness. Keeping in mind the Vision New ICSI- 2022, this article talks about one such pillar i.e. accountability of a professional towards various stakeholders.

WHAT IS ACCOUNTABILITY?

Accountability is recognised as a complex word and is frequently used in different parts of society. The meaning of accountability is mistakenly considered equivalent to the words such as responsibility. The concept of accountability is closely related to the word responsibility, but if it is used interchangeably it will be a source of confusion. Responsibility is an obligation to act or make a certain decision i.e. it includes personal or moral ethics. Accountability on the other hand depicts the relationship that exists between the person who confer responsibilities and the other who ensure that the responsibilities conferred are delivered. It also involves reporting back to the person who has conferred the responsibilities.

Schedler (1999) had summarized the meaning of accountability as:

(1) Information
(2) Justifications and
(3) Sanctions

Accountability is defined as a ‘process of being called to give account to some authority for one’s actions’, or a process of ‘giving an account’. Thus accountability can be seen as ‘answerability’. It is the relationship that exists between an actor and a forum in which the actor is under an obligation to explain and to justify his or her conduct, the forum has the right to pose questions and the actor may face consequences. From the above definition it is clear that the word accountability has an element of control, which in fact is a term used in the literature before the term accountability took over.

Accountability is said to relate to expectations but it is not synonym of discipline or blame. It is general expectation that Supervisors have from their employees or for that matter stakeholders have from their company that the task that was allotted to them will be completed satisfactorily. It is the duty of Supervisors or stakeholders to ensure that the professionals or the company do not define accountability as blame or discipline, but rather, an opportunity for growth and recognition. It is also pertinent to note that Supervisors or for that matter stakeholders will recognize efforts that exceed expectations, not just meet them.

Webster’s Third International Dictionary defines accountability as follows:-
(1) The state of being accountable i.e. is answerable or
Management and educational literature present many views with regard to accountability. Accountability can be viewed as an obligation, as a commodity in an exchange relationship and it can also be viewed as a set of procedures leading to a better performance. In fact it can often be used as a synonym for “good governance”.

**PHASES OF ACCOUNTABILITY**

There are three phases of accountability, first, the information phase, second, the debating phase, third, the consequences or sanction phase. Information is a crucial tool in accountability arrangements. In fact in all phases of accountability process, information first has to be gathered, processed and then finally it has to be communicated. The range and format in which the information has to be provided depends on the type of accountability in question. By providing information to the accountee, the accountor acknowledges the accountability relationship that exists between them.

The dialogical nature of accountability can be seen in debating phase i.e. process of questioning and answering phase. The accountee has the authority to demand answers for the performance of the accountor whereupon the accountor has to provide additional information. This phase is important because it offers the greatest information to emerge because information provided face-to-face allows immediate feedback, allowing direct verification of the correctness of the information provided.

In the consequences or sanction phase the accountee uses his or her right to impose sanctions. The accountee on the basis of information provided in the information phase and debating phase forms his judgement and in doing so, the accountee may choose available formal and informal sanctioning mechanism.

**WHY ACCOUNTABILITY IS IMPORTANT IN CORPORATE GOVERNANCE?**

Accountability is important in corporate governance for the following reasons:

a. **Corporate Performance:-** Accountability is the key to measure performance of the company. Improved accountability towards stakeholders helps in quality decision making which further enhance the long term prosperity of the companies. This long term prosperity of the company in terms of profitability leads to better corporate performance and thus retaining the trust of the investors.

b. **Combating Corruption and Fraud:-** Companies which are transparent in its dealing with stakeholders i.e. companies which provide high level of disclosures to their shareholders and various other stakeholders about the performance of the company are in better position as compare to the companies which do not provide such disclosures. Such disclosures provide an environment where corruption will certainly fade out. The Companies Act, 2013 and with Securities and Exchange Board Of India (Listing Obligation and Disclosure Requirements) Regulation, 2015 prescribe several principles governing disclosures and obligations of board of directors, committees and professionals towards stakeholders i.e. board of directors, committees and professionals are made accountable to shareholder and other stakeholders, thus preventing fraud and corruption to some extent.

c. **Enhanced Investor Trust:-** Investors who are provided with high level of disclosures regarding company’s performance are likely to invest openly in such companies. Disclosure is considered as one of the component of accountability thus accountability presupposes disclosure. It is generally seen that global institutional investors are ready to pay up to 40 percent for shares in companies which have good corporate governance practices which include accountability as one of the aspect.

d. **Enhanced Enterprise Valuation:-** Investors expectations and confidence on management and organisation are fulfilled through enhanced management accountability. This in turn increases the value of the organisation.

e. **Agency Theory:-** Principal-agent theory means interactions between at least two contract partners principal and agent. The agent acts on behalf of principal i.e. Professionals like Company Secretary act on behalf of shareholders. The theory presupposes two things, first, principal’s access to information is limited, second, principal cannot perfectly monitor the performance of his agent. Hence this agency problem is solved when agent i.e. the professionals provides complete and transparent information to its principal i.e. the shareholders. Due to the principal- agent relation that exists between the shareholders and the professionals, a professional is obliged to disclose true and fair position of the company on regular basis to all its shareholders in order to maintain good investor’s relations. Good corporate governance further creates an environment whereby professionals cannot ignore their accountability towards shareholders of the company.

**ABOUT THE ICSI**

The only professional body in India to develop and regulate
the profession of Company Secretaries in India is the Institute of Company Secretaries of India (ICSI). It is one of the premier national professional bodies set up under an act of Parliament, the Company Secretaries Act, 1980. The institute functions under the jurisdiction of the Ministry of Corporate Affairs, Government of India.

**Vision:** “To be a global leader in promoting Good Corporate Governance”

**Mission:** “To develop high calibre professionals facilitating good Corporate Governance”

**ACCOUNTABILITY OF A PROFESSIONAL**

In respect of Board of Directors, prevention of fraud is the sole responsibility and in case of auditor’s detection of fraud is their sole responsibility. Any fraud for or against the company is called corporate fraud.

**Corporate fraud for the company by the Employers:** Employers can commit fraud by increasing profits by inflating sales. Price fixing is also one of the ways to commit fraud. Cheating customers through short weights and measures, short counts and substituting cheaper materials for more profits, false advertising is also included in cheating. Violating government regulators by evasion of taxes, political corruption and padding costs on government contracts.

**Corporate fraud against the company by the Employees:** Employees can commit fraud by forging signatures and endorsement on a cheque, misappropriation of assets, by manipulation in receivables like fake vendor invoices, false expense vouchers, fake suppliers, fake contractors etc., they can commit fraud by manipulation in salary and wages payments like payment to bogus employees, less payment to employees, or excess salary to senior executives who are relative of owners.

**Consequences of Fraud committed by Employers and Employees:**

- **Stakeholders:** One of the major consequences of fraud is loss of trust and confidence of investors in the organisation, loss of credibility of the organisation, loss of employees due to switching over, non payment to creditors, and decrease in value of investment.

- **Economy:** Fraud results in loss of confidence of foreign investors, reduction in employment, adverse effect on overall growth, higher cost of projects, imposition of more government controls, there will also be negative impact on the investment climate in the country.

- **Organisation:** Because of fraud there is an adverse effect on Banker’s attitude in providing loans to the organisation, loss of reputation and decrease in value of shares, loss of customers and dedicated employees, etc.

**COMPANY SECRETARY IN TODAY’S CORPORATE WORLD**

The Company Secretary is often described as the ‘conscience of the company’. Shareholders expect the board of directors to manage the board in their best interest as a primary responsibility. The Company Secretary has a duty to act on behalf of the stakeholders for any unethical behaviour, thus they are made accountable to stakeholders.

The Regulators have placed high level of confidence on the profession of Company Secretaries by enhancing their role under Companies Act, 2013, Securities Laws, Insolvency and Bankruptcy Code, GST, Competition Act etc. They expect the professionals to ensure compliance management in letter and spirit and educate the industry about the compliance requirements. They are expected to exhibit highest level of professional ethics, knowledge and skill in discharging their duties in certification and audit work.

The Society expects the corporate sector to follow good corporate governance practices and the work for their welfare. Due to separation of ownership and management, society depends largely upon professionals for protection of their interest. Thus professionals are made accountable to the Society as a whole.

The professionals like company secretary also serve the trade and industry and play an important role in areas of Corporate Laws, Corporate Governance, Securities Laws and appearances before various Tribunals. Thus industry expects them to exhibit expert knowledge, skills, professional attitude and disciplined approach in carrying out their professional assignments.

In the last four decades the role and importance of Company Secretary has climbed the top of ladder. It is the company secretary who is responsible for implementation of all relevant laws that are applicable to the company. He is also regarded as the key managerial personnel of the company along with Managing Director, Chief Executive Officer, Manager, Whole- time director and Chief Financial Officer of the company. Section 203 of the Companies Act specifically provides for the appointment of whole-time key managerial personnel by means of the board resolution containing the terms and conditions of the appointment.

**Company Secretary as an expert under Section 2(38) of the Companies Act, 2013:** - Section 2(38) of the Companies Act, 2013 defines the word ‘expert’ as “as an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.”

**Functions and duties of Company Secretary under Section 205 of the Companies Act, 2013:** - Following are the functions
that a company secretary needs to perform:

- Duty to report the board about compliances with various laws applicable to the company;
- Duty to ensure that the company complies with the applicable secretarial standards;
- Duty to provide guidance to directors with regard to their duties, responsibilities and powers;
- Duty to facilitate the convening of the meeting i.e. board meeting and general meeting of the company;
- Duty to represent before various regulators, Tribunals and other authorities;
- Duties to assist the board in conduct of affairs of the company and advice such board in ensuring good corporate governance practices.

**SECRETARIAL AUDITOR**

One of the most significant reforms in the field of corporate governance is the introduction of secretarial audit which has to be performed by the secretarial auditor who happens to be the practicing company secretary. As per Section 204 of the Companies Act, 2013 and rules framed thereunder, every public company having paid up share capital of Rs. 50 crore or turnover of Rs. 250 crore is required to obtain secretarial audit report from a practicing company secretary. The secretarial audit report so obtained has to be annexed to the board’s report of the company and also it should be placed before the members in their meeting.

Secretarial Audit is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, as to the audit of compliances of various applicable laws. Thus through audit it helps to detect the various non-compliances and facilitates the corrective measures. With the introduction of secretarial audit it becomes clear that government is committed to improved corporate governance. Secretarial Audit establishes better compliance platform by checking whether the company has complied with all the applicable laws such as Companies Act, 2013, Securities Act, FEMA, Labour Laws, Environmental and Pollution related laws and various other laws that might be applicable to it. Stringent penal provisions have been provided if there is non-compliance with the applicable laws. If for any reason the auditor does not comply with the provisions he shall be punishable with fine which shall not be less than one lakh rupees ad may extend to twenty five lakh rupees.

Sub-section (14) of Section 143 specifies that practising company secretary while conducting secretarial audit shall have same powers and duties as auditor of the company. Sub-section (1) specifically emphasizes on power by saying that every auditor of the company shall have a right of access at all times to the books of account and vouchers of the company.

**Secretarial Auditor to act as Whistle Blower:** Sub-Section (12) of Section 143 of the Companies Act, 2013 states that if the secretarial auditor has reasons to believe that an offence involving fraud has been or is being committed against the company by officers or employees, he can report the matter to Central Government with the stipulated time. This provision lays down heavy duty on the secretarial auditor to report fraud as and when he has reasons to believe that the fraud is being committed against the company.

**Diligence report for Banks:** Practicing Company Secretary has been recognised by the Reserve Bank of India to undertake Diligence Report for the Banks.

**CONCLUSION**

Corporate frauds are not new to Corporate India. In the year 2007 a study was conducted by a Pune based forensic consultancy service. The study was named as ‘Early Warning Signals of Corporate Frauds’. Some shocking findings regarding frauds in India were first, in the year 2007, near about 1200 companies who are listed on BSE and over 1300 companies listed on NSE have manipulated their financial statements. Second, manufacturing sector is a hub of frauds and then follows the real estate and public sector. The KPMG India Fraud Survey Report (2008) present that to over 80 percent of the respondents said that, fraud is a serious problem and also that the procurement, sales and distribution are mostly prone to frauds. Study by Kroll in 2015 is also in the same line and states that the globalisation of business increases fraud risk. The survey also indicates that biggest fraud threat to companies comes from within the organisation. With the increase number of frauds, the role of professionals like statutory auditor, internal auditor, secretarial auditor, cost auditor and Company Secretary comes into picture. It is their responsibility to detect and investigate such frauds. All the above named persons are accountable to the shareholders and other stakeholders in case the fraud remains undetected.

**REFERENCES**

Vision New ICSI-2022 : A Welcome Move

According to this article, corporate governance and compliance management are at the heart of the corporate sector. Participation of the Company secretaries in the corporate management is paramount to ensure that these issues are adequately addressed. In view of the author, ‘Vision New ICSI -2022’ the document prepared by the Core Group of the ICSI is a wonderful proposal to develop good quality professionals and globally recognized ICSI.

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The Institute of Company Secretaries of India (ICSI / the Institute) is incorporated under the Company Secretaries Act, 1980 for the regulation and development of the profession of Company Secretaries. The Institute has been striving towards the realisation of its vision of being a ‘global leader in promoting Good Corporate Governance’ and its mission of developing ‘high calibre professionals facilitating good Corporate Governance’. Guiding motto for achieving the vision and mission is : ‘Speak the Truth, Abide by the Law’.

VISION 2020 TO VISION NEW ICSI-2022
In the year 2011, the ICSI adopted Vision 2020. The ICSI has achieved significant landmarks in line with the goals set up in the Vision 2020. However, in view of the fact that the business environment has been rapidly changing and becoming competitive and that these changes, mostly driven by policy, regulatory and technology changes, expect the Company Secretaries to guide the businesses on how to not only comply with but also leverage regulations, a need was felt to make certain course correction in ICSI’s journey crafted in its Vision-2020 document. When Hon’ble Prime Minister launched Vision of New India-2022, the ICSI also decided to formulate ‘Vision New ICSI-2022’. With a view to promote the interests of all stakeholders, the top 10 Goals to be achieved through the ‘Vision New ICSI 2022’ are as follows:

1. Creating Brand Equity for the Profession of Company Secretary;
2. Enhancement of the Quality of the future Members;
3. Professional development and capacity building of the members;
4. Enhancing quality of services by the members to the industry;
5. Research based development of the Profession and the ICSI;
6. Globalization of the Profession of Company Secretary;
7. Promoting good Corporate Governance;
8. Development of alternate sources of revenues;
9. Ensuring implementation of the Vision Plan 2022;
10. Creating Brand ICSI.

KNOWLEDGE UPDATION : AN ONGOING EXERCISE
An important issue emerges on close scrutiny of the goals is the need for continuous updating of one’s knowledge base. That is where a proactive approach needs to be followed by the Institute as well as the members. Whereas the Institute has to keep revising and upgrading the data base of knowledge ware, the members need to keep revisiting the same on a regular basis so as to be able to deliver the best. This would help in achieving numerous goals. The enhancement of the quality of members is possible if they are willing to sharpen their skills. Professional development and capacity building of the members is directly linked to their craving for knowledge. Quality of service by members is bound to improvise if they are well versed with the latest changes. Research based development of the profession and the ICSI is possible if we geared up to conduct timely study of the amendments and the impact thereof. To diversify into emerging areas, the members need to have
expertise in the core areas where they have already been engaged in rendering services as a professional.

THE COMPANIES ACT, 2013

One area which has affected Company Secretaries the most is the Companies Act 2013 (the Act) which has already been amended three times, in the year 2015, 2017 and 2018. Huge reliance is placed on the delegated legislation under this Act. The term ‘as may be prescribed’ appears too frequently and the same empowers the Central Government to prescribe the applicable legal mechanism through formulating appropriate rules. In exercise of the powers conferred upon it, the Central Government has notified 39 Rules in last five years. And these Rules have been amended about 140 times. In addition to the Rules, the Companies Act is also administered through circulars and notifications and more than 225 such communications have been released. Section 462 of the Act gives power to Central Government to issue notification and direct that any provisions of this Act shall apply or not apply to such class or classes of companies as specified in the said notification. Accordingly, the notifications have been issued to grant certain privileges to private companies, government companies, section 8 companies and nidhi companies. Section 470 of the Act empowered the Central Government to remove difficulties arising in giving effect to the provision of this Act. Accordingly sixteen Removal of Difficulties Orders (RoDs) have been issued by the Central Government.

Section 118(10) of the Act directs every company to observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India. Listed companies are required to follow norms under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Judgments are being issued by the National Company Law Appellate Tribunal, National Company Law Tribunal, Principal Bench and other Benches. On specific issues, judgments are also passed by High Courts and the Supreme Court. As a result, the Company Law today is one of the most voluminous document and the same is witnessing frequent changes triggered by amendments, clarifications, interpretations. Any lapse would result into imposition of large penalties.

THE ROLE OF ICSI

The ICSI can play a vital role in ensuring that its members and students are posted with the latest developments in the regulatory regimes. By designing professional development programmes for the members and students, and thereby impart intensive training on diverse areas affecting the professionals, the ICSI can strengthen brand ICSI and evolve as a global governance body. According to the 38th Annual Report, the ICSI earned about Rs.13.32 crores which is 11.17% of its total income from activities. The same may witness a positive growth if the ICSI increase the number of good quality programmes backed by intensive research work. The same may also help in enhancing the brand equity for the profession of Company Secretaryship.

CONCLUSION

The ICSI, as a focal point for corporate governance and compliance management issues, is fully equipped to achieve all the goals that are spelt out in the ‘Vision New ICSI 2022’ document. All that is needed is the support from all stakeholders, specially the members and the student. ‘Vision New ICSI 2022’ is a comprehensive document granting appropriate recognition to all stakeholders. All that is needed is to draw diverse action plans for regional councils, chapters, study centers and commence the implementation thereof without further delay.
Profession Company Secretary – Accomplish ICSI Vision 2022

“The vision New ICSI, 2022 is aspirational and in sync with the Govt. of India’s vision to commemorate 75 years of Independence in 2022. The coming decade would primarily revolve around Digital innovation and Corporate Governance. Leading Compliance, Audit & Certifications and Governance function commendably to bestow the profession CS “Governance professionals” epithet. This will eventually enable CS to be a global leader in promoting good Corporate Governance.”

INTRODUCTION

“Though no one can go back and make a brand-new start, anyone can start from now and make a brand-new ending.”

-Carl Bard

India, the largest democracy of the world, completes 75 years of Independence in the year 2022. To commemorate 75 years of Independence in 2022, India planned to achieve many landmark events such as hosting of G-20 Summit, Indian Space Research Organisation (ISRO) to send first Indian into Space [i.e. Gaganyaan - India’s maiden human spaceflight programme], aims to become a non-permanent member of the United Nations' Security Council for the year 2021-22, Prime Minister’s vision “Sankalp se Siddhi” (Attainment through Resolve) Scheme, which aims doubling farmers’ income, poverty-free, corruption-free, terrorism free, clean India etc. by 2022.

The vision New ICSI, 2022 document of the Institute of Company Secretaries of India (‘ICSI’) has aspirational and completely in sync with the Govt. of India’s vision to commemorate the occasion in the year 2022 as under:

Vision of the ICSI “To be a global leader in promoting good Corporate Governance.”

In this Article, the Authors intend to articulate four broad areas which are apt for the Company Secretaries (‘CS’) to accomplish the vision New ICSI, 2022, as deliberated below:-

PROACTIVE AND DEFECT FREE COMPLIANCES

Till the year 2003, primarily the responsibilities of CS in employment were to ensure the compliances of the then Companies Act, 1956, Listing Agreement; Securities Contracts (Regulation) Act, 1956 and related compliances under Securities and Exchange Board of India (‘SEBI’) Guidelines and Regulations. Practising Company Secretaries were primarily involved in the certifications of certain requirements relating to above laws.

SEBI, in its endeavour to improve the standards of Corporate Governance in India, constituted a Committee on Corporate Governance under the Chairmanship of Shri N R Narayana Murthy which submitted its report in February 2003. Based on the recommendations of the Committee, SEBI in August 2003, modified the Clause 49 of the then Listing Agreement wherein directors were mandated to periodically review legal compliance reports prepared by the company as well as steps taken to cure any taint. Taking the reference of mandate, CS started obtaining Compliance Certificates from the Functional Heads of the Company, specifically highlighting the instances of non-compliances, for placing it before the Board of Directors. This has entrusted responsibilities on CS to take lead role in handling compliances applicable to the company and since then there is no looking back to lead compliance function.

With the enactment of the Companies Act, 2013 (‘the Act’), the leadership role of CS in handling compliances applicable to the company has been reiterated as Section 205 of the Act [i.e. Function of company secretary] states that: “The Function of the company secretary shall include, -

(a) to report to the Board about compliances with the provisions of this Act, the rules made thereunder and other laws applicable to the company;”

This requires CS to keep themselves abreast with the compliances of not only the Companies Act & Rules made thereunder and other SEBI Regulations but also with the industry specific laws, taxation and labour/ social security laws etc.

To lead and ensure effective compliances, it would be apt if CS devise mechanism to track & ensure prompt compliances, impart periodic training/ spread awareness about compliance deadlines, sensitis all the employees that cost of compliance is always much lesser than cost of non-compliance, reward personnel who...
In view of the above and pursuant to provisions of Section 204 of the Companies Act, 2009 did not contain provisions relating to Secretarial audit. It would be pertinent to mention here that The Companies Bill, 2011 (‘the Bill’) pertaining to “Secretarial audit for bigger companies” have reposed tremendous faith on the profession CS. In fact, one of the salient features of the Bill was insertion of requirement relating to attaching Audit Report given by CS in practice by prescribed class of companies in the Board’s Report.”

AUDIT AND CERTIFICATIONS

During last 1½ decades, audit and certifications of various Forms, Return and Reports etc. being submitted with the Ministry of Corporate Affairs (‘MCA’) and the Stock Exchanges under the Act, SEBI Listing Regulations (erstwhile Listing Agreement) and other Laws have enhanced substantially. Introduction of MCA 21 and the enactment of the Act have virtually necessitated filing of almost all the Form/ Returns duly certified by the CS professionals.

In the area of audit, history of Secretarial Audit can traced when SEBI, in December 2002, mandated that all the listed entities shall subject to a secretarial audit to be undertaken by a qualified Chartered Accountant or a Company Secretary for the purposes of reconciliation of the total admitted capital with both the depositories and the total issued and listed capital which inter-alia to cover that the:

- total of the shares held in NSDL, CDSL and in the physical form tally with the issued / paid-up capital;
- Register of Members (RoM) is updated;
- dematerialisation requests have been confirmed within 21 days and state the shares pending confirmation for more than 21 days from the date of requests and reasons for delay; and
- details of changes in share capital during the quarter.

This is mandated to be complied with by all the listed entities in terms of regulation 55A of SEBI (Depositories and Participants) Regulations, 1996.

Nonetheless, inclusion of Clause 204 in the Companies Bill, 2011 (‘the Bill’) pertaining to “Secretarial audit for bigger companies” have reposed tremendous faith on the profession CS. In fact, one of the salient features of the Bill was insertion of requirement relating to attaching Audit Report given by CS in practice by prescribed class of companies.

The Note of dissent given by one of the member of said Standing Committee and way forward for the same reproduced below:-

“The Companies Bill 2011 provides for a secretarial audit report to be given by the Company Secretaries. The report should include compliance to laws applicable to the company. Way Forward: The Company’s Bill may provide for submission of reports by statutory auditor and the Company Secretary on cases of failure to deposit undisputed statutory dues like PF and ESI to the authorities administering such funds/taxes/duties. Such reporting would facilitate the statutory authorities administering such funds/duties/taxes to take the immediate corrective action.”

It would be pertinent to mention here that The Companies Bill, 2009 did not contain provisions relating to Secretarial audit.

In view of the above and pursuant to provisions of Section 204 of the Act, every listed company; and every public having paid-up share capital of Rs.50 crore or more; or turnover Rs.250 crore or more are required to annex secretarial audit report with its Board’s report. Additionally, based on the recommendation of SEBI Kotak Committee, regulation 24A have been inserted in SEBI Listing Regulations which mandates that every material unlisted subsidiaries (whether public or private), incorporated in India shall also annex secretarial audit report with its annual report effective year ending 31st March, 2019.

Pursuant to the requirement laid down in the prescribed Form MR-3 relating to Secretarial Audit Report, Secretarial Auditor is not only required to review and report about the compliances of the provisions of the Act, FEMA, the Depositories Act, 1996, SEBI Regulations, but also to report about constitution of the Board in compliance with the provisions of the Act, adequacy of sending notice of meetings/ agenda papers; and adequacy of systems & process in the company to monitor and ensure compliances of the applicable laws, rules, guidelines and regulations. All these require Secretarial Auditor to keep themselves thorough on the compliance requirements of the above laws and review all the related books/papers etc. maintained by the company to prepare requisite report which will not only be useful for MCA but also for other stakeholders such as SEBI, Bankers, Stock Exchanges, Securities holders & other regulatory bodies etc.

Apart from certain certifications under FEMA, the Reserve Bank of India mandated all Scheduled Commercial Banks to obtain a Diligence Report from a professional (preferably CS) on a half-yearly basis regarding compliance with statutory and contractual obligations in respect of companies availing consortium lending. Keeping in view the large funding requirements, often large lending to corporates are sanctioned by the Banks under consortium arrangement. Diligence Report by CS primarily cover critical items such as details of the Board of Directors, shareholding pattern, forex exposure, insurance cover in respect of assets, payment of statutory dues, proper end-use of the loan funds, compliance with mandatory Accounting Standards etc. Such
Diligence report will be under minute scrutiny of the Regulators including National Company Law Tribunal (‘NCLT’) particularly when there is a default in repayment to Lenders.

Therefore, CS would have to demonstrate the meticulous skill and excellent knowledge while finalising Secretarial Audit Report and Diligence Report to accomplish the faith reposed on profession CS by the Regulators. At the same time, relevant stakeholders would be able to place high reliance if such Reports are clear, concise and contains qualitative disclosures.

CORPORATE GOVERNANCE

The term ‘Corporate Governance’, in India, is only about two decade old concept in legal form which became buzz word in late nineties when SEBI appointed the Committee on Corporate Governance in May 1999 under the Chairmanship of Shri Kumar Mangalam Birla. Based on the recommendation of the Committee, in February 2000, SEBI introduced new Clause 49 in the Listing Agreement popularly known as “Corporate Governance”. As Clause 49 was inserted in the then Listing Agreement, CS became natural choice in ensuring compliances of requirement of Corporate Governance. From 2000 onwards, SEBI continues to focus on to improve the standard of corporate governance in listed entities and inserted various better corporate governance requirements in Clause 49 which continued giving profession CS leading role in handling corporate governance function.

Further, many better corporate governance provisions which inter-alia includes CSR, independent directors, women directors, vigil mechanism, key managerial personnel, compliances of secretarial standards etc. were introduced in the Act. Incidentally, Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 specifically states of the duties of Company Secretary as under:

“to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.”

At the 41st National Convention of Company Secretaries of India, the then Hon’ble Minister for Corporate Affairs stated the following:

“This terminology of Company Secretaries, I have heard this terminology for years, it does not go down well with me. We have got to change the concept of what the job all of you do. It is ensuring that the Board and the management comply with the laws of the land. It is a tremendous responsibility, it is not making and filing notes but it is to make sure that the company is responsible to the shareholders, to the people of this country, to the law makers and there is full compliance. Therefore, this term needs to be slowly or swiftly transformed to be called governance professionals.”

To achieve the above, in addition to proactive compliances; establishment of sound whistle blower system, robust mechanism to curb insider trading, affirmation of code of conduct in letter & spirit, continuous information to the Board about best corporate governance practices & adoption thereof, inculcate culture of prompt & unambiguous disclosure practices would enable the CS to discharge corporate governance functions effectively. CS can aptly attain this by popularizing the corporate policies amongst employees & other relevant stakeholders through sending periodic communication & training, celebrating corporate governance week atleast once in year, encourage employees to report wrong doings without fear of reprisal etc.

All the above summarizes that the Regulators (i.e. primarily MCA and SEBI) have consistently provided excellent platform for CS to excel in handling corporate governance functions and now it would be for the CS to discharge the above mandates efficiently and the time is not far off when the above statement delivered at the 41st National Convention will become true and CS would be known Governance Officer or Chief Governance Officer.

CONCLUSION

“You must be the change you wish to see in the world.”
-Mahatma Gandhi

Profession CS continues to flourish from being called statutory officer to key managerial personnel. SEBI Listing Regulations states that listed entity to appoint qualified CS as the Compliance Officer; and brings CS under the ambit of “senior management”. Constitution of NCLT and NCLAT and consequently transfer of proceedings under the Companies Act pending before District Courts or High Courts to Tribunal have created humongous opportunities for CS. Additionally, Insolvency and Bankruptcy Code has widened the opportunities for CS to act as Insolvency Professional and/ or represent the corporates being referred for insolvency/ resolution in NCLT or NCLAT. Apart from leading compliance function, certifications of almost all the returns & return being filed with the Regulators, secretarial audit in bigger companies, CS have to play an important role in assisting the Board in adopting good corporate governance and best practices. Managing all the above effectively by CS, would realise the vision of ICSI in becoming global leader to promote good Corporate Governance.
Revamping of Corporate Governance Standards – A Detailed Analysis Under SEBI LODR Amendment Regulations, 2018

Corporate Governance is vital tool to the existence of a Company that intensifies investor's confidence which confirm company's adherence to growth. Good governance can be accomplished through well structured balanced Board of Directors that is capable of taking unbiased decisions and safeguard the interest of various stakeholders. The amendments in SEBI LODR Regulations will pave way for bringing best practices followed internationally and that strengthen better governance across the corporations. Company Secretaries both in employment and practices have compliance obligations under this amendment regulation.

INTRODUCTION

Governance is not a new concept for us, rather its inception can be traced from ancient literatures like Vedas, Manu Smruthi, Arthashastra etc. India is transpired as a world’s super power which predominantly focusing on Corporate India ie., Make in India, Digital India etc. to name a few and it can be possible only through its development across different sectors, good governance, transparency and accountability. Good governance is pre-requisite for economic growth and development of the society. For ensuring good governance practices by Company Secretaries, the Institute has adopted “Satyam Vada, Dharmam Chaara — Speak the Truth, abide by the law” as ‘ICSI Motto'.

The wake of globalization in India was turned up in 1990’s caused governmental de-control over the large corporation. Hence it had become obvious to set up and implement the governance mechanism inherent in corporations by way of responsibility through self-control. In current scenario, corporate world is looked up for good governance practices in letter and spirit for sustainable growth while at the same time protecting the interest of various stakeholders. “Corporate Governance” is a system that has been ethically controlled through internal rules; identification of risk and its minimization procedure; bringing cost control and good return to stakeholders that provides confidence among them; the interaction of the Board of Directors with all its stakeholders on business activities; which in turn will be reflected in the stock market too. Corporate Governance and related disclosures by the listed entities are regulated by SEBI LODR Regulations (erstwhile “Listing Agreement”). Compliance under SEBI LODR Regulations is sine qua non for continuous listing of listed entities. In this article, an attempt has been made to discuss the key amendments in the SEBI LODR Amendment regulations.

BRIEF BACKGROUND OF SEBI LODR AMENDMENT REGULATIONS, 2018

The Market regulator, the Securities and Exchange Board of India (“SEBI”) had come up with certain amendments in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR Regulations”) through SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations, 2018 (“SEBI LODR Amendment Regulations”) on May 9, 2018 based on Report of the Committee on Corporate Governance under the Chairmanship of Mr. Uday Kotak (“The Kotak Committee”). The Kotak Committee suggested 81 recommendations to SEBI (out of which 42 recommendations has been accepted by the SEBI with or without alterations) which includes as follows:

a. Strengthening composition, terms of reference of the Board and its committees, including its evaluation practices.
c. Revisited independency and functioning of Independent Directors

d. Reclassification of Promoters as public etc.

Even though certain amendments have already been effective from last year onwards, there are other recommendations which shall be effective from April 1, 2019 in staggered phases to all listed entities (of which few recommendations apply to top listed entities based on market capitalization). This article traversed the key changes in SEBI LODR Amendment Regulations in the following areas:

I. Composition of Board and allied matters.
II. Mandatory Board committees.
III. Related Party Transactions.
IV. Corporate Governance w.r.t. its subsidiaries.
V. Re-classification of any person as Promoter/ Public.
VI. Financial Results.
VII. Disclosure and Members meet.

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<tr>
<td>Reg 16 (1) (b) (viii)</td>
<td>Definition of “Independent Director” (w.e.f. 01.10.2018)</td>
<td>Such Director other than Nominee director of listed entities shall not be non-independent director of another Company on the Board on which any non Independent Director of listed entity is an Independent Director.</td>
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<td>Reg 16 (1) (c)</td>
<td>Definition of “Material Subsidiary” (w.e.f. 01.04.2019)</td>
<td>Subsidiary whose income or net worth exceeds 10% of consolidated income or networth of listed entity and its subsidiaries in the immediately preceding accounting year.</td>
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<tr>
<td>1st proviso to Reg 17 (1) (a)</td>
<td>Appointment of women Director • Top 500 listed entity w.e.f. 01.04.2019 • Top 1000 listed entity w.e.f. 01.04.2020</td>
<td>Board shall consist of at least 1 woman independent director to Board.</td>
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<td>Reg 17 (1) (c)</td>
<td>Minimum Directors on the Board • Top 1000 listed entity w.e.f. 01.04.2019 • Top 2000 listed entity w.e.f. 01.04.2020</td>
<td>Board shall consist of not less than 8 directors</td>
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<td>Reg 17 (1A)</td>
<td>Appointment of Director attained the age of 75 years (w.e.f 01.04.2019)</td>
<td>Listed entity shall not appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless a special resolution is passed.</td>
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<td>Reg 17 (1B)</td>
<td>Chairperson of listed entity (Top 500 listed entity w.e.f 01.04.2020)</td>
<td>Chairperson shall: a) be an Non Executive Director b) not be related to the MD/ CEO Exception: This shall not be applicable to listed entities which do not have promoters.</td>
</tr>
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<td>Reg 17 (2A)</td>
<td>Quorum of Board Meeting • Top 1000 listed entity w.e.f. 01.04.2019 • Top 2000 listed entity w.e.f. 01.04.2020</td>
<td>One-third of its total strength or 3 directors whichever higher including one Independent Director</td>
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<td>Reg 17 (6) (ca)</td>
<td>Remuneration to single Non Executive Director (w.e.f. 01.04.2019)</td>
<td>The approval of shareholder by Special resolution shall be obtained every year in which the Annual Remuneration payable to single non executive director exceeds 50% of Annual remuneration payable to all non executive directors.</td>
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| Reg 17 (6) (e) | Remuneration payable to Executive Directors- Promoter/ Promoter Group (w.e.f. 01.04.2019) | The fees or compensation payable to Executive Directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, If :-
(i) In case of only one Executive Director - If, Remuneration > Higher of Rs 5 Crores or 2.5% of the net profit of the Company, whichever is higher OR
(ii) In case of more than one Executive Director – If Remuneration to all such Executive Director’s together > 5 per cent of the net profit of the Company |
| Reg 17 (10) | Evaluation of Independent Directors (w.e.f. 01.04.2019) | Such evaluation shall be done by the entire board of directors which shall include -
(a) performance of the directors; and
(b) Fulfilment of the independence under the regulations. |
| Reg 17A | Maximum no. of directorships | A person shall not be director in more than
1) 8 listed entities (w.e.f. 01.04.2019)
2) 7 listed entities (w.e.f. 01.04.2020)
Any person who is whole time director/MD in any listed entity, shall serve as an independent director in not more than 3 listed entities |
| Reg 25(1) | Alternate Director for Independent Director (w.e.f. 01.10.2018) | Person shall not be appointed or continue as an alternate director for an Independent Director. |
| Sch III: Part A, Sec A (7A & 7B) | Material Event to be disclosed to the stock exchanges (w.e.f 01.04.2019) | In case of Resignation of Auditors of the listed entity, detailed reason for such resignation shall be disclosed to the stock exchanges. In case of resignation of Independent Director, detailed disclosure to the stock exchange shall be made. |
| Reg 25 (8) & (9) | Declaration by Independent Director (w.e.f 01.04.2019) | Declaration at:
• 1st Board meeting of every FY; and
• Whenever there is a change in status of directorship.
• Taking on record by Board after undertaking due assessment. |

### II. MANDATORY BOARD COMMITTEES

| Sch II: Part C – A. (21) | Terms of Reference (w.e.f. 01.04.2019) | Reviewing the utilization of loans/ advances / Investment by the Holding Company in the subsidiary > Rs. 100 Crores or 10% of asset size of the subsidiary whichever is lower |

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### Revamping of Corporate Governance Standards – A Detailed Analysis Under SEBI LODR Amendment Regulations, 2018

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<td>IV. CORPORATE GOVERNANCE W.R.T., SUBSIDIARY OF LISTED COMPANY</td>
<td>Appointment of Independent Director in material Subsidiary (w.e.f 01.04.2019)</td>
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<td>Reg 24(A)</td>
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<td>Reg 25(10)</td>
<td>Directors and officers Insurance (D and O Insurance) (Top 500 listed entities w.e.f. 01.10.2018)</td>
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<td>Reg 26 (6)</td>
<td>Compensation or profit sharing in connection with dealings in securities of listed entity (w.e.f 01.04.2019)</td>
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</table>
| Reg 31A | Reclassification of any person as promoter/ public (w.e.f. 16.11.2018) | Such Reclassification shall be permitted subject to the following conditions: 1. Request letter with reason from promoter. 2. Board approval followed by shareholder approval are required. There shall be a time gap of atleast 3 months but not exceeding 6 months between date of Board meeting and the shareholders meeting. 3. Shareholder approval by ordinary resolution provided that person related promoters shall not vote to approve such request. Application for such reclassification shall be made by the listed entity to stock exchanges not later than 30 days from date of approval by shareholders in the General Meeting. Additional conditions to be satisfied A. Promoters seeking re-classification shall not: i. hold more than 10% of total voting rights in the listed entity. ii. Exercise control over the affairs of the listed entity directly or indirectly. iii. Have any special rights with the listed entity through agreement. iv. Be represented on the Board of Directors (including not having nominee director) of the listed entity. v. Act as key Managerial person in the listed entity vi. Be a willful defaulter as per the Reserve of India guidelines. vii. Be a fugitive economic offender. B. Listed entity shall i. be compliant with minimum public shareholding ii. not have trading in its shares suspended by the stock exchanges; iii. not have any outstanding dues to the SEBI, stock exchanges or the depositories. Post Re-classification compliance Such promoter after re-classification as public a. shall comply with the conditions as mentioned above in clause A (i) to (iii) at all times. b. Shall comply with the conditions as mentioned above in clause (iv) and (v) for a period of not less than 3 years from such re-classification. (Failure in complying with the above conditions lead to automatic reclassification as promoter/ persons belonging to promoter group as applicable) Material Events to be disclosed by the listed entity to the stock exchanges Following shall be material events and shall be disclosed to the stock exchanges promptly not later than 24 hours from the occurrence of the event: a. Receipt of request for reclassification by the listed entity from the promoters seeking re-classification; b. Minutes of Board Meeting which would include views of Board; c. Submission of such request to stock exchanges d. Decision of stock exchange on such request. Exemption Provision of Reg 31A (3), (4), and 8 (a) & (b) of the Regulations shall not apply if reclassification of promoters/ promoters group of listed entity is as per the resolution plan approved under Insolvency code.
### VI. FINANCIAL RESULTS

**Reg 32 (7A)**

| Statement of deviation or variation |
| w.e.f. 01.04.2019 |

Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

**Reg 33 (3b)**

| Submission of Consolidated Quarterly/ Year to date results |
| w.e.f 01.04.2019 |

The Listed Entities shall submit Consolidated Quarterly/ Year to date results;

Sec 129 (3) of the Act requires a company (which has Subsidiaries or Associate Company) to prepare consolidated financials of the Company and all the Subsidiaries & Associate Companies in the prescribed format. The Company shall also attach along with its financial statement, a statement containing salient features of financial statement of its subsidiaries & associates in Form AoC-1.

**Reg 33 (3g)**

| Cash flow Statement |
| w.e.f 01.04.2019 |

It shall submit of Standalone & Consolidated Cash flow Statement on Half yearly basis

As per Sec 2 (40) of the Act, every Company except the following, shall include Cash Flow Statement as a part of Financial Statement:
1. one person company,
2. small company,
3. dormant company and
4. private company (if such private company is a start-up)

**Reg 33 (3h)**

| Audit/ Limited Review of Consolidated Revenue, Assets and Profits |
| w.e.f 01.04.2019 |

Atleast 80% of the Consolidated quarterly revenue, assets and profits shall be subject to Audit/ Limited review on quarterly basis

**Regulation 33(3) (i)**

| Effects of Material Adjustments |
| w.e.f 01.04.2019 |

The listed entity shall disclose by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.

(in the results for the last quarter of financial year)

**Reg 33 (8)**

| Statutory Auditor to conduct limited review of audit of entities/ Companies |
| w.e.f 01.04.2019 |

Such Auditor shall undertake a limited review of the audit of all the entities/ companies whose accounts are to be consolidated with the listed entity

### VII. DISCLOSURE AND MEMBER’S MEET

**DISCLOSURES IN ANNUAL REPORT**

**Reg 34 (1)**

| Annual Report to Stock Exchange. |
| w.e.f. 01.04.2019 |

Not later than commencement date of dispatch to its shareholders (publish also on Company’s website);

Any change after AGM shall intimated to the exchange along with revised copy within 48 hours of AGM.

**Schedule V: Part A (2A)**

| Related Party Disclosure |
| w.e.f. 01.04.2019 |

Disclosures of Related Party Transactions (with any person belonging to the promoter/ promoter group with shareholding of 10% or more)

**Schedule V Part B (i)**

| Management Discussion and Analysis |
| w.e.f. 01.04.2019 |

Disclosure of change of 25% or more in key financial ratios viz.,
(a) Debtors Turnover, (b) Inventory Turnover, (c) Interest Coverage Ratio, (d) Current Ratio, (e) Debt Equity Ratio, (f) Operating Profit Margin, (g) Net Profit Margin (%) etc.

**Schedule V Part B (j)**

| Details of any change in Return on Net Worth as compared to the previous FY with explanation. |

**Schedule V Part C – Clause 2 (h)**

| Disclosure of Core Skills/ Expertise/ Competencies of the Board in Corporate Governance Report |
| |

i. The list of core skills/ expertise/ competencies identified by the board of directors as required to function effectively: (w.e.f. 01.04.2019)

ii. The names of directors who have such skills/ expertise / competence (w.e.f. 01.04.2019)

The Act provide for disclosure of brief profile of director.
Corporate world is looked up for good governance practices in letter and spirit for sustainable growth while at the same time protecting the interest of various stakeholders. “Corporate Governance” is a system that has been ethically controlled through internal rules; identification of risk and its minimization procedure; bringing cost control and good return to stakeholders that provides confidence among them; the interaction of the Board of Directors with all its stakeholders on business activities; which in turn will be reflected in the stock market too.”

| Schedule V Part C – Clause 9 (q) | List of Credit Ratings (w.e.f. 01.04.2019) | • list of all credit ratings along with revisions thereof for all debt instruments of such entity or any fixed deposit programme or • any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad |
| Schedule V Part C – Clause 10 (i) | PCS Certificate for disqualification of Directors (w.e.f. 01.04.2019) | Certificate from a Practising Company Secretary that the Board of directors of the company have not been debarred or disqualified from being appointed or continuing as directors of companies by SEBI/ MCA/ any such statutory authority. |
| Schedule V Part C – Clause 10 (h) | utilization of funds raised through Preferential Allotment (w.e.f. 01.04.2019) | Details of utilization of funds raised through preferential allotment or qualified institutions placement as specified under Reg 32 (7A) |
| Schedule V Part C Clause 10 (j) | Reasons for not accepting recommendations of Committee (w.e.f. 01.04.2019) | Need to mention as to where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year |
| Schedule V Part C Clause 10 (k) | Total fees to the Statutory Auditor (w.e.f. 01.04.2019) | Total fees for all services paid by the listed entity and its subsidiaries, on a consolidated basis, to the Statutory Auditor and all entities in the network firm/network entity of which the statutory auditor is a part |

### OTHER DISCLOSURES TO THE SHAREHOLDERS

| Reg 36 (5) Appointment/ Re-appointment of Statutory Auditor (w.e.f. 01.04.2019) | Disclosure of following information in Explanatory Statement: • Proposed Fees Payable; • Terms of Appointment; • Any Material Change in fees as against the fee payable to outgoing partner; • Rationale for such change; • Basis of Recommendation of appointment of statutory auditor proposed to be appointed. |
| Proviso to Reg 40 (1) Transfer/ Transmission/ Transposition of Securities (w.e.f 01.04.2019 vide notification dated 30.11.2018) | Request for effecting the transfer of securities shall not be processed unless the securities are held in demat mode. This provision shall not be applicable in case of transmission or transposition of Securities. The similar provisions has been introduced under rule 9A (“Issue of securities in De-mat form by unlisted public companies”) under The Companies (Prospectus and Allotment of Securities) Rules, 2014 as amended. |

### MEETINGS OF SHAREHOLDERS AND VOTING

| Reg 44 (5) Timeframe for Holding AGM (Top 100 listed entity w.e.f 01.04.2019) | To hold AGM within 5 months from the close of FY ie., by August 31st of the relevant year |
| Regulation 44(6) One- Way Live webcast of AGM Proceedings (Top 100 listed entity w.e.f 01.04.2019) | To provide One- Way Live webcast of AGM Proceedings |

### CONCLUSION

The prompt move of stock market regulator is quite appreciable in the current scenario wherein strict rules on listed entities bring accountability, transparency and governance in the corporates that helps in preserving the interest of investors and stakeholders at large. This will also help to bring in Foreign Direct Investment to India. SEBI recognises that stringent norms must be moulded to regulate listed entities from corporate frauds & governance failures and to give prominence to the Independent directors that they are independent to the Company. The amendments in SEBI LODR regulations per se seems to be propitious and overhauled. But reality need to be seen in near future. Now a days, stakeholders recognise that accomplishing good Corporate Governance practices are one of their top priorities. Company Secretaries both in employment and practice have major role of ensuring compliance in a time bound manner.
Setting up of MSMEs

Micro, Small and Medium Enterprise is a sector in which several government initiatives have been taken for promoting the growth and development of the sector. Central Government has involved the State Governments as well as several Ministries and Departments for this purpose. Many laws are applicable to these enterprises such as MSME Act, FEMA etc. which need to be thoroughly studied by persons running them. Twelve key initiatives and digital initiatives have been elaborated on in this article. One such focus area is the National Competitiveness Program since entrepreneurial and managerial development as well quality management is an issue which MSME managements encounter. The process of setting up an MSME comprises of several steps and is required to be done systematically. The challenges faced by the entrepreneurs are sought to be covered alongwith practical insights into this issue. Some solutions have also been proposed.

"Small businesses provide a big opportunity to make a difference in the world of business and beyond"

-Rise Staff

Micro, Small and Medium Enterprises (MSME) is a vibrant sector and the Central Government has planned for the growth and development of this sector in conjunction with several Ministries/Departments, State Governments and stakeholders.

Enterprise as defined in The Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services.

Enterprises are classified based on production of goods or services and their investments in plant and machinery or equipment, as the case may be.

A) In case of enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951

<table>
<thead>
<tr>
<th>Type of enterprise</th>
<th>Investment in plant and machinery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro Enterprise</td>
<td>Does not exceed Rs.25 lakhs</td>
</tr>
<tr>
<td>Small Enterprise</td>
<td>More than Rs.25 lakhs but does not exceed Rs.5 crores</td>
</tr>
<tr>
<td>Medium Enterprise</td>
<td>More than Rs.5 crores but does not exceed Rs.10 crores</td>
</tr>
</tbody>
</table>

B) In case of enterprises engaged in providing or rendering of services

<table>
<thead>
<tr>
<th>Type of enterprise</th>
<th>Investment in Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro Enterprise</td>
<td>Does not exceed Rs.10 lakhs</td>
</tr>
<tr>
<td>Small Enterprise</td>
<td>More than Rs.10 lakhs but does not exceed Rs.2 crores</td>
</tr>
<tr>
<td>Medium Enterprise</td>
<td>More than Rs.2 crores but does not exceed Rs.5 crores</td>
</tr>
</tbody>
</table>

LAWS APPLICABLE

MSMEs are required to follow various laws. Some of the laws given below may be applicable:

1. The Micro, Small and Medium Enterprises Development Act, 2006 and rules thereunder
2. The Coir Industry Act, 1953
5. The National Jute Board Act, 2008
6. The Factoring Regulation Act, 2011
7. The Information Technology Act, 2000

ORGANISATIONS INVOLVED

The Ministry of Micro, Small and Medium Enterprises, Government of India is the apex body for the formulation and administration of the MSME Act. A National Board for Micro, Small and Medium Enterprises has been established at New Delhi under the MSME Act. The Micro, Small and Medium Enterprises - Development Organization (MSME-DO) headed by the Additional Secretary & Development Commissioner assists the Ministry in formulating, co-ordinating, implementing and monitoring different policies and programs for the promotion and development of MSMEs in the country. In addition, it provides a comprehensive range of common facilities, technology support services, marketing assistance, etc. through its network

The Khadi & Village Industries Commission (KVIC), established under the Khadi and Village Industries Commission Act, 1956, is a statutory organization established for the purpose of promoting and developing khadi and village industries and providing employment opportunities in rural areas.

The Coir Board is a statutory body established under the Coir Board Industry Act, 1953 for promoting overall development of the coir industry and improving the living conditions of the workers engaged in this traditional industry.
National Small Industries Corporation Limited (NSIC), established in 1955, is headed by Chairman-cum-Managing Director and managed by a Board of Directors. The main function is to promote aid and foster the growth of micro and small enterprises in the country, generally on commercial basis.

National Institute for Micro, Small & Medium Enterprises (ni-msme) was originally set up as Central Industrial Extension Training Institute (CIETI) in New Delhi in 1960 as a Department under the Ministry of Industry and Commerce, Government of India. Later it was shifted to Hyderabad in 1962 and was renamed as Small Industry Extension Training (SIET) Institute. From the time of inception, ni-msme has been providing unstinted support to small and medium industries and offers services like research, consultancy, information, training and extension to not only enterprises but also to concerned development agencies.

INITIATIVES
The Government has launched several initiatives for promotion and development of MSMEs. We will be going through 12 key initiatives in brief, specific digital initiatives and one particular initiative called the National Competitiveness program.

Latest Initiatives:
Twelve key initiatives for MSME Support and Outreach were unveiled which included the following:
• 59 minute loan portal to enable easy access to credit for MSMEs
• Mandatory 25% procurement from MSMEs by Central Public Sector Enterprises (CPSEs)
• 2 percent interest subvention (support) for all GST registered MSMEs, on fresh or incremental loans. For exporters who receive loans in the pre-shipment and post-shipment period, the Hon'ble Prime Minister announced an increase in interest rebate from 3 percent to 5 percent
• All companies with a turnover more than Rs. 500 crores, must now compulsorily be brought on the Trade Receivables e-Discounting System (TReDS)
• Out of the 25 percent procurement mandated from MSMEs, 3 percent is reserved for women entrepreneurs
• All public sector undertakings of the Union Government are required to be a part of Government e-Marketplace (GeM).

Lean Manufacturing Competitiveness Programme for MSMEs helps in reducing their manufacturing costs, through proper personnel management, better space utilization, scientific inventory management, improved process flows, reduced engineering time and so on. “

All their vendors are also required to be registered on GeM
• 20 hubs are proposed to be formed across the country, and 100 spokes in the form of tool rooms will be established.
• Clusters will be formed of pharma MSMEs. 70 percent cost of establishing these clusters will be borne by the Union Government
• Returns under 8 labour laws and 10 Union regulations are required to be filed only once a year
• The establishments to be visited by an Inspector will be decided through a computerised random allotment
• An entrepreneur needs two clearances viz. environmental clearance and consent to establish under air pollution and water pollution laws, both of these have been merged as a single consent. The return will be accepted through self-certification.
• Ordinance has been brought, under which, for minor violations under the Companies Act, the entrepreneur will no longer have to approach the Courts, but can correct them through simple procedures

Digital Initiatives for promoting the Ease of Doing Business:
• Udyog Aadhar Memorandum - This can be filed online and a certificate of registration can be obtained online immediately. This facilitates all enterprises for proving their existence. This specifically helps the proprietorship businesses which have no other means of registration
• MSME Samadhan Portal - empowers micro and small entrepreneurs across the country to directly register their cases relating to delayed payments from Central Public Sector Enterprises (CPSE)
• MSME Sambandh Portal - helps in monitoring the implementation of public procurement policy for micro and
The following clearances are required to be obtained depending on the type of product or service:

1. **Project Selection which involves 4 major considerations:**
   - Product: This includes, inter alia, decisions on Product line, branding, warranties, after sales service apart from ease of sourcing of raw material, process technology, accessibility to mark and incentive and support from the Government
   - Process: Once the product is finalised based on the above parameters, choices of process technology is required to be finalised
   - Place: Choose the appropriate location depending on the product/service being launched
   - Partner: Selection of the right partner can make or break an enterprise

Once the place of production and a suitable partner is selected, a project report is required to be prepared.

2. **Technology and Machinery:** In some cases, knowhow may have to be imported in which case technology transfer agreements need to be executed with due care. Technology is also being developed at The Council of Scientific & Industrial Research (CSIR) and Defence Research Labs which can be looked to. Since technology can be prohibitively expensive, smaller enterprises tend not to purchase the same which results in out-dated technology. The main objective of National Micro, Small and Medium Enterprises (NMSME) is to provide machinery and equipment to small industrial units offering them long repayment periods with moderate rate of interest. NSIC has also specified procedures for hire purchase of machinery.

3. **Arranging Finance:** Financial assistance is available from several institutions such as Commercial/Regional Rural/Co-operative Banks, SIDBI(refinance and direct lending), SFCs/SIDCs: State Financial Corporations (e.g. Delhi Financial Corporation)/State Industrial Development Corporations etc. Both short term loans for working capital requirements and long term/medium term loans for asset purchases are provided by these institutions.

4. **Unit Development:** For tiny and service based units, the home may be the best starting point. If an establishment is required to be made, favourable plot of land or commercial space needs to be identified and appropriate structure for interiors as well as equipment is required to be placed. It is essential to obtain the utility connections and procure machinery, materials and the requisite staff.

5. **Udyog Aadhar Memorandum (UAM) and Addresses of District Industries Centres (DICs):** This is a one-page simple registration form for online filing of UAM. It is online and entirely on self-declaration basis. No documentation is required nor is there a filing fee. It is possible for an entrepreneur to register multiple businesses and obtain several Udyog Aadhar Numbers with the same individual’s Aadhar Number. It is advisable to register for UAM since the government provides several benefits for MSMEs which can be availed of. NIC codes are required to be entered in the UAM.


6. **Clearances:** The following clearances are required to be obtained depending on the type of product or service:
   - a. Product Specific Clearances
   - b. Environment and Pollution related clearances
   - c. Regulatory or taxation clearances

7. **Quality Certification:** Normally, ISO 9000 certification is availed of which requires considerable resources. A scheme has been launched to give financial incentive to those SSI units who acquire ISO-9000 certification, by reimbursing 75% of their costs of obtaining certification, subject to a maximum of Rs. 0.75 lacs per unit. The units are also assisted in improving the quality of their products.

**PRACTICAL INSIGHT**

A sole proprietor has started his own venture in a flat (since it is more cost effective than commercial premises). The venture is for transcription of palm leaf manuscripts, translating and analysing the same and publishing it in a book form (both print as well as e-book). For this venture, he created his own website for sale of these books (product) and conducting
related research (service). Since the sale could be made abroad, IEC (Importer Exporter Code) number from RBI as per FEMA Regulations was also required. As he also required the current account for receiving the sale proceeds and the IEC, he approached a bank for opening a current account. The banker insisted that there has to be some licence in the name of the sole proprietor entity. The sole proprietor approached Labour Commissioner for Shops and Establishments Licence. He was informed that he needs to obtain a ‘Licence to Operate’ from the local Municipality. When the Municipality was approached, he was informed that he would not get such a licence since he was operating from a flat.

At this point, it was suggested that he register the entity under MSME as a Micro Enterprise. It is clearly stated in the website that banks can open current account in the name of the entity based on the Udyog Aadhar Registration Certificate (UARC). However, when he went with the UARC to the bank, he was informed that he needs one more licence from some government authority to open the account. It was then decided to register the entity under GST with the address of the business entity. Once the GST registration was completed, the current account was opened and he could go ahead with the IEC number.

It is interesting to note that some private sector banks refused to open the current account in the name of the entity despite the fact that they are listed in the MSME website.

This case indicates the following:

1. Udyog Aadhar registration was a very smooth process which barely took 20 minutes.
2. NIC codes are required to be entered in this form. This is a complex structure which needs to be carefully thought out. Maximum number of codes allowed is 10 which could become a restriction while describing the business activity eg. for agri business, each crop is listed as a separate code which is given below:

   01111 Growing of wheat
   01112 Growing of jowar, bajra and millets
   01113 Growing of other cereals
   01114 Growing of pulses (dal) and other leguminous crops such as peas and beans, not used as oilseeds
   01115 Growing of mustard oil seed
   01116 Growing of groundnut oil seed
   01117 Growing of sunflower oil seed
   01118 Growing of soya bean oil seed
   01119 Growing of other oil seeds
   01121 Organic farming of basmati rice
   01122 Organic farming of non-basmati rice
   01123 Inorganic farming of basmati rice
   01124 Inorganic farming of non-basmati rice.

   The assumption seems to be that the number of products cannot be more than 10 which can be problematic for businesses which may be have more than 10 categories.

3. It is suggested by MSME website that it is better for a sole proprietor to start from home since it is easier on the pocket. However, as stated above, opening the current account could become a challenge.

4. In the above case, GST was not applicable since it is sale of books and the turnover has not crossed Rs.20 lakhs (this is a start-up). However, the proprietor was forced to register under GST since no other licence was possible to be obtained.

5. Dissemination of information relating to and benefits provided to MSMEs, to the entrepreneurs is lacking. In fact, even some of the bankers are not aware of Udyog Aadhar Registration.

**SCOPE FOR COMPANY SECRETARIES**

Company Secretaries play a crucial role in this entire process since they are the primary source for advice with respect to legal compliances and the laws which need to be followed by entrepreneurs. Apart from general advice as to the type of organisation and the set up of the MSME, post formation compliances specific to industries can be a focus area. MSMEs, who have been formed as sole proprietorship, partnerships, LLPs etc. can be converted into companies under the Companies Act and then listed in the SME Exchange as per the extant Securities laws.

**CONCLUSION**

Startup India is a flagship initiative of the Government of India, intended to build a strong ecosystem that is conducive for the growth of startup businesses, to drive sustainable economic growth and generate large scale employment opportunities. Make in India is the other initiative of the Government of India to encourage companies to manufacture their products and enthuse investors to dedicate investments into manufacturing. The Government through this initiative aims to empower startups to grow through innovation and design. MSMEs holding the centre stage in any startup initiative, are critical for any developing country and India is not an exception. Often, MSMEs are termed as the engine for growth in India and it is essential to focus on this sector.
Role of Company Secretaries in Labour Laws and Compliance Calendar

Labour law refers to laws regulating labour in India. Traditionally, Indian Governments at federal and state level have sought to ensure a high degree of protection for workers. Here Company Secretaries can play a leading role in compliances of various statutory provisions. The article depicts a Compliance Calendar and illustrates the scope for Company Secretaries in various Labour legislations to render value added services in ensuring the compliance of various Labour Laws to protect and further the interests of labour, industry and all stakeholders and at same time prevent unwanted lawsuits and penalty for non compliance.

LIST OF COMPLIANCE WORK UNDERTAKEN BY CS

Some of the important compliance work that can be undertaken by a Company Secretary under Labour Laws is enumerated hereunder:

- Registration of the establishment under various applicable Labour legislations.
- Submission of returns on a regular basis.
- Maintenance of appropriate records with regard to employees of the establishment under various labour legislations.
- Ensure adequate facilities have been provided for the employees on behalf of the establishment under various labour legislations.
- Draft employment agreements between the employer and employee and also specific non-disclosure agreements if required.

By undertaking the above mentioned activities, a Company Secretary can achieve the following:

- Compliance with labour laws and regulations.
- Set up adequate internal control system to minimize risks.
- Identify gaps and adequate measures to rectify the same.
- Implement an adequate system to ensure regular and timely compliance of the provisions of law.
- Prevent lawsuits and penalties for non compliance.

Social Justice is guaranteed by the Preamble of our Constitution. The Directive Principles of State Policy also provides that it shall be endeavour or the State to promote the welfare of its people by effectively securing and protecting a social order in which social, economic and political justice shall inform all the institutions of national life.

Even after attaining independence, India is still plagued with victimization, non compliance of labour legislations at large. Many employers resort to short cut methods to avoid the compliance of labour legislations. Many businesses have not put in a place for reporting non – compliances of labour law legislations by an independent professional like Company Secretaries in practice.

Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non compliance in large scale. Audit under the Labour and Employment laws is an effective tool for compliance management of labour, employment and Industrial laws. Audit helps to detect non compliances of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management. Labour Law audit may be useful in promoting cordial relations

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**Anu Amodia, ACS**
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between employees and employers and may also lead to better governance and value creation for the business. Labour Law Audit envisages a systematic scrutiny of records prescribed under labour legislations by an independent professional like practicing Company Secretary, who shall report to the compliance and non-compliance/extent of compliance and conditions of labour in the Indian Industry/Business and in any commercial establishments.

SCAPE OF LABOUR AUDIT
The Labour law auditor must cover all labour legislations applicable to an Industry/Business or any other commercial establishment, wherein audit is being conducted by the Labour Law Auditor. In case a particular piece of labour law is not applicable to a specific business, the same should distinctly be disclosed in the report of an Independent Professional. Scope of labour law audit will certainly differ from business to business. For example, if the business does not have a factory, the provisions of Factories Act, 1948 and any rules/regulations made there under won’t be applicable on such business. Similarly, certain factories in remote areas may not have the facilities of Employees State Insurance Corporation. In such cases, there is no need to ensure compliance of ESI Act.

BENEFITS OF LABOUR AUDIT

Benefits to the Labour/Employee
- Boost the morale of the workers/employees to a large extent;
- It increases social security of workers/employees;
- It helps to inculcate on workers/employees a sense of belongingness towards their employers;
- It ensures timely payment of wages, gratuity, bonus, overtime, compensation etc of the workers;
- Timely payment of entitlements certainly reduces the absenteeism in the establishment.

Benefits to Employer
- It helps to increase productivity in view of lower absenteeism in the establishments. Higher the productivity, higher will be the profits;
- Employer reputation in the Industry/business world certainly increases;
- Strict compliance of labour legislations is ensured by every establishment, which, in turn, reduce or even eliminate penalties/damages/fines/ that may be imposed by the government;
- Co-operation and good understanding improves labour relations. The Congenial atmosphere is indispensable for good corporate governance;
- It also helps in preventing strikes, lock outs etc.

Benefits to Government
- Reduction in the number of field staff for inspection of Industries/Factories/Commercial Establishments as most of their work will be done by an Independent Professional;
- Compulsory Labour Audit will ensure compliance of past defaults;
- In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the Appropriate Government will rise phenomenally.

Labour Law Audit is a process of fact findings and it is a continuous process. Labour Law Audit will ensure a win - win situation for all the stakeholders. It is expected that in near future Labour Law Audit will be made applicable for certain class of establishments, as Central Government is receiving many representations from Professional Institutes such as ICSI and other industry associations.

ROLE OF COMPLIANCE OFFICER IN AREAS OF LABOUR LAW
This field was always neglected by the Company Secretary in employment and in practice. Many HR and MBA personnel are looking after HR Compliance in offices and at manufacturing units. However, there is always lack of the expertise of practical approach and knowledge when it comes to the professional in Compliance. Company Secretary in practice can explore Labour Law compliance as completely new field for practice. Large MNCs are into practice to obtain the Compliance Certificate under all the Heads of the Company periodically, place it before the Board for the observation and suggestion, comments and the areas of improvement. Companies can indulge into practice of taking services from CS in practice and CS can increase their scope by providing Labour Law Audit to the manufacturing unit of the company.

Following is the checklist which can be followed by the Compliance Officer:

<table>
<thead>
<tr>
<th>EVERY MONTH</th>
<th>WHAT TO DO</th>
<th>UNDER WHICH ACT</th>
<th>IN WHICH FORM</th>
<th>TO WHOM/ WHERE</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Remittance of Contributions</td>
<td>The Employees’ Provident Funds &amp; Miscellaneous Provisions Act, 1952</td>
<td>Challan to be generated ‘online’</td>
<td>Pay ‘online’ or by submission of challan with cheque in the authorised banks like SBI</td>
</tr>
<tr>
<td>WHEN</td>
<td>WHAT TO DO</td>
<td>UNDER WHICH ACT</td>
<td>IN WHICH FORM</td>
<td>TO WHOM/ WHERE</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
<td>-----------------</td>
<td>---------------</td>
<td>----------------</td>
</tr>
<tr>
<td>15 days prior</td>
<td>Requisition of vacancies</td>
<td>The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 &amp; Rules</td>
<td>Requisition Form, Rule 4</td>
<td>Local Employment Exchange</td>
</tr>
<tr>
<td>Within 15 days</td>
<td>Return/Notice of commencement or completion of each contract by the Principal employer</td>
<td>The Contract Labour (Regulation &amp; Abolition) Act, 1970</td>
<td>Form VI-B, Rule 81(3)</td>
<td>Concerned Inspector under the Act</td>
</tr>
<tr>
<td>within 15 days</td>
<td>Notice of commencement/ completion of contract work by the Contractor</td>
<td>The Contract Labour (Regulation &amp; Abolition) Act, 1970</td>
<td>Form VI-A, Rule 25(2) (VIII)</td>
<td>Concerned Inspector under the Act</td>
</tr>
<tr>
<td>Within 45 days of end of calendar year</td>
<td>Annual Return in duplicate.</td>
<td>The Building and Other Construction Workers (Regulation of Employment &amp; Conditions of Service) Act &amp; the Rules, 1996</td>
<td>Form XXV</td>
<td>Registering Authority having jurisdiction</td>
</tr>
<tr>
<td>Within 30 Days from due dates</td>
<td>Quarterly Return for quarter ended 31st March</td>
<td>The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 &amp; Rules</td>
<td>Form ER-1: Rule 6</td>
<td>Local Employment Exchange</td>
</tr>
</tbody>
</table>

### WHEN TO WHOM/ WHERE

- **Within 30 Days from due dates**
  - Quarterly Return for quarter ended 30th June
  - The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 & Rules
  - Form ER-1: Rule 6
  - Local Employment Exchange

- **Within 30 Days from due dates**
  - Quarterly Return for quarter ended 30th September
  - The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 & Rules
  - Form ER-1: Rule 6
  - Local Employment Exchange

- **Within 30 Days from due dates**
  - Quarterly Return for quarter ended 31st December
  - The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 & Rules
  - Form ER-1: Rule 6
  - Local Employment Exchange

- **Within 30 Days**
  - Notice of applicability of the Act & any change
  - The Payment of Gratuity (Central) Rules, 1972
  - Form A or B, Rule 3(1&2)
  - Controlling Authority

- **Before 30 days of expiry of licence**
  - Application for renewal of licence in triplicate by contractor
  - The Contract Labour (Regulation & Abolition) Act, 1970
  - Form VII: Rule 29(2) Refer to State Rules
  - Concerned Licensing Officer

- **Atleast 30 days before commencement**
  - Notice of commencement and completion
  - The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act & the Rules, 1996
  - Form IV
  - Concerned Inspector

- **Return about levy of collection of Cess**
  - The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act & the Rules, 1996
  - Form I, Rule 6
  - Concerned Authority
### Role of Company Secretaries in Labour Laws and Compliance Calendar

In a dynamic context, laws need to be reviewed from time to time. Hence, review or updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy including high level of productivity and competitiveness, increasing employment opportunities, attracting more investment for growth, etc. In order to improve and abide by law, CS can play an important role in the field of Labour Laws and its effective compliance.

#### MONTH | DATE | WHICH COMPLIANCE | UNDER WHICH ACT | IN WHICH FORM | TO WHOM/ WHERE
--- | --- | --- | --- | --- | ---
JAN | 15 | Annual Returns | The Factories Act, 1948 | Form as prescribed in State Rules | Chief Inspector/Director or other competent authority of the area
JAN | 21 | Annual returns & details of payment ending 31st Dec | The Maternity Benefit Act, 1961 | Forms L, M, N, & O: Rule16(1) | Competent Authority under the Act
JAN | 30 | Half yearly return by contractor (in duplicate) | The Contract Labour (Regulation & Abolition) Act, 1970 | Form XXIV: Rule 82(1) | Concerned Licensing Officer
JAN | 31 | Annual information about factory/ establishment covered | The Employees’ State Insurance Act, 1948 | Form 01A: Regulation 10C | Regional office (RO) or Sub.RO or Divisional Office
FEB | 1 | Annual Return | The Minimum Wages Act, 1948 | Form III: Rules 21 (4A) | Concerned Inspector
FEB | 15 | Annual return by Principal Employer | The Contract Labour (Regulation &Abolition) Act, 1970 | Form XXV Rule 82(2) | Concerned Registering Officer
FEB | 15 | Annual return by Principal Employer | The Building and Other Construction Workers (Regulation of Employment &Conditions of Service) Act & the Rules, 1996 | Form XXV Rule 242 | Regional Labour Commissioner
**JUL** | 15 | Half-yearly Return | The Factories Act, 1948 | Form as prescribed in State Rules | Concerned Director/Inspector
**JUL** | 30 | Half-yearly Return, by Contractor (in duplicate) | The Contract Labour (Regulation &Abolition) Act, 1970 | Form XXIV: Rule 82(1) | Concerned Licensing Officer
**DEC** | 30 | Annual Return, within 30 days after the expiry of 8 months from the close of the accounting year | The Payment of Bonus Act, 1965 & Rules | Form D: Rule 5 | Concerned Inspector under the Act

#### IN CASE OF | WHAT TO DO | UNDER WHICH ACT | IN WHICH FORM | TO WHOM/ WHERE
--- | --- | --- | --- | ---
Accident | Report immediately if fatal/death & within 48 hrs in ordinary cases | The Employees’ State Insurance Act, 1948 | Form 12 or online also | Concerned Local Office/Dispen-sary of ESI
Accident/dangerous occurrence | Notice Forthwith of occurrence | The Factories Act, 1948 | as prescribed in State Rules | Inspector/ Director of Factories
Accident | Report within 12 hours of occurrence | The Factories Act, 1948 | as prescribed in State Rules | Director/Inspector of Factories
Serious bodily injuries/fatal accidents | Report within 7 days of accident | The Employees’ Compensation Act, 1923 | Form EE | Concerned Commissioner of Employees’ Compensation
Accident | Notice of accident within 4 hours in case of fatal accident and 72 hours in case of other | The Building and Other Construction Workers (Regulation of Employment &Conditions of Service) Act & the Rules, 1996 | Form XIV, Rule 210 (7) | Regional Labour Commissioner

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**CONCLUSION:**

In a dynamic context, laws need to be reviewed from time to time. Hence, review or updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy including high level of productivity and competitiveness, increasing employment opportunities, attracting more investment for growth, etc. In order to improve and abide by law, CS can play an important role in the field of Labour Laws and its effective compliance.
Interim Budget 2019-20

The Interim Budget 2019-20 presented by Finance Minister Shri Piyush Goyal on 1st February, 2019 marks a set of comprehensive reforms aimed at “realizing a New India by 2022” and had a strong focus on sustainable growth and achieving a better quality of life for all citizens of India. The thrust of this Budget was on social infrastructure, ease of living and technology led governance aimed at inclusive and equitable growth.

Interim Budget 2019-20 is a progressive budget and paved the path towards expansion of employment and high growth rate. It is a well-balanced budget with its primary focus on farm economy along with transformational reforms to address socio-economic challenges to ensure that the Indian economy is on a solid track. The main focus of this year budget was the ambitious “10-dimensional vision for 2030” – a roadmap for India to become a US$ 5 trillion economy in the next 5 years and a 10 trillion economy in the next 8 years thereafter. Under this vision, India is envisaged to become a modern, technologically driven, innovative, transparent and equitable nation backed by strong reforms.

QUALITATIVE GLANCE

• State of the Economy
  The Country witnessed its best phase of macro-economic stability during the last five year period. India is 6th largest economy in the world as compared to 11th position in 2013-14. The average inflation brought down to 4.6%, the fiscal deficit has been brought down to 3.4% in 2018-19 and the current account deficit (CAD), is likely to be only 2.5% of GDP this year.

• Banking Reforms and Insolvency and Bankruptcy Code (IBC)
  The Insolvency and Bankruptcy Code helped in recovery of non-performing loans while preserving the underlying businesses and jobs. The Outstanding loans of public sector banks ballooned from Rs. 18 lakh crore to Rs. 52 lakh crore. The Four Rs approach of recognition, resolution, recapitalisation and reforms has been followed. A number of measures have been implemented to ensure Clean Banking. To restore the health of public sector banks, recapitalisation has been done with an investment of Rs. 2.6 lakh crore. Amalgamation of banks has also been done to reap the benefits of economies of scale, improved access to capital and to cover a larger geographical spread.

• Agriculture/ Farm Sector Reforms
  Agriculture continues to be the main driver of the rural economy. Total allocation for the Agriculture sector has seen an increase of 73% over 2018-19. The Government announced the Pradhan Mantri Shramyogi Maan Dhan Yojana (PMSM) scheme as per which farmers having up to 2 hectare of lands will get a guaranteed income of INR 6,000 per year in three equal installments. Further, Interest subvention of 2% is proposed for farmers affected by natural calamities and additional 3% relaxation will be given for timely repayment of loans. The proposals will provide relief to farmers and will address to some extent issues faced in the farm sector.

• Women’s development to women led development
  In the Interim Budget, the Government reminded the worked done for the Women Development and stated that in order to secure the health of every home-maker in rural areas, Government embarked upon a programme to deliver 8 crore free LPG connections under the Ujjwala Yojana. Further, more than 70% of the beneficiaries of Pradhan Mantri MUDRA Yojana are women who are getting affordable and collateral-free loans to start their own businesses.

• Empowering MSMEs and Traders
  Government has undertaken many effective steps to strengthen MSME sector, which provides employment to crores of people. Total 25% of sourcing for government projects will be from the MSMEs, of which 3% will be from women entrepreneurs. In the interim budget, a proposal has been made to provide 2% of interest rebate for MSMEs registered under GST for loans up to INR one crore. Further, in order to pace the ease of doing businesses in India, it is proposed to file quarterly returns under GST with less than Rs 5 crore annual turnover, comprising over 90% of GST payers.

• Infrastructure development
  Infrastructure is the backbone of any nation’s development and quality of life. Infrastructure development has been one of the focus areas of the Government. India has witnessed tremendous growth to attain transformative achievements whether it is highways or railways or airways.

• Social Security / Schemes
  The Pradhan Mantri Shramyogi Maan Dhan Yojana has been announced which is a Mega pension scheme for workers in the organised sector with an income of less than Rs.15,000. They will be able to earn Rs. 3000 after the age of 60 as per the mega pension scheme. The Government is proposed to build one lakh digital villages and 22 AIIMS to be established. Further, for the welfare of farmers and for doubling their income, Minimum Support Price (MSP) is proposed to increase by 1.5 times the production cost for all 22 crops.

• Nine priority sectors for Government
  The Interim budget highlighted following nine priority sectors:
1. To build a Digital India that reaches every citizen;
2. Clean and Green India;
3. Expanding rural industrialization using modern industrial technologies;
4. Clean Rivers - with safe drinking water to all Indians;
5. Oceans and coastlines;
6. India becoming launch pad of the world;
7. Self-sufficiency in food and improving agricultural productivity with emphasis on organic food;
8. Healthy India;

- Simplification of Direct Tax System to benefit Tax-payers
  The key highlights of the Tax Proposals in Interim Budget 2019-20 are as under:

<table>
<thead>
<tr>
<th>HIGHLIGHTS OF TAX PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
</tr>
<tr>
<td>23(5)</td>
</tr>
<tr>
<td>87(A)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>16(ia) Standard Deduction: The existing provisions of the said section, inter alia, provide that the income chargeable under the head “Salaries” shall be computed after making standard deductions of Rs. 40,000 or the amount of the salary, whichever is less.</td>
<td>The existing limit of standard deduction available against income under the head of salary (pension also) is proposed to be increased to Rs. 50,000 from Rs. 40,000. Further, there is no change in Income Tax slabs, rate of surcharge and rate of cess.</td>
<td>This will provide relief to the salaried class taxpayer with an additional standard deduction of Rs. 10,000 from the income under the head of salary and provide relief in tax liability.</td>
<td></td>
</tr>
<tr>
<td>87(A) Rebate is currently available to resident individual upto maximum of Rs. 2,500 or tax liability, whichever is less if the total income does not exceed Rs. 3,50,000.</td>
<td>The existing limit of Rebate Rs. 2500 is now proposed to be increased to maximum of Rs. 12,500 with an income threshold of Rs. 5,00,000.</td>
<td>There is no tax at all if the taxable income does not exceeds Rs. 5,00,000. (The provisions applicable only to resident individual)</td>
<td></td>
</tr>
</tbody>
</table>
When an individual / HUF sells a residential property and buys another residential property, he will be eligible for exemption subject to certain conditions.

New proviso is proposed to be added after section 54(1)(ii) whereby option is given to assesssee by which instead of one residential house in India, two residential houses in India can be purchased or constructed, if amount of capital gain does not exceed 2 crores. It is further proposed to give such option only once in the lifetime of assessee.

This will provide relief to the taxpayers.

---

### 194A(3)

The existing threshold limit for TDS deduction on Interest is Rs. 10,000.

It is proposed to increase the threshold limit of interest amount for making TDS to Rs. 40,000 from current limit of Rs. 10,000.

Interest earners will no longer be required to submit Form No. 15G in cases, where interest amount does not exceed Rs. 40,000.

This will provide relief to the taxpayers.

---

### 194I

The existing threshold limit for TDS deduction on Rent is Rs. 1,80,000.

It is proposed to increase the threshold limit of Rent amount for making TDS to Rs. 2,40,000 from current limit of Rs. 1,80,000.

This will provide relief to the taxpayers and also reduce compliance burden.

---

Interim Budget 2019-20 is a progressive budget and paved the path towards expansion of employment and high growth rate. It is a well-balanced budget with its primary focus on farm economy along with transformational reforms to address socio-economic challenges to ensure that the Indian economy is on a solid track.

---

**Base year for reduced tax rates for Domestic Company**

Domestic companies with a turnover not exceeding INR 250 crore during Financial Year 2016-17 continue to enjoy a reduced tax rate of 25% (increased by applicable surcharge and cess).

The base year for this reduced tax rate is proposed to be extended to domestic companies with turnover not exceeding INR 250 crore for Financial Year 2017-18.

This will provide relief to the domestic companies.

---

**Other tax related reliefs**

- Income Tax returns to be processed within 24 hours and refunds will be paid immediately.
- Within nearly two years, almost all assessment and verification of IT returns will be done electronically by an anonymised tax system without any intervention by officials.

The tax proposals offer a full tax rebate to individuals having an annual taxable income of up to Rs 5 lakh. This would be beneficial for the lower middle-class taxpayers comprising self-employed, small businesses, small traders, salary earners, pensioners and senior citizens. In addition to this, the increase in the standard deduction limit, the threshold for TDS on interest income from bank and post office deposits, upward revision of TDS threshold for tax on rental income, exemption of levy of income tax on notional rent on second self-occupied house and extension of exemption of capital gains to second residential property of up to Rs 2 crore, are all significant measures and provide relief to the tax payers.
STATE REAL ESTATE REGULATIONS: AN ANALYSIS IN PERSPECTIVE OF COMPANY SECRETARIES PROFESSION
State Real Estate Regulations: An Analysis in Perspective of Company Secretaries Profession

The legislative intent of implementing RERA is to bring transparency and safety through a unique regulatory mechanism to counter prolonged issues like falsification and structural delays and also to bring back investors’ confidence in the sector. The present study is an attempt to analyse existing differences with Acts implemented by state governments. An analysis has been carried out between states and also with central Act. To observe differences, ten common criteria on which most of the state rules differ between each other have been identified and considered in the study.

INTRODUCTION:
Real estate sector has been making rapid strides in recent times and has developed as third highest contributors to the Indian economy. With equity investments to the lines of $32 billion and further $ 5.7 billion of global capital flow by the year 2016, the globe has started recognizing this sector as structured and more organised. The Department of Industrial Policy and Promotion (DIPP) reported that during the fiscal year of 2016-17, India’s real estate sector captured $105 million FDI equity, while between April-June quarters of 2017-18, the sector attracted investments of $251 million.

REAL ESTATE: AS AN ENGINE OF GROWTH
There are a numbers of traditional economic theories which always advocates the supremacy of land over other economic goods. The reason behind is that the supply of land is fixed, every patch of land has a distinct location which make it an unique property. The attention of land in economic theories has played very crucial role in various economic analysis and policy formulations.

David Ricardo, one of the leading economist’s land theories explains the existence of land rents from differences in fertility, or more general, differences in land quality. It says that land of a higher quality generates surplus over land with a lower quality. This surplus are then paid as rent to the landlord due to competition at the land market based on the demand for land.

Von Thunen’s theory is concerned with the location and transportation costs of a patch of land by undertaking fertility of land. This theory analyses the land uses pattern along with explanation of land prices. Both the theories are having practical applicability till today.

Today’s concept of real estate sector is nothing but a means of achieving excess of demand for land over supply due to modernization.

*The author thanks Dr. S.K. Dixit, Mentor-Research Cell and CS Sonia Baijal, Director, PD, PP & Studies for encouraging, guiding and giving necessary inputs while developing the manuscript.
and population growth. Hence, real estate sector as an engine of economic growth is not a new concept in an economy.

THE SECTOR:
The sector is expected to grow in a rapid pace in India in the near feature because of following important reasons. 

(a) Distribution of Population by Age:
There is much talk everywhere in the world about India’s demographic dividend with debates raising from how India’s growing young population will make India a world economic leader. To make India a world economic leader, the contribution of real estate sector could not be ignored.

The greatest advantage to the real estate sector is the presence of large proportion of young generation who are between 15 years of age to 59 years of age. This is the age group which has high perception towards purchase of houses and real estate investment. Following table analyses state wise figure of population under different age groups as per 2011 census.

Table-1: Population under Different Age Groups as per 2011 Census

<table>
<thead>
<tr>
<th>States /UT's</th>
<th>0-14</th>
<th>15-34</th>
<th>35-59</th>
<th>60 and above</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>2179079</td>
<td>30609248</td>
<td>23131065</td>
<td>8278241</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>493361</td>
<td>512549</td>
<td>312669</td>
<td>63639</td>
</tr>
<tr>
<td>Assam</td>
<td>1024899</td>
<td>11123193</td>
<td>7736116</td>
<td>2078544</td>
</tr>
<tr>
<td>Bihar</td>
<td>41721188</td>
<td>32264872</td>
<td>22002745</td>
<td>7707145</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>8183836</td>
<td>88616997</td>
<td>6472641</td>
<td>2003909</td>
</tr>
<tr>
<td>Gujarat</td>
<td>17445613</td>
<td>21695832</td>
<td>16272844</td>
<td>4786559</td>
</tr>
<tr>
<td>Haryana</td>
<td>7529954</td>
<td>9370426</td>
<td>6225793</td>
<td>2193754</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>1775385</td>
<td>2491844</td>
<td>1956201</td>
<td>703009</td>
</tr>
<tr>
<td>Jammu and Kashmir</td>
<td>4240710</td>
<td>4411400</td>
<td>2951417</td>
<td>922656</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>11891118</td>
<td>10992825</td>
<td>7643987</td>
<td>2356678</td>
</tr>
<tr>
<td>Karnataka</td>
<td>16024874</td>
<td>22349821</td>
<td>16883719</td>
<td>5791032</td>
</tr>
<tr>
<td>Kerala</td>
<td>7830974</td>
<td>10335954</td>
<td>11011254</td>
<td>4139339</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>24302242</td>
<td>25176834</td>
<td>17351555</td>
<td>5713316</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>29917215</td>
<td>40661653</td>
<td>30280834</td>
<td>11106935</td>
</tr>
<tr>
<td>Manipur</td>
<td>861688</td>
<td>1060221</td>
<td>726088</td>
<td>200200</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>1177942</td>
<td>1052138</td>
<td>592123</td>
<td>138902</td>
</tr>
<tr>
<td>Mizoram</td>
<td>356002</td>
<td>412771</td>
<td>259172</td>
<td>68628</td>
</tr>
<tr>
<td>Nagaland</td>
<td>679032</td>
<td>760810</td>
<td>434463</td>
<td>102726</td>
</tr>
<tr>
<td>Odisha</td>
<td>12076422</td>
<td>14385953</td>
<td>11408224</td>
<td>3984448</td>
</tr>
<tr>
<td>Punjab</td>
<td>7084950</td>
<td>10174719</td>
<td>7576330</td>
<td>2865817</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>23725426</td>
<td>23811691</td>
<td>15629580</td>
<td>511238</td>
</tr>
<tr>
<td>Sikkim</td>
<td>165937</td>
<td>251098</td>
<td>151614</td>
<td>40752</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>17007503</td>
<td>25144641</td>
<td>22418323</td>
<td>7509758</td>
</tr>
<tr>
<td>Tripura</td>
<td>1017991</td>
<td>1362144</td>
<td>1002622</td>
<td>289544</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>71308266</td>
<td>68153539</td>
<td>43288570</td>
<td>15439904</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>3129008</td>
<td>3602662</td>
<td>2437205</td>
<td>900809</td>
</tr>
<tr>
<td>West Bengal</td>
<td>2473745</td>
<td>3265582</td>
<td>2602795</td>
<td>7742382</td>
</tr>
<tr>
<td>A &amp; N Islands</td>
<td>92675</td>
<td>147586</td>
<td>114528</td>
<td>25424</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>266512</td>
<td>426702</td>
<td>294812</td>
<td>67078</td>
</tr>
<tr>
<td>D &amp; N Haveli</td>
<td>107813</td>
<td>147931</td>
<td>73721</td>
<td>13892</td>
</tr>
<tr>
<td>Daman &amp; Diu</td>
<td>54985</td>
<td>122110</td>
<td>54435</td>
<td>11361</td>
</tr>
<tr>
<td>Delhi</td>
<td>4565319</td>
<td>6534460</td>
<td>4524015</td>
<td>1147445</td>
</tr>
<tr>
<td>Goa</td>
<td>318160</td>
<td>503105</td>
<td>471691</td>
<td>163495</td>
</tr>
<tr>
<td>Lakshadweep</td>
<td>16457</td>
<td>22857</td>
<td>19774</td>
<td>5270</td>
</tr>
<tr>
<td>Puducherry</td>
<td>298392</td>
<td>440449</td>
<td>387575</td>
<td>120436</td>
</tr>
<tr>
<td>All India</td>
<td>372444116</td>
<td>421959587</td>
<td>308112432</td>
<td>103849040</td>
</tr>
</tbody>
</table>

Source: Census of India-2011
(b) **Gross Value Added (GVA) at Basic Prices**

The estimated growth of real estate sector when estimated in GVA during 2017-18 is recorded at 7.3 percent against 5.7 percent in 2016-17. The Table-2 derived below shows the contribution of financial, real estate and professional services estimated by first advance estimates of Gross Value Added by economic activities at basic price at 2011-12 and current price respectively.

<table>
<thead>
<tr>
<th>Industry</th>
<th>2015-16</th>
<th>2016-17 (PE)</th>
<th>2017-18 (1st AE)</th>
<th>Percentage change over previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2016-17</td>
</tr>
<tr>
<td>1. Agriculture, forestry &amp; fishing</td>
<td>1,617,208</td>
<td>1,696,175</td>
<td>1,732,371</td>
<td>4.9</td>
</tr>
<tr>
<td>2. Mining &amp; quarrying</td>
<td>324,740</td>
<td>330,485</td>
<td>339,972</td>
<td>1.8</td>
</tr>
<tr>
<td>3. Manufacturing</td>
<td>1,872,115</td>
<td>2,019,227</td>
<td>2,112,345</td>
<td>7.9</td>
</tr>
<tr>
<td>4. Electricity, gas, water supply &amp; other utility services</td>
<td>224,447</td>
<td>240,590</td>
<td>258,672</td>
<td>7.2</td>
</tr>
<tr>
<td>5. Construction</td>
<td>879,782</td>
<td>894,668</td>
<td>927,085</td>
<td>1.7</td>
</tr>
<tr>
<td>6. Trade, hotels, transport, communication and services related to broadcasting</td>
<td>1,989,161</td>
<td>2,143,956</td>
<td>2,329,801</td>
<td>7.8</td>
</tr>
<tr>
<td>7. Financial, real estate &amp; professional services</td>
<td>2,298,798</td>
<td>2,429,638</td>
<td>2,606,602</td>
<td>5.7</td>
</tr>
<tr>
<td>8. Public administration, defence and Other Services</td>
<td>1,284,263</td>
<td>1,430,002</td>
<td>1,564,473</td>
<td>11.3</td>
</tr>
<tr>
<td><strong>GVA at Basic Price</strong></td>
<td><strong>10,490,514</strong></td>
<td><strong>11,185,440</strong></td>
<td><strong>11,871,320</strong></td>
<td><strong>6.6</strong></td>
</tr>
</tbody>
</table>

Source: Government of India,

(c ) **Usage Pattern of Houses:**

Following Table-3 makes a sketch by distributing censes houses according to the uses.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Residence</td>
<td>72.0</td>
<td>72.7</td>
<td>70.2</td>
<td>77.1</td>
<td>77.2</td>
<td>76.9</td>
</tr>
<tr>
<td>Residence cum others</td>
<td>3.2</td>
<td>3.4</td>
<td>2.6</td>
<td>2.8</td>
<td>3.0</td>
<td>2.4</td>
</tr>
<tr>
<td>Shop, office</td>
<td>5.4</td>
<td>3.1</td>
<td>10.9</td>
<td>5.8</td>
<td>3.4</td>
<td>10.8</td>
</tr>
<tr>
<td>School, college</td>
<td>0.6</td>
<td>0.7</td>
<td>0.4</td>
<td>0.7</td>
<td>0.8</td>
<td>0.4</td>
</tr>
<tr>
<td>Hotel, Lodge, guest house</td>
<td>0.2</td>
<td>0.2</td>
<td>0.4</td>
<td>0.2</td>
<td>0.2</td>
<td>0.4</td>
</tr>
<tr>
<td>Hospital, dispensary</td>
<td>0.2</td>
<td>0.2</td>
<td>0.4</td>
<td>0.2</td>
<td>0.2</td>
<td>0.4</td>
</tr>
<tr>
<td>Factory, workshop</td>
<td>0.9</td>
<td>0.6</td>
<td>1.7</td>
<td>0.8</td>
<td>0.5</td>
<td>1.5</td>
</tr>
<tr>
<td>Place of worship</td>
<td>1.0</td>
<td>1.1</td>
<td>0.6</td>
<td>1.0</td>
<td>1.2</td>
<td>0.6</td>
</tr>
<tr>
<td>Other non-residential</td>
<td>10.2</td>
<td>12.8</td>
<td>3.9</td>
<td>11.0</td>
<td>13.3</td>
<td>6.0</td>
</tr>
<tr>
<td>Vacant census houses</td>
<td>6.4</td>
<td>5.3</td>
<td>9.0</td>
<td>0.4</td>
<td>0.3</td>
<td>0.7</td>
</tr>
</tbody>
</table>

Source: Economic Census, GoI

(d) **Housing Shortage:**

Table-4 depicts various interesting facts on the housing condition in India. The comparative figure has been ascertained based on the estimations of two government departments, namely Census of India and National Sample Survey Office. Ten decile groups are identified based on the nature of their economic status. The Table details about urban households in India such as per cent share of total households in urban area, average monthly per capita income, average household size of Indian families on basis of decile categories, average household income based on TG-12 method based on Census of India and National Sample Survey (NSS) studies.

**OBJECTIVES**

The present study is an attempt to-
- To analyse some important economic indicators which paves an opportunity to the real estate sector to grow in future, and
- To analyse some important differences in each state implemented rules by considering the model Central RERA Act.
METHODOLOGY
This study is analytical in nature and is based on secondary sources of information. For this study various state governments’ gazettes on RERA rules have been referred. Ten important criteria such as regulator, ongoing project, registration fees, promoter, real estate agent, real estate regulation authority, rate of interest, time line for refund, penalty and provision of central advisory council where the state Acts differ between each other are considered in this study.

THE REAL ESTATE ACT - THE GENESIS
RERA Act, 2016 is an Act implemented to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

Figure-1: The RERA-The Genesis

<table>
<thead>
<tr>
<th>Prior to 2009</th>
<th>Highly unregulated with lack of professionalism and standardisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>January, 2009</td>
<td>A law for the real estate sector was proposed by The National Conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs of India</td>
</tr>
<tr>
<td>July, 2011</td>
<td>Departments like Competition Commission of India, Tariff Commission and Ministry of Consumer Affairs, Ministry of Law and Justice etc., were suggested for formulating a central legislation under specific entries of Concurrent List of the Constitution for regulation of contracts and transfer of property. Formulation of a Central Law for the sector was finalised.</td>
</tr>
<tr>
<td>June, 2013</td>
<td>The Union Cabinet approved the first Real Estate Bill, 2013</td>
</tr>
<tr>
<td>August, 2013</td>
<td>The First Real Estate Bill, 2013 was introduced in the Rajya Sabha</td>
</tr>
<tr>
<td>September, 2013</td>
<td>The bill was referred to the Standing Committee under Urban Development for review and comments</td>
</tr>
<tr>
<td>February, 2014</td>
<td>Final review report of the Standing Committee with key recommendations was tabled in both Rajya Sabha and Lok Sabha</td>
</tr>
<tr>
<td>February, 2015</td>
<td>Attorney General upheld the validity of central legislation and the competence of parliament</td>
</tr>
<tr>
<td>April, 2015</td>
<td>The Union Cabinet approved Official Amendments based on the review reports submitted by Standing Committee</td>
</tr>
<tr>
<td>May, 2015</td>
<td>Real Estate Bill, 2013 and Official Amendments referred to Select Committee of Rajya Sabha</td>
</tr>
</tbody>
</table>
Note: FICCI report and compiled information.

<table>
<thead>
<tr>
<th>Decile</th>
<th>Urban Households in India as per census (in lakhs)</th>
<th>Share in total urban households %</th>
<th>Average MPCE</th>
<th>Average household size</th>
<th>Average household income based on TG-12 Method</th>
<th>Households facing housing shortage (in lakhs)</th>
<th>Households facing housing shortage in decile using NSS households (%)</th>
<th>Shortage using census decile households (%)</th>
<th>From NSS data: households &amp; population facing shortage among EWS, LIG &amp; Other income groups (%)</th>
<th>From census data: households &amp; population facing shortage among EWS, LIG &amp; Other income Groups (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>82.5</td>
<td>67.4</td>
<td>10.1</td>
<td>521</td>
<td>5.9</td>
<td>3050</td>
<td>37.7</td>
<td>55.9</td>
<td>45.7</td>
<td>42.5 (43.2)</td>
</tr>
<tr>
<td>2</td>
<td>84.6</td>
<td>69.1</td>
<td>10.4</td>
<td>722</td>
<td>5.3</td>
<td>3821</td>
<td>32.5</td>
<td>47.1</td>
<td>38.4</td>
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<tr>
<td>3</td>
<td>74.1</td>
<td>60.5</td>
<td>9.1</td>
<td>870</td>
<td>5.1</td>
<td>4392</td>
<td>22.3</td>
<td>36.9</td>
<td>30.1</td>
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<td>4</td>
<td>132.6</td>
<td>108.3</td>
<td>16.3</td>
<td>1028</td>
<td>4.7</td>
<td>4872</td>
<td>37.2</td>
<td>34.4</td>
<td>28.1</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>33.9</td>
<td>27.7</td>
<td>4.2</td>
<td>1420</td>
<td>4.6</td>
<td>6904</td>
<td>8.6</td>
<td>31.1</td>
<td>25.4</td>
<td></td>
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<tr>
<td>6</td>
<td>76.0</td>
<td>62.1</td>
<td>9.3</td>
<td>1688</td>
<td>4.2</td>
<td>7354</td>
<td>16.8</td>
<td>27.0</td>
<td>22.1</td>
<td></td>
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<tr>
<td>7</td>
<td>86.9</td>
<td>71.0</td>
<td>10.7</td>
<td>2051</td>
<td>4.0</td>
<td>8551</td>
<td>13.5</td>
<td>19.0</td>
<td>15.5</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>89.8</td>
<td>73.4</td>
<td>11.0</td>
<td>2681</td>
<td>3.6</td>
<td>10245</td>
<td>9.9</td>
<td>13.6</td>
<td>11.0</td>
<td></td>
</tr>
</tbody>
</table>

Table 4: Housing Shortage among Various Income Groups in Urban India

By November, 2018

- The Select Committee of the Rajya Sabha had submitted its report on Real Estate Bill, 2013 and tabled the revised Real Estate Bill, 2015.
- The Union Cabinet approved the Real Estate Bill, 2015 for further consideration of Parliament.
- The Bill listed in the Rajya Sabha for its consideration but could not be passed.
- The Bill passed by the Rajya Sabha and send for President’s approval.
- Hon’ble President of India accorded his assent to the Real Estate Bill, 2015.
- The Bill was converted to Act and called as ‘The Real Estate (Regulation and Development) Act, 2016 ‘and was published in the Gazette.
- The Ministry of Housing and Urban Poverty Alleviation had noticed 59 sections of the Act and implemented with effect from 1st May 2016.
- 33 of 92 sections of the Act was notifies and implemented with effect from 1st May 2017.
- 28 States/UTs have notified rules under the RERA.
- 28 States/UTs have set up Real Estate Regulatory Authority.
- 21 States/UTs have set up Real Estate Appellate Tribunal.

By November, 2018

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- 28 States/UTs have notified rules under the RERA.
- 28 States/UTs have set up Real Estate Regulatory Authority.
- 21 States/UTs have set up Real Estate Appellate Tribunal.
On the basis of defined ten criteria, the differences between state acts/rules as well as model Central Act are analysed in Table-5 below:

**Table-5: Difference in State Rules**

|----------------------|-------------|--------------------------------------------------------|-------------------------------------------------|---------------------------------------------------|
| 2. On Going Project  | For which the completion certificate has not been issued: However, for the interest of the allottees, if the authority thinks necessary, could include such projects which are developed beyond the planning area but with the necessary permission from the local authority, could order the promoter to register with the authority. All the rules or the Act would be applicable on such projects. Following projects are excluded under the Act:  
- Where the area of the land proposed to be developed does not exceed five hundred square meter or the number of apartments proposed to be developed does not exceed eight inclusive of all the phases. (Appropriate government can reduce ceiling of five hundred square meter or eight apartments)  
- Where the promoter has received completion certificate for the real estate project prior to the commencement of the Act.  
- For the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.  
- In case of phased projects, registration is required for each phases separately (Section 3, sub section (1) & (2)).  
- Where development is going on and for which Occupancy Certificate or Completion Certificate has not been issued but excludes such Projects which fulfill any of the following criteria:  
  - Where the completion certificate is obtained when the streets and civic amenities and services have been handed over to the local authority in layout Projects.  
  - Where all slabs are laid in housing projects  
  - Where all developmental works have been completed and sale /lease deeds of 50% of the Apartment /Houses/Plots have been executed  
  - Where development works have been completed and application has been filed to the competent authority for issue of Completion or Occupancy Certificate (Rule 2 (1) (g))  
  - A project which has not received completion certificate Where development is going on and for which Completion Certificate has not been issued but excludes projects that satisfies any of the following criteria:  
  - In respect of the lay outs when the streets and civic amenities sites and other services have been handed over to the local authority and planning authority for maintenance  
  - In respect of apartments where common areas and facilities have been handed over to the registered association consists of majority of allottees  
  - Where all development work have been completed as per the Act and certified by the competent agency and sale /lease deeds of sixty percent of the apartment/houses/plots have been registered and executed  
  - Where all development work have been completed as per the Act and certificate by the competent agency and application have been filed with the competent authority for issue of completion certificate/occupation certificate and,  
  - Where partial occupancy certificate is obtained to an extent of the provision for which the potential occupancy certificate is obtained |
| 3. Registration Fees | As suggested by concerned authorities | Not specified. Fee determined from time-to-time  
- Group Housing Project- Rs. 5/- per square meter for land ≤ 1000 square meter or Rs. 10/- per square meter in case ≥ 1000 square meter but maximum should not exceed Rs 5 lakh rupees  
- Mixed Development (Residence plus Commercial)- Rs. 10/- per square meter for land ≤ 1000 square meter or Rs. 15/- per square meter in case ≥ 1000 square meter but the maximum should not exceed 7 lakh rupees  
- Commercial Project- Rs. 20/- per square meter for land ≤ 1000 square meter or Rs. 25/- per square meter in case ≥ 1000 square meter but the maximum should not exceed 10 lakh rupees  
- Group Housing Project- Rs. 5/- per square meter for land ≤ 1000 square meter or Rs. 10/- per square meter in case ≥ 1000 square meter but maximum should not exceed Rs 5 lakh rupees  
- Mixed Development (Residence plus Commercial)- Rs. 10/- per square meter for land ≤ 1000 square meter or Rs. 15/- per square meter in case ≥ 1000 square meter but the maximum should not exceed 7 lakh rupees  
- Commercial Project- Rs. 20/- per square meter for land ≤ 1000 square meter or Rs. 25/- per square meter in case ≥ 1000 square meter but the maximum should not exceed 10 lakh rupees |

Source: TG 12, NSS and Census data.

**MAJOR DIFFERENCES IN STATE RULES: AN ANALYSIS**
### 4. Promoter

<table>
<thead>
<tr>
<th>Date</th>
<th>Rejection Clause</th>
<th>Separate Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 30 days applying</td>
<td>No rejection could be done within 30 days of applying the notice of rejection.</td>
<td>70% in promoter's account</td>
</tr>
<tr>
<td>Not Specified</td>
<td>No rejection could be done without giving an opportunity to be heard in the matter concerned</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Not Specified</td>
<td>No rejection could be done without giving an opportunity of being heard in the matter concerned</td>
<td>Not Specified</td>
</tr>
</tbody>
</table>

### 5. Real Estate Agent

<table>
<thead>
<tr>
<th>Date</th>
<th>Renewal Clause</th>
<th>Separate Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 30 days applying</td>
<td>No rejection could be done without giving an opportunity to be heard in the matter concerned</td>
<td>70% in promoter's account</td>
</tr>
<tr>
<td>Not Specified</td>
<td>No rejection could be done without giving an opportunity of being heard in the matter concerned</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Not Specified</td>
<td>Only inform to the agent by mentioning the cause of rejection. No clarity on the opportunity to be given to be heard or not.</td>
<td>Not Specified</td>
</tr>
</tbody>
</table>

### 6. Real Estate Regulation Authority

<table>
<thead>
<tr>
<th>Date</th>
<th>Fee</th>
<th>Separate Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>As suggested by concerned authority</td>
<td>Fee not mentioned. As decided by authority from time to time</td>
<td>70% in promoter's account</td>
</tr>
<tr>
<td>Rs. 10,000/- for individual or Rs. 50,000/- for other than individual (grant within 30 days of application)</td>
<td>Rs. 2500/- in case of individual or 2 lakhs rupees other than individual (granted within 30 days of application)</td>
<td>Not Specified</td>
</tr>
<tr>
<td>5 years from the date of registration</td>
<td>5 years from the date of approval</td>
<td>Not Specified</td>
</tr>
<tr>
<td>5 years from the date of registration</td>
<td>5 years from the date of approval</td>
<td>Not Specified</td>
</tr>
<tr>
<td>5 years from the date of registration</td>
<td>5 years from the date of approval</td>
<td>Not Specified</td>
</tr>
</tbody>
</table>

### 7. Rate of Interest

<table>
<thead>
<tr>
<th>Date</th>
<th>Payable Clause</th>
<th>Separate Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payable by either the promoter or the allottee (as the case may be) on State Bank of India Prime Lending Rate plus two percent.</td>
<td>Payable by the promoter and the allottee (as the case may be) on State Bank of India Prime Lending Rate plus two percent.</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Payable by the promoter and the allottee (as the case may be) on State Bank of India Prime Lending Rate plus two percent.</td>
<td>Payable by the promoter and the allottee (as the case may be) on State Bank of India Prime Lending Rate plus two percent.</td>
<td>Not Specified</td>
</tr>
</tbody>
</table>

### 8. Timeliness for Refund

<table>
<thead>
<tr>
<th>Date</th>
<th>Separation Clause</th>
<th>Separate Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 45 days</td>
<td>Should be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project or both.</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Within 60 days</td>
<td>Should be punishable with 10% of the estimated cost of the real estate project</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Within 60 days</td>
<td>Should be punishable with 10% of the estimated cost of the real estate project</td>
<td>Not Specified</td>
</tr>
</tbody>
</table>

### 9. Penalty (Money to be paid compounding the imprisonment)

<table>
<thead>
<tr>
<th>Date</th>
<th>Penalty Clause</th>
<th>Separate Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project, as determined by the authority</td>
<td>Not Specified</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Not Specified</td>
<td>Not Specified</td>
<td>Not Specified</td>
</tr>
<tr>
<td></td>
<td>Penalty for contravention of other provisions of this Act (Under Section 61)</td>
<td>Shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the authority.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>iv.</td>
<td>Penalty for non-registration and contravention under section 9 and 10 (Under section 62)</td>
<td>Shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may be cumulatively extended up to five per cent of the cost of plot, apartment or building of the project for which the sale and purchase has been facilitated.</td>
</tr>
<tr>
<td>v.</td>
<td>Penalty for failure to comply with orders of Authority by promoters (Under section 63)</td>
<td>Shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the cost of the project as determined by the authority.</td>
</tr>
<tr>
<td>vi.</td>
<td>Penalty for failure to comply with orders of Appellate Tribunal by promoter (Under section 64)</td>
<td>Shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of the real estate project, or with both.</td>
</tr>
<tr>
<td>vii.</td>
<td>Penalty for failure to comply with orders of Authority by real estate agent (Under section 65)</td>
<td>Shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of plot, apartment or building, of the real estate project, for which the sale or purchase has been facilitated and as determined by the authority.</td>
</tr>
<tr>
<td>viii.</td>
<td>Penalty for failure to comply with orders of Appellate Tribunal by real estate agent (Under Section 66)</td>
<td>Shall be punishable imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of plot, apartment or building, of the real estate project, for which the sale or purchase has been facilitated, or with both.</td>
</tr>
<tr>
<td>ix.</td>
<td>Penalty for failure to comply with orders of Authority by allottee (Under Section 67)</td>
<td>Shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent of the plot, apartment or building cost, as defined by the authority.</td>
</tr>
<tr>
<td>x.</td>
<td>Penalty for failure to comply with orders of Appellate Tribunal by allottee (Under Section 68)</td>
<td>Shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the plot, apartment or building cost or both.</td>
</tr>
</tbody>
</table>

10. Permanent Appellate Tribunal

Chapter-VI of the Act specifies for Central Advisory Council

Not Established

Not Established

Not Established

Source: Compiled analysis

<table>
<thead>
<tr>
<th>Maharashtra</th>
<th>Uttar Pradesh</th>
<th>Rajasthan</th>
<th>Haryana</th>
<th>Chhattisgarh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>Fee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A project in which all buildings as per sanctioned plan not received</td>
<td>· Financial Institutions (commercial) - Rs. 20/- per square meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>occupancy certificate or completion certificate, as the case may be,</td>
<td>· Commercial Projects- Rs. 10/- per square meter for an area above 1000 square meter but not more than 10 lakh rupees.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>as provided by the clause (b) of sub-section (2) of section 3 of the</td>
<td>· Group projects- Rs. 5/- per square meter up to 1000 square meter or Rs. 10/- per square meter above 1000 square meter but shall not exceed 5 lakhs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Act. Projects not applicable are:</td>
<td>· Commercial- Rs. 20/- per square meter up to 1000 square meter or Rs. 25/- per square meter above 1000 square meter but shall not exceed 10 lakhs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Used for the purpose of any renovations or repair or redevelopment</td>
<td>· Plotted projects- Rs. 5/- per square meter but shall not exist 2 lakhs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>which does not involve marketing, advertisement, selling or new allot-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ment of any apartment, plot or building</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Where the structural repair of the existing building are being</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>undertaken by or through any public authority or as per requirement of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>any law, rules or regulations of the state government or direction of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>any competent authority</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Calculated on the area of the land proposed to be developed at the      | · Rs. 20/- per square meter for commercial projects for an area ≤ 1000 square meter and Rs. 1000/- per square meter for every 100 square meter or part thereof where the area is ≥ 1000 square meter. |
| rate of Rs. 10/- per square meter, subject to a minimum of Rs. 50,000/- | · Rs. 10/- per square meter for residential or any other projects for an area ≤ 1000 square meter and Rs. 500/- per every 100 square meter or part thereof where the area is ≥ 1000 square meter. |
| only and a maximum of Rs. 10 lakhs.                                     |                                                                      |

<table>
<thead>
<tr>
<th>Condition</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>No rejection could be done without giving an opportunity of being heard</td>
<td>· Financial Institutions (commercial) - Rs. 20/- per square meter per</td>
</tr>
<tr>
<td>in the matter concerned</td>
<td>· Commercial Projects- Rs. 10/- per square meter for an area above 1000 square meter but not more than 10 lakh rupees.</td>
</tr>
<tr>
<td></td>
<td>· Group projects- Rs. 5/- per square meter up to 1000 square meter or Rs. 10/- per square meter above 1000 square meter but shall not exceed 5 lakhs.</td>
</tr>
<tr>
<td>70% in promoter’s account (100% when receivable is less than the</td>
<td>· Commercial- Rs. 20/- per square meter up to 1000 square meter or Rs. 25/- per square meter above 1000 square meter but shall not exceed 10 lakhs.</td>
</tr>
<tr>
<td>estimated cost of balance construction)</td>
<td>· Plotted projects- Rs. 5/- per square meter but shall not exist 2 lakhs.</td>
</tr>
<tr>
<td>Requirement</td>
<td>Not Specified</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>5 years from the date of registration</td>
<td>10 years from the date of registration</td>
</tr>
<tr>
<td>5 years from the date of approval</td>
<td>Not Specified</td>
</tr>
<tr>
<td>No rejection could be done without giving an opportunity to be heard in the matter concerned.</td>
<td>No rejection could be done without giving an opportunity to be heard in the matter concerned.</td>
</tr>
<tr>
<td>Payable by the promoter and the allottee (as the case may be) on State Bank of India highest Marginal Cost of Lending Rate plus two percent.</td>
<td>Payable by the promoter and the allottee (as the case may be) on State Bank of India highest Marginal Cost of Lending Rate plus two percent.</td>
</tr>
<tr>
<td>Within 30 days</td>
<td>Within 45 days</td>
</tr>
<tr>
<td>Is 5% of the estimated cost of the real estate project which may extend upto 10% of such estimated cost</td>
<td>Is subject to maximum of 10% of the estimated cost of the real estate project for three years</td>
</tr>
<tr>
<td>Not Specified</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Not Specified</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Liable to a penalty of Rs. 10,000/- for every day during which such default continues, which may be cumulatively extend upto 5% of the cost of the plot, apartment or building.</td>
<td>Liable to a penalty of Rs. 10,000/- for every day during which such default continues, which may be cumulatively extend upto 5% of the cost of the plot, apartment or building.</td>
</tr>
<tr>
<td>Not Specified</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Is 5% of the estimated cost of the real estate project which may extend upto 10% of such estimated cost</td>
<td>Is subject to maximum of 10% of the estimated cost of the real estate project for three years</td>
</tr>
<tr>
<td>Not Specified</td>
<td>Not clear</td>
</tr>
</tbody>
</table>
CONCLUSION:

One of the objectives of the implementation of RERA is to provide the nation a unified legal regime with standardised practices related to purchase and sale of real estate and also to standardise sales agreement in the country. From the analysis it seems to be clear that India is now experiencing a clear and well defined real estate regime.

The analysis reveals some interesting observations. To start with, on the definition of ‘ongoing project’, each state considered in the study differs from each other. Further, except Andhra Pradesh, no other states have specified the maximum date to be taken by the real estate authority for conveying the status of registration to the promoter after submitting for registration of the real estate project. On the point of giving an opportunity of hearing to the promoter before rejecting its application of registration for the project under RERA as specified in Central Act has been agreed only by states like Andhra Pradesh and Rajasthan.

An other observation of this study is that, all states except Andhra Pradesh have no uniform consensus with the central Act on maintaining 70% in promoter’s separate account.

On the points like period of validity and renewal of licences issued to real estate agents to act as a certified real estate agent in the respective states, all states are found to have adopted all most same time line except Uttar Pradesh where the licence validity period has been fixed for 10 years. Different states have specified different fee structure for registering a person as a certified real estate agent of their respective state.

States are also observed to have adopted different approaches between themselves over composition, selection procedure, selection time line and salary structure of the Real Estate Regulatory Authorities.

The most important fact of the analysis is on ‘capital penalty’ outlined by the Act and implemented by states rules under various sections. To begin with, the Act specifies for an imprisonment for a term which may extend up to three years or monetary fine which may extend up to further ten per cent of the estimated cost of the real estate project or with both for the promoter as penalty for non-registration of real estate project under section 3 (section 59(2)) of the Act. But except Chhattisgarh, no other states have mentioned any provision of imprisonment. In another observation, no states have adopted any penalty under section 60, section 61 and section 63 of the Act under various provisions specified as penalty. In section 64 which specifies for penalty for failure to comply with orders of Appellate Tribunal by the promoter, except Chhattisgarh state, no other states have specified ‘imprisonment’ as penalty as specified under the Act.

On the establishment of permanent Appellate Tribunal, states like Andhra Pradesh, Bihar, Karnataka, Rajasthan and Chhattisgarh are observed to have not yet established permanent Appellate Tribunal.

A separate in depth study of implementation of RERA in various states and its contribution to the Indian economy need to be undertaken.

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FORECH INDIA LTD v. EDELWEISS ASSETS RECONSTRUCTION CO LTD & ANR [SC]
SWISS RIBBONS PVT LTD v. UNION OF INDIA [SC]
KANODIA KNITS PVT LTD v. REGISTRAR OF COMPANIES DELHI & HARYANA [NCLAT]
BANK STREET SECURITIES PVT LTD & ORS v. REGIONAL DIRECTOR, NORTHERN REGION [NCLAT]
MANAGEMENT OF THE BARARA COOPERATIVE MARKETING-CUM-PROCESSING SOCIETY LTD v. WORKMAN PRATAP SINGH [SC]
M/S. SICAGEN INDIA LTD v. MAHINDRA VADINENI & ORS [SC]
UNION OF INDIA v. KHAITAN HOLDINGS (MAURITIUS) LTD & ORS [DEL]
JASPER LNPOTECH PVT LTD (SNAPDEAL) v. KAFF APPLIANCES (INDIA) PVT. LTD [CCI]
VEDANTA BIO SCIENCES v. CHEMISTS AND DRUGGISTS ASSOCIATION OF BARODA [CCI]
M/S. BSI LTD. & ANR v. GIFT HOLDINGS PVT. LTD. & ANR [SC]

Appeal (Crl.) 847 of 1999

K.T. THOMAS & D.P. MOHAPATRA, JJ. [Decided on 15/02/2000]

Equivalent citations: (2000) 1100 Comp Cas 436.

Negotiable Instruments Act, 1881 read with SICA- offence of cheque dishonour-whether covered under the protective umbrella of SICA-Held, No.

Brief facts:
Some companies and their Directors are now frantically struggling to get themselves extricated from the catch of prosecution proceedings pitted against them, consequent to non-payment of amounts covered by cheques issued by such companies. All the companies involved in this batch of appeals have a common cause now in that those companies have, subsequent to the filing of complaints against them, approached the Board for Industrial Finance and Reconstruction (‘BIFR’ for short) and sought for declaration that those companies became sick as envisaged in the Sick Industrial Companies (Special Provisions) Act, 1985, (‘SICA’ for short). They maintained the stand that when proceedings are pending before the BIFR no prosecution can be maintained under law against those companies. But the plea so made by such companies was not found favour with the trial courts, nor with the revisional courts nor even with the High Courts before which the companies approached. All these appeals have been filed by special leave against the orders passed by the High Courts by which the aforesaid plea was discontertenced.

It is sufficient to set out the facts from one of these appeals in this batch. Answers given to the questions raised in that appeal would apply to all the connected appeals now being heard along with that appeal. Facts in Criminal Appeal No. 847 of 1999 are the following: Cheques issued by the appellant therein were dishonoured by the drawee bank on 27.12.1996 on the ground of insufficiency of amount in the account concerned, and the payee thereof issued a notice on 2.1.1997, demanding payment of the amount covered by such cheques. As the drawer of the cheques failed to make the payment as per demand, within 15 days of receipt of the notice, a complaint was filed on 29.1.1997 against the company and its Directors for the offence under Section 138 of the Negotiable Instruments Act (‘NI Act’ for short). The magistrate before whom the complaint was filed issued process against the accused who were arrayed therein.

Decision: Appeal dismissed.

Reason:
A criminal prosecution is neither for recovery of money nor for enforcement of any security etc. Section 138 of the NI Act is a penal provision the commission of which offence entails a conviction and sentence on proof of the guilt in a duly conducted criminal proceedings. Once the offence under Section 138 is completed the prosecution proceedings can be initiated not for recovery of the amount covered by the cheque but for bringing the offender to the penal liability. What was considered in Maharashtra Tubes Ltd. (supra) is whether the remedy provided in Section 29 or 31 of the State Finance Corporation Act, 1951 could be pursued notwithstanding the ban contained in Section 22 of the SICA. Hence the legal principle adumbrated in the said decision is of no avail to the appellants.

In the above context it is pertinent to point out that Section 138 of NI Act was introduced in 1988 when SICA was already in vogue. Even when the amplitude of the word “company” mentioned in Section 141 of the NI Act was widened through the Explanation added to the section, Parliament did not think it necessary to exclude companies falling under Section 22 of SICA from the operation thereof. If Parliament intended to exempt sick companies from prosecution proceeding, necessary provision would have been included in Section 141 of the NI Act. More significantly, when Section 22(1) of SICA was amended in 1994 by inserting the words [«and no suit for the recovery of money or for enforcement of any security against industrial company or of any guarantee in respect of any loans or advance granted to industrial company»], Parliament did not specifically include prosecution proceedings within the ambit of the said ban.

The conclusion which we have to draw is that if commission of the offence under Section 138 of the NI Act was completed before the commencement of proceedings under Section 22(1) of SICA there is no hurdle in any of the provisions of SICA against the maintainability and prosecution of a criminal complaint duly instituted under Section 142 of the NI Act. The decisions rendered by the High Courts, which are assailed before us in this batch of appeals, are therefore not liable to be interfered with. Appeals are accordingly dismissed. Special Leave Petitions heard along with the above appeals are also hence dismissed.

FORECH INDIA LTD v. EDELWEISS ASSETS RECONSTRUCTION CO LTD & ANR [SC]

Civil Appeal No. 818 of 2018

R F Nariman & Navin Sinha, JJ. [Decided on 22/01/2019]

Insolvency & Bankruptcy Code, 2016- section 7&11- financial creditor filed an insolvency petition against the corporate debtor- appellant objecting to the admission on the ground of continuance of winding up petition under the old Act- objection rejected – whether correct-Held, Yes.

Brief facts:
The present matter arises from an Operational Creditor’s appeal to continue with a winding up petition that has been filed by the said creditor way back in 2014. The facts relevant for disposal of this appeal are as follows:-

A winding up petition, being No. 42 of 2014, was filed by the present appellant before the High Court of Delhi on 10.01.2014, against Respondent No. 2-Company, in which notice had been served, as is recorded by an order of the High Court of Delhi. Further orders which have been pointed out to the Court have gone on to state that there is a debt or liability which is, in fact, admitted.

It transpires that another operational creditor, viz., SKF India Ltd. had filed an application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short ‘the Code’), against Respondent No. 2, which was allowed to be withdrawn so that the aforesaid operational creditor could go to the High Court in a winding up petition which would then
be heard along with the Company Petition No. 42/2014. Meanwhile, Respondent No. 1, being a financial creditor of the self- same corporate debtor, moved the National Company Law Tribunal (NCLT) in an insolvency petition filed under Section 7 of the Code sometime in May/June 2017. This petition was admitted on 07.08.2017. Against the aforesaid order, an appeal was filed by the appellant herein which was dismissed by the Appellate Tribunal, in which Section 11 of the Code was referred to, and it was held by the Appellate Tribunal that since there was no winding up order by the High Court, the financial creditor's petition would be maintainable, as a result of which the appellant's appeal has been dismissed.

Decision: Appeal disposed of with direction.

Reason:
The resultant position in law is that, as a first step, when the Code was enacted, only winding up petitions, where no notice under Rule 26 of the Companies (Court) Rules was served, were to be transferred to the NCLT and treated as petitions under the Code. However, on a working of the Code, the Government realized that parallel proceedings in the High Courts as well as before the adjudicating authority in the Code would stultify the objective sought to be achieved by the Code, which is to resuscitate the corporate debtors who are in the red. In accordance with this objective, the Rules kept being amended, until finally Section 434 was itself substituted in 2018, in which a proviso was added by which even in winding up petitions where notice has been served and which are pending in the High Courts, any person could apply for transfer of such petitions to the NCLT under the Code, which would then have to be transferred by the High Court to the adjudicating authority and treated as an insolvency petition under the Code. This statutory scheme has been referred to, albeit in the context of Section 20 of the SICA, in our judgment which is contained in Jaipur Metals & Electricals Employees Organization vs. Jaipur Metals & Electricals Ltd. & Ors. being a judgment by a Division Bench of this Court dated 12.12.2018.

Section 11 is of limited application and onlybars a corporate debtor from initiating a petition under Section 10 of the Code in respect of whom a liquidation order has been made. From a reading of this Section, it does not follow that until a liquidation order has been made against the corporate debtor, an Insolvency Petition may be filed under Section 7 or Section 9 as the case may be, as has been held by the Appellate Tribunal. Hence, any reference to Section 11 in the context of the problem before us is wholly irrelevant. However, we decline to interfere with the ultimate order passed by the Appellate Tribunal because it is clear that the financial creditor's application which has been admitted by the Tribunal is clearly an independent proceeding which must be decided in accordance with the provisions of the Code.

Though, we are not interfering with the Appellate Tribunal's order dismissing the appeal, we grant liberty to the appellant before us to apply under the proviso to Section 434 of the Companies Act (added in 2018), to transfer the winding up proceeding pending before the High Court of Delhi to the NCLT, which can then be treated as a proceeding under Section 9 of the Code.

**Brief facts:**
The present petitions assail the constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016 ("Insolvency Code" or "Code"). Since we are deciding only questions relating to the constitutional validity of the Code, we are not going into the individual facts of any case.

**Decision:** Constitutional validity upheld.

**Reason:**
The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners.

We are happy to note that in the working of the Code, the flow of financial resource to the commercial sector in India has increased exponentially as a result of financial debts being repaid. Approximately 3300 cases have been disposed of by the Adjudicating Authority based on out-of-court settlements between corporate debtors and creditors which themselves involved claims amounting to over INR 1,20,390 crores. Eighty cases have since been resolved by resolution plans being accepted. Of these eighty cases, the liquidation value of sixty-three such cases is INR 29,788.07 crores. However, the amount realized from the resolution process is in the region of INR 60,000 crores, which is over 202% of the liquidation value. As a result of this, the Reserve Bank of India has come out with figures which reflect these results. Thus, credit that has been given by banks and financial institutions to the commercial sector (other than food) has jumped up from INR 4952.24 crores in 2016-2017, to INR 9161.09 crores in 2017-2018, and to INR 13195.20 crores for the first six months of 2018-2019. Equally, credit flow from non-banks has gone up from INR 6819.93 crores in 2016-2017, to INR 4718 crores for the first six months of 2018-2019. Ultimately, the total flow of resources to the commercial sector in India, both bank and non-bank, and domestic and foreign (relatable to the non-food sector) has gone up from a total of INR 14530.47 crores in 2016-2017, to INR 18469.25 crores in 2017-2018, and to INR 18798.20 crores in the first six months of 2018-2019. These figures show that the experiment conducted in enacting the Code is proving to be largely successful. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained.

The result is that all the petitions will now be disposed of in terms of this judgment. There will be no order as to costs.
Companies Act, 2013- section 248- striking of name of the company-documents could not prove that the company was working- whether name to be restores-Held, No.

**Brief facts:**
The name of the appellant company was struck off by the Registrar of Companies, as the company had not been carrying on business or nor in operations for two immediately preceding financial years and the company had not obtained the status of dormant company under Section 455 of the Companies Act, 2013 (“Act” in brief).
The appellant filed the appeal before NCLT claiming that it had not been served with Notice under Section 248(1) of the Act and the Registrar of Companies (ROC) had proceeded to issue notice under Section 248(5) of the Act and the name of the appellant company was then struck off. The appellant claimed that the company had been doing business and was in operation and audited financial statements for the year financial year 2012-13 to FY 2016-17 were filed.

The NCLT considered the case put up before it as well as the documents and came to the conclusion that the appellant company failed to prove that it was carrying on business or was in operation when its name was struck off and dismissed the appeal which was filed before it. Against the dismissal the present appeal has been filed and the same claim is put up by the appellant referring to the documents which were filed before NCLT.

**Decision:** Appeal dismissed.

**Reason:**
The ROC filed reply before us and affidavit of ROC claims that the appellant company had not filed financial statements from the financial year ending 31.3.2004 till 31.3.2011. The balance sheet and annual return was filed for the year ending 31.3.2012 and thereafter again there was no filing and according to ROC, STK-1 notice was duly issued to company on 21.3. 2017 and the copy of the same has been filed. According to the ROC the appellant did not respond to the notice and further steps to strike off the company were taken. According to ROC, later on public notice as per Section 248(5) was issued.

We have no reasons to doubt the affidavit filed before us by the ROC attaching copy of the Notice dated 21.3.2017 as per STK 1 and the affidavit which claims that such notice was issued to the appellant company as per the official records of the ROC. Apart from this the appeal filed before NCLT itself admitted that notice under Section 248 was published in the official gazette, copy of notice STK 5 also gave opportunity to the appellant to move the ROC if it was aggrieved by the proposed removal of the company name. After such notice the appellant made no effort to move the ROC and put up its case that the appellant was in business or in operation when the name was struck off. Thus we are not accepting the contention that opportunity to the appellant was not given. Regarding the merits of the claim that the appellant was in business or in operation the documents filed before us include two income tax returns for the assessment years 2016-17 and 2017-18. The return for 2016-17 claims that the gross total income of the year was Rs.504 and the income tax return for 2017-18 claims that the gross total income was Rs.1473/-.

If the invoices are seen, the seller is shown as Kanodia Hosiery Mills and buyer is Kanodia Knit (P) Ltd. If the address of the seller is perused in these invoices it is 35, North Basti Harphool Singh, Sadar Thana Road, Delhi. This is the same address of the appellant, Kanodia Knits Pvt Ltd, also. How much weight such documents should be given is a foregone consequence. We are not impressed by such documents to claim that the company was in business or in operation. Perusal of the impugned order shows that the NCLT considered the documents placed before it.

Having heard the appellant, and seeing the documents when we have considered the above findings and observations of the NCLT, we do not find any reason to differ from NCLT. There is no substance in this appeal. The appeal is rejected. No order as to costs.

LW 12:02:2019

**BANK STREET SECURITIES PVT LTD & ORS v. REGIONAL DIRECTOR, NORTHERN REGION [NCLAT]**

Company Appeal (AT) No.340 of 2018

A.I.S. Cheema & Balvinder Singh. [Decided on 17/01/2019]

Companies Act, 2013- amalgamation- petition filed under old Act transferred to NCLT- based on the report of the RD amalgamation was rejected- whether correct- Held, Yes.

**Brief facts:**
It appears that the appellants had filed first motion before the Hon’ble High Court of Delhi and the Court was pleased to dispense with the requirement of convening meetings of equity shareholders, secured and unsecured creditors of the Companies in view of their consent being obtained. The appellant then filed joint petition for sanction of scheme of amalgamation before the Court vide second motion under Section 391 to 394 of Companies Ac, 1956 (“Old Act” in short). Notice was issued to the Registrar of Companies/Regional Director and Official Liquidator. Notice by newspaper publication was also directed. The second motion petition, before it could be decided came to be transferred to the Learned NCLT in view of the powers getting vested with NCLT.

It is stated that when the matter came up before NCLT, NCLT heard the same and considered report of the Regional Director and concluded that certain companies in the scheme were carrying on NBFC activities and approval of Reserve Bank of India had not been taken and the petition required to be rejected.

**Decision:** Appeal dismissed.

**Reason:**
We have heard the learned counsel for the appellant and perused the record. A copy of the report of Regional Director has been filed at Annexure-21. The report shows that the Regional Director had issued query to the appellant company by letter dated 8th March, 2016 and the letters returned undelivered. Then one Advocate Mr. Ashish Middha by letter dated 15th March, 2016 filed reply with the Regional Director on behalf of the company. The impugned order shows that the ROC during the pendency of the matter before NCLT took action under Section 12(1) r/w Section 12(4) of the Companies Act, 2013 and imposed penalty which came to be reduced by Regional Director in an appeal and which penalty was paid by the appellants. This relates to not giving notice of change of the registered office to the Registrar of Companies. This should reflect on working of these appellant companies with regard to how bona fide their actions are.

It is apparent, from paras 7, 8 and 9 of the report of the Regional Director, that the appellants who had made their submissions to the Regional Director through letter dated 15.03.2016 were unable to convince the Regional Director regarding the issue of NBFC. Report shows that Regional Director was satisfied that the appellant companies were prima facie engaged in investment activities or extending loans and advances to certain parties like corporate bodies and there was no mention that these companies are registered with RBI as NBFC to carry on such business.

The learned counsel for appellants argued that if the appellant company No.1,2,4,5,6 had ‘zero’ income and transferee company also had ‘zero’ income and so it cannot be said that both the conditions i.e. more than 50% of assets should be invested in financial activities
and more than 50% of income should be from financial activities were satisfied.

Having gone through the matter if the transferor companies show ‘zero’ income from operations and still show huge investments to be their assets, the Regional Director rightly observed that the intrinsic value of these investment (assets) is not known and the reasonableness of the proposed exchange ratio could not be ascertained. Such accounts showing ‘zero’ income and showing huge investments as assets must be said to be not inspiring confidence. If there are huge investments as assets and it shows that financial assets are more than non-financial assets and income from operation is zero without its break up between financial income and non-financial income, the required criteria to determine the principal business of the company being finance company gets met. The NCLT not being satisfied from the case put up by the appellant declined to accept the scheme and we find it difficult to interfere with the impugned order.

Looking to these definitions as mentioned above, when the report of the Regional Director shows that the appellant companies were engaged in investment activities or extending loans and advances, these above provisions would be attracted. Even with or without the circular of Reserve Bank of India dated 19th October, 2006, keeping in view the above legal provisions, the appellants have not been able to satisfy the Regional Director or the NCLT that they are not involved in NBFC activities. The counsel for the appellants has not been able to satisfy us also. The appeal does not even plead that the appellants are not indulging in NBFC activities. The appeal memo while referring to the appellant companies merely stated that the objects of the companies were as amended from time to time and which have been set out in Memorandum of Association of the different companies. No such Articles of Association or Memorandum of Association have been produced before us to show what are aims and objects of these companies. No documents are shown as to what are the activities of these companies. Thus no material has been brought to satisfy that the impugned order is erroneous and deserves to be interfered with.

**Decision:** Appeal allowed.

**Reason:**

In our considered opinion, there was no case made out by the respondent (workman) seeking re-employment in the appellant’s services on the basis of Section 25 (H) of the ID Act.

In the first place, the respondent having accepted the compensation awarded to him in lieu of his right of reinstatement in service, the said issue had finally come to an end; and Second, Section 25 (H) of the ID Act had no application to the case at hand.

In order to attract the provisions of Section 25(H) of the ID Act, it must be proved by the workman that firstly, he was the “retrenched employee” and secondly, his ex-employer has decided to fill up the vacancies in their set up and, therefore, he is entitled to claim preference over those persons, who have applied against such vacancies for a job while seeking reemployment in the services.

The case at hand is a case where the respondent’s termination was held illegal and, in consequence thereof, he was awarded lump sum compensation of Rs.12,500/ in full and final satisfaction. It is not in dispute that the respondent also accepted the compensation. This was, therefore, not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act.

That apart and more importantly, the respondent was not entitled to invoke the provisions of Section 25 (H) of the ID Act and seek re-employment by citing the case of another employee (Peon) who was already in employment and whose services were only regularized by the appellant on the basis of his service record in terms of the Rules.

In our view, the regularization of an employee already in service does not give any right to retrenched employee so as to enable him to invoke Section 25 (H) of the ID Act for claiming re employment in the services. The reason is that by such act the employer do not offer any fresh employment to any person to fill any vacancy in their set up but they simply regularize the services of an employee already in service. Such act does not amount to filling any vacancy.

In our view, there lies a distinction between the expression ‘employment’ and ‘regularization of the service’. The expression ‘employment’ signifies a fresh employment to fill the vacancies whereas the expression ‘regularization of the service’ signifies that the employee, who is already in service, his services are regularized as per service regulations.

In our view, the Labour Court was, therefore, justified in answering the reference in appellant’s favour and against the respondent by rightly holding that Section 25(H) of the ID Act had no application to the facts of this case whereas the High Court (Single Judge and Division Bench) was not right in allowing the respondent’s prayer by directing the appellant to give him reemployment on the post of Peon.

In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside and the award of the Labour Court is restored.
R Banumathi & Indira Banerjee, JJ. [Decided on 08/01/2019]

Negotiable Instruments Act,1881- section 138- dishonour of cheque-complaint filed on the basis of second notice- whether maintainable-Held,Yes.

**Brief facts:**
Case of the appellant-complainant is that they had business dealings with the respondents and in the course of business dealings, the respondents had issued three cheques, which when presented for collection were dishonoured and returned with the endorsement “insufficient funds”. The appellant-complainant had issued first notice to the respondent(s) on 31.08.2009 demanding the repayment of the amount. The cheques were again presented and returned with the endorsement “insufficient funds”. The appellant had issued a statutory notice on 25.01.2010 to the respondent(s). Since the cheque amount was not being paid, the appellant-complainant had filed the complaint under Section 138 of the Negotiable Instruments Act based on the second statutory notice dated 25.01.2010. The respondent(s)-accused filed petition before the High Court under Section 482 Cr.P.C. seeking to quash the criminal complaint filed by the appellant-complainant on the ground that the complaint was not filed based on the first statutory notice dated 31.08.2009 and the complaint filed based on the second statutory notice dated 25.01.2010 is not maintainable. The High Court quashed the complaint by holding that “the amount has been specifically mentioned in the first notice and, thereafter, the complainant himself has postponed the matter and issued the second notice on 25.01.2010 and the complaint filed on the same cause of action was not maintainable.

**Decision:** Appeal allowed.

**Reason:**
The issue involved whether the prosecution based upon second or successive dishonour of the cheque is permissible or not, is no longer res integra. In Sadanandan’s case [(1998) 6 SCC 514] it was held that while second and successive presentation of the cheque is legally permissible so long as such presentation is within the period of six months or the validity of the cheque whichever is earlier, the second or subsequent dishonour of the cheque would not entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. The correctness of the decision in Sadanandan’s case was doubted and referred to the larger bench.

Three-Judge Bench of this Court in MSR Leathers v. S. Palaniappan & Anr 2013 ((1) SCC 177) held that there is nothing in the provisions of Section 138 of the Act that forbids the holder of the Cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation.

In the present case as pointed out earlier that cheques were presented twice and notices were issued on 31.08.2009 and 25.01.2010. Applying the ratio of MSR Leathers (supra) the complaint filed based on the second statutory notice is not barred and the High Court, in our view, ought not to have quashed the criminal complaint and the impugned judgment is liable to be set aside.

The Complaint CC No. 4029 of 2010 before the Court of XVIII, Metropolitan Magistrate at Saidapet, Chennai is restored to the file of the Trial Court and the Trial Court shall proceed with the matter in accordance with law after affording sufficient opportunity to both the parties.

**LW 15:02:2019**

**UNION OF INDIA v. KHAITAN HOLDINGS (MAURITIUS) LTD & ORS [DEL]**

CS (OS) 46/2019, I.As. 1235/2019 & 1238/2019

Prathiba M. Singh, J. [Decided on 29 /01/2019]

Arbitration under bilateral investment treaties - BIT between India and Mauritius- investment in India by Mauritius entity- dispute – arbitration proceedings initiated under BIT by investor- government of India sought anti-arbitration injunction- whether grantable- Held, No.

**Brief facts:**
Arbitration as a means for resolution of disputes is well entrenched in most judicial systems. In the context of commercial arbitration, there are two types - domestic arbitration and international commercial arbitration. In all these disputes, minimum judicial interference in the conduct of arbitral proceedings is the norm. There is yet another species of arbitration which is the subject matter of the present case i.e., Arbitral proceedings under Bilateral Investment Treaties. While traditional arbitrations arise out of commercial contracts entered into between individuals and companies, arbitrations under BITs arise out of agreements signed between two sovereign nations. Under these agreements, each of the States, signatory to the Agreement agrees to provide Fair and Equitable Treatment to investors from the other State, as also extend protection against arbitrary, discriminatory and unfair practices. The investments made by investors of the State are to be safeguarded against any expropriation and remedies are also provided for adjudication of disputes through international dispute settlement mechanisms. The dispute settlement mechanisms can be triggered both by the aggrieved State as also an aggrieved investor from a State which is party to the Agreement, against the other State. Interference by domestic courts in arbitral proceedings that may be commenced under BITs is permissible but only in `compelling circumstances’, i.e., “in rare cases”. Courts are hesitant to interfere in the arbitral process once the Tribunal is constituted and is seized of the dispute.

The Union of India seeks an anti-arbitration injunction against the arbitral proceedings initiated by Defendant No.1 - M/s Khaitan Holdings (Mauritius) Ltd. a Mauritius based company, under the Agreement entered into between the Republic of India and the Republic of Mauritius for the Promotion and Protection of Investments (hereinafter “BIT agreement”).

**Decision:** Injunction refused.

**Reason:**
The genesis of the dispute, which has been encapsulated in the notice invoking arbitration is the judgement of the Supreme Court in CPIL (supra) of the Supreme Court by which the Supreme Court cancelled the licences granted to various companies including Loop Telecom. The judgment of the Supreme Court resulted in fresh recommendations being made by the Telecom Regulatory Authority of India, and thereafter an auction being conducted for allocation of the spectrum and award of licenses.

It can be seen that in the era of BIT agreements, even judgments of Courts could trigger investment disputes under the BITs resulting in enormous claims being raised against the Government. This is so because under public international law which primarily governs BIT agreements, the Articles of State Responsibility specifically provide that the conduct of any organ of the State can be called to question. The grounds on which the Republic of India seeks an anti-arbitration injunction are *inter alia* as under:
That Khaitan Holdings is not a genuine investor due to the clear link and control by Sh. Ishwari Prasad Khaitan and Smt. Kiran Khaitan of both Khaitan Holdings (Mauritius) and Loop Telecom;

That the BIT cannot be invoked by an entity, though incorporated in Mauritius, but is actually controlled by Indian citizens;

That there has been no expropriation as due process has been followed and the decision to cancel the licences was rendered by the Supreme Court of India in public interest;

That the entire foreign investment, being through the automatic route, was subject to Indian laws under the UASL;

That Loop Telecom has already availed of its remedies against the cancellation of its licences under Indian law and hence rights under the BIT stand waived;

Overlapping nature of the claims raised by Loop Telecom before TDSAT and Defendant no.1 in the arbitral proceedings;

All the above grounds, are those that can be that with and decided by the Arbitral Tribunal. The arbitration having been invoked in 2013 and the Tribunal having been constituted and being seized of the dispute, it is not for this Court to adjudicate on these issues. The above issues ought to be raised by the Republic of India before the Arbitral Tribunal, which under Article 21, would rule upon the same. The proceedings which are already underway cannot be termed as being oppressive, vexatious or an abuse of process at this stage. The prayer for ad-interim relief seeking stay of the arbitral proceedings commenced by Khaitan Holdings under the BIT, is accordingly rejected, at this stage.

• That Khaitan Holdings is not a genuine investor due to the clear link and control by Sh. Ishwari Prasad Khaitan and Smt. Kiran Khaitan of both Khaitan Holdings (Mauritius) and Loop Telecom;

That the BIT cannot be invoked by an entity, though incorporated in Mauritius, but is actually controlled by Indian citizens;

That there has been no expropriation as due process has been followed and the decision to cancel the licences was rendered by the Supreme Court of India in public interest;

That the entire foreign investment, being through the automatic route, was subject to Indian laws under the UASL;

That Loop Telecom has already availed of its remedies against the cancellation of its licences under Indian law and hence rights under the BIT stand waived;

Overlapping nature of the claims raised by Loop Telecom before TDSAT and Defendant no.1 in the arbitral proceedings;

All the above grounds, are those that can be that with and decided by the Arbitral Tribunal. The arbitration having been invoked in 2013 and the Tribunal having been constituted and being seized of the dispute, it is not for this Court to adjudicate on these issues. The above issues ought to be raised by the Republic of India before the Arbitral Tribunal, which under Article 21, would rule upon the same. The proceedings which are already underway cannot be termed as being oppressive, vexatious or an abuse of process at this stage. The prayer for ad-interim relief seeking stay of the arbitral proceedings commenced by Khaitan Holdings under the BIT, is accordingly rejected, at this stage.
The allegation contained in the complaint/information are as under:

Brief facts:

- The OP, an unregistered body, is imposing unfair conditions in the sale of pharmaceutical products of different companies.
- The OP has formulated guidelines for its members which require any person including a member to obtain permission/NOC (No-Objection Certificate) prior to becoming a stockist of a particular company.
- The OP forced additional/new stockists not to sell products of a pharmaceutical company unless NOC is obtained by the existing stockist from the OP.
- The OP insists on procuring NOC from it before a pharmaceutical company launches new products, without which the company is not allowed to launch new product.
- A circular dated 02.03.2009, was issued by the OP, wherein permission has been granted to some distributors to become stockists of certain pharmaceutical companies, which indicates that procurement of such NOC is necessary.
- The OP was also engaged in fixation of margins for pharmaceutical products.

Decision: Complaint allowed. Penalty imposed.

Reason:

On a consideration of the aforesaid material, the following issues arise for determination in the present matter:

Issue 1: Whether the OP was mandating NOC prior to the appointment of stockist by pharmaceutical companies in contravention of the provisions of Section 3(1) read with Section 3(3) (b) of the Act?

In many past cases concerning the conduct of regional/ district/ State level chemists and druggists associations, the Commission has held that the practice of mandating NOC prior to the appointment of stockists results in limiting and controlling the supply of drugs in the market, contravening Section 3(3)(b) read with Section 3(1) of the Act. By mandating an NOC requirement as a pre-requisite for appointing a stockist by pharmaceutical companies, the chemists and druggists associations discourage new/existing stockists to enter/expand the market amounting to an entry barrier for them. Appointment of a new stockist should be the exclusive right of a pharmaceutical company, without any interference by any third party. Any influence or interference with the choice of a distributor, to take decisions based on its commercial consideration and business requirements, by a pharmaceutical company would restrict its freedom to do business with persons of its choice. Such interference not only disrupts the distribution chain, but also results in limiting and controlling the supply of drugs in the market, as many-a-time the dikhtats are sanctioned by consequent boycott of the pharmaceutical companies not following the directions of the association(s).

Though the present matter dates back to an information filed in 2009, nevertheless the aforesaid observations of the Commission made in later cases involving similar allegations are pertinent to this matter too. The OP has not denied the existence of the practice of seeking NOC in literal sense, but has vehemently contended that the said practice was voluntary in nature and there was no coercion by the OP on any of the stockists or pharmaceutical companies. Further, it has been submitted that the OP was acting in order to safeguard the interest of its members.

The aforesaid evidences (documents, circulars, policies, cross-examinations and other evidences), both oral and documentary, clearly reveal that indeed the OP was indulging in imposing the requirement of NOC prior to appointment of stockists. The OP had raised serious objections to the statements recorded as well as questionnaire survey conducted by the DG. During the hearing held on 13.12.2018, the learned counsel for the OP also highlighted another questionnaire survey purportedly conducted by the OP and enclosed with its earlier submissions filed on 05.05.2011. As per the OP, the results of this questionnaire survey are contradictory to the results of the survey conducted by the DG. The Commission is not fully convinced with the objections taken by the OP with regard to the questionnaire survey. However, in view of the objections raised by the OP, the Commission decides not to rely on the said questionnaire survey. Notwithstanding, the existence of cogent documentary evidence available on record establishes the case against the OP. Moreover, the Statements, along with their cross-examination, do not further the case of the OP as highlighted in the foregoing paragraphs. Though the OP has highlighted certain contradictions in relation to one or two witnesses, the Commission notes that the majority of the deponents have confirmed their original statements in the cross-
examination and the veracity of which has not been whittled down in any manner. Rather they have confirmed the anti-competitive practices carried out by the OP.

Based on such evidence, the Commission is of the view that the practices carried on by the OP has resulted in limiting and controlling the supply of drugs in the market in the Baroda district, in violation of provisions of Section 3(1)(b) read with Section 3(1) of the Act.

Issue 2: Whether the OP was fixing the trade margins for wholesalers or retailers in contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Act?

The Commission notes that besides mandating the requirement of NOC prior to the appointment of stockists by pharmaceutical companies, the OP was also involved in the fixation of trade margins of the non-DPCO drugs which had the potential to determine the sale price of drugs.

The circular dated 02.03.2009 and the other evidence dealt with in Issue 1 also confirms the practice of fixation of trade margins for non-scheduled/non-DPCO products by the OP to the tune of 10% for the wholesaler and 20% for the retailers. The Commission observes that the OP has not denied fixation of such margins. Rather the OP has tried to justify the adequacy of such margins for the betterment of wholesalers/retailers. Further, it has been argued that these margins are as per industry norms and that the DG has not investigated whether such margins led to any adverse impact or not.

The Commission finds no merit in any of these contentions raised by the OP. Even if the margins are as per industry norms and for the betterment of the wholesalers/retailers, the association is not within its legitimate right to impose the said margins on wholesaler or retailers. It should be an independent commercial decision of every entity in the vertical chain to decide the margin it wants to secure or pass on from the upstream entity or the downstream entity, respectively. Further, the decisive criteria is not whether the said practice was for the benefit of wholesalers/retailers or not but whether the association replaced an entity's independent commercial decision by its own decisions. If many entities independently find a certain percentage as the appropriate margin and voluntarily decide to adopt it, it may not be a competition issue but if they collude/decide together or if an association decides on behalf of such entities and mandates that such entities are required to follow it, it will amount to a contravention of the provisions of the Act.

Further, the contention that it was an industry norm and purportedly prescribed by AIOCD would not absolve the OP from its liability under the Act. Even if the trade margins of 10% (for wholesalers) and 20% (for retailers) are not fixed by the OP but were prescribed by AIOCD, there is evidence that the OP was ensuring that this anti-competitive practice is scrupulously followed by its members.

In view of the findings elucidated in the earlier part of this order, the Commission directs the OP to cease and desist from indulging in the practice of mandating NOC and fixation of trade margins, which has been held to be anti-competitive in terms of the provisions of Section 3 of the Act.

Further, it is necessary that such anti-competitive conduct is penalised to discipline the erring party for the said contravention. Accordingly, the Commission deems it appropriate to impose a penalty on the OP at the rate of 10% of its relevant income based on the income and expenditure account for three financial years filed by it for the relevant years during the earlier proceedings before the Commission.
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FROM THE GOVERNMENT

- NATIONAL COMPANY LAW TRIBUNAL AMENDMENT RULES, 2019
- COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2019
- COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2019
- THE COMPANIES (AMENDMENT) ORDINANCE, 2019
- COMPANIES (FURNISHING OF INFORMATION ABOUT PAYMENT TO MICRO AND SMALL ENTERPRISE SUPPLIERS) ORDER, 2019
- NOTIFICATION UNDER SECTION 485 OF COMPANIES ACT, 2013
- DISCLOSURES BY STOCK EXCHANGES FOR COMMODITY DERIVATIVES
- REPORTING FOR ARTIFICIAL INTELLIGENCE (AI) AND MACHINE LEARNING (ML) APPLICATIONS AND SYSTEMS OFFERED AND USED BY MARKET INTERMEDIARIES
- ACCEPTANCE OF PROBATE OF WILL OR WILL FOR TRANSMISSION OF SECURITIES HELD IN DEMATERIALIZED MODE
- PORTFOLIO CONCENTRATION NORMS FOR EQUITY EXCHANGE TRADED FUNDS (ETFS) AND INDEX FUNDS
- CYBER SECURITY AND CYBER RESILIENCE FRAMEWORK FOR MUTUAL FUNDS / ASSET MANAGEMENT COMPANIES (AMCs)
- UNIFORM MEMBERSHIP STRUCTURE ACROSS SEGMENTS
- GUIDELINES FOR PUBLIC ISSUE OF UNITS OF INVITS - AMENDMENTS
- GUIDELINES FOR PUBLIC ISSUE OF UNITS OF REITS - AMENDMENTS
- NORMS FOR INVESTMENT AND DISCLOSURE BY MUTUAL FUNDS IN DERIVATIVES
- CLARIFICATIONS IN SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS, 2018
- ALIGNMENT OF TRADING LOT AND DELIVERY LOT SIZE
- REVISED MONTHLY CUMULATIVE REPORT (MCP)
- COMMITTEES AT MARKET INFRASTRUCTURE INSTITUTIONS (MIIS)
- REPORTING FOR ARTIFICIAL INTELLIGENCE (AI) AND MACHINE LEARNING (ML) APPLICATIONS AND SYSTEMS OFFERED AND USED BY MARKET INFRASTRUCTURE INSTITUTIONS (MIIS)
1. These rules may be called the National Company Law Tribunal (Amendment) Rules, 2019.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the National Company Law Tribunal Rules, 2016, in rule 71:
(i) In sub-rule (3), in clause (b) for the words “Central Government” the words “Regional Director” shall be substituted.
(ii) In sub-rule (4), for the words “Central Government” the words “Regional Director” shall be substituted.

K. V. R. MURTY
Joint Secretary

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019

[Issued by the Ministry of Corporate Affairs vide F. No. 1/21/2013-CL-V-part dated 22.01.2019. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 43(E) dated 22.01.2019]

In exercise of the powers conferred by section 26, sub-section (1) of section 27, section 28, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:

1. Short title and commencement.—(1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.
(2) They shall come into force on the date of their notification in the Official Gazette.

2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 9A, after sub-rule (10), the following shall be inserted, namely:
“(11) This rule shall not apply to an unlisted public company which is:—
(a) a Nidhi;
(b) a Government company or
(c) a wholly owned subsidiary.”.

K. V. R. MURTY
Joint Secretary
The Companies (Amendment) Ordinance, 2019

[Issued by the Ministry of Law and Justice. Published in the Gazette of India Extraordinary, Part - II, Section - 1 dated 12.01.2019]

Promulgated by the President in the Sixty-ninth Year of the Republic of India.
An Ordinance further to amend the Companies Act, 2013.

WHEREAS the Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November, 2018;
AND WHEREAS the Companies (Amendment) Bill, 2019 to replace the Companies (Amendment) Ordinance, 2018 has been passed by the House of People on the 4th day of January, 2019 and is pending in the Council of States;
AND WHEREAS the Companies (Amendment) Bill, 2019 could not be taken up for consideration and passing in the Council of States;
AND WHEREAS the Companies (Amendment) Ordinance, 2018 will cease to operate on the 2151 day of January,2019;
AND WHEREAS it is considered necessary to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2018;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;
Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. Short title and commencement
   (1) This Ordinance may be called the Companies (Amendment) Ordinance, 2019.

   (2) It shall be deemed to have come into force on the 2nd day of November, 2018.

2. Amendment of Section 2
   In Section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),-
   (a) for the first proviso, the following provisos shall be substituted, namely:-

   “Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

   Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

   (b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

3. Insertion of new Section 10A.

After Section 10 of the principal Act, the following section shall be inserted, namely:-

Commencement of business, etc. “10A. (1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

4. Amendment of Section 12.
   In Section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:-

   “(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

5. Amendment of Section 14.
   In Section 14 of the principal Act,-
   (i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:-

   “Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

   Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;
(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

6. Amendment of Section 53.
In Section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) Where any company fails to comply with the provisions of this Section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

7. Amendment of Section 64.
In Section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

8. Amendment of Section 77.
In Section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:-

“Provided that the Registrar may, on an application by the company, allow such registration to be made-

(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified-

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed.”.

9. Amendment of Section 86.
Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

“(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of Section 77, he shall be liable for action under Section 447.”.

10. Substitution of new Section for Section 87.
For Section 87 of the principal Act, the following section shall be substituted, namely:-

Rectification by Central Government in Register of charges. “87. The Central Government on being satisfied that-

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of Section 82 or Section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

11. Amendment of Section 90.
In Section 90 of the principal Act,-

(i) for sub-section (9), the following sub-section shall be substituted, namely:-

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(ii) in sub-section (10),-

(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted;

(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted;

12. Amendment of Section 92.
In Section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-
“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

13. Amendment of Section 102.
In Section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this Section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefits accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.

14. Amendment of Section 105.
In Section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

15. Amendment of Section 117.
In Section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

16. Amendment of Section 121.
In Section 121 of the principal Act, for sub-section (3), Amendment of the following sub-section shall be substituted, namely:-

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

17. Amendment of Section 137.
In Section 137 of the principal Act, in sub-section (3), for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;

(b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

18. Amendment of Section 140.
In Section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

19. Amendment of Section 157.
In Section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

20. Substitution of new section for Section 159.
For Section 159 of the principal Act, the following section shall be substituted, namely:-

Penalty for default of certain provisions. “159. If any individual or director of a company makes any default in complying with any of the provisions of Section 152, Section 155 and Section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

21. Amendment of Section 164.
In Section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:-

“(i) he has not complied with the provisions of sub section (1) of section 165.”.

22. Amendment of Section 165.
In Section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending
with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

23. Amendment of Section 191.
In Section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

24. Amendment of Section 197.
In Section 197 of the principal Act, (a) sub-section (7) shall be omitted;
(b) for sub-section (15), the following sub-section shall be substituted, namely:-

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

25. Amendment of Section 203.
In Section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.

26. Amendment of Section 238.
In Section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted.

27. Amendment of Section 248.
In Section 248 of the principal Act, in sub-section (1),-(a) in clause (c), for the word and figures “Section 455,”, the words and figures “Section 455; or” shall be substituted;
(b) after clause (d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (l) of section 10A; or
(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

28. Amendment of Section 441.
In section 441 of the principal Act,-

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;
(b) for sub-section (6), the following sub-section shall be substituted, namely:-

2 of 1974, “(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compounding.”.

29. Amendment of Section 446B.
In Section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such Sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such Sections” shall be substituted.

30. Amendment of Section 447.
In Section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

31. Amendment of Section 454.
In Section 454 of the principal Act,-

(i) for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) The adjudicating officer may, by an order- (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non compliance or default under the relevant provisions of this Act; and
(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;
(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;
(iii) in sub-section (8),-

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;
(b) in clause (ii)-

(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;
(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub section (7), as the case may be,” shall be substituted.

32. Insertion of new Section 454A.
After Section 454 of the principal Act, the following section shall be inserted, namely:-

Penalty for repeated default. "454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed
by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”.

33. **Repeal and Savings Ord. 9 of 2018.**
   (1) The Companies (Amendment) Ordinance, 2018 is hereby repealed.
   (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

RAM NATH KOVIND,  
President of India

DR. G. NARAYANA RAJU  
Secretary to the Govt. of India

**Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019**

[Issued by the Ministry of Corporate Affairs vide F. No. 17/6/2017-CL-V dated 22.01.2019. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 368(E) dated 22.01.2019]

Whereas, the Central Government vide notification number S.O. 5622(E), dated the 2nd November, 2018 has directed that all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereafter referred to as “Specified Companies”), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

(a) the amount of payment due; and

(b) the reasons of the delay;

And whereas, in exercise of power under Section 405 of the Companies Act, 2013, (18 of 2013) the Central Government, considers it necessary to require “Specified Companies” to furnish above information under said section of the Act.

Now, therefore, in exercise of the powers conferred by Section 405 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order, namely:-

1. **Short title and commencement.**- (1) This Order may be called the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.

(2) It shall come into force from the date of its publication in the Official Gazette.

2. Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within thirty days from the date of publication of this notification.

3. Every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March.

K. V. R. MURTY  
Joint Secretary

**Disclosure by Stock Exchanges for commodity derivatives**

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DMP/CR/P/2019/08 dated 04.01.2019.]

1. SEBI vide circular SEBI/HO/CDMRD/DMP/2016/101 dated September 27, 2016 had prescribed certain norms regarding disclosures by Stock Exchanges on their website for commodity derivatives.

2. Transparency in the commodities derivatives markets is paramount for price signals as well as its correlation with the underlying physical market activities. In order to enhance transparency to the public in Commodity Derivatives Markets and also as recommended by Commodity Derivatives Advisory Committee (CDAC), all recognised stock exchanges shall make additional disclosures on their websites with respect to trading in commodity derivatives. The formats for these disclosures are placed at Annexures-I and II.

3. **Annexure I** contains format for disclosure of Open Interest and turnover for various categories of participants at Commodity as well as market level. In this regard the stock exchanges shall:

   a. Categorise the participants in the following six categories:

      i. Farmers/FPOs: It includes participants such as farmers, farmers’ cooperatives, Farmers Producers Organisations (FPOs) and such entities of like nature.

      ii. Value chain participants (VCPs): It includes participants such as Processors, Commercial users as Dal and Flour Millers, Importers, Exporters, Physical Market Traders, Stockists, Cash & Carry participants, Producers, SMES/MSMEs & Wholesalers etc., but exclude farmers/FPOs.

      iii. Proprietary traders: It includes the members of stock exchanges trading in their proprietary account.
iv. **Domestic financial institutional investors:** It includes participants such as Mutual Funds (MFs), Portfolio Managers, Alternative Investment Funds (AIFs), Banks, Insurance Companies and Pension Funds etc., which are allowed to trade in commodity derivatives.

v. **Foreign participants:** It includes participants such as Eligible Foreign Entities (EFEs), NRIs etc. which are allowed to trade in commodity derivatives markets.

vi. **Others:** All other participants which cannot be classified in the above categories.

b. The categorization of the clients/members shall be made on self-declaration basis for each commodity. However, exchanges can re-classify any participant where it deems necessary to do so based on the information available with it. Exchanges shall be required to conduct periodical exercise to capture the above data. Thus, the exchange shall put in place necessary systems to capture the requisite information.

c. In case self-declaration is not obtained for a particular client for a particular commodity, positions of such client in such commodity shall be clubbed with “Others” category.

d. In case there are less than 10 participants in any category, the stock exchanges while disclosing the number of participants can disclose as “less than 10”.

e. To begin with, stock exchanges shall make the disclosures on a weekly basis for every Wednesday by next Wednesday (and for next trading day in case of holiday on any Wednesday) by October 01, 2019. By April 01, 2020 onwards, such disclosures shall be made on daily basis by 6:00 PM on T+1 day.

4. **Annexure II** contains Commodity wise format of disclosure for top participants, members and market wide position limits. Stock Exchanges shall make disclosures on daily basis, latest within a month of the date of this circular. Such disclosures for any day are to be made before start of trading on the next day. The recognized stock exchange shall make necessary disclaimer that the grouping of clients is based on the “Guidelines on Clubbing of Open Positions” issued by it.

5. Exchanges shall also maintain complete historical data of the above disclosures on their website in spread sheet format.

6. These disclosure requirements are in addition to those already mandated by SEBI.

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.

8. Exchanges are advised to:
   i. to make necessary amendments to the relevant byelaws, rules and regulations.
   ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.
   iii. communicate to SEBI, the status of the implementation of the provisions of this circular.

9. This circular is available on SEBI website at www.sebi.gov.in under the category “Circulars” and “Info for Commodity Derivatives”.

VIKAS SUKHWAL
Deputy General Manager

**Annexure-I and Annexure-II not published here for want of space. Readers may log on to sebi.gov.in.**

08 Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered and used by market intermediaries

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ MIRSD/DOS2/CIR/P/2019/10 dated 04.01.2019.]

**Background**

1. There is increasing usage of AI (Artificial Intelligence) and ML (Machine Learning) as product offerings by market intermediaries and participants (e.g. “robo advisors”) in investor and consumer facing products. SEBI is conducting a survey and creating an inventory of the AI / ML landscape in the Indian financial markets to gain an in-depth understanding of the adoption of such technologies in the markets and to ensure preparedness for any AI / ML policies that may arise in the future.

2. As most AI / ML systems are black boxes and their behavior cannot be easily quantified, it is imperative to ensure that any advertised financial benefit owing to these technologies in investor facing financial products offered by intermediaries should not constitute to misrepresentation

**Scope definition**

3. Any set of applications / software / programs / executable / systems (computer systems) – cumulatively called application and systems,

   a. that are offered to investors (individuals and institutions) by market intermediaries to facilitate investing and trading,
   OR

   b. to disseminate investments strategies and advice, 
   OR

   c. to carry out compliance operations / activities,

   where AI / ML is portrayed as a part of the public product offering or under usage for compliance or management purposes, is included in the scope of this circular. Here, “AI” / “ML” refers to the terms “Artificial Intelligence” and “Machine Learning” used as a part of the product offerings. In order to make the scope of this circular inclusive of various AI and ML technologies in use, the scope also covers Fin-Tech and Reg-Tech initiatives undertaken by market participants that involves AI and ML.

4. Technologies that are considered to be categorized as AI and ML technologies in the scope of this circular, are explained in Annexure B.

**Regulatory requirements**

5. All registered Stock Brokers / Depository Participant offering or using applications or systems as defined in Annexure B, should participate in the reporting process by completing the
FROM THE GOVERNMENT

CHARTERED SECRETARY | FEBRUARY 2019

AI / ML reporting form (see Annexure A).

6. With effect from quarter ending March 2019, registered Stock Brokers / Depository Participant using AI / ML based application or system as defined in Annexure B, are required to fill in the form (Annexure A) and make submissions on quarterly basis within 15 calendar days of the expiry of the quarter.

7. Stock Exchanges and Depositories have to consolidate and compile a report, on AI / ML applications and systems reported by registered Stock Brokers / Depository Participants in the reporting format (Annexure C) on quarterly basis. The said report (Annexure C) shall be submitted in soft copy only at AI_SE@sebi.gov.in (for Stock Exchange) / AI_DEP@sebi.gov.in (for Depositories) to SEBI within 30 calendar days of the expiry of the quarter, starting from quarter ending March 2019.

8. Stock Exchanges and Depositories shall;
   a) make necessary amendments to the relevant byelaws, rules and regulations for the implementation of the above direction;
   b) bring the provisions of this circular to the notice of their members/participants and also disseminate the same on their websites; and
   c) communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Development Report.

9. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

DEBASISH BANDYOPADHYAY
General Manager

Annexure A - Form to report on AI and ML technologies –
To be submitted quarterly

Intimation to Stock Exchange / Depository for the use of the AI and ML application and systems.

<table>
<thead>
<tr>
<th>S No.</th>
<th>Head</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Entity SEBI registration number</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Registered entity category</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Entity name</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Entity PAN no.</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Application / System name</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Date from when the Application / System was used</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Type of area where AI or ML is used</td>
<td>&lt;order execution / Advisory services / KYC / AML / Surveillance / compliance/ others (please specify in 256 characters)&gt;</td>
</tr>
</tbody>
</table>

7.a Does the system involve order initiation, routing and execution? <Yes / NO>
7.b Does the system fall under discretionary investment or Portfolio management activities? <Yes / NO>
7.c Does the system disseminate investment or trading advice or strategies? <Yes / NO>
7.d Is the application/system used in area of Cyber Security to detect attacks <Yes / NO>
7.e What claims have been made regarding AI and ML Application / System – if any? <free text field>

8. What is the name of the Tool / Technology that is categorized as AI and ML system / Application and submissions are declared vide this response <free text field>

9. How was the AI or ML project implemented <Internally / through solution provider / Jointly with a solution provider or third party>

10. Are the key controls and control points in your AI or ML application or systems in accordance to circular of SEBI that mandate cyber security control requirements <free text field>

11. Is the AI / ML system included in the system audit, if applicable? <Yes / NO / NA>

12. Describe the application / system and how it uses AI / ML as portrayed in the product offering <free text field>

13. What safeguards are in place to prevent abnormal behavior of the AI or ML application / System <free text field>

Annexure B – Systems deemed to be based on AI and ML technology
Applications and Systems belonging but not limited to following categories or a combination of these:

1. Natural Language Processing (NLP), sentiment analysis or text mining systems that gather intelligence from unstructured data. – In this case, Voice to text, text to intelligence systems in any natural language will be considered in scope. Eg: robo chat bots, big data intelligence gathering systems.

2. Neural Networks or a modified form of it. – In this case, any systems that uses a number of nodes (physical or software simulated nodes) mimicking natural neural networks of any scale, so as to carry out learning from previous firing of the nodes will be considered in scope. Eg: Recurrent Neural networks and Deep learning Neural Networks

3. Machine learning through supervised, unsupervised learning or a combination of both. – In this case, any application or systems that carry out knowledge representation to form
a knowledge base of domain, by learning and creating its outputs with real world input data and deciding future outputs based upon the knowledge base. Eg: System based on Decision tree, random forest, K mean, Markov decision process, Gradient boosting Algorithms.

4. A system that uses statistical heuristics method instead of procedural algorithms or the system / application applies clustering or categorization algorithms to categorize data without a predefined set of categories.

5. A system that uses a feedback mechanism to improve its parameters and bases it subsequent execution steps on these parameters.

6. A system that does knowledge representation and maintains a knowledge base.

Annexure C – Consolidated Quarterly Reporting Form

Consolidated Quarterly report to SEBI of all registered intermediaries with Stock Exchange / Depositories using AI and ML application and systems for the Quarter Ended DD/MM/YYYY

<table>
<thead>
<tr>
<th>Entity registration number</th>
<th>Entity name</th>
<th>Entity PAN no.</th>
<th>Application / System name</th>
<th>Date used from</th>
<th>Type of area where AI or ML is used</th>
<th>Does system audit report comply to circular no SEBI/HO/MIRSD/DOP/CIR/P/2019/10 dated January 4, 2019 of SEBI</th>
<th>Is there any adverse comment in the System audit report</th>
<th>Was the entity inspected in past 1 year</th>
<th>If inspected was any irregularity noted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>If system audit report is submitted by entity later than “date used from”</td>
<td>If system audit report is submitted with adverse remarks and Stock Exchange/ Depositories is entitled to inspect the entity</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Add separate rows for each system or application.

Acceptance of Probate of Will or Will for Transmission of Securities held in dematerialized mode

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/05 dated 04.01.2019.]

1. In terms of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018, succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 has been prescribed as documentary requirement for transmission of securities held in physical mode.

2. With regard to transmission of securities held in dematerialized mode, the same is dealt in terms of bye laws of the Depositories. In order to harmonize the procedures for transmission of securities in dematerialized mode with that of transmission of securities in physical mode, it has been decided that transmission of securities held in dematerialized mode shall be dealt in line with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018.

3. Accordingly, the Depositories and Stock Exchanges are directed to:

a) bring the provisions of this circular to the notice of their participants/ members, and also disseminate the same on their websites; and
b) suitably amend their Bye Laws;

4. The provisions of this circular shall be applicable with immediate effect.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

D. RAJESH KUMAR
General Manager

Portfolio Concentration Norms for Equity Exchange Traded Funds (ETFs) and Index Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DFS/CIR/P/2019/011 dated 10.01.2019.]

1. In order to address the risk related to portfolio concentration in ETFs and Index Funds, it has been decided to adopt the following norms:

a) The index shall have a minimum of 10 stocks as its constituents.
b) For a sectoral/ thematic Index, no single stock shall have more than 35% weight in the index. For other than sectoral/ thematic indices, no single stock shall have more than 25% weight in the index.
c) The weightage of the top three constituents of the index, cumulatively shall not be more than 65% of the Index.
d) The individual constituent of the index shall have a trading frequency greater than or equal to 80% and an average impact cost of 1% or less over previous six months.

Accordingly, any ETF/ Index Fund that seeks to replicate a particular Index shall ensure that such index complies with the aforesaid norms.

2. Compliance Procedure:

a) The aforesaid norms shall be applicable to all ETFs/ Index Funds tracking equity indices.
b) The ETF/ Index Fund issuer shall evaluate and ensure compliance to the aforesaid norms for all its ETFs/ Index Funds at the end of every calendar quarter.
c) The ETF/Index Fund issuer shall ensure that the updated constituents of the Indices (for all its ETFs/ Index Funds) are available on the website of such ETF/ Index Fund issuers at all points of time.

3. Applicability:

a) All existing Equity ETFs/ Index Funds in the market: The issuers of all the existing Equity ETFs/ Index Funds are required to ensure adherence to the new norms by all
the ETFs/ Index Funds within a period of three months from the date of issuance of this circular.

b. **All the Equity ETFs/ Index Funds where SEBI has issued final observations on the Scheme Information Document, but have not yet been launched:** The issuers shall submit the compliance status vis-à-vis these norms to SEBI before launching such ETFs/ Index Funds.

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

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**11 Cyber Security and Cyber Resilience framework for Mutual Funds / Asset Management Companies (AMCs)**

[**Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMDDF2/CIR/P/2019/012 dated 10.01.2019.**]

1. With rapid technological advancement in securities market, there is greater need for maintaining robust cyber security and to have cyber resilience framework to protect integrity of data and guard against breaches of privacy.

2. As part of the operational risk management framework to manage risk to systems, networks and databases from cyber-attacks and threats, Mutual Funds/ Asset Management Companies (AMCs) need to have robust cyber security and cyber resilience framework in order to provide essential facilities and services and perform critical functions in securities market.

3. Based on the recommendation of SEBI’s High Powered Steering Committee - Cyber Security, it has been decided that the framework prescribed vide SEBI circular CIR/MRD/DP13/2015 dated July 06, 2015 on cyber security and cyber resilience also be made applicable to all Mutual Funds / AMC. Accordingly, all Mutual Funds / AMCs shall comply with the provisions of Cyber Security and Cyber Resilience as placed at Annexure-1.

4. Mutual Funds / AMCs are advised to take necessary steps to put in place systems for implementation of this circular. The guidelines annexed with this circular shall be effective from April 1, 2019.

5. 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 interests of investors in securities and to promote the development of, and to regulate the securities market.

**HARINI BALAJI**
General Manager

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**Annexure - 1**

1. Cyber-attacks and threats attempt to compromise the Confidentiality, Integrity and Availability (CIA) of the computer systems, networks and databases (Confidentiality refers to limiting access of systems and information to authorized users, Integrity is the assurance that the information is reliable and accurate, and Availability refers to guarantee of reliable access to the systems and information by authorized users). Cyber security framework includes measures, tools and processes that are intended to prevent cyber-attacks and improve cyber resilience. Cyber Resilience is an organization’s ability to prepare and respond to a cyber-attack and to continue operation during, and recover from, a cyber-attack.

**Governance**

2. As part of the operational risk management framework to manage risk to systems, networks and databases from cyber-attacks and threats, Mutual Funds/ Asset Management Companies (AMCs) should formulate a comprehensive cyber security and cyber resilience policy document encompassing the framework mentioned hereunder. The policy document should be approved by the Board of the AMC and Trustees, and in case of deviations from the suggested framework, reasons for such deviations should also be provided in the policy document. The policy document should be reviewed by the Board of AMC at least once annually with the view to strengthen and improve its cyber security and cyber resilience framework.

3. The cyber security and cyber resilience policy should include the following process to identify, assess, and manage cyber security risk associated with processes, information, networks and systems:
   a. ‘Identify’ critical IT assets and risks associated with such assets,
   b. ‘Protect’ assets by deploying suitable controls, tools and measures,
   c. ‘Detect’ incidents, anomalies and attacks through appropriate monitoring tools/processes,
   d. ‘Respond’ by taking immediate steps after identification of the incident, anomaly or attack,
   e. ‘Recover’ from incident through incident management, disaster recovery and business continuity framework.

4. The Cyber security policy should encompass the principles prescribed by National Critical Information Infrastructure Protection Centre (NCIIPC) of National Technical Research Organization (NTRO), Government of India, in the report titled ‘Guidelines for Protection of National Critical Information Infrastructure’ and subsequent revisions, if any, from time to time.

5. Mutual Funds/ AMCs should also incorporate best practices from standards such as ISO 27001, ISO 27002, COBIT 5, etc., or their subsequent revisions, if any, from time to time.

6. Mutual Funds/ AMCs should designate a senior official as Chief Information Security Officer (CISO) whose function would be to assess, identify and reduce cyber security risks, respond to incidents, establish appropriate standards and controls, and direct the establishment and implementation of processes and procedures as per the cyber security and resilience policy approved by the Board of the AMCs.

7. The Board of the AMCs shall constitute a Technology Committee comprising experts proficient in technology. This Technology Committee should on a quarterly basis review the implementation of the cyber security and cyber resilience policy approved by their Board, and such review should include review of their current IT and cyber security
and cyber resilience capabilities, set goals for a target level of cyber resilience, and establish a plan to improve and strengthen cyber security and cyber resilience. The review shall be placed before the Board of the AMCs and Trustees for appropriate action.

8. Mutual Funds/ AMCs should establish a reporting procedure to facilitate communication of unusual activities and events to CISO or to the senior management in a timely manner.

9. The aforementioned committee and the senior management of the AMCs, including the CISO, should periodically review instances of cyber-attacks, if any, domestically and globally, and take steps to strengthen cyber security and cyber resilience framework.

10. Mutual Funds/ AMCs should define responsibilities of its employees, outsourced staff, and employees of vendors, members or participants and other entities, who may have access or use systems / networks of the Mutual Funds/ AMCs, towards ensuring the goal of cyber security.

Identify

11. Mutual Funds/ AMCs should identify critical assets based on their sensitivity and criticality for business operations, services and data management and should maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows.

12. Mutual Funds/ AMCs should accordingly identify cyber risks (threats and vulnerabilities) that it may face, along with the likelihood of such threats and impact on the business and thereby, deploy controls commensurate to the criticality.

13. Mutual Funds/ AMCs should also encourage its third-party service providers, if any, such as RTAs, Custodians, Brokers, Distributors, etc. to have similar standards of Information Security.

Protection

Access Controls

14. No person by virtue of rank or position should have any intrinsic right to access confidential data, applications, system resources or facilities.

15. Any access to AMC’s/ Mutual Fund’s systems, applications, networks, databases, etc., should be for a defined purpose and for a defined period. AMCs/MFs should grant access to IT systems, applications, databases and networks on a need-to-use basis and based on the principle of least privilege. Such access should be for the period when the access is required and should be authorized using strong authentication mechanisms.

16. Mutual Funds/ AMCs should implement strong password controls for users’ access to systems, applications, networks and databases. Password controls should include a change of password upon first log-on, minimum password length and history, password complexity as well as maximum validity period. The user credential data should be stored using strong and latest hashing algorithms.

17. Mutual Funds/ AMCs should ensure that records of user access are uniquely identified and logged for audit and review purposes. Such logs should be maintained and stored in encrypted form for a time period not less than two (2) years.

18. Mutual Funds/ AMCs should deploy additional controls and security measures to supervise staff with elevated system access entitlements (such as admin or privileged users). Such controls and measures should inter-alia include restricting the number of privileged users, periodic review of privileged users’ activities, disallow privileged users from accessing systems logs in which their activities are being captured, strong controls over remote access by privileged users, etc.

19. Account access lock policies after failure attempts should be implemented for all accounts.

20. Employees and outsourced staff such as employees of vendors or service providers, who may be given authorized access to the Mutual Fund’s/ AMC’s critical systems, networks and other computer resources, should be subject to stringent supervision, monitoring and access restrictions.

21. Two-factor authentication at log-in should be implemented for all users that connect using online/ internet facility.

22. Mutual Funds/ AMCs should formulate an Internet access policy to monitor and regulate the use of internet and internet based services such as social media sites, cloud-based internet storage sites, etc.

23. Proper ‘end of life’ mechanism should be adopted to deactivate access privileges of users who are leaving the organization or whose access privileges have been withdrawn.

Physical Security

24. Physical access to the critical systems should be restricted to minimum. Physical access of outsourced staff or visitors should be properly supervised by ensuring at the minimum that outsourced staff or visitors are accompanied at all times by authorized employees.

25. Physical access to the critical systems should be revoked immediately if the same is no longer required.

26. Mutual Funds/ AMCs should ensure that the perimeter of the critical equipments rooms are physically secured and monitored by employing physical, human and procedural controls such as the use of security guards, CCTVs, card access systems, mantraps, bollards, etc. where appropriate.

Network Security Management

27. Mutual Funds/ AMCs should establish baseline standards to facilitate consistent application of security configurations to operating systems, databases, network devices and enterprise mobile devices within the IT environment. The Mutual Funds/ AMCs should conduct regular enforcement checks to ensure that the baseline standards are applied uniformly.

28. Mutual Funds/ AMCs should install network security devices,
such as firewalls as well as intrusion detection and prevention systems, to protect their IT infrastructure from security exposures originating from internal and external sources.

29. Anti-virus software should be installed on servers and other computer systems. Update of anti-virus definition files and automatic anti-virus scanning should be done on a regular basis.

Security of Data

30. Data-in motion and Data-at-rest should be in encrypted form by using strong encryption methods such as Advanced Encryption Standard (AES), RSA, SHA-2, etc.

31. Mutual Funds/ AMCs should implement measures to prevent unauthorized access or copying or transmission of data / information held in contractual or fiduciary capacity. It should be ensured that confidentiality of information is not compromised during the process of exchanging and transferring information with external parties.

32. The information security policy should also cover use of devices such as mobile phone, faxes, photocopiers, scanners, etc. that can be used for capturing and transmission of data.

33. Mutual Funds/ AMCs should allow only authorized data storage devices through appropriate validation processes.

Hardening of Hardware and Software

34. Only a hardened and vetted hardware / software should be deployed by the Mutual Funds/ AMCs. During the hardening process, Mutual Funds/ AMCs should inter-alia ensure that default passwords are replaced with strong passwords and all unnecessary services are removed or disabled in equipments / software.

35. All open ports which are not in use or can potentially be used for exploitation of data should be blocked. Other open ports should be monitored and appropriate measures should be taken to secure the ports.

Application Security and Testing

36. Mutual Funds/ AMCs should ensure that regression testing is undertaken before new or modified system is implemented. The scope of tests should cover business logic, security controls and system performance under various stress-load scenarios and recovery conditions.

Patch Management

37. Mutual Funds/ AMCs should establish and ensure that the patch management procedures include the identification, categorization and prioritization of security patches. An implementation timeframe for each category of security patches should be established to implement security patches in a timely manner.

38. Mutual Funds/ AMCs should perform rigorous testing of security patches before deployment into the production environment so as to ensure that the application of patches do not impact other systems.

Disposal of systems and storage devices

39. Mutual Funds/ AMCs should frame suitable policy for disposals of the storage media and systems. The data / information on such devices and systems should be removed by using methods viz. wiping / cleaning / overwrite, degauss and physical destruction, as applicable.

Vulnerability Assessment and Penetration Testing (VAPT)

40. Mutual Funds/ AMCs should regularly conduct vulnerability assessment to detect security vulnerabilities in the IT environment. Mutual Funds/ AMCs should also carry out periodic penetration tests, at least once in a year, in order to conduct an in-depth evaluation of the security posture of the system through simulations of actual attacks on its systems and networks.

41. Remedial actions should be immediately taken to address gaps that are identified during vulnerability assessment and penetration testing.

42. In addition, Mutual Funds/ AMCs should perform vulnerability scanning and conduct penetration testing prior to the commissioning of a new system which offers internet accessibility and open network interfaces.

Monitoring and Detection

43. Mutual Funds/ AMCs should establish appropriate security monitoring systems and processes to facilitate continuous monitoring of security events and timely detection of unauthorized or malicious activities, unauthorized changes, unauthorized access and unauthorized copying or transmission of data/information held in contractual or fiduciary capacity, by internal and external parties. The security logs of systems, applications and network devices should also be monitored for anomalies.

44. Further, to ensure high resilience, high availability and timely detection of attacks on systems and networks, Mutual Funds/ AMCs should implement suitable mechanism to monitor capacity utilization of its critical systems and networks.

45. Suitable alerts should be generated in the event of detection of unauthorized or abnormal system activities, transmission errors or unusual online transactions.

Response and Recovery

46. Alerts generated from monitoring and detection systems should be suitably investigated, including impact and forensic analysis of such alerts, in order to determine activities that are to be performed to prevent expansion of such incident of cyber-attack or breach, mitigate its effect and eradicate the incident.

47. The response and recovery plan of the Mutual Funds/ AMCs should aim at timely restoration of systems affected by incidents of cyber-attacks or breaches. The recovery plan should be in line with the Recovery Time Objective (RTO) and Recovery Point Objective (RPO) as specified by SEBI for Market Infrastructure Institutions vide SEBI circular CIR/ MRD/DMS/17/20 dated June 22, 2012 as amended from time to time.
48. The response plan should define responsibilities and actions to be performed by its employees and support or outsourced staff in the event of cyber-attacks or breach of cyber security mechanism.

49. Any incident of loss or destruction of data or systems should be thoroughly analyzed and lessons learned from such incidents should be incorporated to strengthen the security mechanism and improve recovery planning and processes.

50. Mutual Funds/AMCs should also conduct suitable periodic drills to test the adequacy and effectiveness of response and recovery plan.

Sharing of information

51. Quarterly reports containing information on cyber-attacks and threats experienced by Mutual Funds/AMCs and measures taken to mitigate vulnerabilities, threats and attacks including information on bugs / vulnerabilities / threats that may be useful for other AMCs/MFs should be submitted to SEBI in a soft copy.

52. Such details as are felt useful for sharing with other Mutual Funds/AMCs in masked and anonymous manner shall be shared using mechanism to be specified by SEBI from time to time.

Training

53. Mutual Funds/AMCs should conduct periodic training programs to enhance awareness level among the employees and outsourced staff, vendors, etc. on IT / Cyber security policy and standards. Special focus should be given to build awareness levels and skills of staff from non-technical disciplines.

54. The training program should be reviewed and updated to ensure that the contents of the program remain current and relevant.

Periodic Audit

55. AMCs/Mutual Funds shall arrange to have its systems audited on an annual basis by an independent CISA/CISM qualified or CERT-IN empanelled auditor to check compliance with the above areas and shall submit the report to SEBI along with the comments of the Board of AMCs and Trustees within three months of the end of the financial year.

Vendors or Service Providers

56. AMCs/MFs have outsourced many of their critical activities to different agencies / vendors / service providers. The responsibility, accountability and ownership of those outsourced activities lies primarily with AMCs / MFs. Therefore, AMCs / MFs have to come out with appropriate monitoring mechanism through clearly defined framework to ensure that all the requirements as specified in this circular is complied with. The periodic report submitted to SEBI should highlight the critical activities handled by the agencies and to certify the above requirement is complied. The provisions of this circular shall also apply to those RTAs which serve AMCs as the in-house RTAs of the AMCs.

12 Uniform membership structure across segments

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/14 dated 11.01.2019.]

1. In cash segment, all the Stock Brokers are trading cum self-clearing members whereas in derivatives segment, membership structure is that of Trading Member (TM) and / or Clearing Member (CM). After the introduction of derivatives in the year 2001, most of the Stock Brokers in cash segment had also become TM / CM in derivatives segment. Unification of membership structure across equity cash and derivatives segments of Stock Exchanges is vital to facilitate ease of doing business.

2. SEBI Board in its meeting held on June 21, 2018 decided that sub-brokers as an intermediary shall cease to exist with effect from April 01, 2019. All existing sub-brokers would migrate to become Authorised Persons (APs) or Trading Members if the sub-brokers meet the eligibility criteria prescribed under Stock Exchange bye-laws and SEBI Regulations and by complying with these Regulations.

3. SEBI has implemented the mechanism of single registration, whereby a registered TM / CM can operate in any segment of the recognised Stock Exchange / Clearing Corporation under the single registration number granted by SEBI.

4. In order to implement uniform membership structure across equity cash and derivatives segments, following course of action is provided –

a) The membership structure as Trading Member (TM), Self-clearing Member (SCM), Clearing Member (CM) and Professional Clearing Member (PCM) as prevalent in equity derivatives segment shall be implemented in cash segment with effect from April 01, 2019.

b) The existing Stock Brokers in cash segment of a Stock Exchange who are already registered as SCM / CM in derivatives segment shall automatically become SCM / CM, as the case may be, in cash segment with effect from April 01, 2019.

c) The existing Stock Brokers in cash segment of a Stock Exchange who are not registered as SCM / CM in derivatives segment shall continue as SCM in cash segment with effect from April 01, 2019. However, -

i. Existing Stock Brokers in cash segment shall meet with the net-worth requirement as per formula prescribed by Dr. L.C. Gupta Committee as applicable to SCM / CM in equity derivatives segment on or before September 30, 2019.

ii. Existing Stock Brokers in cash segment who fail to meet the net-worth requirement for SCM / CM on or before September 30, 2019 shall continue to trade as Trading Member in cash segment provided that they shall tie up with a CM / PCM for clearing and settlement of their trades on or before September 30, 2019.

d) The existing PCMs in derivatives segment shall become PCMs in cash segment with effect from April 01, 2019. However, the existing Custodian Clearing Member in cash segment shall continue to act as Custodian Clearing Member in cash segment only.

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5. The Stock Exchanges and Clearing Corporations are directed to:
   a) bring the provisions of this circular to the notice of their members, and also disseminate the same on their websites;
   b) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another, as considered necessary;
   c) monitor the compliance of this circular;
   d) communicate to SEBI, the status of the implementation of the provisions of this circular.

6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of and to regulate the securities market.

D. RAJESH KUMAR
General Manager

Guidelines for public issue of units of InvITs - Amendments

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/CIR/P/2019/16 dated 15.01.2019.]

1. This is in continuation to SEBI circular No. CIR/IMD/DF/55/2016 dated May 11, 2016, which provided the “Guidelines for public issue of units of InvITs” (“InvIT Guidelines”).

2. With a view to further rationalise and ease the process of public issue of units of InvITs, it has been decided to provide for following in the InvIT Guidelines:
   a) In clause 3 of Schedule A,
      i. explanation to sub-clause (1) shall be substituted with following:
         “Explanation: Institutional investors is as defined under Regulation 2(1)(y) of SEBI (Issue Of Capital And Disclosure Requirements) Regulations, 2018.”
      ii. Sub-clause 2(h) shall be substituted with the following:
         “(g) Neither the merchant bankers(s) nor any associate of the merchant bankers, other than mutual funds sponsored by entities which are associate of the merchant bankers or insurance companies promoted by entities which are associate of the merchant bankers or pension funds of entities which are associate of the merchant bankers or Alternate Investment Funds (AIFs) sponsored by the entities which are associate of the merchant bankers or FPIs other than Category III sponsored by the entities which are associate of the merchant bankers, shall apply under the Anchor Investors category.”
   b) In clause 6 of Schedule A,
      i. Following proviso shall be inserted after the proviso to sub-clause (3)
         “Provided further, that in case of force majeure, banking strike or similar circumstances, the InvIT, for reasons to be recorded in writing, may extend the bidding (issue) period disclosed in the offer document, for a minimum period of three working days, subject to total bidding period not exceeding thirty days.”
   c) In clause 8 of Schedule A,

i. In sub-clause (3), the word “five” shall be substituted with the word “two”.

d. In clause 9 of Schedule A,
   i. sub-clause (1) to (5), shall be substituted with following:
      (1) The InvIT shall accept bids using only the Application Supported by Blocked Amount (ASBA) facility for making payment i.e. writing their bank account numbers and authorising the banks to make payment in case of allotment, by signing the application forms. Further, the bidding process shall be done only through an electronic bidding platform provided by recognised stock exchanges.

   (2) An investor, intending to subscribe to a public issue, shall submit a completed bid-cum-application form to Self-Certified Syndicate Banks (SCSBs), with whom the bank account to be blocked is maintained or any of the following intermediaries:
      a. A syndicate member (or sub-syndicate member)
      b. A stock broker registered with a recognised stock exchange
      c. A depository participant (‘DP’)
      d. A registrar to an issue and share transfer agent (‘RTA’)

   (3) Role of intermediaries:
      a. Intermediaries accepting the application forms shall be responsible for uploading the bid along with other relevant details in application forms on the electronic bidding system of stock exchange(s) and submitting the form to SCSBs for blocking of funds (except in case of SCSBs, where blocking of funds will be done by respective SCSBs only).
      b. All applications shall be stamped and thereby acknowledged by the intermediary at the time of receipt.

   (4) Role of Stock Exchanges:
      a. Stock Exchanges to provide transparent electronic bidding facility.
      b. Stock exchange(s) shall validate the electronic bid details with depository’s records for DP ID, Client ID and PAN, by the end of each bidding day and bring the inconsistencies to the notice of SCSBs or intermediaries concerned, for rectification and re-submission within the time specified by stock exchange(s).
      c. Stock exchange(s) shall allow modification of selected fields viz. DP ID/Client ID or Pan ID (Either DP ID/Client ID or Pan ID can be modified but not BOTH), Bank code and Location code in the bid details already uploaded on a daily basis upto timeline as has been specified.
      d. The stock exchanges shall develop the systems to facilitate the investors to view the status of their public issue applications on their websites and sending the details of applications and allotments through
Guidelines for public issue of units of REITs - Amendments

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/CIR/P/2019/15 dated 15.01.2019.]

1. This is in continuation to SEBI circular No. CIR/IMD/DF/136/2016 dated December 19, 2016, which provided the “Guidelines for public issue of units of REITs” (“REIT Guidelines”).

2. With a view to further rationalise and ease the process of public issue of units of REITs, it has been decided to provide for following in the REIT Guidelines:

   a. In clause 3 of Schedule A,
      i. explanation to sub-clause (1) shall be substituted with following:
         “Explanation: Institutional investors is as defined under Regulation 2(1)(y) of SEBI (Issue Of Capital And Disclosure Requirements) Regulations, 2018.”
      ii. in sub-clause 2(b), following proviso to be inserted
         “Provided that in case of strategic investor, the aforesaid application value shall be subject to Regulation 2(1)(zb) of the REIT Regulations.”
      iii. Sub-clause 2(g) shall be substituted with the following:
         “(g) Neither the merchant bankers(s) nor any associate of the merchant bankers, other than mutual funds sponsored by entities which are associate of the merchant bankers or insurance companies promoted by entities which are associate of the merchant bankers or pension funds of entities which are associate of the merchant bankers or Alternate Investment Funds (AIFs) sponsored by the entities which are associate of the merchant bankers or FPIs other than Category III sponsored by the entities which are associate of the merchant bankers, shall apply under the Anchor Investors category.”

   b. In clause 6 of Schedule A,
      i. Following proviso shall be inserted after the proviso to sub-clause (3)
         “Provided further, that in case of force majeure, banking strike or similar circumstances, the REIT, for reasons to be recorded in writing, may extend the bidding (issue) period disclosed in the offer document, for a minimum period of three working days, subject to total bidding period not exceeding thirty days.”

   c. In clause 8 of Schedule A,
      i. In sub-clause (3), the word “five” shall be substituted with the word “two”.

   d. In clause 9 of Schedule A,
      i. sub-clause (1) to (5), shall be substituted with following.
         (1) The REIT shall accept bids using only the Application Supported by Blocked Amount (ASBA) facility for making payment i.e. writing their bank account numbers and authorising the banks to make payment in case of allotment, by signing the application forms. Further, the bidding process shall be done only through an electronic bidding platform provided by recognised stock exchanges.
         (2) An investor, intending to subscribe to a public issue, shall submit a completed bid-cum-application form to Self-Certified Syndicate Banks (SCSBs), with whom the bank account to be blocked is maintained or any of the following intermediaries:
            a. A syndicate member (or sub-syndicate member)
            b. A stock broker registered with a recognised stock exchange
            c. A depository participant (“DP")
            d. A registrar to an issue and share transfer agent (“RTA")
         (3) Role of intermediaries:
            a. Intermediaries accepting the application forms shall be responsible for uploading the bid along with other relevant details in application forms on the electronic bidding system of stock exchange(s) and submitting the form to SCSBs for blocking of funds (except in case of SCSBs, where blocking of funds will be done by respective SCSBs only).
            b. All applications shall be stamped and thereby acknowledged by the intermediary at the time of receipt.
         (4) Role of Stock Exchanges:
            a. Stock Exchanges to provide transparent electronic bidding facility.
            b. Stock exchange(s) shall validate the electronic bid details with depository’s records for DP ID, Client ID and PAN, by the end of each bidding day and bring the inconsistencies to the notice of SCSBs or intermediaries concerned, for rectification and re-submission within the time specified by stock exchange(s).
            c. Stock exchange(s) shall allow modification of selected fields viz. DP ID/Client ID or Pan ID (Either DP ID/Client ID or Pan ID can be modified but not BOTH), Bank
code and Location code in the bid details already uploaded on a daily basis up to timeline as has been specified.

d. The stock exchanges shall develop the systems to facilitate the investors to view the status of their public issue applications on their websites and sending the details of applications and allotments through SMS and E-mail alerts to the investors.

(5) The blocking of funds accompanied with any revision of Bid, shall be adjusted against the amount blocked at the time of the original bid or the previously revised bid.

e. In clause 13 of Schedule A, i. sub-clause (7), shall be substituted with following, “The merchant bankers shall submit a compliance certificate in respect of news reports appearing for the period between the date of filing the draft offer document with the Board and the date of closure of the issue in accordance with Clause (11) of Schedule IX of SEBI (Issue Of Capital And Disclosure Requirements) Regulations, 2018.”

3. This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 with Regulation 33 of REIT 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

15 Norms for investment and disclosure by mutual funds in derivatives

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/17 dated 16.01.2019.]

1. This has reference to SEBI Circular no. Cir/IMD/DF/11/2010, dated August 18, 2010 on Review of norms for investment and disclosure by Mutual Funds in derivatives.

2. Mutual Fund schemes are permitted to undertake transactions in equity derivatives in accordance with the exposure limits specified in the above mentioned circular. Paragraph 4 of the said circular, inter-alia, states that Mutual Funds shall not write options or purchase instruments with embedded written options.

3. Based on the suggestions of market participants and recommendations of Mutual Fund Advisory Committee (MFAC), it has been decided to permit mutual funds to write call options under a covered call strategy as prescribed below:

Writing of Covered Call Options by Mutual Fund Schemes

4. In partial modification to aforementioned circular, Mutual Fund schemes (except Index Funds and ETFs) may write call options only under a covered call strategy for constituent stocks of NIFTY 50 and BSE SENSEX subject to the following:

a. The total notional value (taking into account strike price as well as premium value) of call options written by a scheme shall not exceed 15% of the total market value of equity shares held in that scheme.

b. The total number of shares underlying the call options written shall not exceed 30% of the unencumbered shares of a particular company held in the scheme. The unencumbered shares in a scheme shall mean shares that are not part of Securities Lending and Borrowing Mechanism (SLBM), margin or any other kind of encumbrances.

c. At all points of time the Mutual Fund scheme shall comply with the provisions at paragraph 4(a) and 4(b) above. In case of any passive breach of the requirement at paragraph 4(a), the respective scheme shall have 7 trading days to rebalance the portfolio. During the rebalancing period, no additional call options can be written in the said scheme.

d. In case a Mutual Fund scheme needs to sell securities on which a call option is written under a covered call strategy, it must ensure compliance with paragraphs 4(a) and 4(b) above while selling the securities.

e. In no case, a scheme shall write a call option without holding the underlying equity shares. A call option can be written only on shares which are not hedged using other derivative contracts.

f. The premium received shall be within the requirements prescribed in terms of paragraph 5 of SEBI circular dated August 18, 2010 i.e. the total gross exposure related to option premium paid and received must not exceed 20% of the net assets of the scheme.

g. The exposure on account of the call option written under the covered call strategy shall not be considered as exposure in terms of paragraph 3 of SEBI Circular no. Cir/IMD/DF/11/2010, dated August 18, 2010.

h. The call option written shall be marked to market daily and the respective gains or losses factored into the daily NAV of the respective scheme(s) until the position is closed or expired.

5. For schemes intending to use covered call strategy, the risks and benefit of the same, must be disclosed in the Scheme Information Document.

6. In terms of paragraphs 11 and 13 of SEBI Circular no. Cir/IMD/DF/11/2010, dated August 18, 2010 call options written shall be disclosed in the following format:

<table>
<thead>
<tr>
<th>Underlying</th>
<th>No. of contracts</th>
<th>% of underlying shares</th>
<th>Option price when sold</th>
<th>Current option price</th>
<th>Margin maintained in Rs. Lakhs</th>
</tr>
</thead>
</table>

Call options written as percentage of total market value of equity shares held in the scheme

For the period ended … specify the following for call options written which have already been exercised/expired

- Total Number of contracts entered into
- Gross Notional Value of contracts
- Net Profit/Loss on all contracts

7. For existing schemes, writing of call options shall be permitted subject to appropriate disclosure and compliance with Regulation 18 (15A) of SEBI (Mutual Funds) Regulations, 1996.

8. All other provisions of the circular dated August 18, 2010 in respect of norms for investment and disclosure by Mutual Funds in derivatives shall remain the same.

9. 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 interests of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager
16 Clarifications in SEBI (Depositories and Participants) Regulations, 2018
[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ MRD/DOP2-DSA2/CIR/P/2019/022 dated 23.01.2019.]

1. SEBI, vide notification dated October 03, 2018, issued Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 [SEBI (D&P) Regulations, 2018].

2. Stock Exchanges, Depositories, Public Financial Institutions and Public Sector Banks had sought certain clarifications from SEBI with regard to the applicability of Regulation 24 (9) and Regulation 24 (10) of SEBI (D&P) Regulations, 2018. In this regard, it is clarified that:
   (i) For the purpose of Regulation 24 (9) and Regulation 24 (10) of SEBI (D&P) Regulations 2018, a recognized clearing corporation shall not be considered as a Depository Participant.
   (ii) For the purpose of 24(10) of SEBI (D&P) Regulations 2018, in addition to the directors, employee/s of entities mentioned in Regulation 24 (10) shall not be considered as Depository Participant or their associate.

3. In view of the above, Depositories are directed to:
   (i) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
   (ii) bring the provisions of this circular to the notice of the depository participants / other market participants and also disseminate the same on their website;
   (iii) communicate to SEBI the status of implementation of the provisions of this circular through monthly development report.

4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with Section 19 of the Depositories Act, 1996 in 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 at “Legal Framework→Circulars”.

BITHIN MAHANTA
Deputy General Manager

17 Alignment of Trading Lot and Delivery Lot size
[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ CDMRD/DNPMP/CIR/P/2019/023 dated 23.01.2019.]

1. As per the IOSCO Principles for Regulation and Supervision of Commodity Derivatives Markets, with regards to the size of delivery unit for physically settled commodity derivatives contracts, “any deviation from the physical market delivery size or composition should be closely examined to ensure that it does not constitute a barrier to delivery or otherwise impedes the physical delivery of the commodity.”

2. In the commodity derivatives markets, it is observed that the stock exchanges keep differential “trading lot size” and “delivery lot size” of some commodity derivatives contracts, wherein:
   a. Trading Lot Size represents the standard quantity of the underlying commodity corresponding to a single derivatives contract position, i.e. trading can be done only in multiple of the Trading lot size, and
   b. Delivery Lot Size represents the standard quantity of the underlying commodity, in multiple of which delivery is permitted after the expiry of the contract.

3. The practice of different trading and delivery lot sizes, at times, puts participants in disadvantageous positions. The matter was discussed in CDAC and based on the recommendation of CDAC it has been decided that the exchanges shall follow the policy of having uniform trading and delivery lot size for the commodity derivatives contracts.

4. An exception to the above may be provided on case to case basis, subject to the recognized stock exchanges submitting detailed rationale including physical market practices, feedback from stakeholders etc., for keeping different lot size for trading and delivery with respect to any contract, to SEBI for approval. In such cases exchanges shall put in place an adequate mechanism to ensure that no participant is put to disadvantageous position and that it does not constitute a barrier to delivery or otherwise impedes the physical delivery of the commodity.

5. The circular shall be effective from the date of this circular. For existing contracts with different trading lot and delivery lot size, exchanges shall submit their proposal for alignment/exemption to SEBI within one month from the date of this circular in order to comply with the provisions of this circular.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. Exchanges are advised to:
   i. to make necessary amendments to the relevant bye-laws, rules and regulations.
   ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.
   iii. communicate to SEBI, the status of the implementation of the provisions of this circular

8. This circular is available on SEBI website www.sebi.gov.in under the category “Circulars” and “Info for Commodity Derivatives”.

VIKAS SUKHWAL
Deputy General Manager

18 Revised Monthly Cumulative Report (MCR)
[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ IMD/DFS/CIR/P/2019/020 dated 22.01.2019.]


2. In line with SEBI circulars dated October 6, 2017 and December 4, 2017 on “Categorization and Rationalization of Mutual Fund Schemes”, the format of MCR has been revised and the same is placed at Annexure-A.

3. Accordingly, from April 2019 onwards, AMCs shall submit the MCR to SEBI in the revised format by the 3rd working day of each month.

4. As per the existing provision, a Mutual Fund scheme is
permitted to invest certain percentage of its AUM in schemes of same Mutual Fund or other Mutual Funds. In order to avoid such investments being considered by both the investee and investing scheme, it is clarified that the investing scheme shall exclude the same while reporting the data on AUM in the MCR.

5. 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 interests of investors in securities and to promote the development of, and to regulate the securities market.

DEENA VENU SARANGADHARAN
Deputy General Manager

Annexure - A

Name of the Mutual Fund: ________________

MCR for the period from April 2019 to ________________

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Scheme Category</th>
<th>No. of schemes as on</th>
<th>No. of Folios as on</th>
<th>Funds mobilised for the period</th>
<th>Reproc. basis/Redemp. for the period</th>
<th>Net inflow (rev)/Outflow (rev) for the period</th>
<th>Net Assets Under Management as on</th>
<th>Average Net Assets under Management for the month</th>
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<tbody>
<tr>
<td>A</td>
<td>Open ended Schemes</td>
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<td>Income/Debt Oriented Schemes</td>
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<td>Ultra Short Duration Fund</td>
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<td>Growth/Equity Oriented Schemes</td>
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<td>Multi Cap Fund</td>
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Notes
The sum of number of investors for each scheme type will not match the sub total under each scheme type as investors may be common across different scheme of different mutual funds. In addition, the above table is collation of unique investors from individual fund houses.

#AAUM of the mutual fund is the average of the daily AUM of the Mutual Fund for the month -

Inter scheme investments are excluded from the above data
19 Committees at Market Infrastructure Institutions (MIIs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/13 dated 10.01.2019.]

1. The erstwhile Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (SECC Regulations, 2012) and SEBI (Depositories and Participants) Regulations, 1996 (SEBI (D&P) Regulations, 1996), read-with circulars issued thereunder, prescribed Stock Exchanges, Clearing Corporations and Depositories (hereinafter referred to as Market Infrastructure Institutions or MIIs) to constitute various committees in order to ensure effective oversight on the functioning of MIIs.

2. Based on decisions taken by SEBI Board in its meeting dated June 21, 2018, inter alia related to rationalization of statutory committees at MIIs, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (SECC Regulations, 2018) and SEBI (Depositories and Participants) Regulations, 2018 (SEBI (D&P) Regulations, 2018), were notified on October 3, 2018 and the SECC Regulations, 2012 and SEBI (D&P) Regulations, 1996 were repealed.

3. Given that the scope of work of some of the committees at MIIs were inter-related and overlapping, SEBI Board, in its meeting dated June 21, 2018, inter alia decided to rationalize the constitution of existing regulatory committees at MIIs.

4. Accordingly, in respect of statutory committees at MIIs, the Regulation 29 of SECC Regulations, 2018 & Regulation 30 of SEBI (D&P) Regulations, 2018, reads as under:

   (1) Every recognised stock exchange / recognized clearing corporation or depositories [as applicable], shall constitute the committees as per sub-regulation (2) and sub-regulation (3).

   (2) Functional committee, comprising:
      a. Member selection committee;
      b. Investor grievance redressal committee; and
      c. Nomination and remuneration committee.

   (3) Oversight committees, comprising:
      a. Standing committee on technology;
      b. Advisory committee;
      c. Regulatory oversight committee; and
      d. Risk management committee.

   (4) The composition, quorum and functions of the committees under sub-regulation (2) and sub-regulation (3) of these regulations shall be in the manner as specified by the Board from time to time.

5. Considering that the committees at MIIs have been rationalised into aforementioned seven committees, based on consultation with MIIs, it has been decided that the functions of these seven committees, along-with the detailed composition of each committee shall be as provided at Annexure A.

6. Further, while the aforementioned annexure provides for the composition that is specific to each statutory committee at MI, the overarching principles for composition and quorum of the statutory committee at MIIs shall be as under, which shall be applicable to all committees with an exception for Investor Grievance Redressal Committee (IGRC):

   a. On each committees at MIIs, except IGRC, the number of Public Interest Directors (PIDs) shall not be less than the total number of shareholder directors, Key Management Personnel (KMPs), independent external persons, etc. put together, wherever shareholder directors, KMPs, independent external persons, etc. are part of the concerned committee.

   b. PID shall be chairperson of each committee at MI.

   c. To constitute the quorum for the meeting of the MI committee, the number of PIDs on each of the committees at MIIs shall not be less than total number of other members (shareholder directors, KMPs, independent external persons, etc. as applicable) put together.

   d. The voting on a resolution in the meeting of the committees at MIIs shall be valid only when the number of PIDs that have cast their vote on such resolution is equal to or more than the total number of other members (shareholder directors, KMPs, independent external persons, etc., as applicable) put together who have cast their vote on such resolution.

   e. The casting vote in the meetings of the committees shall be with the chairperson of the committee.

   f. Apart from that specifically provided in the Annexure, whenever required, a committee may invite Managing Director, other relevant KMPs and employees of the MI. However such invitee shall not have any voting rights.

As regards the composition and quorum of IGRC, the same shall be as prescribed in the enclosed Annexure A.

7. Further, MIIs are directed to adhere to the following:

   a. Over and above the statutory committees mentioned at point 4 above, the committees that are mandated by relevant law for listed companies shall apply mutatis mutandis to MIIs.

   b. MIIs shall lay down policy for the frequency of meetings, etc., for the statutory committees.

   c. PIDs in Committees at MIIs:
      i. SECC Regulations 2018 and SEBI (D&P) Regulations 2018 prescribe that a PID on the board of a MII shall not act simultaneously as a member on more than five committees of that MII.

      ii. It is clarified that the above limitation on maximum number of committees that a PID can be member of, shall be applicable only to statutory committees prescribed by SEBI under SECC Regulations 2018 and SEBI (D&P) Regulations, 2018, and circulars issued thereunder. The said requirement shall not be applicable to committees constituted under Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements), 2015, amongst others.

      iii. In case of non-availability of adequate number of PIDs in a MII, the relevant MII shall take steps to induct more PIDs in order to fulfil the requirement of composition of committees within a MII.

   d. Meeting of PIDs:
      i. As per code of conduct for PIDs provided in SECC Regulations 2018 & SEBI (D&P) Regulations 2018, the PIDs shall be required to meet separately every six months. It is added that all the PIDs shall necessarily attend all such meetings of PIDs.

      ii. The objective of such meetings, shall include inter alia reviewing the status of compliance with SEBI letters/ circulars, reviewing the functioning of regulatory departments including the adequacy of resources dedicated to regulatory functions, etc. PIDs shall also prepare a report on the working
of the committees of which they are member and circulate the same to other PIDCs. The consolidated report in this regard shall be submitted to the governing board of the MIIs. Further, PIDCs shall identify the important issues which may involve conflict of interest for the MII or may have significant impact on the market and report the same to SEBI, from time to time.

e. Independent external persons in committees at MIIs:

i. The independent external persons forming a part of committees shall be from amongst the persons of integrity, having a sound reputation and not having any conflict of interest. They shall be specialists in the field of work assigned to the committee; however they shall not be associated in any manner with the relevant MII and its members.

ii. MIIs shall frame the guidelines for appointment, tenure, code of conduct, etc., of independent external persons. Extension of the tenure may be granted to independent external persons at the expiry of the tenure, subject to performance review in the manner prescribed by SEBI for PIDCs. Further, the maximum tenure limit of Independent external persons in a committee of MII shall be at par with that of PIDCs, as prescribed under Regulation 24(3) of the SECC regulations 2018.

8. On the aspect related to commencement of operations by a newly recognised stock exchange/ clearing corporation, it has been decided that the recognised stock exchange after grant of recognition can commence trading operations with a minimum of 25 trading members, in place of earlier requirement of minimum of 50 trading members. Similarly, a newly recognised clearing corporation can now commence clearing and settlement operations with a minimum of 10 clearing members, in place of earlier requirement of minimum of 25 clearing members.

9. As stated in Regulation 52 (1) of SECC Regulations, 2018, SEBI circular no. CIR/MRD/DSA/33/2012 dated December 13, 2012 and circular no. SEBI/HO/MRD/DSA/CIR/P/2016/30 dated January 22, 2016 stand repealed with the issuance of this circular. Further, following circulars stand partially amended as under:


b. Clause 3 of SEBI circular no. SEBI/HO/DMS/CIR/P/2017/15 dated February 23, 2017 and Clause no. 2 (B) of SEBI circular no. CIR/CDMRD/DEICE/CIR/P/2017/77 dated July 11, 2017 providing for composition and functions of former committees of MIIs, stands rescinded.

c. Clause 5 of SEBI circular no. CIR/MRD/DPM/1/2015 dated January 12, 2015 on Risk management policy at depositories may be read as under: “The Depositories shall put in place mechanism to implement the Risk Management Framework through a Risk Management Committee which shall be headed by a Public Interest Director (PID).” Further, the responsibilities of the committee and other requirements of the circular, as provided in the said circular shall continue to be applicable to depositories.

d. In SEBI circular no. SEBI/HO/CDMRD/DMP/CIR/P/2016/103 dated September 27, 2016, references to ‘Risk management committee’ shall be replaced with ‘Membership selection committee’.

10. The MIIs shall submit a confirmation report to SEBI with regard to the formation and composition of the Committees listed out in the Annexure A and compliance with other norms prescribed in the circular, at the earliest but not later than three months from the date of this circular.

11. MIIs are directed to:

a. take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;

b. bring the provisions of this circular to the notice of their members and also disseminate the same on their websites; and

c. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.

12. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 and Section 19 of the Depositories Act, 1996, to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.

13. This circular is available on SEBI website at www.sebi.gov.in at “Legal Framework→ Circulars”. BITHIN MAHANTA

Deputy General Manager

Annexure-A not published here for want of space. Readers may log on to sebi.gov.in.

20 Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered and used by Market Infrastructure Institutions (MIIs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ MRD/DOP1/CIR/P/2019/24 dated 31.01.2019.]

Background

1. SEBI is conducting a survey and creating an inventory of the AI / ML landscape in the Indian financial markets to gain an in-depth understanding of the adoption of such technologies in the markets and to ensure preparedness for any AI / ML policies that may arise in the future.

Scope definition

2. Any set of applications / software / programs / executable / systems (computer systems) – cumulatively called application and systems, to carry out compliance operations / activities, where AI / ML is used for compliance or management purposes, is included in the scope of this circular. In order to make the scope of this circular inclusive of various AI and ML technologies in use, the scope also covers Fin-Tech and Reg-Tech initiatives undertaken by MIIs that involves AI and ML.

3. Technologies that are considered to be categorized as AI and ML technologies in the scope of this circular, are explained...
### Regulatory requirements

4. All MIIs shall fill in the AI / ML reporting form (Annexure B) in respect of the AI or ML based applications or systems as defined in Annexure A offered or used by them, and submit the same in soft copy only at AI_MII_SE@sebi.gov.in (for Stock Exchanges) / AI_MII_DEP@sebi.gov.in (for Depositories) / AI_MII_CC@sebi.gov.in (for Clearing Corporations) to SEBI on a quarterly basis within 15 days of the expiry of the quarter, with effect from quarter ending March 31, 2019.

5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular is available on SEBI website at www.sebi.gov.in at “Legal Framework—Circulars”.

**Amit Tandon**
Deputy General Manager

### Annexure A – Systems deemed to be based on AI and ML technology

Applications and Systems belonging but not limited to following categories or a combination of these:

1. Natural Language Processing (NLP), sentiment analysis or text mining systems that gather intelligence from unstructured data. – In this case, Voice to text, text to intelligence systems in any natural language will be considered in scope. Eg: robo chat bots, big data intelligence gathering systems.

2. Neural Networks or a modified form of it. – In this case, any systems that uses a number of nodes (physical or software simulated nodes) mimicking natural neural networks of any scale, so as to carry out learning from previous firing of the nodes will be considered in scope. Eg: Recurrent Neural networks and Deep learning Neural Networks.

3. Machine learning through supervised, unsupervised learning or a combination of both. – In this case, any application or systems that carry out knowledge representation to form a knowledge base of domain, by learning and creating its outputs with real world input data and deciding future outputs based upon the knowledge base. Eg: System based on Decision tree, random forest, K means, Markov decision process, Gradient boosting Algorithms.

4. A system that uses statistical heuristics method instead of procedural algorithms or the system / application applies clustering or categorization algorithms to categorize data without a predefined set of categories.

5. A system that uses a feedback mechanism to improve its parameters and bases it subsequent execution steps on these parameters.

6. A system that does knowledge representation and maintains a knowledge base.

### Fee Concession to Physically Challenged Members @ 25% w.e.f. 1st April, 2019

Members who are physically challenged and not in any gainful employment or practice may seek concession in annual membership fee @ 25% w.e.f. 1st April, 2019. This concession is also applicable additionally to members who are of the age of sixty/seventy years or above and not in any gainful employment or practice. The member needs to submit a medical certificate and a declaration to this effect for seeking this concession.

### Obituaries

Chartered Secretary deeply regrets to record the sad demise of the following Members:

**CS Gopal Sitaram Jogani** (10.05.1977 – 01.11.2018), an Associate Member of the Institute from Mumbai.

**CS Anil Kumar Gupta** (30.01.1967 – 31.12.2018), an Associate Member of the Institute from Mohali.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.
NEWS FROM THE INSTITUTE

- Members restored during the month of December 2018
- Certificate of practice surrendered during the month of December 2018
- Know Your Member (KYM)
- Notice
MEMBERS RESTORED DURING THE MONTH OF DECEMBER 2018

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<td>35165 MS. KHOOSOO AGARWAL</td>
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<td>37206 MS. BARKHA ARORA</td>
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<td>37628 MS. CHARU JAIN</td>
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<td>38745 MS. JESICA SAMSON SHAPURKAR</td>
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<td>39600 MS. SHIVI GARG</td>
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<td>40328 MR. SARVIK SINGHAI</td>
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<td>40645 MR. PRINCE JAIN</td>
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<td>41117 MR. KHANISH JUNEJA</td>
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<td>44828 MR. VINEET SUBHASH SINGH</td>
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<td>45079 MS. NIDHI SHARMA</td>
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<td>102</td>
<td>A</td>
<td>48403 MR. MAYUR JAIISINGH</td>
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</table>
CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF DECEMBER 2018

SL. NO. | NAME | ACS/FCS NO. | COP NO. | REGN
--- | --- | --- | --- | ---
1 | SH. KRISHNA GOPAL MUJAWDIYA | F - 2630 | 2268 | WIRC
2 | SH. VIVEK SINHA | F - 9294 | 5215 | NIRC
3 | SH. ESHWAR SABAPATHY | F - 6097 | 5280 | SIRC
4 | SH. SANDEEP GAMBHIR | F - 9428 | 5697 | NIRC
5 | MRS. AANCHAL GOENKA | A - 27471 | 9868 | WIRC
6 | MS. RASHMI CHHOTALAL SARVAIYA | F - 8771 | 11446 | WIRC
7 | MS. JYOTI JAIN | A - 31247 | 12785 | EIRC
8 | MS. SHALINI KASHYAP | A - 32383 | 12847 | NIRC
9 | MS. VANITA ARORA | A - 34930 | 13382 | NIRC
10 | MR. NIHANT KAMNANI | A - 36625 | 13822 | NIRC
11 | MS. RENU | A - 38898 | 14672 | NIRC
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14 | MS. SWATI SETHI | A - 41536 | 15538 | WIRC
15 | MR. NILESH SHARMA | A - 43178 | 16062 | WIRC
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30 | MR. SUBHAJIT MUKHERJEE | A - 43989 | 19189 | EIRC
31 | MS. SIRISHA CHINTAPALLI | A - 15822 | 19786 | SIRC
32 | MS. NUPUR BIRANI | A - 52623 | 19889 | NIRC
33 | MS. AMRITA SARAF | A - 51052 | 20137 | EIRC
34 | MS. SONUM JAIN | A - 54135 | 20220 | EIRC
35 | MS. SEBANKA SAHA | A - 45332 | 20365 | SIRC
36 | MR. GOPAL DUTTA | A - 46464 | 20487 | EIRC
37 | MS. KAPILA KANDEL | A - 52540 | 20633 | NIRC
38 | SH. MAHESHWAR CHAND GUPTA | F - 2702 | 20797 | EIRC
39 | SH. VENKAT RAO | A - 10340 | 20912 | NIRC
40 | MS. RAJNI KOHLI | A - 35298 | 20919 | NIRC
41 | MS. SHILPA MURLIDHARU PAWANKAR | A - 24330 | 20996 | WIRC
42 | MS. GUNJAL KATARUKA | A - 52475 | 21298 | WIRC
43 | SH. ANURAG UPADHYAYA | A - 14305 | 21300 | NIRC
44 | MS. PRANJALI SINGH | A - 44336 | 21387 | NIRC
45 | SH. RAKESH KUMAR GUPTA | F - 5951 | 21944 | WIRC

ATTENTION!

The last date for payment of annual membership fee was 31-08-2018 and for renewal of certificate of practice was 30-09-2018. The members who have not paid their annual membership fee and/or certificate of practice fee by the last date are required to restore their membership and/or certificate of practice by paying the requisite entrance and restoration fees alongwith the applicable annual membership fee and annual certificate of practice fee with GST@18% on the total fee payable. Members are required to submit Form–BB for restoration of membership and Form-D for restoration of certificate of practice duly filled and signed. For more clarification, please write at jitendra.kumar@icsi.edu for restoration of membership and vidhya.ganesh@icsi.edu (for restoration of certificate of practice).
The second bi-annual Convocations of 2018 were successfully held in the eastern, northern and western regions for awarding certificate of membership to Associate & Fellow members admitted during the period from 1st April, 2018 to 30th September, 2018 and to award prizes / medals to meritorious students (National) and winner students of national level competitions. The details are as under:

<table>
<thead>
<tr>
<th>Region</th>
<th>Date &amp; Venue</th>
<th>Session</th>
<th>Number of members &amp; student awardees present to receive the award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern</td>
<td>Held on 17th December, 2018 at Bhasa Bhavan Auditorium, National Library, Alipore, Kolkata</td>
<td>Morning: Chief Guest Shri. R. Bandyopadhyay, IAS (Retd.) Former Secretary, MCA, GOI, Guest of Honour Shri Pradip Kumar Ghosh Pro Vice Chancellor, Jadavpur University Special Guest Shri Yogesh Gupta, IPS Special Director, ED</td>
<td>ACS-112 FCS-4 Student Awardee-2</td>
</tr>
<tr>
<td>Northern</td>
<td>Held on 2nd January, 2019 at Sirifort Auditorium, New Delhi</td>
<td>Morning: Chief Guest Hon’ble Justice (Retd.) Shri Dilip Raosaheb Deshmukh Former Chairman Company Law Board Afternoon: Chief Guest Shri R. Krishnan Past President, ICSI &amp; Managing Director, Associated Global Vat LLP</td>
<td>ACS-199 FCS-13 Student Awardee-7</td>
</tr>
<tr>
<td>Western</td>
<td>Held on 11th January, 2019 at Birla Matushree Sabhaughar (Bombay Hospital), New Marine Lines, Mumbai</td>
<td>Morning: Chief Guest Dr. Mohan Kaul President, Indian Professionals Forum, United Kingdom Guest of Honour Shri Vijay Kumar Jhalani, Govt. Nominee, ICSI Council Afternoon: Chief Guest Shri Praveen Kumar Gupta Managing Director (Retail &amp; Digital Banking), State Bank of India Guest of Honour Shri Sanjay Deshmukh Former Vice Chancellor University of Mumbai</td>
<td>ACS-177 FCS-7 Student Awardee-9</td>
</tr>
</tbody>
</table>
MISCELLANEOUS CORNER

- ETHICS & SUSTAINABILITY CORNER
- GST CORNER
- CG CORNER
- GLOBAL CONNECT
- HAND BOOK OF COMPANY LAW PROCEDURES
- GAZETTE NOTIFICATION
What is it that gives exactly as much as it takes? It goes around and comes around in equal measures? What shows an effect but hides its cause? The answer to all these questions is KARMA.

The very first thing we learn to do the moment we are born is to breathe. But then, wait a minute, we don’t really keep it with us; we must give it back. This is the ongoing rhythm of life. This is the natural law of reciprocity. We start by taking what we end up giving back. This is the law of cause and effect. This unwritten law encompasses every action we perform. This is the law of flawless justice. We always get the return of everything we give.

So, who writes my destiny? And whom am I supposed to approach if I want something to be changed in my destiny? This will need the understanding of the types of karma. There are 2 levels of Karma-

1. **Gross** - where actions done are seen and understood at the gross level; and,

2. **Subtle** - where physical actions are not involved and the acts done are not seen but felt by the originator and by one for whom the act was intended. Eg: thinking negative or positive about someone is not a physical action but a subtle karma.

The gross karma is reflected by our skills, actions and behaviour, which is only 10% or the tip of our karma iceberg. The rest 90% or the base of the iceberg is our subtle karma. This base (90%) impacts the tip (10%). And they altogether create our attitude or sanskars.

In today’s life, we have unknowingly created an equation of being in a state of mind as per the situations we are surrounded with in outside world. If my situation is the way I wanted it to be, then I am happy but if the situation is not my way, then me getting disturbed and becoming unhappy is normal and definite (as per our created equation). On top of it, we often get to hear if situations are not my way, then it is normal and natural to get upset and disturbed. But here we need to pause and think and question ourselves - had this formula been right, then everything happening in our day to day life would have been very easy to accept and we would not have been mourning or crying basis the situations of life. We allow thoughts of pain, regret and disturbances to be created in our mind and keep on getting disturbed based on situations in life and crave for happiness, love and peace. It is like cooking disturbance and wanting to eat happiness, creating disturbance and craving for peace. But we feel that for our peace, situations have to be our way. So as per our belief system, if a big crowd is sitting in an auditorium with a big screen on sides to facilitate clear view of the stage, and the screen stops working due to some technical issues (a situation), then people sitting at back would get disturbed. Then as per our belief system, every individual sitting at back should get equally disturbed, does it happen the same way? The answer is “NO”. Also, what is the reason of disturbance-(a) screen not working (b) someone from IT responsible for the technical issues or (c) thoughts created in minds which is different for every individual? Now we get the answer, whether the screen is working or not, the main role is being played by the thoughts created in the minds which solely depend upon the power of the souls (gained through Rajyoga Meditation). This is just an example. Likewise, there are countless reasons/ situations which disturb us as per our belief system. We keep on blaming one or the other for our disturbances and pains, but the most important point to be considered here is - the moment we say we got disturbed because of this, because of that, because of him/ her, we actually allow our mind to get disturbed and experience pain. We don’t stop here, we share our disturbances and pains with our family members, our friends, our relatives and our neighbours and they listen to the narrations with all the stocks of sympathy they do have and endorse our disturbances and pains. They love us so much that they also become part of our pains, saying they can feel our pains; all this happen because of our negative belief systems. Now this entire process keeps on adding and multiplying and the whole globe is thereby disturbed today because we all are contributing to it firstly by experiencing, then sharing and ultimately endorsing. As a result of all this, we can see today majority of us are disturbed because of one or other reasons, but creator and contributor of all this disturbance is we and only we. Disputes, arguments, tensions, worry, jealousy, anger, insecurity, fear-all this we have
created in our minds, spread with the people around us, absorbed by the surroundings and we have unfortunately reached to that state where we have started calling even diseases to be normal too. And irony is that if someone says “I didn’t fall sick for years”, then everyone around would react by saying “this is so abnormal” just because as per our wrong belief systems, we have accepted diseases to be normal and obvious.

Our vocabulary plays a key role in creating our destiny; the sentences framed by us, the words we use while talking to ourselves in our mind is to be taken care of to create the destiny we desire.

Thus, thoughts, words and deeds fall on a wide ranged spectrum between pure and impure. The consequences occur in the immediate short term, mid-term and long-term manner. They affect your body, mind, wealth, relationships, circumstances, opportunities etc. Sometimes we are not able to see or relate to the connections and so are not able to recognize that we are experiencing the consequences of a wrong action or set of actions, we did, or are continuing to do in this life.

Life is result of action and reaction – nothing less, nothing more. Our actions always set in motion an equal and opposite flow, we call it as reaction. Let us find out how does it work...

When we spread good vibes knowingly or unknowingly during the day, we feel great at day’s close. If you smile at someone, what are the chances that they will smile back at you, even if they don’t know you? Almost always… If you take a moment out of your routine to ring a friend in hospital or help an elderly person, positive vibes of their gratitude will reach you. Moreover, the hard work and the honest deal we do in day to day life is a recurring deposit in the account of Karma. The act itself becomes our dividend for now and its effect becomes our saving for future. Thus, avoiding or ignoring our responsibility may seem to be an easy way to do work for now, but it will lead to our own loss in future.

This means that whatever circumstances I’m in at the moment, irrespective of who or what is compelling me or repelling me; but whatever I am experiencing is only and entirely the consequence of my own prior thoughts, decisions and actions. Understanding the Law of Karma gives appropriate significance to concepts such as responsibility and justice. Factors that make a difference to our karma broadly fall in the below categories:

• Knowledge and understanding of people and events
• Upbringing by parents and family culture
• Influence of company into which a person is. As it is said in the famous Hindi proverb- jaisa sang waisa rang
• Intuition or Divine Insight, which helps us feel what we are going to say or do before we actually execute it
• Level of consciousness we are in- If we are in a right state of consciousness, then we may ignore someone else’s minor mistakes and forgive them or stop accumulation of feelings of hurt, revenge, which otherwise can trigger a wrong karma. On the other hand, we if are undergoing through a wrong state of consciousness, we might take little things too seriously.
• Inner Powers
• Ichchhamatramavidya i.e. ignorant of all traces of desires of return from karma- If we do any good karma in the desire of getting something in return, then the karma itself looses its power and it is as good as eating an unripe fruit.

Sometimes the Law of Karma is only half understood. Someone may think helplessly, “If whatever is happening to me now is because of my past actions, then there’s nothing I can do about it for now”. But if the past created the present, the present also creates the future. Instead of being a slave to one’s past, understanding the Law of Karma inspires us to actively participate in creating our own destiny which means, of course, that each moment is a unique opportunity to refrain from doing anything that will bring us pain in future and instead, sow a seed that will bring us the sweetest of fruits consequently.

The Law of Karma begins to work to my advantage when I stop habitual actions that are negative and hence harmful; also take responsibility to positively address the consequences of any such actions performed in the past and pay attention to perform positive actions from this moment onwards. How I talk to others is my Karma and how they behave with me is my fate, so now I know the relationship between Karma and Fate. Whatever is coming back to me now is what was sent from me somewhere in past. While throwing a ball on the wall
(KARMA), I do have all choices- the force with which I throw, the angle, the speed but while the ball is coming back to me, I can simply face it, can’t escape but yes the response I create now is totally my choice. We can’t prevent return of our Karma because that is the energy targeted for us.

The Law of Karma is the law of absolute justice, which is represented as the blind-folded deity who does fair justice till the cause and effect are balanced, and whose long arm reaches easily from one life to the next, enabling the soul to reap the fruit of seeds it has sown in past and to create the destiny it desires.

Rajyoga Meditation helps us in aligning our Karma on the track of goodness. We often get overpowered by the situations and feel that only after this difficult situation passes on, we could be able to sustain inner stability but as a matter of fact, this entire episode of events actually is vice versa. When we are able to sustain inner stability by aid of connecting to the supreme authority, the only resource of infinite virtues through Rajyoga Meditation, we gain power so that we are not overpowered by any such difficult situation; rather, our inner strength and stability overpowers the situation and we just cross it so easily and smoothly that we don't even realise it at all.

Every soul exists within a perpetually turning cycle of cause and effect. Every soul acts according to their sanskaras which are produced by their karma, which in turn reinforces their sanskaras. Gradually over the course of the cycle of time, the quality of consciousness declines, tying the bondages of karma ever more tightly in an escalating knot of negatively influenced phenomenon of give and take which binds the individuals concerned in intensifying forms of sufferings and sorrow.

Rajyoga helps in checking and changing our thoughts from negative to positive. It helps in quantum shift of our mind or spirit/ soul/ consciousness from body- consciousness to soul- consciousness or spiritual consciousness. It enables us to understand our karmic circumstances, empowers us to settle our ‘karmic accounts’ in the best possible ways and shows us how to accumulate ‘karmic credit’ for the future with richest dividends.

**PREMIER ON COMPANY LAW**

The publication titled ICSI Premier on Company Law (With Commentary on Companies Act, 2013) is one such attempt of the Institute to provide not only the law in all its exactness but supplement it with Commentaries and case laws on the critical issues faced by the stakeholders including the Professionals in practical application of the law.

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Also, available on Amazon website - https://www.amazon.in/Premier-Company-law-ICSI-Publications/dp/B07JC1M6N8
Appeal to Register as GST Practitioner

Dear Professional Colleagues,

The Company Secretaries are rendering various value added services to the trade and industry and acting as an extended arm of the regulatory mechanism. There are ample opportunities available for Company Secretaries in GST regime viz. Compliances, advisory, consultancy, tax planning, representational services etc. as they are well versed in understanding the nuances of laws & taxation system.

Many of our members are actively practicing in GST and are widely recognised as GST Expert. In this regard we request the members to kindly register their name as GST Practitioner and also inform to the Institute in order to facilitate ICSI stakeholders to Know About Your Expertise.

You may register yourself as GST Practitioner in the prescribed form at GST Portal available at the web link:

https://reg.gst.gov.in/registration/

Further, we request you to share your details with ICSI at the following link:

https://bit.ly/2HwIpPm

Regards

CS Ranjeet Pandey
President
ANNOUNCEMENT

Quality Review Board of ICSI invites applications for Empanelment of “Quality Reviewers”

The Ministry of Corporate Affairs has constituted the Quality Review Board of ICSI to make recommendations to the Council with regard to the quality of services provided by the members of the Institute; to review the quality of services provided by the members of the Institute including secretarial services; and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

With a view to carry out the abovementioned functions, the Quality Review Board contemplates to avail the services of senior members of the profession to assess the quality of services being rendered by Company Secretaries both in practice and in employment.

Eligibility criterion for Quality Reviewers-

A Quality Reviewer shall fulfil the criteria mentioned in para I or para II:-

I. An individual desiring to be empanelled as quality reviewer shall:
   a) Be a Fellow member of ICSI; and
   b) Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
   c) Be currently in practice of the profession of company secretaries.”

II. An individual desiring to be empanelled as quality reviewer shall be
   a) An empanelled Peer Reviewer in terms of the Guidelines for Peer Review of Attestation Services by PCS has completed minimum 2 assignments of Peer Review.

Provided that the term of Quality Reviewer shall be three years subject to maximum six (6) months from the date of surrender of Certificate of Practice.

The Quality Review Board shall pay to the Quality Reviewer a fee of Rs. 25,000/- per quality review subject to submission of Quality Review Report. The Quality Reviewer shall bear the cost of travel, local transport, food, taxes, communications, printing, cost of submission of report etc.

The Quality Reviewer shall be reimbursed the cost of to and fro travel to the station nearest to the Practice Unit subjected to Quality Review from the place of his residence in accordance with the travel policy approved by the Board.

Interested members may kindly apply in the format available at https://goo.gl/TJQVsd and send it to Director, Professional Development, Perspective Planning & Studies, The Institute of Company Secretaries of India, C-36, Sector-62, Noida-201 309.

Contact Details : qrb@icsi.edu/ 0120-4082172/27
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Phone: 02266119696 Email: resumes@mangalamjobs.com
1. GST Revenue collection for January 2019 crossed one lakh crore rupees
   - The total gross GST revenue collected in the month of January, 2019 is Rs 1,02,503 crore of which CGST is Rs 17,763 crore, SGST is Rs 24,826 crore, IGST is Rs 51,225 crore (including Rs 24,065 crore collected on imports) and Cess is Rs 8,690 crore (including Rs 902 crore collected on imports).
   - In FY 2018-2019, it is for the third time that GST Revenue collection has crossed One Lakh Crore.
   - The total number of GSTR-3B Returns filed for the month of December up to 31st January, 2019 is 73.3 lakh.
   - The collection in January 2019 is a significant increase from the collection of Rs 94,725 crore in December, which was a decline from Rs 97,637 crore in November and Rs 1,00,710 crore in October.
   - January 2019 collections are 14% above the January 2018 collections of Rs 89,825 crore. This jump has been achieved despite various tax reductions having come into force that provided major relief to the consumers. The gross GST collections over the last three-month period has been 14% higher than the corresponding period last year.

The following Chart shows Trends in Revenue during the Current Financial Year 2018-19 as compared to the Last FY 2017-18:

2. Rising Revenue Trend prompted Government to estimate 18% growth in FY20 GST Collections: Ajay Bhushan Pandey
   - The Government has projected over 18 percent growth in GST collections in 2019-20 based on the rising trend in revenue mop up witnessed during the three-month period ending January 2019, Revenue Secretary Ajay Bhushan Pandey said.
   - The central government plans to collect over Rs 7.61 lakh crore in Goods and Services Tax next fiscal as against the revised estimate of over Rs 6.43 lakh crore to be collected in the current financial year ending March.
   - However, the collection during this fiscal would be less by Rs 1 lakh crore from the Rs 7.43 lakh crore estimated in the budget for 2018-19.
   - Last fiscal, our average collection was Rs 89,000 crore. This fiscal, we are averaging Rs 97,000 crore. So, the revenue trend is on an upward scale. If one compares November, December, January of 2017-18 with that of 2018-19, one can see a 14 percent increase. So, based on this assessment, we have given the increase for next year said Ajay Bhushan Pandey, Revenue Secretary.
   - He said during the last one-and-half years, a series of measures, both in raté rationalisation and processes, have been undertaken.
   - The changes made to the GST system will hopefully lead to consolidation next year, which in turn will result in higher revenue, Pandey told PTI. “Based on that, we have given the estimate.”

3. New IT system to soon bar e-way bills if GST returns not filed for 6 months
   - Non-filers of GST returns for 6 consecutive months will soon be barred from generating e-way bills for movement of goods.
   - The Goods and Services Tax Network (GSTN) is developing such IT system that businesses who have not filed returns for two straight return filing cycle, which is 6 months, would be barred from generating e-way bills, an official said.
   - “As soon as the new IT system which will ensure barring of e-way Bill generation if returns are not filed for 6 months is put in place, the new rules will be notified,” an official told PTI.
   - The move, officials believe, would help check Goods and Services Tax (GST) evasion.
   - Central tax officers have detected 3,626 cases of GST evasion/violations cases, involving Rs 15,278.18 crore in April-December period.
   - Touted as an anti-evasion measure, e-way bill system was rolled out on April 1, 2018, for moving goods worth over Rs 50,000 from one state to another. The same for intra or within the state movement was rolled out in a phased manner from April 15.
   - Transporters of goods worth over Rs 50,000 would be required to present e-way bill during transit to a GST inspector, if asked.
   - Officials feel that to shore up revenue and increase compliance, stringent anti-evasion measures have to be put in place.
   - To this effect the revenue department is working towards integrating that e-way bill system with NHAI’s FASTag mechanism beginning April to help track movement of goods.
   - It has come to the investigative officers’ notice that some transporters are doing multiple trips by generating a single e-way bill. Integration of e-way bill with FASTag would help find the location of the vehicle, and when and how many times it has crossed the NHAI’s toll plazas.

4. Cabinet clears setting up of national bench of GST Appellate Tribunal (GSTAT)
   - The Cabinet approved setting up of the national bench of the appellate tribunal for disputes arising under goods and services tax (GST).
   - GSTAT would be the first common forum of dispute resolution between the Centre and states, and an adjudication authority on distinct orders passed by different state-level appellate authorities on the same issue of law. The GSTAT bench would be situated in Delhi and be presided over by the president along with two technical member — one each from the Centre and state.
   - “The creation of the national bench of GSTAT would amount to one-time expenditure of 92.50 lakh while the recurring expenditure would be 6.86 crore per annum,” the government said in a statement.
   - Since GST was launched in July 2017, the state-level authorities of advance ruling (AARs) gave divergent orders on applications dealing with the same provision of
the GST Act. Besides, some of the rulings have upended conventional tax principles established in the earlier regimes.

- For instance, Delhi AAR ruled that duty free shops at an airport would have to pay GST as it operated from within the country’s borders and hence its sales could not be classified as exports. Similarly, AARs in Maharashtra and Karnataka arrived at two different GST rates to be applicable for setting up solar power plants.
- The government said being a common forum, GSTAT will ensure that there is uniformity in redressal of disputes arising under GST, and therefore, in implementation of the tax regime across the country.
- National bench of the GST Appellate Tribunal will act as forum for second appeal in case of dispute.

5. Mining industry pushes for single GST to supersede multiple levies

- The country’s mining sector, distressed by a multitude of levies like royalty and contributions to the District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET), has advocated a uniform Goods & Services Tax (GST) to overcome the multiplicity of taxes.
- Royalty rates on minerals in the country are the highest among resource-rich nations and a cocktail of levies makes India top the list of nations with steep effective taxation rate (ETR) on mining.
- The cumulative effect of royalty, DMF and NMET amounts to 19.8 per cent of the IBM (Indian Bureau of Mines) sales price, blunting the competitive edge of mining. Miners also feel this is a case of double taxation since royalty is calculated on the average iron ore sales price published by IBM.

6. GST, excise, service tax evasion shoots up to Rs 48,555 crore in Apr-Dec

- GST, central excise and service tax evasion detected during the April-December period of the current financial year stood at Rs 48,555 crore, the highest in two years.
- During the period, 8,917 cases of evasion of central excise, service tax and GST were detected involving an amount of Rs 48,555.06 crore, Ministry of State for Finance Shiv Pratap Shukla said in a written reply to the Rajya Sabha.
- Of this, investigation in 3,626 cases of GST evasion/ violations was initiated till December in the current financial year by Central GST (CGST) formations.

7. Taxman may examine high usage of input tax credit to set off GST liability

- Concerned over a decline in GST revenues, tax officials are likely to examine the high usage of input tax credit (ITC) to set off tax liability by businesses, sources said.
- The issue of high ITC was flagged at the meeting of the Group of Ministers (GoM) which was set up by the GST Council to look into the reasons for revenue shortfall being faced by a large number of states.
- According to sources, availing ITC ideally should not result in loss of revenue but there could be possibility of misuse of the provision by unscrupulous businesses by generating fake invoices just to claim tax credit.
- During the meeting of the GoM, it was pointed out that as much as 80 per cent of the total GST liability is being settled by ITC and only 20 per cent is deposited as cash.
- GST revenue has averaged around Rs 96,000 crore per month so far this fiscal and this reflects the cash component being deposited by businesses.

8. GSTN develops system to fetch e-way bill data into monthly sales returns to curb evasion

- Now, businesses supplying goods worth more than Rs 50,000 will have option to include details of e-way bills generated while filing the final monthly sales return under GSTR-1, a move aimed at curbing tax evasion by reporting different sets of supplies data.
- Matching of invoices of e-way bills with the sales shown in GSTR-1 will help taxmen in assessing the possibility of ITC being claimed on the basis of fake invoices, a source said.
- Once the new return filing system becomes operational, it would become possible for the department to match the ITC claims and taxes paid on a real time basis.
- The revenue department would now analyse the large number of ITC claims to find out if they are genuine or based on fake invoices and take corrective action, sources said.

- Under the present dispensation, there is no provision for real time matching of ITC claims with the taxes already paid by suppliers of inputs.
- The matching is done on the basis of system generated GSTR-2A, after the credit has been claimed. Based on the mismatch highlighted by GSTR-2A and ITC claims, the revenue department sends notices to businesses.
- “Currently there is a time gap between ITC claim and matching them with the taxes paid by suppliers. Hence there is a possibility of ITC being claimed on the basis of fake invoices,” a source said.
- The government said being a common forum, GSTAT will ensure that there is uniformity in redressal of disputes arising under GST, and therefore, in implementation of the tax regime across the country.
- National bench of the GST Appellate Tribunal will act as forum for second appeal in case of dispute.
reported up to 50 B2B and B2C large invoices in a month. *Since these invoices can be easily seen on the screen, facility to import the data directly into GSTR-1 has been provided for such taxpayers. These taxpayers can edit the details imported in GSTR-1, if required, and then file their Form GSTR 1 online after adding other details like B2C supplies,” GSTN said.

- For those having more than 50 invoices but up to 500, have been provided facility to download the data in a prescribed ‘csv’ file format, which can then be imported into GSTR 1 offline tool.
- In case the number of invoices is more than 500, the invoice details can be imported from return Dashboard on GST portal as a ‘zip’ file. Tax payer can add more invoices (like those below Rs 50,000 in value) and upload in offline tool to prepare his/her return.
- Linking of e-way bill data with GSTR-1 would help taxmen keep a tab on whether the supplies shown in e-way bill matches the sales shown in the returns form and thereby check evasion.

9. Proposal to encourage taxmen to file GST profiteering complaints on anvil
- The GST officials are working out mechanism to prompt taxmen to initiate profiteering complaints, which could be taken up for further investigation by the Directorate General of Anti-Profitereing.
- Currently, only consumers file complaints against businesses for not passing on the benefits of reduction of the rates of Goods and Services Tax (GST) on various products.
- Under the standard operating procedure (SoP) being worked out by the GST officials, the Central and State Government Tax Officers will be encouraged to take up suo moto the issue of profiteering by businesses, sources said.
- Once the tax officers find that GST benefits have not been passed on to the consumers, they will refer the case for further investigation to the Directorate General of Anti-Profitereing (DGAP).
- As per the procedure, the DGAP submits its investigation report to the National Anti-Profitereing Authority (NAA), which decide on the final quantum of profiteering and the monetary penalty.
- In 2018, the NAA received 80 investigation reports from the DGAP and issued final orders in 29 cases. Of this, 9 businesses were found to have not passed on benefits of rate cuts of about Rs 559.90 crore to consumers.
- So far in 2019, the NAA has passed orders in 3 cases.
- Sources said as consumers often are reluctant to file complaints, the GST officials and the NAA are keen to rope in the field formation for filing complaints of profiteering against businesses.
- Sources further noted that consumers usually lag the expertise to ascertain whether the GST rate cut benefits have been passed on to them by way of reduction in prices. The tax officials, they said, will be able to find out with greater certainty, whether the tax cut benefits have been passed on to the consumers.
- The proposed mechanism will also act as a deterrent for businesses who show reluctance in passing on GST benefits.
- The GST has replaced a tangle of local taxes and entry levies. Since its roll out on July 1, 2017, GST Council has reduced tax rates on a host of items.
- Of the 1,216 commodities being used at present, broadly 183 are taxed at zero rate, 308 at 5 per cent, 178 at 12 per cent, 517 at 18 per cent and 28 items in the 28 per cent slab.

CORPORATE GOVERNANCE CORNER

Developments – January, 2019

Hong Kong: the Companies (Amendment) (No 2) Ordinance 2018

The new Companies Ordinance (Cap. 622) (new CO) which commenced operation in March 2014, provides for a modern statutory framework for the incorporation and operation of companies in Hong Kong. A number of measures have been introduced under the new CO to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of small and medium-sized enterprises.

The Companies (Amendment) (No. 2) Ordinance 2018 (the Amendment Ordinance) seeks to incorporate new developments after the commencement of the new CO and clarify the policy intent or remove ambiguities or inconsistencies in the new CO. The amendments include expanding the scope for simplified reporting, updating the accounting-related provisions to reflect the latest accounting standards, and streamlining and clarifying provisions to facilitate compliance. The Amendment Ordinance is effective from 1st February 2019.

The Amendment Ordinance brings the new CO further in line with prevailing accounting standards and reduces compliance costs. This would help strengthen Hong Kong’s position as an international commercial and business centre.


Gibraltar: The Companies (Amendment) Bill 2019

To amend the Companies Act 2014, the Companies (Amendment) Bill 2019 was published in the Gibraltar Gazette on 30th January 2019. The short explanatory memorandum at the end of the Bill states: “This Act amends Parts XII, XIV, XV, XVI, and Schedule 26 of the Companies Act 2014. The amendments extend the provisions relating to the registration or establishment in Gibraltar of a branch or place of business by overseas companies, to overseas entities having a legal personality other than companies”.

Hand Book of Company Law Procedures

Co-Author By:
Pavan Kumar Vijay, Ankit Singhi, Vinod Kumar Aggarwal, Manoj Kumar, Anjali Aggarwal, Mohini Varshneya, Nilesh Latwal, Shivan Singhal

Published by: Wolters Kluwer (India) Pvt. Ltd.
Pages: 1,456 Price: Rs.1,995

"Hand Book of Company Law Procedures" is a comprehensive book which covers 150 procedures under the Companies Act, 2013 and the rules made thereunder under, Liquidation of a company under the Corporate Insolvency Resolution Process (CIRP) as well as Voluntary Liquidation of a Company under IBC division and reference as div. 1.

The Authors have covered all the routine procedural aspects relating to incorporation and compliance part at every stage before the winding up process and further procedures under the Insolvency and Bankruptcy Code, 2016 relating to Corporate Insolvency Resolution Process (CIRP) as well as Voluntary Liquidation of a Company under IBC has been covered briefly as well as the authors have also covered the related compliances under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the applicable Secretarial Standards where ever were relevant in the procedure part.

The Book is a compendium of every type of compliances in the bullet point presentations as well relevant draft of the relevant resolutions which are properly updated and has covered the amendments made by the Companies (Amendment) Ordinance, 2018 (effective from 2nd Nov., 2018) updated status of the law, for providing entire clarity relating to significant aspects of compliance of company law and rules made thereunder.

However, the book does not cover some of the chapters of the Company Law relating to Inspection, Inquiry and Investigation, Winding up, Companies Authorised to Register under the Companies Act, Government Companies, Registration Offices and Fees and Nidhi Companies as these are used rarely in the routine compliance part.

The book shall provide proper guidance to the Companies and simplify working of the management and professionals engaged in the Compliance work for proper and adequate compliances.

The learned team of authors with their long professional background and diversified expertise and experience have provided procedures for step by step activities with minimum and maximum time required to complete the procedural compliance task which is really significant contribution to the subject and provide thorough source of knowledge in practical working.

The Book also has reference division which provides section and rules wise list of forms, text of the various physical forms, draft of various notice with relevant titles for easy reference and understanding for the corporate professionals, Board of directors, auditors and account’s and secretarial department as a whole.

Now a days, it is very difficult for the corporate professionals to update themselves related to frequent changes made in the law, rules and regulations and to synchronise them with other laws, therefore, they need to update their professional knowledge and comply with the requirement properly and timely.

The Company Law emphasizes mainly on transparency, proper and timely disclosure by the companies as may be required according to their status as OPC, Small Company, Specified Company, Listed Company, NBFC, Section 8 Company, Government Company, etc.

It has been observed that detailed procedural requirements are covered along with the draft of the resolutions regarding important chapters which is used by professionals frequently i.e. incorporation of company, Share capital and Debentures, Acceptance of Deposits, Management and Administration, Audit and Accounts, Appointment and Qualifications of directors, Meetings of the Board and its Powers, Appointment and Remuneration of Managerial Personnel, etc. All the procedures provide one shot requirements and guidance about the procedural aspects which shall be definitely a tremendous source of knowledge for proper planning, since inceptions to the end of related compliances.

Presently, there is no such book related to compliance requirement. Therefore, I am sure that the readers will find this book a very useful source of knowledge for their practical use while discharging their duties as a corporate professionals and will also be helpful for the corporates, auditors and Adjudicating authority.

Careful reading of the book will put the concerned in good stead and they will be in a position to act with sheer confidence as corporate professionals and will also be helpful for the corporates, auditors and Adjudicating authority.

Non-compliance with the requirement towards compliance of Company Law is being reviewed by the regulators and judiciary and may cause sever penal action. Lack of knowledge and unfair practice to carry certification work will be looked seriously and will be equally harmful to the certifying professionals as well entire corporate sector and the director’s community. Therefore, the book has been designed to serve as a complete guide for company law consultants and Key Managerial Personnel towards the related requirements and providing them adequate knowledge.

The authors are complimented and appreciated for their book on "Hand Book of Company Law Procedures".

CS (Dr.) D.K. Jain
Member, Editorial Advisory Board of Chartered Secretary.
भारत का सार्वजनिक नियोजन

अधिसूचना

EXTRAORDINARY

भाग III—खण्ड 4

PART III—Section 4

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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भारतीय कम्पनी सचिव संस्थान

अधिसूचना

नई दिल्ली, 18 जनवरी, 2019

2019 संख्या 1.—कम्पनी सचिव अधिनियम 1980 की धारा 23 और कम्पनी सचिव विनियमन लिस्ट, 1982 के साथ पट्टा कम्पनी सचिव (परिषद के बुनावट) नियमावली, 2006 के अंतर्गत जारी 17 दिसम्बर, 2018 की अधिसूचना सं. 2 के अनुसार में परिषदी भारत क्षेत्रीय परिषद के 11 सदस्यों के लिए बुधवार 16 और 17 जनवरी, 2019 को मुंबई में और अन्य स्थानों पर 16 जनवरी, 2019 को आयोजित किए गए। 18 जनवरी, 2019 को महीने की गणना के बाद परिषदी भारत क्षेत्रीय निर्वाचन क्षेत्र से निर्मलिखित उम्मीदवारों को (निर्वाचन क्रमांक) निर्वाचित घोषित किया गया है:

1. सीईस कोठोडिया आशीष (एफसीसीएस–6549)
2. सीईस चापक पवन घनायामुदास (एफसीसीएस–6429)
3. सीईस राह रोहित वेंकतान (एफसीसीएस–6114)
4. सीईस शलिष्टकुंडल राजेंद्र पद्माकर (एफसीसीएस–6254)
5. सीईस लवणा राजेंद्र छानामाई (एफसीसीएस–6185)
6. सीईस नीरवाक अमृता दिलीपचंद (सुप्री) (एफसीसीएस–5079)
7. सीईस चीतवरी योगेश (एफसीसीएस–8644)
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9. सीईस बाप जसवंत मिश्र (एफसीसीएस–7993)
10. सीईस दीपक शिल्पा कंदर (सुप्री) (एफसीसीएस–5819)
11. सीईस बापा लक्ष्मी कुमार (एफसीसीएस–1316)

कम्पनी सचिव (परिषद के बुनावट) नियमावली 2006, के निवन 36 के अनुसार में जारी।

अशोक कुमार दीक्षित, निर्वाचन अधिकारी एवं स्थानान्तरण सचिव
[निवास–III/4/अधिसूचना/494/18]

382 GI/2019

(1)
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
NOTIFICATION

New Delhi, the 18th January, 2019

No.1 of 2019.—Pursuant to Notification No. 2 of 2018 dated 17th December, 2018 issued under the Company Secretaries (Election to the Council) Rules, 2006 read with Section 23 of the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982, the elections for electing 11 members to the Western India Regional Council was held on 16th & 17th January, 2019 at Mumbai and on 16th January, 2019 at other places. Following members have been declared elected from Western India Regional Constituency (in the order elected) after the counting of votes held on 18th January, 2019:

1. CS Karodia Ashish (FCS-6549)
2. CS Chandak Pawan Ghanshyamdas (FCS-6429)
3. CS Shah Snehal Chandrakant (FCS-6114)
4. CS Sahasrabuddhe Rahul Padminakar (FCS-6254)
5. CS Tarpara Rajesh Chhaganbhai (FCS-6165)
6. CS Nautiyal Amrita Dineshchandra (Ms.) (FCS-5079)
7. CS Choudhary Yogesh (FCS-8644)
8. CS Pahade Tushar Sudhir (FCS-7784)
9. CS Wagh Hrishikesh Shirish (FCS-7993)
10. CS Dixit Shilpa Kedar (Ms.) (FCS-5819)
11. CS Batra Satish Kumar (FCS-1316)

Issued in accordance with Rule 36 of the Company Secretaries (Election to the Council) Rules, 2006.

ASHOK KUMAR DIXIT, Returning Officer and Officiating Secy.

[ADVT.-III/4/Exty./494/18]
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DP World, His Highness Sheikh Ahmed
Bin Saeed Al Maktoum, President, Dubai Civil Aviation Authority, Chairman and Chief Executive, The Emirates Airlines & Group, Chairman, Dubai World, His Highness Sheikh Nahyan bin Mubarak Al Nahyan, Hon’ble Cabinet Member and Minister, Govt. of UAE, H.E. Dr. Khalaf Ahmad Al Habtoor, Group Chairman, Al Habtoor Group and Ms. Fatma Buti Al-Mheiri, Chairwoman, Dubai Quality Group and other distinguished guests during the Golden Peacock Awards ceremony of the 2017 Dubai Global Convention.

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"You cannot connect dots looking forward, but you can connect dots looking backwards."

~ Steve Jobs

The concept of ‘Registered Valuer’ was introduced under section 247 of the Companies Act, 2013 to carry out valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, as per the Companies (Registered Valuers and Valuation) Rules, 2017 notified by MCA on 18th October, 2017. The Rules will lead to setting-up of Valuation Standards which will further improve transparency and governance and, while bringing about a clarity regarding various aspect of valuation will have a major impact on the industry, professionals, stakeholders and the government as well. Needless to say, the requirement of Registered Valuers will definitely enhance professional opportunities for both the Company Secretaries as well as other professionals.

Some of the areas under Companies Act, 2013 requiring valuation include:

1. Further issuance of shares
2. Sweat equity shares
3. Shares under a scheme of Corporate Debt restructuring/ compromise or arrangement/M&A
4. Purchase of Minority Shareholding

About the Institute of Company Secretaries of India (ICSI):

ICSI is a statutory body constituted under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries. The Institute has been contributing in all initiatives of Govt. of India having potential to excel socio-economic growth of the nation and in one such initiative has delved into developing Registered Valuers by establishing its wholly owned subsidiary ICSI Registered Valuers Organisation (ICSI RVO).
# SYLLABUS FOR VALUATION OF SECURITIES OR FINANCIAL ASSETS

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# EDUCATIONAL QUALIFICATION & EXPERIENCE

**Graduate Level**
- Graduate in any stream

**Post Graduate Level**
1. Member of the The ICSI or ICAI or The ICMAI or;
2. MBA/PGDBM specialisation in finance or;
3. Post Graduate Degree in Finance

3 years of experience in the discipline after completing graduation

# REGISTRATION

Any individual willing to register himself as a Valuer Member may send an application in the form available at the website: [www.icsirvo.in](http://www.icsirvo.in)

The form shall be accompanied by a Demand Draft favouring ICSI Registered Valuers Organisation payable at New Delhi.

**FEE FOR THE COURSE:**
- Enrolment Fee: Rs. 8,850/- (Rs. 7,500 + GST @ 18%)
- Course Fee: Rs. 26,550/- (Rs. 22,500 + GST @ 18%)
PROCEDURE TO BE FOLLOWED

1. Meet eligibility requirements, qualification and experience prescribed under Rule 4 of the Companies (Registered Valuers and Valuation) Rules, 2017.

2. Seek enrolment as a valuer member of ICSI RVO.

3. Complete 50 hours educational course.

4. Register and pass computer based Valuation Examination conducted by IIBI.

5. Within 3 years of passing the examination, submit Form A along with requisite fee in favour of Insolvency and Bankruptcy Board of India and supporting documents, to ICSI RVO.

6. ICSI RVO shall verify Form A & other requirements and submit the same along with its recommendation to IBBI.

7. On receipt of Form A along with recommendation of ICSI RVO, fee and other documents, the IBBI shall process the application for registration in accordance with the Rules.

8. After registration with IBBI, take up training with ICSI RVO.

9. On completion of the training, the ICSI RVO shall issue a Certificate of Practice to the registered valuer.

10. Valuation certificate can be issued only after obtaining Certificate of Practice.

IBBI EXAMINATION REQUIREMENTS

a. The examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions by IBBI.

b. The duration of the examination is 2 hours.

c. A candidate is required to answer all questions.

d. Wrong answer attracts a negative mark of 25% of the marks assigned for the question.

e. A candidate needs to secure 60% of marks for passing.

FEE FOR THE IBBI EXAMINATION: Rs. 1500/- for every enrolment.

For further information contact:
CS Samir Raheja, CEO (Designate), ICSI RVO
4th Floor, ICSI-House, 22, Institutional Area, Lodi Road, New Delhi-110 003,
Phone: +91-11-43541028, E-mail: rvo@icsi.edu, Website: www.icsirvo.in

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