

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



INTERVIEW WITH  
SHOBANA KAMINENI



## Empowering Labour Governance



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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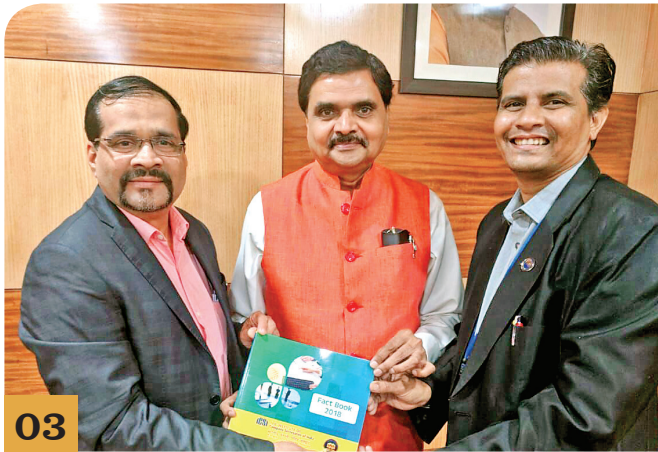




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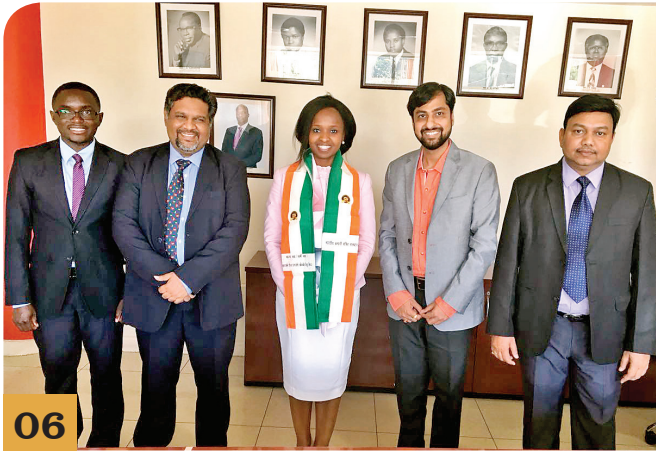


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1. ICSI Launch of Study Material for Executive Programme New Syllabus 2017 - Standing from Left: CS Vineet Chaudhary, CS Makarand Lele , CS(Dr.) Shyam Agrawal, CS Sonia Bajjal & CS Ashish Doshi.
2. Release of MSOP Module 2018- Standing from Left: CS Dinesh Chandra Arora, CS Ramakrishna Gupta, CS Makarand Lele, Hon'ble Justice Challa Kodandaram (High Court of Telangana & AP), CS Ahalada Rao V., CS Kavitha Rani S & CS L Jayaraman.
3. CS Makarand Lele releasing the Fact Book of ICSI and handing over the first copy to Vijay Kumar Jhalani (Govt. Nominee, Central Council of ICSI) along with CS Ahalada Rao V.
4. ICSI delegation Meeting with Dr Ranveer Singh (Vice Chancellor, National Law University, Delhi) at the inauguration of 3 days Strategic Leadership Program for CS.
5. CS Makarand Lele with Vice Chancellor, NLU Delhi along with Participants of 03 days Strategic Leadership Program at NLU, an exclusive program for Capacity building in Legal domain and Advocacy skills for appearance before All quasi-judicial bodies.



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6. Meeting of ICSI delegation with Kenya National Chamber of Commerce & Industry: Standing from Left – Stephen Osedo( County & SME Assistant, KNCCI), Dr. Bharat Kulkarni (Chairman, Indo Global SME Chamber), Angela Ndambuki (CEO, KNCCI), CS Ashish Garg and Dr. S K Jena.
7. ICSI delegation presenting the ICSI Publication to Rajesh Swami( Deputy High Commissioner, High Commission of India at Kenya).
8. Meeting of ICSI delegation with Consul General of India to Hong Kong: Standing from Left: CS (Dr.) Shyam Agrawal, Puneet Agrawal (Consul General of India, Hong Kong), CS Makarand Lele, CS Sonu Lakhani.
9. A view of the Council Meeting of The Corporate Secretaries International Association (CSIA) in progress.
10. Meeting of ICSI delegation with Consul General of India, Dubai: Standing from Left: CS Ahalada Rao V., Vipul (Consul General of India, Dubai), CS Vijay Ojha, CS Bhawna Srivastava.
11. Address by CS Ahalada Rao V., at Institute of Directors, Dubai Global Convention 2018 on Leadership for integrating excellence, culture, and innovation for social value as a competitive edge.



12. CS Makarand Lele addressing at a Seminar on GST & Companies Act 2013 organised by Varanasi Chapter of ICSI.
13. National Seminar on Companies Act 2013 organised by Lucknow Chapter of ICSI- Standing from Left: CS Anupam Jaiswal, Alok Tandon ( Dy. Registrar, MCA), CS Makarand Lele & CS Vineet Chaudhary.
14. CS Makarand Lele addressing at the ICSI Symposium on Companies Amendment Act 2017, Draft Rules & Ease of Doing Business at Palakkad.
15. Open House Session with Members on Broad Process of IPO & Recent Developments in SEBI Laws organized by NIRC - Sitting on the dais from Left: CS Manish Gupta, CS NPS Chawla, CS Saurabh Kalia, CS Vineet K Chaudhary, CS Pradeep Debnath, CS Ranjeet Pandey, CS Rajiv Bajaj, CS Monika Kohli and CS Nitesh Kumar Sinha.
16. Seminar on Broad Process of IPO & Recent Developments in SEBI Laws- Sitting on the dais from Left: CS Savithri Parekh (Chief Legal & Company Secretary, Pidilite Industries Ltd.) & CS Geetika Anand ( AVP, Company Secretary and Compliance Officer, Aditya Birla Fashion and Retail Limited, Mumbai).
17. Seminar on "Contentious Issues in Compliance & Certification under CA 2013" and "Drafting of Minutes / Proceedings with Special Thrust on SS-1 & SS-2" organized by Jalandhar Chapter of NIRC- Sitting on the dais from Left: CS Rajeev Bhambri, CS Saurabh Kalia, CS Amit Vinayak, CS Vineet K Chaudhary & CS Mohit Saluja.



## ***ICSI President CS Makarand Lele elected as Secretary of “Corporate Secretaries International Association (CSIA)”***

A good news to share in the Golden Jubilee Year of ICSI. Our President CS Makarand Lele, has been elected as the **Secretary of the Corporate Secretaries International Association (CSIA)** in its Council Meeting held on April 20, 2018 at Hong Kong.

CSIA is an international federation of professional bodies having 15 member countries and represents membership span of around 1,00,000 Corporate Secretaries.

All CSIA members share a common interest in the promotion of good governance practices and enhancing the profile of professionals who serve as corporate secretaries and governance professionals. CSIA is also actively engaged in creating a global professional association enabling industry professionals globally to work more effectively towards shaping corporate governance and developing unified best practices. CSIA create platform for governance professionals to promote best practices in Corporate Secretarial, Corporate Governance and Compliance Services with a vision to be *‘The Global Voice of Corporate Secretaries and Governance Professionals’*.

*CS Makarand Lele affirms that he will go the extra mile to promote profession of company secretaries and improve the visibility of profession, across the Globe.*

**CS Dinesh Chandra Arora**  
Secretary, ICSI





*Change brings Opportunity.*  
~NidaQubein



Dear Professional Colleagues,

**T**he past month, if I am to describe it, has been quite enthralling professionally. The Institute, the professional fraternity, the regulators have witnessed winds of change and well for professionals like us, who are on a constant lookout for opportunities of growth development and moments to prove our mettle, we are a firm believer of finding much synonymy between change and progress.

But at the same time, being a true professional calls for maintaining high standards of morality and integrity in each and every sphere and arena of activity. For a brigade of professionals with whom the Hon'ble Prime Minister takes pride in pinning his hopes and expectations, the responsibility just multiplies manifold. But then as Roy Edward Disney puts it, "When your values are clear to you, making decisions becomes easier". The statement talks of values & their role in decision making and come to think of it, the terms 'ethics', 'morals', 'values' have since ages been a part of the human life and have been, more or less, used interchangeably in our vocabulary. For an individual, there may not be much of a starking difference between the three and even in case of corporate and other business enterprises, the nature of ethics and values seems overlapping. We, as professionals, take pride in being men and women of greater intellect and hence the need to preserve, promote and more so live by these values is heightened significantly, more than we even realise.

The entire brigade of the members of the Institute are divided into two segments; one gaining employment as Company Secretaries and strengthening the framework of corporate governance from within and the second which takes on to function in the Practising mode undertaking professional activities on behalf of their clients and providing consultation and services in almost all spheres of professional activity especially one pertaining to compliance with the laws of the land in true letter and spirit. In such a scenario, it seems apt to be called the need of the hour or maybe of every minute passing by that the professionals themselves have a strong set of values and morals, one which sets the perfect example not just for their fellow members or professionals of other arenas but also for those who may be looking up to them as idols and seeking similarities in near future.

Keeping in sight the significance of integrity, professional competence and ethical conduct; the Team ICSI has very enthusiastically coined the theme "PCS – A Value Driven Professional" for the Golden Jubilee Year National Conference of Practising Company Secretaries, 2018 (19th Edition). The moments of the Inaugural Ceremony of the Golden Jubilee Year have taken the profession and its members to a pedestal where it is nearly impossible to imagine even the slightest of lacking in compliance, not just with the acts, rules, regulations or other 'n' number of legislations but with the morals and values which we as professionals have



forever held close to our heart. The Conference to be held on the 18th and 19th of May, 2018 in the financial and commercial capital of the country, the economic hub of India shall not only play the role of the perfect platform for the participants to explore new opportunities in the areas of practice but also provide an insight into the changing dimensions of the profession and its positioning the governance framework.

Needless to say that secretarial audit sits at the helm of the profile of a Practising Company Secretary and encompasses quite a lot. It is for this very reason that the Regulatory authorities in the nation have accorded momentous significance to this activity under a variety of legislations. While on one hand, the Companies Act, 2013 inculcated the activity to be made mandatorily applicable upon listed entities and certain specified set of companies, the Kotak Committee recommended that the same may be further extended to material unlisted subsidiaries of listed entities. It is with great pride and pleasure that I congratulate the entire CS fraternity regarding the inclusion of 3 pointers pertaining to the profession in the recently notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2018 which shall be applicable from 1st April, 2019. From having the definition of senior management altered to include Company Secretary, to mandating the requirement of Certificate from a Company Secretary in Practice stating that none of the directors is disqualified or debarred from appointment or continuation on the Board of Directors, the faith instilled in the profession seems more than gratifying...

While we stand to accomplish aplenty with the given amendments on the national front, the international arena, too, is lauding the presence of the Institute tremendously. I am quite heartened to share with you my election as the Secretary of one of the most coveted international organizations in corporate governance, Company Secretaries International Association. The CSIA is an international federation of professional bodies having representatives of 15 member countries with a membership span of over 1,00,000 members. I believe that The Institute of Company Secretaries of India stands to play a very significant role with the extended representation through this coveted designation.

While the achievements for the professional fraternity were witnessed on various fronts, the future torchbearers of the good governance too cannot be left behind. The students and their interests fall second to none as far as the dedicated efforts initiatives of the Team-ICSI are concerned. It is the untiring efforts of the Team as well as the experts roped in that the Institute has launched the Study Material of the Executive Programme under the New Syllabus of 2017. Incorporating a total of 7 (seven) subjects, the new study material has been developed to include the most recent developments

holding significance in the functioning and operations of the corporate vicinity. The study material of the Professional Programme shall follow suit.

The Institute whilst focussing on corporate governance has forever been considerate about its responsibilities towards strengthening national governance. It is with this intent that the Model Governance Code for Meetings of Gram Panchayats had been developed and released at the Inaugural ceremony of Golden Jubilee Year. It was the occasion of the National Panchayat Day on 24th April, 2018 that the Institute through its various representative and experts promoted and propagated the adoption of the Code amongst the Sarpanches and other members of Gram Panchayats across the nation. Widely covered by media, the events celebrated and felicitated the adoption of good governance practices at the very grass-root level of the nation.

While each and every achievement, each and every moment can be judged nothing short of enthralling what remains to be seen is that with each new opportunity how we as a 50,000 strong brigade of professionals move ahead to materialise them while holding on tightly to our common set of ethics, morals and values. Values which will not only provide the much needed cementing strength to the foundation of the profession but which shall prove to be the benchmark for generations to follow...

So friends, pull up your socks and gather your gear, for there are newer heights to scale than ever before... I'm certain that the Golden Jubilee Year shall be the dawn of a new era for the profession; one where the world will look up to us as the true torch bearers of good governance and that won't be limited to the boundaries of the nation !!!

***“The best way to predict your future is to create it!!!”***

Happy Reading!!

Best wishes.

Yours Sincerely



May 04, 2018  
New Delhi

CS Makarand Lele  
President, ICSI

# Recent Initiatives taken by ICSI

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

## 1. Meeting with Dignitaries

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

- Shri Vipul, Hon'ble Consul General of India to Dubai
- Prof. (Dr.) Ranveer Singh, Vice Chancellor, National Law University, Delhi
- Smt. ShobanaKamineni, President, Confederation of Indian Industry

## 2. Suggestions/ Representations Submitted

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

- Suggestions on the Draft Companies (Authorized To Register) Second Amendment Rules, 2018;
- Suggestions on the Need for or Desirability of Appeal Mechanism under Section 233 of the Companies Act, 2013;
- Representation on Notification of Revised Section 403 (Fee for Filing, etc.) in view of the Companies (Amendment) Act, 2017 ;
- Representation on Revision of the Companies (Registration Offices and Fees) Rules, 2014;
- Representation on the Requirement of giving Advertisement in Newspaper for shifting of Registered Office of Companies;
- Representation regarding Further Relaxation of Additional fee and Extension of the last date of Filing of AOC-4 XBRL e-Forms using Ind AS under the Companies Act, 2013.

## 3. President, ICSI elected as Secretary, CSIA

CS MakarandLele, President, ICSI has been elected as the Secretary of prestigious 'Corporate Secretaries International Association (CSIA)' during its Council Meeting held on 19-20 April, 2018 at Hong Kong.

## 4. Dubai Global Convention, 2018

The Institute joined hands with Institute of Directors as an Associate Partner in organizing the Dubai Global Convention, 2018 (28th World Congress on Leadership for Business Excellence and Innovation) during April 17-19, 2018 at Dubai, UAE. This global business meet along with the presentation of Golden Peacock Awards has outstandingly captured the theme of 'Transformative Leadership for Fostering Creativity, Innovation & Business Excellence'.

## 5. ICSI - 13th International Professional Development Fellowship Programme

The Institute is organizing its 13th International Professional Development Fellowship Programme - 2018 from June 16 to June 23, 2018 at London & Scotland. Participating Members would be entitled to Ten Programme Credit Hours.

## 6. ICSI Meeting with Group of Ministers on GST return simplification

In order to finalize a single-page Return Form for businesses under GST, a Ministerial Panel under Bihar Deputy Chief Minister Sushil Modi met tax experts and representatives from industry on April 17, 2018 at Vigyan Bhawan, New Delhi. The Team ICSI attended the meeting, which was organized for seeking the views of experts and industry on GST Return Simplification and made a presentation before the Group of Ministers on Simplification of Return Filing under GST.

## 7. Meeting with Department-related Parliament Standing Committee on Industry

ICSI delegation met the Department-related Parliamentary Standing Committee on Industry for the examination of 'Professionalization of Board of CPSEs'. ICSI delegation in its submissions focused on adoption of Secretarial Standards in the meetings of CPSEs, reducing Board Size and imparting training, amongst others.

## 8. Panel for Investor Education and Protection Fund Authority

As you are aware that the Ministry of Corporate Affairs has constituted an IEPF Committee to review the practical difficulties involved under the provisions of the Companies Act, 2013. The Institute is extending all support to IEPF Authority in simplifying the processes involved. The Institute is also formulating its suggestions and preparing representation to the Ministry regarding the alterations and amendments required to be made in relevant rules.

## 9. Group to examine the Companies (Acceptances of Deposits) Rules, 2014

The Ministry of Corporate Affairs constituted a Group to examine the Companies (Acceptances of Deposits) Rules, 2014, under the Chairmanship of Shri M R Bhat. The Group discussed in detail the Draft Rules in its 4th Meeting, held on April 13, 2018, at ICSI-CCGRT Mumbai. CS Makarand Lele, President, ICSI attended the meeting as a special invitee.

## 10. Golden Jubilee Year National Conference of Practicing Company Secretaries (19th Edition)– An Update

With the release of Brochure for the Golden Jubilee

Year National Conference of Practicing Company Secretaries (19th Edition), Institute is receiving encouraging response from members for registration as delegate for the Conference. With this, we hope to surpass all earlier National Conferences of Practicing Company Secretaries in terms of participation. A galaxy of speakers have already acceded to our request to address the participants at the conference. The technical sessions of the conference have been designed in a manner to have the maximum benefit of the deliberations. Various publications of interest to the professionals are proposed for release at the Conference.

#### 11. Study Material For Executive Programme under ICSI-New Syllabus

The Institute has notified new curriculum for Executive and Professional Programme with an objective to inculcate in its students and more so the professionals of tomorrow with the right kind of knowledge, skills and training to make them competent enough to render value added services to corporate sector. Understanding the significance of knowledge in any professional course, especially one of the stature of this one, the Team ICSI has covered lengths and breadths in developing an apt Study material sustaining the needs of the dynamics of Indian corporates and the structure of the New Syllabus of 2017. It is heartening for me to share that the study material so developed has been strengthened with deliberations with not just Company Secretaries but Industry Experts and other professionals with a wide spectrum of acquaintance with the needs and requirements of the companies in the Indian Mainland.

#### 12. Strategic Leadership Program for Young Company Secretaries

The Institute in collaboration with National Law University, Delhi organized a Strategic Leadership Program for Young Company Secretaries, a three (3) days joint certification course from April 26-28, 2018 at New Delhi. This course aims to develop functional competencies in the core and emerging areas of corporate law and practice along with enhancing the leadership qualities for organizational development and institution building.

#### 13. Celebration of National Panchayati Raj Diwas

The Institute in an attempt to promote best practices of Self-Governance in Gram Panchayats, organized various programs at its Regional Offices and Chapters on the occasion of 9th National Panchayati Raj Diwas on April 24, 2018. These programs were conducted in consonance with the ICSI- Model Governance Code for Meetings of Gram Panchayats.

#### 14. National Seminar on Companies Act, 2013

With an objective to deliberate on recently enacted Companies (Amendment) Act, 2017 and to discuss related critical issues, the Institute organized a National Seminar on Companies Act, 2013 on April 29, 2018 at Lucknow. Directors of companies, Senior Management Personnel, Company Secretaries and other professionals attended the seminar.

#### 15. 1st Strategic Meet on Setting up Training Quality Monitoring Cell

With a view to ascertain the need to provide quality training to CS professionals, in alignment with emerging trends in compliance and governance, the Institute constituted a Group of experts to discuss and deliberate on related issues for developing quality training for students and members. Accordingly, the 1st meeting of the Expert Group under the Chairmanship of Secretary, ICSI was held to deliberate on various strategic and developmental plans for improving the quality of practical training offered to students, including the three-point agenda focussing on:

- Generating new thought process for designing ICSI certified Train the Trainer Program,
- Suggesting new topics for project reports, and
- Revising format of quarterly report submitted by the students.

#### 16. Critical Issues Research Contest

With the impetus on developing an orientation towards research and critical understanding of issues related to Companies Act, 2013, the Institute is organising "Critical Issues Research Contest" for its members. For participating in the contest, members are required to submit a minimum of five critical issues in atleast three chapters of the Companies Act, 2013 of his/her choice. The contest is open from April 10 – May 10 2018 and for participation, member may click on the link <http://www.icsi.in/CIC/MemberLogin.aspx>.

#### 17. Meeting of Secretarial Standards Board

112th Meeting of Secretarial Standards Board was held on April 21-22, 2018 at New Delhi. The Board in addition to its proposal to bring out Standards for other sectors like charitable entities, societies, etc. to promote National Governance, also discussed briefly the need for bringing out new Standard on the "Board's Report" and the prerequisite for the Guidance Note on Dividend, Independent directors and Related Party Transactions.

#### 18. GST Initiatives

The Institute is standing shoulder to shoulder with the government in ensuring the directed implementation of GST throughout the country. Accordingly, the Institute is building the capacity of its members, students and other stakeholders through regular

updates via GST Newsletter, GST Educational Series, GST App, GST Point and many more. In the month of April, the Institute has achieved following milestones in its various initiatives towards directed implementation of GST:

- GST Newsletter – 13 volume of monthly Newsletter have been published.
- GST Educational Series – 220 Issues have been brought.
- GST Point – More than 75 sessions of GST Point have successfully been completed.
- GST App – Almost 19000 users.

### 19. Educational Series - Prevention of Sexual Harassment of Women at Workplace

Pursuant to the recommendations of ICSI - Task Force on Prevention of Sexual Harassment of Women at Workplace, the Institute has in addition to its regular measures in this direction decided to give more focussed attention to create awareness about Prevention of Sexual Harassment of Women amongst students and members.

In this direction, the Institute initiated the publication of the 'Prevention of Sexual Harassment of Women at Workplace (POSH) Educational Series'. This weekly Educational Series will highlight various legislations and remedies available to a woman along with an Executive Summary.

### 20. Task Force on Prevention of Sexual Harassment of Women at Workplace – An Update

As appraised in preceding issue that the Institute has constituted a Task Force on Prevention of Sexual Harassment of Women at Workplace with the objective to create awareness on the provisions of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 amongst its members and students. Taking forward the objective towards accomplishment, the Task Force had its second meeting at New Delhi on April 02, 2018 for deliberating at length upon the various awareness modalities on Prevention of Sexual Harassment of Women at Workplace.

### 21. MSOP Module 2018

The Institute unveiled latest MSOP Module, 2018 during the Inaugural function of Brainstorming Sessions on 'The Companies Act, 2013 read with the Companies Amendment Act, 2017' on April 14, 2018 at Hyderabad through the gracious hands of Hon'ble Justice Shri ChallaKodandaram, High Court of Andhra Pradesh and Telangana, in the presence of CS Makarand Lele, President, ICSI and CS Ahalada Rao, Vice-President, ICSI.

This MSOP Module 2018 is a comprehensive document covering a wide range of topics on Company Law, Secretarial Audit, Drafting, Moot Court and Mock Meetings, Interview skills, Professional Ethics and Code of conduct.

### 22. ICSI Institute of Insolvency Professionals formerly ICSI – Insolvency Professional Agency (ICSI-IPA)

In view of the multi-dimensional role played by ICSI-IPA in enrolling, educating, training and monitoring the cadre of Insolvency Professionals and in providing academic and technical support to various regulators associated with it, a need was felt by the Governing Board of the Company to change its name. Pursuant to the approval of the Central Government and the receipt of the fresh Certificate of Incorporation the ICSI – Insolvency Professional Agency (ICSI-IPA) has been renamed as ICSI Institute of Insolvency Professionals in the august presence of Dr. M.S. Sahoo, Chairperson, IBBI, CS Makarand Lele, President, ICSI, CS Ahalada Rao, Vice President, ICSI and other senior members of the profession.

### 23. Faculty Resource Data Bank

The Institute's is persistent in organising various programmes for development of Members and Students pan India. The Institute has a large pool of Faculty engaged through its Headquarters, Regional Offices and Chapters, yet in order to avail the best faculty resource aligned with time and purpose, Institute has decided to develop a Centralised Data Bank of Faculty Resource from across the country. Accordingly, the Institute is extending an open invitation to the professionals for submitting the details of their expertise in order to enable it to take the benefit of their expertise the programmes to be organised by the Institute. Professionals (Members of ICSI and even Non- Members) who have the requisite experience and expertise may submit the details at [www.icsi.edu/faculty](http://www.icsi.edu/faculty).

### 24. ICSI Signature Award Scheme

ICSI Signature Award Scheme aimed at felicitating the Top Rank holders in B.Com. Final Examinations of reputed Universities and also of specialised programmes/ papers of IITs / IIMs with the award of a Gold Medal and Certificate, is well accomplished with the MoUs signed with 19 Universities and the award of 12 Gold Medals in last two years of the scheme. In the month of April, 2018, another MoU has been signed with Jai Narain Vyas University, Jodhpur, Rajasthan, in this regard.

### 25. Study Centre Scheme

The Institute had launched the Study Centre Scheme in order to break the distance barrier for students belonging to cities/locations, wherein the representative offices of the Institute are not in existence. So far, with the establishment of 70 Study Centres in collaboration with reputed colleges in different locations, the following study centres have also been opened in the month of April, 2018:

- HaranahalliRamaswamyInstitute of Higher Education, PB No-194, Salagame Road, Hasssan District, Karnataka
- HaldiaLaw College, ICARE Complex, P.O. Hatberia, P.S.Haldia District- Purba Medinipur

***“It is very important for the force of youth to engage in building knowledge and skills, enhance productivity, and stay true to the philosophy of moral leadership” – Shobana Kamineni***



**SHOBANA KAMINENI**

*In Conversation with Preeti Kaushik Banerjee  
Director (Corporate Communication), The ICSI*

**A** woman entrepreneur and an ideal of sorts, the first woman president of more than 120-year old industry association, the Confederation of Indian Industry (CII) has her own take on the growth and development of the nation. Talk of any burning issue in corporate arena, she neither minces words nor shies from ground issues and realities.

In a one-to-one with Preeti Kaushik Banerjee, Director, Directorate of Corporate Communication, Shobana Kamineni, the Executive Vice Chairperson of Apollo Hospitals Enterprises Limited talks about entrepreneurship, start-ups, corporate culture, governance scenario, CSR and more...

**The World Bank’s Doing Business Report 2018 ranked India 100th out of the 190 countries surveyed. India is one of the top five reformers according to the report. Do you think that India today holds a conducive business environment?**

It is heartening to note the quantum jump in India’s rank in the Doing Business rankings of the World Bank. The country in the last 3 years has moved up 42 positions, thanks to Government’s strong commitment to create a better investment climate. The sharp improvement in ranking is a reflection of aggressive and transformational reforms undertaken since the last assessment by the World Bank. Transformational reforms such as implementation of GST,

enactment of insolvency and bankruptcy Code and several other reform initiatives aimed at simplification of procedures at both Centre and the State level have also contributed to the rapid improvement in the ranking.

There are numerous more reform measures in the pipeline and the incumbent government accords paramount importance to ushering a conducive business environment in the country. CII too has been working closely with both the Centre and State governments in this endeavour by conducting surveys pan-India and advocating several useful policy suggestions, many of whom have found their way into the policy compendiums. Because of the proactive measures undertaken by the government, the business environment in India has become very supportive and helped businesses undertake their investment plans. CII is advocating for EoDB reforms so that it is easy for a small SME to conduct day to day business.

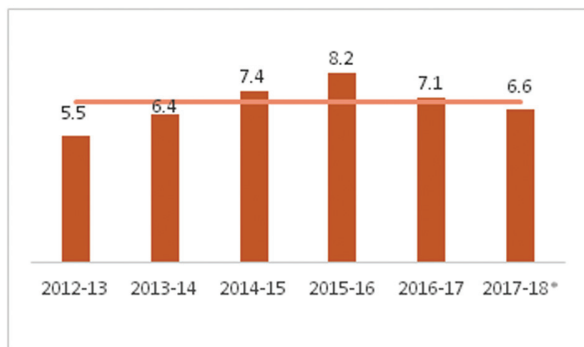
**World Bank projects India’s GDP growth to pick up to 7.3% in 2018-19 and to 7.5% in the next two years. In light of the current economic scenario, is it possible to take this rate to 10 percent? If so, by when?**

Ans: After two sub-par years (which saw growth rate dipping below the average of the last five years), interjected by demonetisation and rollout of the Goods and Services Tax (GST), growth is seen recuperating to respectable levels over the next few years. However, it is still expected to hover around the 7.5% mark. For taking the growth to the next level and scaling it to the 10% mark, concerted efforts will be required by the policy makers at all levels. To be sure, many significant reform measures have been introduced by the present government in the last few years which have proved to be game-changers for the economy, but still many more especially in the areas pertaining to destressing agrarian economy, land acquisition and labour reforms are need of the hour.

The underlying fundamentals of our economy, particularly investment and savings rates, are strong. The key growth engines which need to fire on all cylinders for leap-frogging the growth will be largely domestic and policy driven, though a synchronous upturn in global growth will, undoubtedly, provide some tailwind. By all accounts, leaping into double-digits growth looks challenging at the present juncture, but it is certainly not unachievable. If the external environment remains supportive and the domestic economy continues to recover bolstered by the significant policy measures in the future as well, we can see growth touching the elusive 10% mark in the next 4-5 years.

# Looking Beyond

## Growth Trajectory of India (y-o-y, %)



Source: CSO Note: The horizontal line denotes the five year average growth rate, \* Advance estimates

**According to a recent survey around 83 percent of the Indian workforce would like to be an entrepreneur. How would you describe the entrepreneurship climate for start-ups in India?**

The entrepreneurial culture has been firmly ingrained in the Economy and its people. On its part, the government has also over the years launched various enabling programmes for fostering the growth of the entrepreneurial spirit in the country. Start-up India is one such flagship initiative of the government which intends to build a strong eco-system for nurturing innovation and Startups in the country. Apart from Startup India, the recent Union Budget has also announced a slew of measures to strengthen the entrepreneurship climate for Start-ups in India. All these measures have made the entrepreneurship climate very conducive for the Startups in India. Moreover, the job creation scenario in the country which is on a slippery terrain currently could get a shot in the arm if the entrepreneurial spirit is further fostered.

**With the corporate sector evolving at an unprecedented**

**pace, corporate governance, too, is hogging the limelight for reasons more than one. In your opinion, what are the major governance issues facing the India Inc.?**

Over the years, India has liberalised the regulatory fabric of the country to bring into line its corporate governance norms at par with those of the developed countries. Complying with good corporate governance practices continue to remain one of the top priorities of stakeholders even today. However, in the recent times, we have seen the boardroom battles of some of the prominent corporate houses of India spill over to the full public sight which has once again brought back the spotlight on the problems plaguing corporate governance in India. One of the major governance issue which needs to be resolved in this regard is defining the role and responsibilities of the promoter in the company's board. In this regard, stringent rules and polices need to be put in place so that the original promoters don't have a veto right on who comes in as independent director.

**Women bring a different perspective to leadership, and can form more widely skilled and creative executive teams. Yet, appointment of women directors on the board while having brought within the ambit of Section 149(1) of the Companies Act 2013, lacks complete compliance. Why is it so? How can we ensure compliance of this provision in India Inc. in true letter and spirit?**

The intent behind the provision of appointment of women directors has always been clear since the time of its introduction in the Companies Bill wherein it states that this provision should be 'encouraging more and more women participation in decision making at various levels'. As per a recent SEBI report, nearly one-third of the top-500 listed companies do not have any woman member on their respective boards. This is a startling revelation, despite the regulatory requirement of the SEBI. I urge ICSI to ensure compliance to this important regulatory provision by all its members at the earliest.

**Delving further into the issue of participation of women at work place, it goes without saying that gender parity will lead to better corporates and working environs. What strategies is CII adopting to achieve the same?**

Ans: Increased participation of women in the labour force and more importantly ensuring gender parity is not only important to achieve higher economic growth and efficiency but is essential for improved socio-economic conditions as well. CII is committed to promoting women's economic empowerment and has undertaken several initiatives to promote increased participation of women at workplace. The CII National Committee on Women Empowerment works with the industry to strengthen women's role and participation in the economic sphere and community areas. Further, to enable women to leverage career opportunities and enhance professional skills, CII has launched the Indian Women Network (IWN) in 2013. The IWN envisions using learning, sharing and mentoring to help women become achievers in their respective fields. Since 2005, CII has



institutionalised the annual CII Woman Exemplar Award. The Women Exemplar Programme identifies, recognizes, empowers and supports women working at the grassroots. It recognizes women who have, against all odds, excelled and contributed significantly to India's development process. Since its inception in 2005, 35 women exemplars have been recognized and awarded.

Gender Parity was one of the important features under the "India Inclusive" theme in the CII Agenda for 2017-18. Some of the new CII initiatives under the agenda included the CII IWN Gender Diversity Awards to recognize and reward gender diversity practices, the launch of Stri Shakti Abhiyan with the vision of harnessing women's potential through skill development and the CII IWN-ISK (Indian School of Business) orientation programme on board leadership for women board members.

**Corporate Social Responsibility and Sustainability are one of the agendas of CII to promote responsible business activity. What are the various initiatives which have been taken by CII to sensitize the corporates for a sustainable tomorrow?**

Corporate Social Responsibility (CSR) has been in existence in India for a long time. Over time, with the rising importance conferred to the concept of 'Triple Bottom-line', CSR has become an intrinsic part of a company's overall sustainability strategy. It is heartening to note here that according to the CII CSR tracker 2016, 1270 BSE listed companies spent around Rs 8,185 crore, which is 27 per cent more than that spent in 2014-15. What is also interesting is the fact that 4.6 per cent of the 1014 companies that spent on CSR in 2016 were loss making firms. CII has been at the forefront in catalyzing, enabling and facilitating corporate sector engagement in CSR through its various centres of Excellence. The CII-ITC Centre of Excellence for Sustainable Development, in particular, has been helping companies develop CSR policies, build their capacities, measure on-ground impact and the social return on investment.

The passing of the Companies Act has also given a much-needed impetus to CSR activities in India. CII has played an instrumental role in developing the CSR rules under the Companies Act 2013 and subsequently shared its recommendations with the high-level committee to improve monitoring of implementation of CSR policies. CII has also worked closely with the Government in developing the National Voluntary Guidelines. In the past few years, CII has shared its views with the Parliamentary Standing Committee on corporate Governance, including review of the CSR compliance. CII has also been creating platforms like its annual CSR Summit to promote and strengthen the CSR movement by engaging with stakeholders from industry, Government and civil Society. As the Indian industry makes rapid strides in its journey towards addressing our country's social challenges, CII will continue to play the role of a facilitator in safeguarding that India remains firm on a growth path to a sustainable future.

**Considering your years of experience, both as an**



**Sixty percent of us are under the age of 35. Building on this tremendous energy of youth, India is set for a reinvigorated pace of growth that will take our economy to \$5 trillion by 2025.**



**entrepreneur and from handling various designations of high accord, what would be your success mantra for the younger generation?**

Sixty percent of us are under the age of 35. Building on this tremendous energy of youth, India is set for a reinvigorated pace of growth that will take our economy to \$5 trillion by 2025. Plus, we will see massive transformation in digitisation, urbanisation and technology advances, which will completely change our society, our industry and our citizens. The talented, entrepreneurial and tech-savvy young people will shape the emerging development of the country and its people and have a huge positive impact on the world. What this cohort does to make our country great will be critical to our success as a nation.

"My message to the young people is very simple - This is your time! This is the time you show the world how good and how great you and your country can be, how we can develop rapidly, and how we can lead the world with ethics, morals, and responsibility. It is very important for the force of youth to engage in building knowledge and skills, enhance productivity, and stay true to the philosophy of moral leadership. I am sure our young people will rise to great heights and take India to the top of global achievement charts"...

# National Panchayati Raj Day Pan India Celebrations



**राष्ट्रीय पंचायती राज दिवस  
NATIONAL PANCHAYATI RAJ DAY**  
Self-governance and Gram Panchayats - The way forward  
24<sup>th</sup> APRIL, 2018  
at





# National Panchayati Raj Day Pan India Celebrations



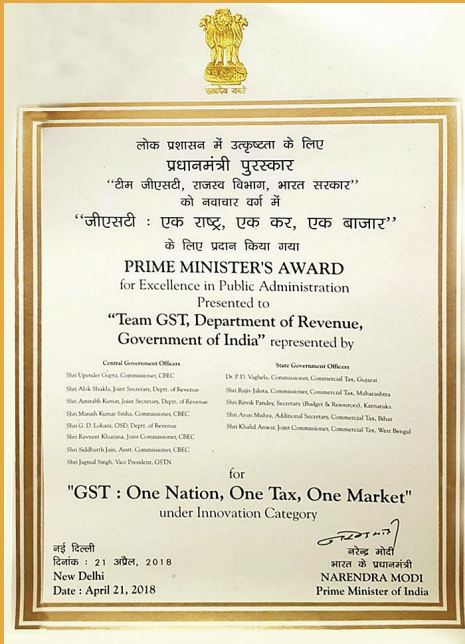
# National Panchayati Raj Day Pan India Celebrations



# National Panchayati Raj Day Pan India Celebrations



## The Prime Minister's Award for Public Administration



**T**he GST initiative of Government of India not only has proffered the indirect taxation scenario of the nation an entirely new direction, it has also given some momentous achievements to The Institute of Company Secretaries of India as well. While on one hand, the ICSI plays the role of India's GST Partner, it has even made a world record in this arena.

It is a moment of great pride that the members of the Institute are achieving laurels too. The Prime Minister's Award for Public Administration, presented on 21st April, 2018 to Team GST, Department of Revenue, Government of India, was represented by both Central Government and State Government officers for “GST: One Nation, One Tax One Market” under Innovation category. The Institute of Company Secretary of India feels proud to share that one of the members of the Institute Shri Upendra Gupta, Commissioner, Central Board of Excise and Customs had headed the said Team.

The entire CS fraternity congratulates Shri Gupta on this noteworthy achievement and hopes that many more laurels shall come his way in the years to follow... Good luck for your future endeavours to Shri Upendra Gupta.

**CS Dinesh Chandra Arora**  
Secretary, ICSI

## Launch of Study Material for Executive Programme (New Syllabus 2017)

*"Education is the passport to the future, for tomorrow belongs to those who prepare for it today."*



The Institute of Company Secretaries of India with its ever evolving educational structure aims to incorporate each single development in every arena of corporate activity concerning this brigade of professionals to make them truly live up to the meaning of 'intellectuals'.

The Company Secretaryship Course intends to inculcate in its students and more so the professionals of tomorrow with the right amount of knowledge, skill and training to render them fit in every possible environment facing the corporate arena.

Understanding the significance of knowledge in any professional course, especially one of the stature of this one, the Team ICSI has covered lengths and breadths in developing an apt Study material sustaining the needs of the dynamics of Indian corporates and the structure of the New Syllabus of 2017. It is heartening for me to share that the study material so developed has been strengthened with deliberations with not just Company Secretaries but Industry Experts and other professionals with a wide spectrum of acquaintance with the needs and requirements of the companies in the Indian Mainland.

At this juncture, I am pleased to share that the study material for the subjects of Executive Programme under New Syllabus has been uploaded on the ICSI website for the benefit of the students at the link:

<https://www.icsi.edu/AcademicCorner/StudyMaterialNewSyllabus2017.aspx>

### *Executive Programme (New Syllabus – Examination to be held on December 2018)*

MODULE – I	MODULE – II
Jurisprudence, Interpretation and General Laws (Paper-1)	Corporate & Management Accounting (Paper-5)
Company Law (Paper-2)	Securities Laws and Capital Markets (Paper-6)
Setting up of Business Entities and Closure (Paper-3)	Economic, Business and Commercial Laws (Paper-7)
Tax Laws (Paper-4)	Financial and Strategic Management (Paper-8)

It goes without saying that utmost care has been taken to ensure that the contents covered under respective study material is all encompassing, completely updated and fully analyzed. Further, efforts have been made to incorporate sufficient number of case laws / practical aspects / practical problems as per the requirement of each subject.

I also convey my heartfelt gratitude to all the Writers / Reviewers / Resource Persons and Academic Officers in ICSI who burnt their midnight oil and contributed immensely towards the writing / reviewing / value addition of the contents of the study material of the subjects mentioned hereinabove.

I wish all the prospective Governance Professionals and Corporate Saviours a very bright future ahead !

**CS Makarand Lele**  
President, ICSI

## Fixed Term Employment- Cauldron on Fire Again (Legal Provisions Revisited)

28

T.K.A.Padmanabhan

**F**TE means the practice of employing workers or employees on contractual basis for a fixed period of time, where their subsequent employment in the industry/ establishment is contingent on the renewal of the said contract. It has been seen in the foreign jurisdictions that where they have employed a person under fixed term employments, they provide a particular time period within which the employment gets regularised. This, however, is not the situation in India. In India FTE has been indirectly practiced due to Section 2 (oo)(bb) of the Industrial Disputes Act, 1947. Abuse of this provision by Government as well as private establishments led to two main issues as to its nature and regularisation of fixed term employees. The introduction of fixed term employment by the impugned amendment upsets the already well settled issues, which requires the Government to have a relook at the provision.

## Penalties for Non- compliance under Labour Laws in India

33

Dipti Mehta

**A**n establishment has to ensure statutory compliances under various labour laws. The compliances are not just limited to the statutory deposits, returns and records to be maintained by the employer under various labour laws, but also to represent them in case of prosecution under various statutes. Compliance of all the applicable legal provisions, rules and regulations are required in order to prevent lawsuits and /or penalties. The present article in a nutshell discusses the obligations and liabilities of an organization under various labour laws in India. It also deals with the offences and penalties for non-compliance of the provisions as contained therein. Further, the article also discusses prevention of sexual harassment at workplaces and punishment, compensation and consequences of non-compliances of the provisions.

## Labour Laws Compliances and Impact thereof on Stakeholders

41

Sandeep M. Nagarkar

**L**abour legislation is widely used both to regulate individual employment relationships and to establish the framework within which workers and employers can determine their own relations on a collective basis, for example, through process of collective bargaining. There

are two types of labour laws – collective and individual. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work and through the contract for work. A Company Secretary can provide various expert services in the areas like to obtain registrations, to maintain records, to meet expectations of employers and employees and legal opinion to support compliance of labour laws.

## Role of a Company Secretary in Shaping & Mapping The Labour Laws

45

Pramod S. Shah and Varsha A. Rohra

**T**he position of a Key Managerial Personnel being the senior most position of the Company which have also been designated to a Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements along with the Labour law Compliance being the new field of laws in which the involvement of Company Secretaries have been demanded and for the same Role of a Company Secretary in Labour Laws have been highlighted in the article. Core highlight of the same is the "Labour Audit" which is a new concept necessitated keeping in mind number of non compliance & hardships caused to the labours of our country. Further mentioned is the scope of services which can be provided by a Company Secretary, added thereon is the Designing an independent and adequate system for ensuring regular & timely compliance and filling up the gaps thereof by rectifying the Non compliance and exciting the spark of Compliance in the clients.

## The Contract Labour (Regulation and Abolition) Act, 1970: A Perspective

50

Srikanth. G.

**U**nder Article 246 of the Indian Constitution, issues related to labour and labour welfare come under List -III that is the Concurrent List. In all there are around 47 central labour laws and more than 200 state labour laws. The Supreme Court of India in its first verdict on the matter of Contract Labour ruled that "if the work done by a contract labour is essential to the main activity of any industry, then contract labour in that industry should be abolished". Labour management is one of the most crucial task of an entrepreneur. In order to surpass the stringent labour regulations, the industry sector in India is largely resorting to contract labourers, who are governed by the "Contract Labour Regulation and Abolition Act of 1970". Contract Labour is a significant and growing form of employment. Cost effectiveness, competency, higher productivity with cost effectiveness, flexibility to manpower deployment and replacement and more specifically reduced need for regular compliances with labour laws thus leading to less supervision of the principle employers are lucrative facets of employing contract labour. Time and again, principal employers getting into trouble due to non-adherence to

the Act as the Contractor fails to understand the regulatory space or does not have the client specific approach there by getting the principle employer into non-compliance. The objective of the Act is security to the labourers in consonance, equal treatment and security to all labourers, employees of an industry or contract labourers and reducing or abolishing exploitation of contract labourers. The Act envisages healthy workplace environment, healthy working conditions, like canteen, rest rooms, first aid etc (Section 16-19) to be provided to contract labourers by the Contractor failing which the liability fastens on principal employer (Section 20 and 21). It is also the duty of the principal employer to ensure disbursement of wages to the Contract labour under his supervision (Section 21(3)).

## Company Secretary and Compliance of Labour

56

### Laws

Manjiri Kulkarni

The role of Company Secretary is vital in ensuring the compliance of various applicable laws including labour laws. Company Secretary has to keep updated the Board of Directors about the status of compliance periodically. Provisions of Companies Act, 2013 and rules and regulations and SEBI (LODR) Regulations needs to be adhered strictly to avoid non-compliance, penalty and law suits. Implementation of adequate system for timely compliance and its updation according to amendments in laws, sharing of information with all the concerned departments/branch offices is the core aspect in compliance to avoid any slippages and delays in implementation. The Ministry of Labour and Employment has always introduced various schemes to ease the compliance from the employers which leads to better maintenance of records, inspection by prescribed authorities and easily accessible for public thereby enabling more transparency and wellbeing of employees.

Part II  
Other Articles

## Secretarial Standard on Dividend

60

S.C. Vasudeva and S.H. Rajadhyaksha

The article on Secretarial Standard on Dividend summarizes the contents of the standard i.e. SS-3. The article also explains the term 'profit' as it was understood by the courts in earlier years. The concept so laid down by the courts, not being in consonance with accountants' view, led to the provisions of the Companies Act 1956 as well as the present Act being brought in conformity with the accounting principles. Secretarial Standards on Dividend ("SS-3") was issued in the year 2003 to harmonize and standardize the provisions relating to the payment of final and interim Dividend taking into account the provisions of Companies Act 1956. The present standard has been revised so as to incorporate the changes brought in by the Companies Act 2013 (The Act) and

rules prescribed thereunder relating to payment and distribution of Dividend. The principles set out in this standard deal with the declaration and payment of Dividend on equity as well as preference share capital by a going concern. The standard also deals with regard to various provisions relating to the treatment of unpaid dividend and transfer of such unpaid dividend to Investor Education and Protection Fund within the prescribed period. Apart from the provisions relating to payment of Dividend, contained in the Act, requirements under the listing agreements have been separately indicated in Annexure 'A' to the standard.

## Secretarial Guidance for Preferential Issue by Listed Companies

62

Ekta Shah and Dr V.R.Narasimhan

The Article is written with an idea to facilitate the Listed Companies to raise funds through preferential issue. The objective of the article is to address the shortcomings faced by the companies while making a preferential issue. Preferential Issue is regulated under Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Also, most of the SEBI guidelines have been incorporated in Section 62 of the Companies Act, 2013 which contains provisions relating to further issues of shares. SEBI has mentioned clear timelines under ICDR Regulations to adhere with preferential issue process. Non-compliance with these timelines may result in penalty and interest payments to allottees. The article will facilitate the Companies to be in compliance with these timelines. Listing on an Exchange and compliance with the regulations will assure sustaining public investments in listed entities and may also help in raising further capital. The article provides an idea why companies prefer to raise capital through preferential offer rather than rights issue, and how the listed companies shall ensure compliance with regulations and communications to the Exchange.

## Fugitive Economic Offenders Bill and Opportunity for Company Secretaries

66

Dr.Prasant Sarangi

Growing instances of fraud incidences have shaken the Indian economy since last few years with the additions of fugitive offenders, loan defaulters and economic cheaters, the list of economic offenders is widening day-by-day. People to make fun has started asking in social media: 'whose name appears today?' The Central Government for the first time introduced the Fugitive Economic Offenders (FEO) Bill, 2018 in Lok Sabha on 12th March, 2018. This study is an attempt to review the Bill that the government is going to implement to counter the high profile business houses who have not only duping the banking system of the country but also wasting the valuable time of the Court by leaving the country. Further it analyses the opportunities that the Company Secretaries will get after the implementation of this Act.

## Research Corner

P-71

Labour Reforms, Social Audit  
And Labour Law Audit

72

ICSI Research Cell

Regulation of Indian labour market is lagging behind international labour standards, due to over-arching complexities of archaic labour laws. Though the successive governments have made persistent efforts to bring Indian labour laws at par with global standards, a lot have been achieved, yet we have miles to go. In this regard, labour law audit, can be proved to be an important tool, to ensure efficient and effective implementation of labour laws in India. Hence, labour law audit is urgent need of the day. The study analyses three important aspects related to Indian labour force like labour reforms, social security and labour law audit. Since, Labour reforms are linked to competitiveness by augmenting labour productivity, reforming Indian labour market is expected to boost labour productivity. Further, Social protection plays a key role in achieving sustainable development, promoting social justice.

THE ICSI-CCGR  
Invites Comprehensive  
Papers on Functions of  
Company Secretary in  
Champion Sectors

79

## Legal World

P-81

- **LMJ 05:05:2018** No case appears to have been made out that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members. In order to be successful on this ground, the Petitioners have to make out a case for winding up of the company on just and equitable grounds. [SC]
- **LW 31:05:2018** The transmission of shares as mandated by the award could be fully effectuated by obtaining a rectification of the register under Section 111 of the Companies Act. The remedy which was resorted to was competent. The view of the NCLT, which has been affirmed by the NCLAT does not warrant interference. [SC]
- **LW 32:05:2018** Having vetted the underwriting agreement executed by the appellant company and the underwriters which is in consonance with the model underwriting agreement prescribed by SEBI, NSE is not justified in rejecting the basis of allotment submitted by the appellant on ground that the underwriters have failed to subscribe to the unsubscribed shares as contemplated under regulation 106P of the ICDR Regulations. [SAT]
- **LW 33:05:2018** Though belatedly, the appellant has implemented all the required policies and procedures on AML/CFT policy as stipulated under the various circulars of SEBI and by the penalty precedent set by SEBI itself we are of the view that the penalty of Rs.40 Lakh imposed on the appellant is excessive. [SAT]
- **LW 34:05:2018** In the present case, the Adjudicating Authority having noticed that the Respondent has satisfied with the evidence that there is no default on the part of the Respondent and the 'debt' is not due, we find no ground to interfere with the finding of the Adjudicating

Authority.[NCLAT]

- **LW 35:05:2018** As per the aforesaid provision of the I&B Code, the appeal is required to be filed within thirty-days, means within thirty-days from the date of knowledge of the order against which appeal is preferred.[NCLAT]
- **LW 36:05:2018** CCI upholding cartelisation in zinc-carbon dry cell batteries, passes cease and desist order and imposes penalties.
- **LW 37:05:2018** CCI causes investigations into the process of allotting licenses to developers by the Licensing Authority DTCP & HUDA of Haryana on the complaint of abuse of dominance.
- **LW 38:05:2018** We are of the view that at the very moment when the order of enhancement of superannuation of the employees came into force though temporary in nature, it would amount to privilege to employees since it is a special right granted to them. Hence, any unilateral withdrawal of such privilege amounts to contravention of Section 9A of the Act and such act of the employer is bad in the eyes of law.[SC]
- **LW 39:05:2018** It is the settled position in law that when two labels or artistic works are compared, the broad features are to be compared and not by putting the two labels side by side. [Del]

## From the Government

P-91

- Relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E Forms using Ind AS under the Companies Act,2013 -reg.
- Condonation of Delay Scheme, 2018.
- North East Industrial Development Scheme (NEIDS), 2017
- Designated Special Court for Speedy Trial of Offences Punishable with Imprisonment of 2 Years or More
- Alteration to Schedule I of the Companies Act, 2013
- Companies (Share Capital and Debentures) Amendment Rules, 2018
- Change in Definition of Startup Entity
- Monitoring of Foreign Investment limits in listed Indian companies
- Measures to strengthen Algorithmic Trading and Co-location/ Proximity Hosting framework
- Clarification on clubbing of investment limits of foreign Government/ foreign Government related entities
- Know Your Client Requirements for Foreign Portfolio Investors (FPIs)
- Review of Framework for Stocks in Derivatives Segment
- Performance disclosure post consolidation/ Merger of Schemes
- Investments by FPIs in Government and Corporate debt securities
- Guidelines for issuance of debt securities by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)
- Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018

## Other Highlights

P-115

- Members Restored During the Month of March 2018
- Certificate of Practice Surrendered During the Month of March 2018
- Payment of Annual Membership and Certificate of Practice Fee for the Year 2018-2019
- Council / Regional Councils Elections – 2018
- Gst Accounts Assistant Course
- Ethics & Sustainability Corner
- CG Corner
- GST Corner



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# 1

## ARTICLES



- FIXED TERM EMPLOYMENT- CAULDRON ON FIRE AGAIN (LEGAL PROVISIONS REVISITED)
- PENALTIES FOR NON-COMPLIANCE UNDER LABOUR LAWS IN INDIA
- LABOUR LAWS COMPLIANCES AND IMPACT THEREOF ON STAKEHOLDERS
- ROLE OF A COMPANY SECRETARY IN SHAPING & MAPPING THE LABOUR LAWS
- THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970: A PERSPECTIVE
- COMPANY SECRETARY AND COMPLIANCE OF LABOUR LAWS
- SECRETARIAL STANDARD ON DIVIDEND
- SECRETARIAL GUIDANCE FOR PREFERENTIAL ISSUE BY LISTED COMPANIES
- FUGITIVE ECONOMIC OFFENDERS BILL AND OPPORTUNITY FOR COMPANY SECRETARIES

# Fixed Term Employment- Cauldron on Fire Again (Legal Provisions Revisited)

*In industrial employment scenario Fixed term employment (FTE), other than Indian jurisdiction, has been recognised only as a stop-gap arrangement or ad hoc measure to tide down temporary shortage of labour and it is made clear that if FTE is repeatedly used, then such employment ought to be regularised. By notifying the Industrial employment (Standing Order) Central (Amendment) Rules, 2018 ["the Rules" for short], the concept of FTE has been re-introduced by amending Schedule 1 to the Industrial Employment (Standing Order) Act, 1946. This article traces the history of FTE in India and examines the concept, its validity and its relevance in the light of international practices and judicial pronouncements.*



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## INTRODUCTION

**F**ixed term employment ["FTE" for short], as the name suggests, means the practice of employing workers on contractual basis for a fixed period of time. Their subsequent employment in the industry/establishment would be contingent on the renewal of the said contract. Against this, permanent employment is an employment where a person is employed without any outer boundary of time limit.

In industrial employment scenario FTE, other than Indian jurisdiction, has been recognised only as a stop-gap arrangement or *ad hoc* measure to tide down temporary shortage of labour and it is made clear that if FTE is repeatedly used, then such employment ought to be regularised.

By notifying the Industrial employment (Standing Order) Central (Amendment) Rules, 2018 ["the Rules" for short], the concept of FTE has been re-introduced by amending Schedule 1 to the Industrial Employment (Standing Order) Act, 1946 ["the Act" for short].

This article traces the history of FTE in India and examines the concept, its validity and its relevance in the light of international practices and judicial pronouncements.

## HISTORY OF FTE IN INDIA

It is to be noted that FTE was initially introduced, for the first time, in 2003 during the period of NDA Government (G.S.R. No. 936 (E), dated 10.12.2003) only to be removed after 4 years in 2007 (G.S.R No. 655 (E), dated 10.10.2007). It has now again been introduced as a means to create employment. Prior to the coming of this amendment, the Standing Order Central Rules were amended by a notification of 8<sup>th</sup> January, 2018 allowing for fixed term employment only in apparel manufacturing sector. The present amendment, notified on 16<sup>th</sup> March 2018 allows for fixed term employment across all sectors.



FTE has been indirectly practiced in India due to the provision in the Industrial Disputes Act, 1947 ["the IDA" for short] namely, Section 2(oo)(bb) which excludes termination of employee due to non-renewal of contract of employment or expiry of employment after the stipulated period in the contract from the purview of retrenchment. This clause was abused by the employers in private as well as government sectors. The employees would be employed on fixed term and the term would be less than the specified number of days required in a year to qualify for the retrenchment provisions. Further, the employers would keep renewing the contracts with gaps of certain days to avoid the compensation provisions for the labour welfare. When the issue arose before the judiciary, it stood vehemently against this practice, which has been discussed in detail below.

This practice led to two main questions to be sorted out by the Court, namely:

- Where can FTE workers be employed, i.e. for what sort of jobs would a contract for FTE be considered fair?
- Regularisation of the post held by the FTE/temporary/casual workman, as they are kept in the post by continuously renewing their contracts but they still do not have job security as the law had been and still is silent.

The issue of fixed term employment came up before the Supreme Court, in the case of *S.M Nilajkar v. Telecom District Manager*, AIR 2003 SC 3553. Primarily, it laid down, with

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reference to section 2(oo)(bb) of the IDA, principles as to what is a “fixed term employment” and what are the kinds of jobs in which workman can be employed on fixed term. The court made the following observations:

*“11. It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.*

*13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :- (i) that the workman was employed in a project or scheme of temporary duration; (ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract. (iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting*



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*applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.”*

From the above judgement, the following are the conditions that emerge, for employing a workman in fixed term employment:

- the workmen is employed in a project or a scheme of temporary nature;
- the contract of employment provides *inter-alia* that the employment shall come to an end on expiry of the scheme or the project;
- the employment comes to an end with the termination of the scheme or project or on the expiry of the contract; and
- the workmen was apprised of the aforesaid terms by the employer at the commencement of the employment.

In the case of *Haryana State Electronics Development Corporation v. Mamni*, AIR 2006 SC 2427 the issue before the apex court was the validity and the ultimate result of repeated employment of a person in the same post by successive renewal of the employment contract. The Supreme Court observed that:

*“It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent-workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent/workman for a specified period, as alleged, but was to defeat the rights available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner/management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice.”*

It is clear that what was stressed in the above judgements as to the nature of fixed term employment is that it is the very nature of the job itself which should be of fixed term and not merely the period of employment for the job. In other words, the job itself should be of a fixed term as against perennial nature of a job so as to be termed as fixed term employment. Employment in such fixed term job is fixed term employment. The mere fixing of a time will not suffice.

## INDUSTRIAL EMPLOYMENT (STANDING ORDER) CENTRAL (AMENDMENT) RULES, 2018

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According to the amendment a ‘fixed term workman’ is defined as a workman who has been engaged on the basis of a written contract of employment for a fixed period.<sup>1</sup> However the amendment also provides for rider as to on what basis the fixed term contract must be entered into and what “rights” these employees would have. It states that the terms of employment of a workman for fixed term need to be in parity with that of the permanent workman with respect to the hours or work, wages, allowance and other benefits. Further, a fixed term workman would also be eligible for the statutory benefits available to a permanent workman, proportionate to his period of service even if it does not qualify for the same in the strict sense given in the statute. Therefore, a fixed term workman will be eligible for gratuity even if he does not fulfil the conditions required, of having served in the employment of the employer for a specific number of days, to avail the same under the Act due to the nature of his work. His statutory benefits would be calculated according to his period of service. Hence, this creates a duty on the employers to devise a scheme for the payment of statutory benefits for fixed term workmen different from the permanent workmen. Fixed term workmen cannot be denied the same because of the nature of their work.

Further, the fixed term workman need not be given a notice or money in lieu of the notice for termination of his employment as a result of non-renewal of contract or employment or on the expiry of such contract period without it being renewed. But his services will not be terminated as a way of punishment without giving him a chance to put forward his case against the charges of misconduct.

Furthermore, the amendment is prospective in nature. An employer cannot convert the posts of a permanent workmen existing in the establishment to that of a fixed term workman after the coming into force of this amendment. They can only create new jobs by this amendment.

This amendment only complicates the issue further by adding another category of workman clashing with the categories of workmen already existing. Further it is silent on the major issues already existing because of the prior classification:

- a. Nature of job for FTE can exist
- b. Regularisation of temporary post on continual renewal

The Act, when enacted, categorised workman broadly as permanent, temporary, apprentices and probationers. In 2003

another category “badlis or fixed term employment” was added by NDA Government<sup>2</sup> and was substituted with “badlis” in 2007 by UPA Government<sup>3</sup>. Now this amendment restores the fixed term employment category.

The purpose of categorising workman into various kinds was discussed in detail by the Supreme Court of India<sup>4</sup> bringing out the fine nuances of the terms employed. The relevant portion of the judgement reads as under:

“4. The main question for our consideration in the present appeal by the employer by special leave is the proper construction of the definition of a permanent workman. *In deciding on the proper meaning to be attached to the words and phrases used in the definition it will be proper to consider the question in the background of the definition in the Standing Order of two other kinds of workmen viz. Seasonal Workmen and Temporary Workmen. A Seasonal Workman is defined as one who is engaged for the crushing season only and/or may also be employed for the period necessary for cleaning and overhauling either before or after the season and is discharged after the work is finished. A Temporary Workman is defined as one who is engaged in the work of a temporary and casual nature or to fill in a temporary need of extra hands on permanent or temporary jobs.*

5. Reading the three definitions together it is abundantly clear that while a seasonal workman is engaged in a job which lasts during the crushing season only, a temporary workman may be engaged either for work of a temporary or casual nature of work of a permanent nature; but a permanent workman is one who is engaged on a permanent nature of work only. *The distinction between a permanent workman engaged on work of a permanent nature and a temporary workman engaged on work of a permanent nature is in the fact that a temporary workman is engaged to fill in a temporary need of extra hands of permanent jobs. In this background it becomes clear that the words “engaged on a permanent nature of work throughout the year” were intended to mean “engaged on a permanent nature of work lasting throughout the year” and not “engaged throughout the year on a permanent nature of work”. When a workman is engaged on a work of permanent nature which lasts throughout the year it is legitimate to expect that he would continue there permanently unless he has been engaged to fill in a temporary need. It will be unreasonable to think that the Standing Orders left a loop-hole for the employer to prevent a person engaged on a work of permanent nature which lasts throughout the year, from becoming permanent by the device of discharging him from time to time. By such a device it would be possible for the employer to prevent any workman from becoming permanent, even though the work on which he is engaged lasts throughout the year and is in its nature permanent. That could not have been the intention when the Standing Orders were framed. It stands much more to reason that in speaking of a workman being engaged on a permanent nature of work throughout the year, those who framed the Standing Orders proceeded on the assumption that if the work of a permanent nature lasts throughout the year a workman who has completed his probationary period, if any, will continue to be engaged*

<sup>1</sup> A “fixed term employment workman” is a workman who has been engaged on the basis of a written contract of employment for a fixed period:

Provided that-

- (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman; and
- (b) he shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute’.

<sup>2</sup> GSR 936(E) dated 10/12/2003.

<sup>3</sup> GSR 655 (E) dated 10/10/2007.

<sup>4</sup> *Jaswant Sugar Mills Ltd. v. Badri Prasad*, AIR 1967 SC 513 : (1961) 1 LLJ 649



It is to be mentioned here that the Supreme Court of India favours regularisation of posts if the employee has been putting in more than 240 days of work in a year and his contract gets renewed for a considerable period of years. But where the employee has not and could not fulfil the said criteria the law is silent and the court is helpless unless it can be proved by the employee that the act of the management amounts to unfair labour practice of hiring a workman as temporary workman where he can be hired as a permanent one. And such cases are subject to case-to-case analysis of its facts and circumstances.

*in that work. We are, therefore, of opinion that the Appellate Tribunal was right in thinking that to be a permanent workman within the definition it is not necessary that the workman should be engaged throughout the year. What is necessary is that the work on which he is engaged is of a permanent nature and lasts throughout the year.*

6. What, however, of a workman who is engaged on work of a permanent nature which lasts throughout the year but his own engagement is only to fill in a temporary need of extra hands? It is clear that such a workman falls clearly within the definition of a temporary workman which has been set out above, though at the same time he may fall within the definition of a permanent workman. As, however, such a man falls within the narrower and special category of temporary workman it will not be reasonable to hold that he was sought to be included within the definition of a permanent workman in the Standing Orders. The proper construction of the definition of a permanent workman therefore is: A workman engaged on a work of permanent nature which lasts throughout the year and who has completed his probationary period, if any, not being one engaged to fill in a temporary need of extra hands on permanent jobs, e.g., in leave vacancies.”

In view of the above judgement the broad basic categories of a job/work is three fold i.e. permanent (perennial nature lasting throughout the year); temporary (casual or to fill in a temporary need) and seasonal (working only during a given season). In the above work profile, the categorisation of workmen will be as under:  
Permanent employee employed in work of permanent nature.  
Temporary employee employed in work of permanent nature.  
Temporary employee employed in work of temporary nature.  
Seasonal employee employed in seasonal work.  
Apprentices.  
Probationers.

Further with respect to regularisation of the posts of persons engaged through fixed term contract where the contract of the workman is renewed periodically after the expiry of the contract, the Court has held that where the contract has been renewed continuously for a period of several years (without court's intervention which is called "litigious employment"), the post must be regularised with the workman on that post. The onus is heavy on the government to not misuse the provisions of Section 2(oo) (bb). Where the government scheme is such where it provides for jobs of temporary nature, like MNREGA et al., the employment cannot be regularised as it would frustrate the very purpose of the scheme. But where the employment is not under a scheme but as a contractual liability in a government/private establishment, both the establishments are to ensure that they should not engage in unfair labour practice.<sup>5</sup>

It is to be mentioned here that the Supreme Court of India favours regularisation of posts if the employee has been putting in more

than 240 days of work in a year and his contract gets renewed for a considerable period of years. But where the employee has not and could not fulfil the said criteria the law is silent and the court is helpless unless it can be proved by the employee that the act of the management amounts to unfair labour practice of hiring a workman as temporary workman where he can be hired as a permanent one. And such cases are subject to case-to-case analysis of its facts and circumstances. Therefore the law needs to be simplified to correct these lacunae than to further complicate the issue by bringing in amendments in a haphazard manner.

## FOREIGN LAWS ON FTE

It has been seen in the foreign jurisdictions that where they have employed a person under fixed term employments, they provide a particular time period within which the employment gets regularised. But in India so far, it has been on case to case basis whether the employee can claim regularisation of his employment. Apart from the factor of the period of time for which the contract was renewed, other factors have also been looked into by the courts in various cases like the employment of other persons in the same job after the retrenchment of the aggrieved person, employment of those persons as temporary workmen or permanent workmen, etc.

FTE is a very important issue concerning labour welfare and is very much prevalent in certain foreign laws. Given its nature to create issues against the employee, wherever FTE finds mention in the labour code in outside jurisdictions, the provision is very clear and ensures regularisation of the position of the employee after a certain period of time if the employee's contract keeps renewing after a particular specified (in law) period. The status and position of the employee is not kept in dark.

### 1. *The United Kingdom*

In the United Kingdom a person is said to be on fixed term employment if he has an employment contract with the establishment/organisation he works for and that this said contract ends on a particular date, or on completion of a specific task for which he was engaged.<sup>6</sup>

Under the English Laws, the "Workers" are not fixed term employees if they fall within either of the following situations:<sup>7</sup>

1. They have a contract with an agency rather than the company they're working for; or
2. They are a student or trainee on a work-experience placement; or
3. They are working under a 'contract of apprenticeship'; or
4. They are a member of the armed forces

Further, the "Workers" may be fixed term employees if they fulfil either of the following conditions:<sup>8</sup>

1. They are employed as a seasonal or casual employee

<sup>6</sup> <https://www.gov.uk/fixed-term-contracts> (Last viewed on 03.05.2018)

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>5</sup> *Jacob M. Puthuparambil & Ors. v. Kerala Water Authority & Ors.* 1990 AIR 2228; *Secretary, State of Karnataka & Ors. v. Uma Devi* (2006) 4 SCC 1

- taken on for up to 6 months during a peak period
- They are employed as a specialist employee for a project
  - They are employed for covering for another worker who is on maternity leave.

Furthermore, under the English Laws, fixed-term contracts will come to an end automatically when they reach the agreed end date. The employer does not need to give any notice thereof. It is a common practice that when the employment contract is not renewed beyond the stipulated period, it is to be considered that the said employee is automatically dismissed. But, when an employee has been in employment for 2 years consecutively and the employer 'dismisses' him (by not renewing the contract), the employer needs to show a 'fair reason' for not renewing the contract. The "Workers" have the right to not be dismissed unfairly after 2 years' service (after 06.04. 2012. For employees employed before the said date the period is 1 year's service) and be given written statement of reasons by the employer for not renewing their contracts. They may be entitled to statutory redundancy payments after 2 years' service if the reason for non-renewal is redundancy.<sup>9</sup>

Fixed-term employees have the right to a minimum notice period as well under the English Laws. The minimum notice period to be followed is as under:

- 1 week if they've worked continuously for at least 1 month.
- 1 week for each year they've worked, if they've worked continuously for 2 years or more.

These are the minimum periods. The contract may specify a longer notice period.

If an employer ends a contract without giving the proper notice, the employer may be able to claim breach of contract.<sup>10</sup>

#### 2. Australia

In Australia, fixed term contract employees are employed for a specific period of time or for a particular task. For example a 6 month contract where employment ends after 6 months. Fixed term employees are different to permanent employees who are employed on an ongoing basis until the employer or employee ends the employment relationship. Fixed term contract employees are usually full-time or part-time employees. Full-time or part-time fixed term employees are generally entitled to the same wages, penalties and leave as permanent employees. An award or registered agreement may provide extra terms and conditions for a fixed term employee.<sup>11</sup>

#### 3. Brazil

In Brazil, fixed-term employment agreements are only allowed: (a) for up to 2 years when: (1) the temporary nature of the service justifies a pre-established term, or (2) the business activities have a temporary nature; (b) during an initial 90 day probation employment period, after which the employment agreement will become for an indefinite term. Additionally, Law 9.601/98 establishes that collective bargaining agreements may also authorize some additional situations in which fixed-term employment agreements will be allowed.<sup>12</sup>

9 <https://www.gov.uk/fixed-term-contracts/renewing-or-ending-a-fixed-term-contract> (Last viewed on 03.05.2018)

10 *Ibid.*

11 <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time> (Last viewed on 03.08.2018)

12 <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/brazil> (Last viewed on 03.08.2018)

If the parties intend to execute a fixed term employment agreement it is necessary to have a written employment agreement expressly stating the term and the reason. The fixed-term agreement will become an indefinite term employment agreement, if the agreement: (a) is for a fixed term, but the reason to justify it is not one of the reasons allowed by law; (b) does not have a clause mentioning the term and the legal justification for such term; (c) is extended more than once; (d) the maximum term is not observed; (e) the renewal is not agreed by the parties in writing; or (f) if successive fixed-term employment agreements are used without observing the 6-month break.<sup>13</sup>

#### 4. South Africa


In South Africa, the Labour Relations Amended Act of 2014 introduced a new regulation of fixed-term employment contracts with effect from January 1, 2015. The regulation is set forth in Section 198B and applies only to 1) employers with 10 or more employees (and for new businesses during the first two years of their operations, the regulation applies only if the employer has 50 or more employees), and 2) to lower earning employees, which are employees earning less than a threshold annual wage determined by the South African Minister of Labour. Since July 1, 2014, the earnings threshold is South African Rand 205,433.50.<sup>14</sup>

The Act fundamentally changes fixed-term contract employment with the introduction of section 198B, under which a fixed term contract means a contract of employment which terminates on the occurrence of a specified event, the completion of a specified task or project, or on a fixed date other than an employee's normal or agreed-upon retirement age.<sup>15</sup>

FTE is not applicable in the following cases of employees:<sup>16</sup>

- Employees earning more than R205 433-30 (this amount will change according to the Basic Conditions of Employment Act (75/1997) Earnings Threshold Determination as gazetted by the minister of labour each year).
- Employees employed in terms of fixed-term contracts which is permitted by any statute, sectoral determination or collective agreement.
- Employers who employ fewer - less than ten employees.
- Employers who employ under 50 people and whose businesses have been in operation for less than two years, unless the employer conducts more than one business or the business was formed by the division or dissolution of an existing business.

## CONCLUSION

The introduction of fixed term employment, without a proper clear definition of the term, and without adequate safe guards against its misuse would result in further exploitation of labour in the garb of FTE, where litigants will be knocking the doors of the courts for justice. Though it appears to be a good step, at least in paper, it is introduced without any forethought or clarity of its consequences. It is high time the Government of the day have a relook into the FTE concept. 

13 *Ibid.*

14 <http://www.polity.org.za/article/fixed-term-employees-the-new-labour-relations-amendment-act-of-2014-2015-09-04> (Last viewed on 03.05.2018)

15 <http://www.ee.co.za/article/labour-relations-amendment-act-fixed-term-employment-contracts.html> (Last viewed on 03.05.2018)

16 *Ibid.*



# Penalties for Non-compliance under Labour Laws in India

*The article discusses in a nutshell the obligations and liabilities of an organisation under various labour laws in India. It also deals with the offences and penalties for non-compliance of the provisions as contained therein.*



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## NEED FOR COMPLIANCE

- Statutory compliance under various labour laws to be ensured by establishments.
- It is not just limited to the statutory deposits, returns and records to be maintained by the employer under various labour laws, but also to represent them in case of prosecution under various statutes.
- Compliance of all the applicable legal provisions, rules and regulations in order to prevent lawsuits and/or penalties.

## THE CONTRACT LABOUR (REGULATION AND ABOLITION ACT), 1970

### Introduction

The Act has been brought to the fore to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The main object of this Act is to prevent the exploitation of contract labour and to ensure as well as introduce better conditions of work. It should be well pointed out at first that there exists a fine line of difference between contract labour and direct labour.

The Act essentially applies to the principal employer of an establishment and the contractor who employed 20 or more workmen even for one day, in the preceding twelve months as the contract laborer. The Act, however, does not pertain to seasonal employment or intermittent employment. This Act makes an endeavor to create a balance between, providing minimum wages to contract workers through the licensing of contractors and holding the principle employers accountable for the enforcement of the law.

The Act enumerates certain joint and several responsibilities on the principal employer and the contractor. It is the duty of the principal employer to ensure that the contractor adheres to the liabilities under the Act.

### Liabilities

- » Pays the wages as determined by the Government or as fixed by the Commissioner of Labour. The payment of

wages shall be disbursed through the contractor or his nominees, and a representative of the principal employer is required to sign the register as a token of having disbursed the salary

- » The work for which the labor is employed must not be of a perennial nature. Discipline at work is an area of supervision of the contractor, and thus, the workers shall not be subjected to the control of the principal employer
- » Fair wages are paid to the contract laborer even in their absence

### Obligations and Penalties under Contract Labour

The Contract Labour (Regulation and Abolition Act), 1970 imposes certain obligations and penalties for non-compliance, respectively. In any event of the contractor failing to provide for the above facilities, the obligation is automatically transferred to the principal owner. While the principal employer may be offered some consolation in respect of the recovery of expenses, it would, however, be prudent to negotiate clearly and define the mutual rights and duties, before entering into any form of contract with the contractor. Conditions are likely to be imposed upon the contractor for compliance with the Contract Labour Act.

In cases of large corporate houses, employing far more than 100 laborers, it would be wise to ensure that the contractor has previously in all other circumstances been working in consonance with the Act, has a valid license and has not been at default to labor payment. Diligence especially is required in those areas where due protection may not be provided to the principal employers.

The Act particularly states the penalties for non-compliance in Chapter VI (Sections 23 and 24), which shall be as follows:

- » Section 23  
Contravention of provisions regarding employment of contract labour.

Whoever contravenes any provision of this Act or of any rules made there under prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a license granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first

such contravention.

» Section 24

Other offences - If any person contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Thus, an authorized inspector under this Act has been empowered to make an investigation, examination or inquiry with regard to an establishment. However, in case he is faced with an obstruction, then the person so concerned shall be subjected to an imprisonment for three years along with a fine that may extend to five hundred rupees or both. Such an obstruction also extends to the nonproduction of documents or registers on the demand of the inspector.

Whenever any provision of this Act is contravened (extending to provisions relating to license), it is implied that such an action has been acted against the regulation of contract labor.

Hence, the person concerned shall be punishable with an imprisonment for a term that may extend to a maximum of three months or may be penalized with a fine up to one thousand rupees or both. In the case of continuing contravention, an additional fine of rupees one hundred for each day may be imposed during which such contravention continues.

Section 24 deals with other general offences of noncompliance under the Act for which the person may be imprisoned for up to three months or with a fine that may extend up to one thousand rupees. It should be particularly noted here that if the offender is a company, then the company, as well as all the persons associated with such contravention, shall be responsible for the offence (jointly and severally).

Provided that there is nothing to show that the company had contravened the provisions of the act without a prior knowledge and had been duly diligent in its conduct, the company and the liable persons associated shall be punished accordingly. This also includes negligence on the part of the director, manager, sub-manager, agent, etc. However, the cognizance of offence can only take place if there had been a previous complaint in writing concerning a particular issue of the contravention and that, such a complaint was made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector. The Presidency Magistrate or a Magistrate of the first class are empowered to try such cases.

## THE FACTORIES ACT, 1948

### Introduction

The Act regulates the working condition in factories. The basic requirements of the Act is to ensure safety, health and welfare of workers. It is applicable to all the workers and all the factories using power and employing ten or more workers and if not using power, employing twenty or more workers on any day of the preceding twelve months.

Section 6 of the Act explains registration and renewal of factories which shall be granted by the Chief Inspector of factories on



where in any premises separate buildings are being leased out by the owner to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water-supply, lighting and sanitation.



submission in a prescribed form, along with prescribed fees and procedure.

### Liabilities under the Factories Act, 1948

Section 93 provides that where in any premises separate buildings are being leased out by the owner to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water-supply, lighting and sanitation. [Section 93(1)].

Where in any premises, independent floors or flats are leased to different occupiers for use as separate factories, the owner shall be liable as if he were the manager or occupier of a factory for any contravention of the provisions of this Act.

### Health and Safety

- > Cleanliness
- > Disposal of wastes & effluents
- > Ventilation & Temperature
- > Dust & Fumes
- > Artificial Humidification
- > Over crowding
- > Lighting
- > Drinking Water
- > Latrines & Urinals
- > Spittoons
- > Vaccination & Inculcation
- > Provision of Canteen
- > Welfare officer









Every factory needs to adopt the following safety measures for the welfare of the workers.

### Safety of Workers

- ✓ Employment on on Dangerous Machines
- ✓ Cutting of Power
- ✓ Cotton opener
- ✓ Precautions against Fire
- ✓ Machinery in motion
- ✓ Floor, stairs, & means of access
- ✓ Pits and pumps
- ✓ Precaution of eyes
- ✓ Safety of worker
- ✓ Explosive or inflammable gas
- ✓ Prohibition of children
- ✓ Shelter of rest.

### Compliance of Safety Policy



### Offences and Penalties under Factories Act, 1948

OFFENCE	PENALTIES
• For contravention of the Provisions of the Act or Rules	• Imprisonment upto 2 years or fine upto Rs.1,00,000 or both
• On Continuation of contravention	• Rs.1000 per day
• On contravention of Chapter IV pertaining to safety or dangerous operations.	• Not less than Rs.25000 in case of death. • Not less than Rs.5000 in case of serious injuries.
• Subsequent contravention of some provisions	• Imprisonment upto 3 years or fine not less than Rs.10,000 which may extend to Rs.2,00,000.
• Obstructing Inspectors	• Imprisonment upto 6 months or fine upto Rs.10,000 or both.
• Wrongful disclosing result pertaining to results of analysis.	• Imprisonment upto 6 months or fine upto Rs.10,000 or both.
• For contravention of the provisions of Sec.41B, 41C and 41H pertaining to compulsory disclosure of information by occupier, specific responsibility of occupier or right of workers to work imminent danger.	• Imprisonment upto 7 years with fine upto Rs.2,00,000 and on continuation fine @ Rs.5,000 per day. • Imprisonment of 10 years when contravention continues for one year.

## INDUSTRIAL DISPUTES ACT, 1947

### Introduction

Primarily, the Act aims at regulating and harmonizing relationship between employer and the employees by methods such as conciliation and adjudication. It lays down machinery for resolution of dispute between the parties.

The distinctive features of the Act are that all Factories and Establishments, irrespective of being registered or not under any other Act and regardless of the number of employees on the rolls will come under its purview.

The Act applies to every business, trade, undertaking, service, avocation, etc., which is considered as an industry under the Act.

### Persons who can raise industrial dispute under the Act

- An individual workman can raise an industrial dispute with regard to his discharge, dismissal, retrenchment or termination
- The Act covers Industries and Workmen
- Workmen definition excludes supervisor and manager

### CONDITIONS FOR LAYING OFF

#### Failure, refusal or inability of an employer to provide work due to

- Shortage of coal, power or
- Accumulation of stocks.
- Breakdown of machinery
- Natural calamity

### Lay off Compensation

Payment of wages except for intervening weekly holiday compensation 50% of total or basic wages and DA for a period of lay off up to maximum 45 days in a year.

### Notice of Change

21 days' notice to be given by an employer to workmen about changing the conditions of service.

### Prohibition of strikes & lock out

- Without giving to the employer notice of strike, as hereinafter provided,  
Within six weeks before striking
- Within fourteen days of giving such notice
- Before the expiry of the date of strike specified in any such notice as aforesaid
- During pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings
- During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings
- During the pendency of proceedings before labour court, Tribunal or National Tribunal. and two months, after the conclusion of such proceedings
- During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-Section(3A) of section 10A

- **During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award**

### PENAL PROVISION AND COMPLIANCE

- **For breach of provisions of the Act, the employer shall be punishable with imprisonment up to six months and/or fine not exceeding Rs.5,000**
- **On continuing of offence fine upto Rs., 200 per day**

Sr. No.	Section/ Rule	Provision	Compliance	Form
1.	Section 3	Work Committee	Where 100 or more workers are employed, a work committee representing employers and workmen shall be constituted to secure and preserve amity and good relations.  The representatives of work committee shall be appointed by following the complete procedure of election as laid down under Rules.	-
2.	Section 9A	Notice of change	To effect any change in the conditions of Service.	Form E
3.	Rule 56A	Half Yearly returns	Not later than 20th day of month following the half year.	Form-G.1
4.	Rule 74A	Notice of layoff	Notice of layoff shall be given to the workmen on commencement and termination of layoff.	FormO-1 and FormO-2
5.	Rule 75A	Notice of and application for permission of retrenchment	-	Form PA and Form PB
6.	Section 9C	Grievance Settlement Authorities	Where 50 or more workmen are employed, Grievance Settlement Authority for settlement of Industrial Disputes shall be constituted.	-
7.	Section 25O	Closure of undertaking	60 days notice to labour authorities and prior permission from govt. if workers are more than 100.	Form QA

### TRADE UNIONS ACT, 1926

#### Introduction

Labour unions or trade unions are organizations formed by workers from related fields that work for the common interest of its members. They help workers in issues like fairness of pay, good working environment, hours of work and benefits. They represent a cluster of workers and provide a link between the management and workers.

#### Purpose of Trade Unions

The purpose of these unions is to look into the grievances of wagers and present a collective voice in front of the management. Hence, it acts as the medium of communication

between the workers and management.

Regulation of relations, settlement of grievances, raising new demands on behalf of workers, collective bargaining and negotiations are the other key principle functions that these trade unions perform.

The Indian Trade Union Act, 1926, is the principal Act which controls and regulates the mechanism of trade unions. In India, political lines and ideologies influence trade union movements. This is the reason why today political parties are forming and running trade unions.

#### Formation

- A Trade Union may be formed by any 7 or more members by subscribing their names to Rules of Trade Union and apply for registration under this Act
- At least half of Office Bearers shall be person engaged or employed in the industry with which trade union is connected

#### Compliance under Trade Union

Sr. No.	Section	Provision	Compliance	Form
1.	Section 5	Application for registration	Application shall be made with Registrar of Trade Union accompanied with rules of Trade Union and a Statement giving complete details of Trade Union.	Form A
2.	Section 12	Registered Office	Trade Union shall have a registered office and may change address of Registered office with the intimation to Registrar.	-
3.	Section 28	Annual Return	Return of all receipts and expenditures and assets and liabilities for the year ended 31 <sup>st</sup> December shall be sent to Registrar.	Form D

### PENALTIES UNDER THE ACT

#### Section 31 – Failure to submit returns

(1) If default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provisions of this Act, every [office-bearer] or other person bound by the rules of the trade union to give or send the same, or, if there is no such [office-bearers] or person, every member of the executive of the trade union, shall be punishable with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues :

**PROVIDED** that the aggregate fine shall not exceed fifty rupees.

(2) Any person who willfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

#### Section 32 – Supplying false information

**regarding trade unions**

Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may extend to two hundred rupees.

**Section 33 – Cognizance of offences**

(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

### CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 AND

### THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT 2016

**Introduction**

The Child Labour (Prohibition and Regulation) Amendment Act, 2016 has come into force on July 30, 2016. There are major changes brought in by the amended Act compared to the provisions of the earlier Act. The main objective of the Act is to prohibit the engagement of children in certain employments and to regulate the conditions of work.

**Definition of Child**

A person who is less than fourteen years of age or of age given under the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

**Definition of Adolescent**

A person between fourteen to eighteen years of age. Prohibition of employment in any hazardous occupations and processes as specified in the Schedule.

**Regulation on work conditions of the Adolescent**

Provides for regulation of work conditions viz. working hours limited to six hours in a day, one hour rest after every three hours of work and no overtime, etc.

**Analysis of the Amendment Act**

The regulation will be a challenge as the amendment does not provide the criteria to determine if an enterprise is a family enterprise or not.

The Amendment legalises child labour in “family business” and is silent on regulation of working hours, overtime, weekly holidays etc. for such child labour, thereby, making this provision exploitable for employment of child labour.

**Prohibition of employment of children in any occupation and process**

Prohibits employment of a child in all occupations except where the child helps his family after school hours.

**Power of Central Government**

To add or omit any hazardous occupation and process from the list as included in the amendment.

**Penalty for violation of the Act**

Enhanced penalty for violation of the provisions of the amended Act. Imprisonment for a period up to six months to two years whereas, earlier it was three months to one year and fine of INR 20,000 to INR 50,000 whereas, earlier it was INR 10,000 to INR 20,000.

**Conclusion**

The Schedule of the Act provides the list of hazardous occupations and processes and as per the amendment:

- Prohibition is only on occupations related to mining and explosives or inflammable substances whereas earlier the list contained eighteen occupations
- Hazardous processes as mentioned under the Factories Act, 1948 whereas earlier the list contained 65 processes

**THE MATERNITY BENEFIT ACT, 1961****AND****THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017****Introduction**

The Maternity Benefit Act was enacted to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.

The Maternity Benefit (Amendment) Act, 2017 has come into force on March 28, 2017 after receiving the assent of the President on March 27, 2017. There are major changes brought in by the amended Act, compared with the provisions of the earlier Act.

**INSERTION OF NEW PROVISIONS UNDER THE AMENDMENT**

**Maternity Benefit (Amend) Act, 2017-Clarifications**

**Act applicable on contract workers/consultant also**

**Dismissal of pregnant woman is unlawful-punishable .**

\* **Duration of maternity leaves as per the Amendment Act**  
The Amendment Act increases the duration of the maternity leave from twelve to twenty-six weeks which can be availed prior to eight weeks from the date of expected delivery (earlier it was six weeks prior).

From third child onwards, maternity leave to be for twelve weeks which can be availed six weeks prior.

**Under section 21 of the Maternity Benefit Act, an employer for contraventions of the Act may be imprisoned for a period which shall not be less than 3 months and which may extend to an year or with fine of a sum of Rs. not less than 2000 and which may even be extended to thousands.**

**\* Maternity leave for adoptive and commissioning mothers**

Maternity leave of twelve weeks to:

- i. Adoptive mothers (adopts a child below three months of age);
- ii. Commissioning mother.

he period is to be calculated from the date the child is handed over to the said mothers.

**\* Crèche facilities**

To be provided by an establishment with fifty or more employees within a prescribed distance. Four visits in a day to crèche should be allowed.

**\* Option to work from Home**

Employer to permit a woman to work from home, if the nature of work permits her to do so and the same can be availed after the completion of her maternity leave for a duration mutually decided.

**\* Employer to inform the woman of maternity benefits**

Woman to be informed at the time of appointment, of the maternity benefits available, either in writing or electronically.

**PENALTY**

**Section 21 – Penalty for contravention of Act by employer**

(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

**PROVIDED** that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made there under, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

**PROVIDED** that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

**The amendments of 2017** to the Maternity Benefit Act, 1961, do not specifically state of or about any penalties, for non-compliance of the creche facility. However, as per section

21 sub-clause (2), the Act does provide for penalties, if any employer contravenes the provisions or the rules of the Act, either with imprisonment which may extend to one year, or with a fine which may extend to five thousand rupees, or with both. Under section 21 of the Maternity Benefit Act, an employer for contraventions of the Act may be imprisoned for a period which shall not be less than 3 months and which may extend to an year or with fine of a sum of Rs. not less than 2000 and which may even be extended to thousands.

**PREVENTION OF SEXUAL HARASSMENT AT THE WORKPLACE**

**Introduction**

Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental right to equality – and right to life, guaranteed under Article 14 Right To Equality, Article 15 Prohibition of discrimination – on grounds of religion, race, caste, sex or place of birth and Article 21 Protection of life and personal liberty of the Constitution of India (Constitution). Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.

**EVOLUTION OF THE LAW ON WORKPLACE SEXUAL HARASSMENT**

The elimination of gender-based discrimination has been one of the fundamentals of the Constitutional edifice of India. The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of Vishaka v. State of Rajasthan

(Vishaka Judgment ), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. The POSH Act and the POSH Rules were enacted 16 years after the Vishaka Judgement.

**THE VISHAKA JUDGEMENT**

The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector. As per the Vishaka judgment, Sexual Harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a. Physical contact and advances;
- b. A demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing pornography;

e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruitment and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.

### WHAT AMOUNTS TO SEXUAL HARASSMENT?

The POSH Act explains sexual harassment which includes unwelcome sexually tinted behaviour, whether directly or by implication, such as

- (i) physical contact and advances,
- (ii) demand or request for sexual favours,
- (iii) making sexually coloured remarks,
- (iv) showing pornography, or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The following circumstances, among others, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- implied or explicit promise of preferential treatment in employment;
- implied or explicit threat of detrimental treatment in employment;
- implied or explicit threat about present or future employment status;
- interference with work or creating an intimidating or offensive or hostile work environment; or humiliating treatment likely to affect the lady employees health or safety.

### PUNISHMENT AND COMPENSATION

The Prevention Of Sexual Harassment (POSH) Act prescribes the following punishments that may be imposed by an employer to an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;
- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined on the basis of the following:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;

**Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.**



- iii. medical expenses incurred by the victim for physical/psychiatric treatment;
  - iv. the income and status of the alleged perpetrator; and
  - v. feasibility of such payment in lump sum or in installments.
- In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concern.

#### Consequences of non-compliance

If an employer fails to constitute an ICC or does not comply with the requirements prescribed under the POSH Act, a monetary penalty of up to INR 50,000 (approx. US\$ 900) may be imposed. A repetition of the same offence could result in the punishment being doubled and/or de-registration of the entity or revocation of any statutory business licenses. It is however unclear as to which business licenses are being referred to in this case. It is also pertinent to note that all offences under POSH Act are non-cognizable.

#### Other Laws Pertaining to Workplace Sexual Harassment

##### I. Industrial Employment (Standing Orders) Act, 1946

The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable. The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (Standing Orders Rules) prescribe a list of acts constituting misconduct and specifically includes sexual harassment. The Model Standing Orders not only defines sexual harassment in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that sexual harassment is not limited to women under the Standing Orders Rules.

## II. Indian Penal Code, 1860

Section	Offence	Punishment	Cognizable/ Non-Cognizable
354	<b>Outraging the modesty of a woman</b> Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged.	Simple/Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine.	Cognizable
354-A	<b>Sexual harassment by a man</b> i. Physical contact and advances involving unwelcome and explicit sexual overtures; ii. Demand or request for sexual favours; iii. Showing pornography against the will of a woman; or iv. making sexually coloured remarks.	Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.	Cognizable
354-B	Assault or use of criminal force to woman with intent to disrobe Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.	Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and fine.	Cognizable
354-C	<b>Voyeurism</b> Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.	First conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine. Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.	Cognizable

354-D	<b>Stalking</b> Following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or Monitoring the use by a woman of the internet, email or any other form of electronic communication.	First conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine; Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which may extend to five years and fine.	Cognizable
509	<b>Insulting the modesty of a woman</b> Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.	Simple imprisonment for a term which may extend to three years, and fine.	Cognizable

**“If you think  
compliance is  
expensive..  
try non-compliance.”**

**DISCLAIMER**

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# Labour Laws Compliances and Impact thereof on Stakeholders

Labour legislation is widely used both to regulate individual employment relationships and to establish the framework within which workers and employers can determine their own relations on a collective basis, for example, through process of collective bargaining. There are two types of labour laws – collective and individual. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work and through the contract for work.



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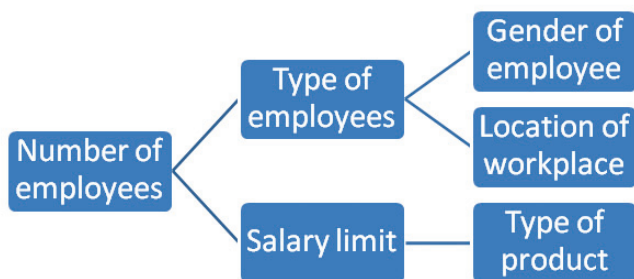
## BASIS OF LABOUR LAWS

Employment in India is primarily governed by the Constitution of India, specific laws framed by the Central and State Governments, Local bodies, and Agreements with the employees as well as by judicial precedents. Labour law mediates the relationship between Workers, Employers, Trade Unions and the Government. Labour legislation is widely used both to regulate individual employment relationships and to establish the framework within which workers and employers can determine their own relations on a collective basis, for example, through process of collective bargaining. There are two types of labour laws – collective and individual. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work and through the contract for work.

## APPLICABILITY OF LABOUR LAWS

The labour legislations in India, is divided into 5 broad categories, viz. Working Conditions, Industrial Relations, Wages, Welfare and Social Securities. The legislations are all based upon Constitution of India and the resolutions taken in International Labour Organization (ILO) conventions from time to time.

The applicability is based on the following factors:



- As to number of employees: PF Act - 20 employees, Factory Act 20/40 employees
- As to type of employee: Direct, Indirect, Construction

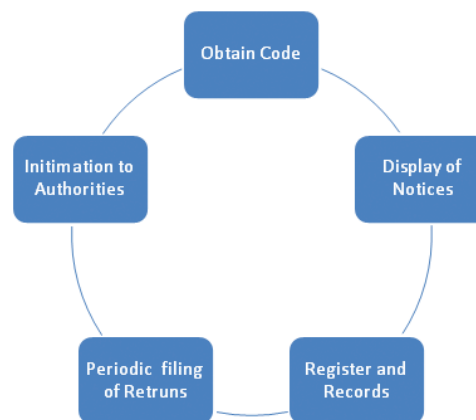
worker, etc.

- As to wage limit: ESI - Rs. 21,000, PF – Rs. 15,000, Bonus – Rs.21,000
- As to location: Within State, Special Economic Zone, Out of State.
- As to gender: Child, Adolescent, and Female.
- As to product: Software, Construction work, Sugar, etc.

The labour laws are not applicable to following establishments:

- Seasonal Establishments
- Government units having their own scheme relating to PF, Gratuity
- Government establishments with similar and superior benefits than provided in traditional labour laws
- Employees in military, naval or air force or the civil aviation department, Government of India.

## STEPS IN LABOUR LAW COMPLIANCES



1. Obtain Code: Employer can obtain various codes like Employees Provident Fund Code, Employees State Insurance Code, Labour welfare Funds (State wise). The process to obtain code is now online on the portal called "Shram Suvidha" (One Stop Shop of Labour Law Compliances). Common Registration under EPF and ESI Act is being provided under 'Ease of Doing Business' initiative of Government of India on New version of Shram Suvidha Portal. CS can help employers to obtain these codes. CS can also prepare data input sheet to obtain registration codes effectively and efficiently.
2. Display of Notices: Notices like working hours, rest interval, weekly holiday, shift timings, authorised person under Payment of Gratuity Act shall be displayed at the conspicuous

**The labour legislations in India, is divided into 5 broad categories, viz. Working Conditions, Industrial Relations, Wages, Welfare and Social Securities. The legislations are all based upon Constitution of India and the resolutions taken in International Labour Organization (ILO) conventions from time to time.**

place and also on the website of the company, if any. Further, abstracts of the Acts like Factories Act, Payment of Wages Act, Payment of Gratuity Act etc. shall be displayed on the notice board of the company. CS shall ensure that notices are displayed in the prescribed format and at appropriate place of the establishment.

3. Register and Records: Employer shall maintain registers and records like attendance, leaves, Identity cards salary registers, register of deductions and fines, accident register, nomination register, inspection books, etc. CS shall ensure that all these registers are maintained in prescribed formats and duly authenticated by the employer. The register shall be preserved for a minimum period of 3 years. The register shall be produced when demanded by the authorities. The records may be maintained electronically or manually. Records and registers shall be kept in the premises to which they relate.

Ministry of Labour & Employment vide Notification dated February 21, 2017 for ease of compliance of Labour Laws reduced the number of Registers to be maintained to 5 in place of 56 Registers which were provided under the following Central Labour Laws/Rules:

- a. The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
- b. The Contract Labour (Regulation & Abolition) Act, 1970
- c. The Equal Remuneration Act, 1976
- d. The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979
- e. The Mines Act, 1952
- f. The Minimum Wages Act, 1948
- g. The Payment of Wages Act, 1936
- h. The Sales Promotion Employees (Conditions of Service) Act, 1976
- i. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

To further facilitate the compliance by the establishments, a software has been developed (Procedure available on Shram Suvidha Portal) for maintenance of these registers by the Establishments.

4. Periodic Filing of Returns – Employer shall file online returns to the authorities on or before due dates. CS shall ensure that all returns are filed in the prescribed formats and well before due dates to avoid interests and penalties. The Unified Shram Suvidha Portal is developed to facilitate reporting of Inspections, and submission of Returns. The Unified Shram Suvidha Portal has been envisaged as a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions. For integration of data among various enforcement agencies, each inspectable unit under any Labour Law has been assigned one Labour Identification Number (LIN). A Company Secretary with the help of compliance calendar, monthly reminder system or software programs can ensure periodic filing of returns.

5. Intimation to Labour Department: Employer shall give intimation to Labour Department like change in name, address, nature of business, number of employees, closure of business, etc. A Company Secretary shall ensure that all such intimations are given in the prescribed format and shall be sent to the Department on or before due dates.

### **SPECIAL PROVISION FOR WOMEN EMPLOYEES (DIFFERENT STATES MAY HAVE DIFFERENT PROVISIONS AS PER LOCAL SHOP ACT)**

- » Women workers should not be discriminated against in recruitment, transfer, training, promotion or wages
- » All women workers can work during night period (9.30 P.M. to 7.00 A. M.) subject to their consent and the employer shall protect and provide them dignity, honor and safety at workplace
- » The employer shall provide protection from sexual harassment and transportation from establishment to their doorstep
- » The employer shall take all the measures and safeguards to prevent or deter the commission of acts of sexual harassment at the place of work
- » In case of sexual harassment at the instance of a third party, either by an act or commission, the employer shall take all the necessary and reasonable steps to assist the affected women workers in terms of support and preventive action
- » Provide proper lighting and illumination inside the establishment and also surroundings of the establishment and to all places where the women workers may move out of necessity in the course of such shift
- » Every employer shall maintain a complaint box and also display the phone numbers of local police station, control room and women help line number prominently in the establishment
- » Sufficient number of women security guards shall be engaged in establishment employing not less than 10 women workers. The Police verification of such women security guards shall be mandatory
- » Separate urinals and latrines shall be maintained for women workers with safety locking facility only from inside
- » The number of women workers employed in the night shift shall not be less than three at any point of time

### **HEALTH, SAFETY AND WELFARE PROVISIONS (DIFFERENT STATES MAY HAVE DIFFERENT PROVISIONS AS PER LOCAL SHOP ACT)**

- Every employer shall take such measures relating to the health and safety of the workers including cleanliness, lighting, ventilation and prevention of fire as may be prescribed
- Every employer is responsible for constant supervision and to ensure compliance with rules relating to health and safety and for taking steps necessary to prevent accidents
- Every establishment wherein 100 or more workers are ordinarily employed, there shall be constituted a Health, Safety and Welfare Committee, consisting of equal number of employer and workers' representatives

- Premises of every establishment shall be kept clean and free from infection
- It should have proper ventilation and lighting
- No rubbish, filth or debris shall be allowed to accumulate or to remain on any premises or in an establishment or in the surroundings of such establishment in such position that effluvia there from can arise within the area of the establishment or its surroundings
- Employer shall take all the measures to protect the premises and the workers therein from the danger of fire. He shall adopt and implement all such measures as suggested, recommended or directed by the Fire Officer, Department of the Local Authority or Fire Brigade of that local area or any such authority
- Every employer shall provide at the place of work first-aid facilities as may be prescribed
- The employer shall make effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed in the establishment, a sufficient supply of wholesome drinking water
- The employer shall provide sufficient latrine and urinal for men and women as may be prescribed and these shall be so conveniently situated as may be accessible for the workers employed in the establishment
- Wherein 50 or more workers are employed, there shall be provided and maintained a suitable room or rooms as crèche for the use of children of such workers
- The employer should provide canteen wherein not less than 100 workers are employed.

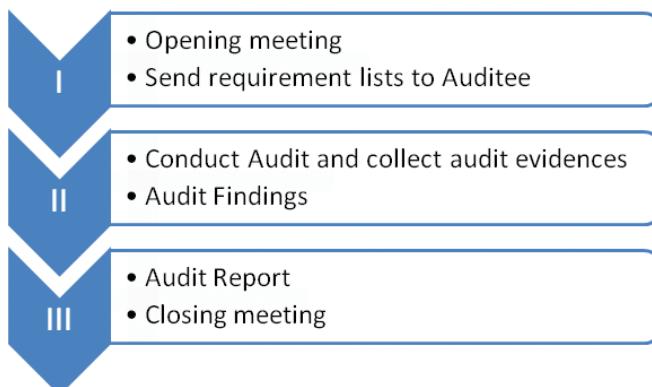
## LABOUR LAWS AUDIT

The Third Party Audit/Certification Scheme of Government of Haryana has authorized PCS to conduct Audit of Compliance of Various Labour Laws. This is a part of Business Reform Action plan 2016 – Ease of doing Business.

## WHAT DOES A LABOUR AUDIT COMPRISE?

- Legal Compliances
- Compensation and Salary administration
- Employee relation and related policies
- Employee policy and procedures including employee handbook
- Registers and records relating to employees like attendance, salary statements, leaves register, etc.

### Procedure for Audit:

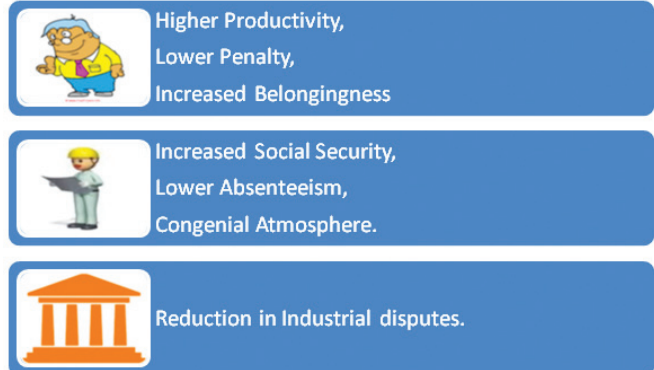


## CONTENTS OF LABOUR LAWS AUDIT REPORT

1. The agreed objectives, scope and plan of audit.
2. The agreed criteria, including a list of reference documents.
3. Observations on compliance level.
4. Risk involved.
5. Management response on auditor's observations.
6. Recommendations of the auditor to improve compliance level.
7. Summary of the audit process including any obstacles encountered.
8. Audit conclusions on conformance, suitability, and effectiveness.
9. Disclaimer by the auditor.
10. Dated and signed by the auditor.

Company Secretaries can conduct such audits and make value addition to the business of the employer. A Company Secretary can also take help of Safety Auditor and present combined report to the Management. Employers are more concerned with the safety of the employees engaged at construction sites and in factories having hazardous manufacturing process. This type of audit will help the employer to avoid accidents/serious bodily injuries and unintended non-compliances.

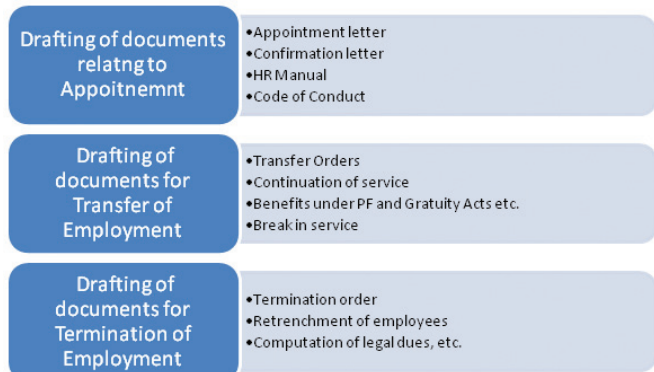
### Benefits of Audits



## EMPLOYMENT LAWS AND FUNCTIONS OF CS

As per Section 205 of the Companies Act, 2013, a Company Secretary shall report about compliances under this Act and other laws (which includes Labour Laws) applicable to the Company. The Board shall periodically review compliance reports of all laws applicable to the company, as well as steps taken by the company to rectify instances of non-compliances as part of Legal Compliance Management.

Following are the areas where a Company Secretary can contribute and offer expert services to the Industries:





## APPROACH AND EXPECTATIONS OF STAKEHOLDERS LIKE EMPLOYER, EMPLOYEE, GOVERNMENT AND LABOUR UNION

### Approach and Expectations of Employer

- Flexible Labour Market – hire and fire of his employees as per changes in the demand, product and technology
- Reduction in wage cost/Minimum Liability – labour cost is normally 10 – 25% of total manufacturing cost and hence employer prefer capital intensive techniques to avoid labour issues and related compliances
- Friendlier climate for business – ease of doing business and single window clearance for various permissions and approvals
- Free from fetters created by State or Labour Union – co-operation form Union in the matters like wage settlement, resolving of industrial disputes
- Simplifications – removal of overlapping, rigid and isolated labour Legislations and consolidated registers and returns for all the labour laws

### Approach and Expectations of Employee

- Decent work standards and service conditions
- Substantial increase in earnings
- Improvement in working conditions/better employment
- Re-employment assurance
- Social security
- Skill building
- Health, safety and welfare facilities at workplace

### Approach and Expectations of Labour Union

- Do not increase threshold limit of employee - which provide

**As per Section 205 of the Companies Act, 2013, a Company Secretary shall report about compliances under this Act and other laws (which includes Labour Laws) applicable to the Company. The Board shall periodically review compliance reports of all laws applicable to the company, as well as steps taken by the company to rectify instances of non-compliances as part of Legal Compliance Management.**

option to employer to remain as small unit to circumvent the laws

- Flexibility in labour market will reduce their bargaining power
- Insecurity of employees – 90% of employees are informal/casual and this type of employees shall be provided all the facilities which are being provided to regular employers
- Government shall consult worker and their union before changes in labour and Industrial laws – substantial reduction in strikes and lockout


### Approach and Expectations of Government

- Investment in training of talents, skill building and social assistance
- Facilities like Sharm Suvidha Portal – once compliance report under 16 laws – one stop shop for labour law compliance
- More emphasis on policy like “Minimum Government, Maximum Governance”
- Decent work practices for direct and indirect employees
- Implementation of minimum wages in formal and informal sector
- Respect the labour – bring back dignity to the worker
- Reduction in inspections – Web based inspection to initiate actions against defaulting employers
- Social Safety Net for workers - Government ought to increase its presence in this area, particularly in case of startups and small scale industry. In United Kingdom (UK), Government provides safety net to employees of startups
- Ministry of Labour & Employment has taken various measures to promote ‘Ease of Doing Business’ through transformative reforms both legislative as well as governance
- Ministry of Labour and Employment has decided to formulate the Labour Code on Social Security, 2018 by amalgamating, simplifying and rationalizing all existing labour laws relating to social security like PF, ESI, Gratuity, Labour Welfare, etc.

### Role of CS in Labour Laws

- Enhance awareness about Labour Laws
- Seek clarification from Labour authorities, if in doubt
- Set mechanism to review applicability of Laws
- Take corrective steps in case of non-compliance
- Set up Compliance Check-List
- Keep track of amendments
- Review employer’s policies to ensure whether they are in alignment with the provisions of Labour Laws
- Send dos and don’ts to employees to avoid loss of benefit to employees due to ignorance

## CONCLUSION

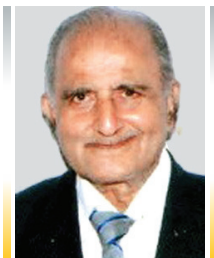
In view of the above discussions, it seems clear that Employers to ensure compliances are up to the mark to avoid significantly larger penalties. Employer shall conduct periodic review of compliance with a myriad of administrative regulations. Company Secretaries shall and can support the industries in labour compliance management system. These types of proactive actions would help to meet expectations of Employer, Employee, their Unions and the Government. 

## REFERENCES:

- Shram Suvidha Portal – Ministry of Labour and Employment.
- Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act 2017 and rules made there under.

# Role of a Company Secretary in Shaping & Mapping The Labour Laws

The position of a Key Managerial Personnel which have also been designated to a Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements along with the Labour law Compliances. The present article highlights the role of a Company Secretary in Labour Laws. The article inter alia also touches upon "Labour Audit" which is a new concept necessitated keeping in mind the number of non-compliances and hardships caused to the workers of our country.



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## INTRODUCTION

As federal, state and local municipalities issue new laws and update existing ones, businesses must be kept informed of these laws and changes, how they affect them and their employees and how to ensure that their business complies with the letter of the law.

The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings have been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

Further Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre. For reference constitutional Entries of the same have been reproduced as under:

Labour Jurisdiction : Constitutional Status	
Union List	Concurrent List
Entry No. 55	Regulation of labour and safety in mines and oil fields.
Entry No. 22	Trade Unions; industrial and labour disputes.
Entry No. 61	Industrial disputes concerning Union employees.

Entry No. 23	Social Security and insurance, employment and unemployment.
Entry No. 65	Union agencies and institutions for "Vocational ... training..."
Entry No. 24	Welfare of labour including conditions of work, provident funds, employees "invalidity and old age pension and maternity benefits, etc.

## TYPES OF LABOUR LAWS

Labour Laws relating to:

### I. Welfare measures:

- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952.
- The Employees' State Insurance Act, 1948.
- The Payment of Gratuity Act, 1972.
- The Maternity Benefit Act, 1961.
- The Employees' Compensation Act, 1923

### II. Payroll:

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

### III. Administration:

- The Factories Act, 1948
- The Indian Fatal Accidents Act, 1985

### IV. Social Measures:

- The Apprentices Act, 1961
- The Contract Labour (Regulation & Abolition) Act, 1970
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

### V. Role of Personnel and HR Manager:

- The Industrial Dispute Act, 1947
- The Industrial Employment (Standing Orders) Act, 1970

## ROLE OF COMPANY SECRETARY IN LABOUR LAWS



\* Former Chairman of WIRC & Central Council Member of ICSI

Company Secretary in practice can explore Labour Law compliances as completely new field for practice. Companies can indulge into the practice of taking services from CS in practice and CS can increase their scope by providing various services to the manufacturing unit of the company. A Practising Company Secretary advises on good governance practices and compliance of various laws like Corporate Laws, Industrial Laws and other Governance norms as prescribed under the Companies Act 1956/2013, Listing Agreement with Stock Exchanges and compliance of various Labour Laws.

### SCOPE OF VARIOUS SERVICES WHICH CAN BE PROVIDED BY PRACTISING COMPANY SECRETARY

#### I. Registration of the establishment under various applicable Labour legislations:

Company Secretaries have been performing the task of one of the Principal Officers of the company under various enactments. The detailed educational background, legal knowledge and training that a CS acquires, makes him an adaptable professional capable of rendering a wide range of services to companies of all sizes, co-operative and other corporate bodies, firms etc. A Practising Company Secretary can provide services to various establishments for registration in the following laws as per applicability to the organisation:

##### ➤ **Factory License:**

As per the provisions of the Factories Act and Rules applicable to the state every Factory employing 10 or more workers with use of power or 20 or more workers without the aid of Power have to take Factory License before start of Factory. This has to be renewed every Year. Before applying for Factory License every owner of factory has to apply for factory building Plan approval. Under Factory Building plan approval Maps and Drawings of the Factory are to be submitted to get them approved as per the State Factory Rules. The Procedure for Building approval and Factory License takes about 20-25 working days.

##### ➤ **Contract Labour Registration:**

As per the Provisions of the Contact Labour (Regulation and Abolition) Act, 1970 any contractor getting and performing outsourced work and employing more than 20 workers at any time during the year has to take Labour License. There are separate rules applicable to state. Time required for the Labour License is 5-7 Working Days.

##### ➤ **Principal Employer Registration:**

As per the provisions of the Contact Labour (Regulation and Abolition) Act, 1970 every employer who is outsourcing any work and employing Independent Contractor has to get himself registered as the Principal Employer and issue Form-5 to the Contractor for his License. It takes about 4-6 days to get the Registration Certificate.

##### ➤ **Registration under Provident Fund Act:**

As per the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 any establishment employing 20 or more persons, cinema theatres employing 5 or more persons has to get themselves registered and contribute to the provident



The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings have been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

fund of the employees. The provident fund scheme has to be approved and registered. If any establishment is not satisfying the above two conditions for coverage and if the employer and majority of the employees are willing, the act may be applicable to such establishment.

##### ➤ **Fire Safety Plan Approval:**

Every State has its own Fire Safety Act. The Industrial building has to be approved by the Fire Department for the purpose of the Fire Safety. Under this application has to be submitted with the building Plan/Maps. After Application is submitted, the Fire Inspector inspects the Building and Give Certificate. The time required is 7-9 Working days.

##### ➤ **State Pollution Control NOC Certificate:**

Every Industry has to take certificate from the State Pollution Control Department which States that the industry is free from Air and Water Pollution. Before start of work the Industries have to get themselves approved by the Pollution Control Board. The Industries have to Submit their Manufacturing Procedure and also their Building Plan and Machinery installed details which should also contain the safety measure taken for Control of Pollution.

#### II. Maintaining Statutory Registers & Records with regard to employees of the establishment under various labour legislations:

On 21 February 2017, the Ministry of Labour and Employment, Government of India (Ministry) has notified the Ease of Compliance to Maintain Registers under various Specified Labour Laws /Rules 2017 (Ease of Compliance Rules). The Ease of Compliance Rules have come into force with effect from the date of its notification in the Official Gazette.

The Ease of Compliance Rules enable an employer to maintain 5 (five) types of combined registers in place of 56 Registers which were required to be maintained as per the earlier provisions. These 5 (Five) types of combined registers can be maintained under the following laws:

- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Contract Labour (Regulation and Abolition) Act, 1970;
- Equal Remuneration Act, 1976;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Mines Act, 1952;



**Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over seven decades of attaining independence, India is still plagued with victimization, non-compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations.**

- Minimum Wages Act, 1948;
  - Payment of Wages Act, 1936;
  - Sales Promotion Employees (Conditions of Service) Act, 1976; and
  - Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, (collectively referred to as the Specified Labour Laws).
- The 5 (five) types of combined registers required to be maintained under the Specified Labour Laws, include:**
- Employee Register;
  - Wage Register;
  - Register of Loan/Recoveries;
  - Attendance Register; and
  - Register of Rest Days/Leave account of employees/Leave with Wages.

### III. Labour Audit:

#### ❖ Introduction

Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over six decades of attaining independence, India is still plagued with victimization, non-compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations.

Labour Audit envisages a systematic scrutiny of records prescribed under labour legislations by an independent professional like Company Secretary in Whole Time Practice (hereinafter referred to as PCS), who shall report the compliance and non-compliance/extent of compliance and conditions of labour in the Indian industry/ Factory/ Other Commercial Establishments. The Report should ideally, be addressed to the appropriate government. The appropriate government may provide for filing fees for such report on the lines of filing fees charged by Registrar of Companies for the documents filed with them.

#### ❖ Scope of Labour Audit

The audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. If a particular labour law is not applicable to a specific employer, the same should distinctly be disclosed in the report of the Independent Professional. The mode of disclosure has to be decided in consultation with the

Ministry of Labour.

#### ❖ Methodology of conduct of Labour Audit

At the commencement of audit, the Independent Professional like Company Secretary in Whole Time Practice should define the scope of his audit. The scope will certainly differ from employer to employer.

Independent Professional like Company Secretary in Whole Time Practice should identify various Central and State Acts and Rules that are applicable to an employer. Based on such identification, he should commence scrutinising the compliance of provisions of various Acts/Rules. It will be in the fitness of things that the Report is drafted in the same manner as a PCS does for Compliance Certificate under the proviso to Section 383A(1) of the Companies Act, 1956. Checklist for compliance of each legislation has to be formulated before commencement of his audit.

#### ❖ Benefits of Labour Audit

##### Benefits to the Labour

- (a) Introduction of Labour Audit will boost the morale of the workers to a large extent.
- (b) It will increase their Social Security.
- (c) It will inculcate on workers a sense of belongingness towards their employer.
- (d) It will secure timely payment of wages, gratuity, bonus, overtime, compensation, etc. of the workers.
- (e) Timely payment of entitlements will reduce absenteeism in the organisation.

##### Benefits to Employer:

- (a) Increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- (b) Status in the Society for the employer will increase, in view of the recognition that may be bestowed on them by the Government.
- (c) Strict compliance of all labour legislation will be ensured by each of the employers, which, in turn, will reduce or even eliminate penalties/damages/fines that may be imposed by the Government.
- (d) Co-operation of and understanding with the workers will improve labour relations. The congenial atmosphere is indispensable for good corporate governance.

##### Benefits to the Government:

- (a) 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 like Company Secretary in Whole Time Practice.
- (b) Compulsory Labour Audit will ensure compliance of past defaults.
- (c) In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the Appropriate Government will rise phenomenally.
- (d) India's image before the International Labour Organisation will improve as a country with negligible non-compliance of labour legislation.

**IV. Submission of returns on a regular basis:**

Name of the Statute	Form	Name of the Return	To be sent to
Deposit of TDS on salaries with the Government	Online payment	ITNS 281	Generate Chalan and retain it for filing quarterly returns
The Employees' Provident Funds & MP Act 1952 (Provident Fund)	Online upload TXT file	Monthly ECR	No submission required
The Employees' State Insurance Act 1948 (ESIC)	Online upload EXCEL file	Monthly ECR	No submission required
The Maternity Benefits Act, 1961	LMNO Rule 16(1)	Annual Returns and details of payment ending 31st Dec.	Competent Authority under the Act
The Contract Labour (R&A) Act, 1970 & Rules	XXIV Rule 82(1)	Half yearly return	Concerned Licensing Officer
Filing of Quarterly Income Tax Return	Form No 24Q and Form No. 27A	3rd Quarter eTDS Return	Quarterly e-TDS/TCS statements to be filed in paper form by deductors/collectors along with soft copy of FVU at TIN Facilitation Centres
The Minimum Wages Act, 1948	III Rule 21(4A)	Annual Return	Inspector under the area concerned
The Payment of Wages Act 1936 & Related Mines Rules	V Rule 18 (related Mines Rules) VII, VIII Rule 16 related Air Transport	Annual Return	Concerned Labour Commissioner
The contract Labour ( R&A) Act 1970 & Rules	XXV Rule 82(2)	Annual Return by Principal Employer	Concerned Registering Officer
The Apprenticeship Act, 1961	APP-2	Half yearly return March ending	Concerned Regional Director/ Apprenticeship Adviser
The Employment Exchange (CNV) Act, 1959 & Rules	ER-1 Rule 6	Quarterly return for quarter ended 31st March	Local Employment Exchange
The Factories Act, 1948	Refer to State Rules	Half Yearly return	Concerned Director / Inspector

**V. Display of Abstract and notices:****Notices to be Displayed on Notice Board:**

- The Notices have to be displayed at a position nearest to the main entrance gate
- Should be prominently placed and visible to the employees concerned
- Have to be signed/authorized copies

- Have to be updated

**Notices under Factories Act:**

- Name of Occupier of the Factory
- Name & Address of Manager of Factory
- Form 11 – Notice of Periods of Work - Form 11 (as per AP Rule)
- Name of the Inspector having jurisdiction in the area
- Abstract of the Factories Rules of the concerned State where the Factory is situated.

Notices under Contract Labour (Regulation & Abolition) Act, 1970 – *Only applicable to establishments engaging Contract Labour:*

- Copy of Registration Certificate of the Establishment
- Abstract of the Act

Notices under Payment of Gratuity Act, 1972 – *Applicable to all establishments:*

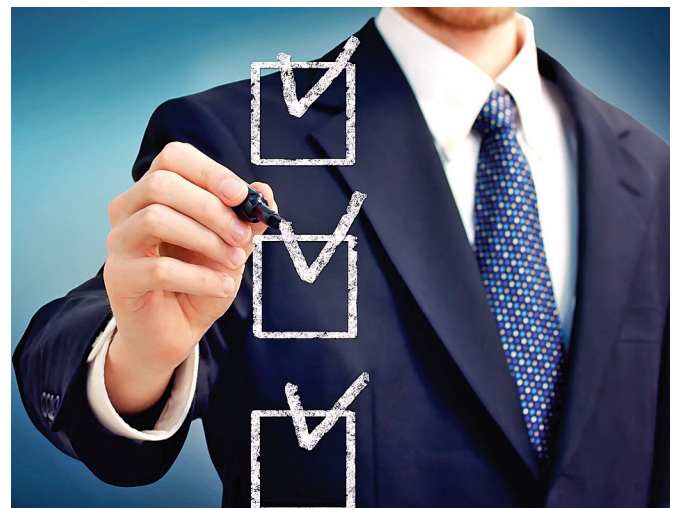
- Notice of “Officer authorized to receive Notices” – Notice Under Rule 4 of the Payment of Gratuity Act 1972
- Form U – Abstract of the Act and Rules – Gratuity Notices under Payment of Wages Act & Minimum Wages Act – *Applicable to all establishments*
  - Notice of Rates of Wages
  - Notice of Hours of Work
  - Wage Period
  - Date of Payment of Wages
  - Date of Payment of undisbursed wages
  - Name & Address of Labour Inspector having jurisdiction

**Standing Orders**

- Model/ Certified Standing Orders

**VI. Draft employment agreements between the employer and employee and also specific non-disclosure agreements if required:**

An employment agreement is a legal contract that establishes a formal employment relationship between an employer and an employee. Drafting of deeds and documents for various purposes in a company usually forms part of the multi-faceted duties of the Company Secretary.





## IMPLEMENT AN ADEQUATE SYSTEM TO ENSURE REGULAR AND TIMELY COMPLIANCE OF THE PROVISIONS OF LAW

The importance of maintaining compliance with labour laws is actually quite simple. Compliance is a means of protection for both the employee and the employer. The laws spell out the requirements and compliance ensures legal protection for those who abide by the law. For those who do not abide by the requirements of the law, legal provision may not be available in the case of lawsuits.

The company secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented. The company secretary ensures that an organisation complies with relevant legislation and regulation applicable to the Company.

The Department of Labour oversees and enforces more than 180 federal labor laws that affect the workplace. Many of these laws impact specific types of businesses, yet there are core laws that affect every employer. As an example, three of the core labor laws that affect the majority of businesses today are:

- Occupational Health and Safety Act – It regulates health and safety conditions in private sector industries, thereby ensuring the workplace does not pose any serious hazards.
- Family Medical and Leave Act – requires employers with more than 50 employees to give workers up to 12 weeks of unpaid, job-protected leave for the birth or adoption of a child or for the serious illness of the employee or a spouse, child or parent.
- Fair Labour Standards Act – sets standards for wages and overtime pay and guarantees federal minimum wage and overtime pay.

Compliance can be achieved in many ways. Some compliance requires that situations be documented and incidents filed with the government. An example is with OSHA reporting of accidents, injuries, illnesses or deaths caused by unsafe work conditions. In this case, First Report of Injury Forms must be completed and reports filed with the government.

Another example of compliance involves several state laws around paid leave, sick leave or pregnancy leave where an employer must notify every new hire of the law in writing upon their start of employment.

A more common means of compliance is the labour law posters which are required at the federal and state level and some local levels. Posters summarize important details of the law and are required to be displayed at highly visible locations within the workplace, thereby ensuring that every employee has access to the information.

## IDENTIFY GAPS AND TAKE ADEQUATE MEASURES TO RECTIFY THE SAME

- To kick-start the process for ensuring compliance with all applicable laws, following would be the broad steps that need to be taken by a Practising Company Secretary:
  - Compiling a list of all laws (Central, State, Municipal, Overseas laws) applicable to the Company including regulation, rules and notifications and collating them in the way of systematic checklists so that adherence to compliances can be reviewed, evidenced and checked.



A more common means of compliance is the labour law posters which are required at the federal and state level and some local levels. Posters summarize important details of the law and are required to be displayed at highly visible locations within the workplace, thereby ensuring that every employee has access to the information.



- Secondly, checking the existing compliance status for the company for its entire operations including manufacturing sites, offices and other locations.
- Identifying instances of non-compliances (if, any);
- Identifying the probable reasons for non-compliances.
- Divide the compliances into certain categories depending upon risk level and priority.
- Remedification of non-compliances identified.

- Next step would be to ensure all compliances identified are monitored on real time basis.

This can be ideally done through software automation and would entail the following activities:

- Map all compliances in an excel sheet in categories (function wise, location wise, due dates, periodicity, nature of compliance, risk level, etc.)
- Assign responsible person for each compliance i.e. those ensuring compliance at ground level and those supervising the compliances
- Uploading of all compliances collated in the excel sheet in the compliance software tool (in-house or external)
- Each user would receive alerts on compliances within their functional area as per periodicity defined in the system.
- The users would have to confirm compliance and also upload evidence for the same.
- The management can take periodic reports to review the status of compliance entity wise, location wise, function wise and in various other ways to track and control compliance in the desired manner.

## CONCLUSION

The role of a company secretary has expanded beyond simply ensuring statutory compliance to becoming a pivotal one. A company secretary can add real value and impact by bringing, to the board and company strategic understanding and softer skills in addition to their already much sought legal and governance knowledge.

CS

# The Contract Labour (Regulation and Abolition) Act, 1970: A Perspective

*The sigh of relief of the principal employer after contracting/outsourcing works stand vitiated as the Contract Labour (Regulation and Abolition) Act, 1970 (Act) casts strict liabilities on the principal employer. The Act makes a number of provisions for the welfare of the contract workers including payment of minimum wages, social security and other benefits. Further, the principal employer is held responsible for failure of compliance of the provisions and violations by the contractor.*



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The Contract Labour (Regulation and Abolition) Act, 1970 describes it as “an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith” which came into force on 10th February 1971, vide Notification No. G. S. R. 190, dated 1st February 1971, and published in Gazette of India, Extraordinary, Part II, Section 3(i), dated February 10, 1971. It is from mid-sixties that proliferation of contract system began in the industries, public as well as private. Through contract labour system, employers seek to make the employment relationship between the principal employer and contract worker indirect. They thereby evade the responsibility and extract bigger surplus by taking advantage of the fragile service condition of the workers. It is important to note that principal employer is the ultimate recipient of the benefit of production process in its final form. It is well known practice that the only ostensible purpose in engaging the contract labour instead of direct employees is to gain the monetary advantage by reducing the expenditure.

The trade union movement reacted effectively against this trend through direct industrial actions and by seeking parliamentary and judicial interventions, which brought the Contract Labour (Regulation & Abolition) Act, 1970 (herein after referred as “Act”) into being. The Statement of Objects and Reasons was as follows:

*“The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time.....The proposed Bill aims at abolition of contract labour in respect of such categories as may be notified by appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The Bill provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise Central and State Governments in*

*administering the legislation and registration of establishments and contractors. Under the Scheme of the Bill, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against details in the matter of wage payment.”*

## JUDICIAL ACTIVISM IN REFERENCE TO CONTRACT LABOUR ABOLITION

The Courts took very active role in interpreting and favouring of the abolition of the Contract Labour and regulating the rights of the Contract Labour. The First of it is the landmark judgement in *Standard Vacuum Refining Company v. Its Workmen*, [1960] 3 SCR 466 in which the Supreme Court had affirmed the direction of the Industrial Tribunal for the abolition of the contract system of labour. Further the judgement of the Supreme Court in this historic case said that contract labour should not be employed where (a) *the work is perennial and goes on from day to day;* (b) *the work is necessary for the factory;* (c) *the work is sufficient to employ a considerable number of whole-time workmen;* and (d) *the work is being done in most concerns through regular workmen.*

Further In *Catering Cleaners of Southern Railway v. Union of India & Ors.*, AIR 1987 SC 777 the Supreme Court expressed in dismay with reference to contract labour engagement as follows: “Of late there has been a noticeable tendency on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments”. “it is a matter of surprise that employment of contract labour is steadily on the increase in many organised sectors including the public sector, which one expects to function as a model employer.”

Further in *Gujarat Electricity Board v. Hind Mazdoor Sabhawhere*, Supreme Court has expressed its dismay “While parting with these matters, we cannot help expressing our dismay over the fact that even the undertakings in the public sector have been indulging in unfair labour practice by engaging contract labour when workmen can be employed directly even according to the tests laid down by Section 10 [2] of the Act. The only ostensible purpose in engaging the contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole.



“Contract labour” can be distinguished from employees in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or contract for service of an establishment by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer.

*The economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development. The attitude adopted by the undertakings is inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. This is apart from the mandate of the directive principles contained in Articles 38, 39, 41, 42, 43 and 47 of our Constitution.”*

From the above, it can be inferred that the courts are also of the view that the Contract Labour engagement shall be abolished over a period of time as it leads to the abuse of labour rights for the economic benefit of the employers and is used mainly to depart from the responsibilities being an employer towards the employees.

### CONSTITUTIONAL VALIDITY

The Supreme Court in *Gammon India Ltd. v. Union of India* 1974 SCC (L&S) 252 while dealing with the Contract Labour Act, 1970 held that “The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by section 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of the section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment. The Act in section 10 empowers the Government to prohibit employment of contract labour in any establishment.” and it was further held that “Act does not violate Articles 14 and 15 of the Constitution of India.”

### CONTRACT LABOUR VIS-A-VIS EMPLOYEES

According to the act a “contract labour” is hired in or in connection with such work by or through a contractor and such hiring is with or without the knowledge of the principal employer. However “An employee” is “a person who works in the service of another under express or implied contract for hire, under which the employer has the right to control details of work performance” (Black’s Law Dictionary).

“Contract labour” can be distinguished from employees in terms

of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired *in connection with the work or contract for service of an establishment* by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer.

In *Basanta Kumar Mohanty v. State Of Orissa (1992) IILLJ 190 Ori* it was held that “a workman shall be deemed to have been employed as contract labour when he is hired in, or in connection with a particular work of the principal employer. The determinative factor, therefore, is whether a workman was hired in or in connection with work of an establishment. A permanent employee who during his employment can be placed at different establishments at the choice of the contractor cannot be called to be a contract labour because he is not hired in or in connection with the work of any particular establishment. The logic behind this conclusion is that where employment of a person is unrelated with any specific work of any establishment, he is not a contract labour, because his employment has no nexus with any particular work of any establishment.”

### APPLICABILITY

The act applies: (a) to every establishment in which twenty or more workmen, are employed or were employed on any day of the preceding twelve months as contract labour; (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen. However the appropriate Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

### REGISTRATION OF CERTAIN ESTABLISHMENTS

#### Principle Employer

Section 7 (1) of the Act read with Rule 17 (1) of The Contract Labour (Regulation and Abolition) Central Rules, 1971 (Rules) mandates that every principal employer of an establishment to which this Act applies shall, in the time limit so fixed, make an application in triplicate, in Form I, to the registering office in the prescribed manner for registration of the establishment accompanied by treasury receipt showing payment of the fees for the registration of the establishment (Rule 17(2)). The Registering Officer may at his discretion entertain any such application for registration after expiry of the period fixed in this behalf upon being satisfied that there is sufficient cause for delay.

The Registering authority under Rule 18 of The Contract Labour (Regulation and Abolition) Central Rules, 1971 shall issue a Certificate of Registration in Form II. Further, Rule 18(4) of the Act mandates that, if there is any change, in the particulars specified in the certificate of registration, the principal employer of the establishment shall intimate to the registering officer, within 30 (Thirty) days from the date when such change takes place, the particulars of, and the reasons for, such change for continuous compliance. The registering officer shall maintain a register in Form III showing the particulars of establishments in



It has been well settled by the various judgements of Apex Court & High Courts that the contractor's employees will not automatically become the employees of the principal employer, even if the principal employer does not get registration and the contractor does not hold licence, though employing contract labour without obtaining registration or without obtaining licence is an offence under the Act.

relation to which certificate of registration have been issued by him. (Section 7(3)).

### LICENSE FOR CONTRACTOR

Section 12(1) of the Act mandates that no contractor to whom the Act applies, shall undertake or execute any work through contract labour, except under and accordance with a licence issued in that behalf by the licensing officer which may contain such conditions as envisaged under section 12(2) of the Act which includes, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 of the Act. The Contractor shall apply for license under Rule 21(1) of the Rules stating that every application by a contractor for the grant of a licence in triplicate, in Form IV, to the licensing officer of the area in which the establishment, in relation to which he is the contractor, is located along with requisite treasury receipts as to the deposit of the security at the rates specified in Rule 24 and the payment of the fees at the rates specified in Rule 26. Further under Rule 21(2) of the rules such application shall be accompanied by a certificate by the principal employer in Form V to the effect that the applicant has been employed by him as a contractor in relation to his establishment and that he undertakes to be bound by all the provisions of the Act and the rules made there under insofar as the provisions are applicable to him as principal employer in

respect of the employment of contract labour by the applicant. Under Rule 25, every licence granted under sub-section (1) of Section 12 shall be in Form VI and every licence granted under sub-rule (1) or renewed under Rule 29 shall be subject to the following conditions, namely- (i) the licence shall be non-transferable; (ii) the number of workmen employed as contract labour in the establishment shall not, on any day, exceed the maximum number specified in the licence.

In *Labourers Working on Salal Hydro-Project v. State of Jammu & Kashmir and Others* it was held by the Supreme Court that "if (sub-) contractors undertake or execute any work through contract labour without obtaining a licence under section 12 sub-section (1), they would be guilty of a criminal offence punishable under section 23 or section 24. In *Padam Prasad Jain v. State of Bihar*, 1978 Lab IC 145 it was held that "by providing that no person shall undertake or execute any work through a contract labour except without a licence, Section 12 imposed a liability not to undertake or execute any work through contract labour without licence, a liability which continued until the licence was obtained and its requirement was complied with. It was an act which continued. Undertaking or executing any work through contract labour, without a licence, therefore, continued a fresh offence every day on which it continued." What is a continuing offence was explained by the Supreme Court in *State of Bihar v. Deokaran* A.I.R. 1973 S.C. 908 as follows: "Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirements is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act of omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

## EFFECT OF NON REGISTRATION

It has been well settled by the various judgements of Apex Court & High Courts that the contractor's employees will not automatically become the employees of the principal employer, even if the principal employer does not get registration and the contractor does not hold licence, though employing contract labour without obtaining registration or without obtaining licence is an offence under the Act. Legal Consequences for default on the part of contractor for non-renewal of his licence have been discussed by a bench of Madras High Court in *Workmen of Best & Crompton Industries Limited* represented by their General Secretary of Socialist Workers Union, Madras v. Management of Best & Crompton Engineering Ltd., Madras (1985- 1- LLJ, 492), their lordship observed that: "The contractor's licence has not been renewed within the prescribed time limit and that the registration under section 7 was initially granted for 30 workmen, has not been amended to cover engagement of 75 workmen."... "Rule 29 requires that the application of renewal should be made before the validity of licence. It would therefore, be inferred that the contractor is not eligible to apply for renewal at all and that his only remedy if he wants to work as a licensed contractor, is to apply for a fresh and new license. Otherwise, the workmen would not be deemed to be employed as contract labour."

Section 15 of the Act states that any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

## THE OBJECTIVE TO ABOLISH THE CONTRACT LABOUR

Section 10 of the Contract Labour Act, 1970

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

- a. whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- b. whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- c. whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- d. whether it is sufficient to employ considerable number of whole-time workmen.


*Explanation.* - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

In *L.&T. McNeil Ltd. v. Government of Tamil Nadu*, 2001 I CLR 804 (S.C.) The High Court rejected the challenge given to the Notification of Government of Tamil Nadu, prohibiting contract labour, in the process of sweeping and scavenging in the establishments/factories employing 50 or more workmen. The Supreme Court, while quashing the impugned notification, observed that no definite view, was expressed by Labour Advisory Board and in the absence of the same and in the absence of any other material, it is not very clear as to how the Government could have reached the conclusion one way or the other. Thus the decision of the Government in issuing the impugned notification under section 10(1) of the Act, is vitiated because of non-consideration of relevant materials.

In *Steel Authority of India Ltd. v. National Union Water Front Workers*, 2001 III CLR 349 (S.C.) in a challenge to the Central Government Notification dated 9-12-1976, prohibiting employment of contract labour for sweeping, etc. in the buildings owned and occupied by establishments in respect of which Central Government is appropriate Government, the Supreme Court held that the said notification apart from being an omnibus notification, does not reveal the compliance of section 10(1) of the Act. Besides the Notification also exhibits non-application of mind by the Central Government and hence impugned notification cannot be sustained.

In *B.H.E.L Workers Association, Hardwar v. UOI* the court observed that "The Contract Labour (Regulation and Abolition) Act, 1970 does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. The court further held that "Parliament has not abolished contract labour but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under section 10 of the Act.

In *Catering Cleaners of Southern Railway v. UOI*, the court held that writ of mandamus directing Central Government to abolish the contract labour system cannot be issued because section 10 had vested the power in the appropriate government. In

 Section 20(1) of the Contract Labour Act states that if any amenity required to be provided under Section 16, 17, 18 or 19 of the Act for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed thereof, such amenity shall be provided by the principal employer within such time as may be prescribed and under Section 20(2) the employer has a right to recover all the expenses incurred in providing the amenity from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

the circumstances, the appropriate order to make according to Court, was to direct the Central Government to take suitable action under section 10 of the Act within six months from the date of order. It was also observed that without waiting for the decision of the Central Government, the Southern Railway was free on its own motion to abolish the system and regularise the services of the employees. In *Gujarat Electricity Board v. Hind Mazdoor Sabha* where it was held that only the appropriate government can abolish contract labour in accordance with section 10 and no court or industrial adjudicator has jurisdiction on the matter of absorption.

### AUTOMATIC ABSORBING OF CONTRACT LABOUR

In *Air India Statutory Corporation v. United Labour Union*, 1997 1 CLR 292 (S.C.), Supreme Court held that on abolition of contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. The Bombay High Court has correctly held that the High Court under Article 226 of the Constitution, would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated section 12 and principal employer has violated section 7 of the Contract Labour (Regulation and Abolition) Act, 1970.

In *Steel Authority of India v. National Union Water Front Workers & Ors.* 2001 III CLR 349 (S.C.) “While examining the issue as to whether automatic absorption of contract labour follows on issue of Notification under section 10 prohibiting contract labour, the Supreme Court held that the principal employer cannot be required to order absorption of contract labour working in the said establishment, as neither section 10 nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour, on issuing notification prohibiting employment of contract labour in any process, operation or any other work in an establishment. The court held that even in the cases where the system of contract labour is abolished, the erstwhile contract labour who might have put up years of service as contract labour under the same principal employer cannot be absorbed as a matter of right as there was no such provision in the Act. However, if it was a sham contract the contract labour could raise an industrial dispute and deserve absorption.”

In *Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh & Ors.* 2002 II CLR 299 allowing the appeal filed by the Municipal Corporation of Greater Mumbai, the Supreme Court held that “directions given by the High Court, not being consistent with Constitution Bench judgment in Steel Authorities’ case (2001 III CLR 349), impugned judgment is set aside, leaving it open to the respondent union to seek remedies available in terms of para 125 of the aforesaid SAIL Judgment, before the State Government or industrial adjudicator as the case may be.”

### PRINCIPAL EMPLOYER’S LIABILITY IN CASE OF DEFAULT BY CONTACTOR

The Contract Labour Act prescribes that the contractor shall provide (i) Canteen provisions; (ii) Rest-rooms; (iii) First aid facilities and (iv) Other facilities which include (a) drinking

water at convenient places; (b) sufficient number of latrines and urinals and (c) washing facilities. Section 20(1) of the Act states that if any amenity required to be provided under Section 16, 17, 18 or 19 of the Act for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed thereof, such amenity shall be provided by the principal employer within such time as may be prescribed and under Section 20(2) the employer has a right to recover all the expenses incurred in providing the amenity from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

In *People’s Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235: 1982 SCC (L & S) 275 it was held that the obligation to provide amenities conferred under the Act to the workers is on the principal employer. Government will be responsible for enforcement of those amenities where contractors engaged by it for executing its construction project fail to provide the amenities to its workers. Government’s failure to perform its obligation amounts to violation of Article 21 and workers can enforce their right by writ petition under Article 32.

### WAGES

Section 21 of the Act read with Rules 63 to 73 of the Rules deals with payment of wages. Section 21(1) of the Act read with Rule 63 states that a contractor shall be responsible for fixing the wage periods in respect of which wages shall be payable and payment of wages to each worker employed by him as contract labour and such wages shall be paid if, as per Rule 65 of the Rules, the wages of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of the seventh day and in other cases before the expiry of tenth day after the last day of the wage period, which as per Rule 64 of the Rules shall not be one month, in respect of which the wages are payable.

Section 21(2) read with Rules 72 and 73 of the Rules states that every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages and shall record under his signature a certificate at the end of the entries in the Register of Wages or the Register of Wage-cum-Muster Roll, as the case may be in such manner as may be prescribed. Further section 21(4) states that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

### EQUAL PAY FOR CONTRACT LABOUR: WHEN ARISES

Rule 25(2) (v) (a) of the Rules states that in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the

workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work. However in the case of any disagreement with regard to the type of work the same shall be decided by the Chief Labour Commissioner (Central). In *B.H.E.L Workers Association, Hardwar v. UOI* it was further held that “No invidious distinction can be made against Contract labour. Contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central).”

### REGISTERS AND OTHER RECORDS TO BE MAINTAINED

The following are the few important registers that are to be maintained under the Contract Labour (Regulation & Abolition) Central Rules, 1971

FORM No	Particulars
Form I	Rule 17(1): Application for Registration of Establishments Employing Contract Labour
Form II	Rule 18(1): Certificate of Registration
Form III	Rule 18(3): Register of Establishments
Form IV	Rule 21(1): Application for Licence
Form V	Rule 21(2): Form of Certificate by Principal Employer
Form VA	Rule 24(1A): Application for Adjustment of Security Deposit
Form VI	Rule 25 (1): Form of Licence Granted by the Office of Licensing Officer
Form VIA	Rule 25 (2) (viii): Notice Of Commencement/Completion of Contract Work by the Licensee
Form VIB	Rule 81(3): Notice of Commencement/Completion of Contract Work by the Employer for each Contractor
Form VII	Rule 29(2): Application for Renewal of Licences
Form VIII	Rule 32(2): Application for Temporary Registration of Establishments Employing Contract Labour
Form IX	Rule 32(3): Temporary Certificate of Registration
Form X	Rule 32(2): Temporary Certificate of Registration
Form XI	Rule 32(3): Temporary Licence
Form XII	Rule 74: Register of Contractors (Responsibility: Principal Employer)
Form XIII	Rule 75: Register of Workman employed by Contractor
Form XIV	Rule 76: Employment Card
Form XV	Rule 77: Service Certificate
Form XVI	Rule 78 (1)(a)(i): Muster Roll
Form XVII	Rule 78(1)(a)(i): Register of Wages
Form XVIII	Rule 78(1)(a)(i): Register of Wages cum muster Roll
Form XIX	Rule 78(1)(b): Wage Slip
Form XX	Rule 78(i)(a)(ii): Register of Deductions for Damage or Loss
Form XXI	Rule 78(1)(a)(ii): Register of Fines

Form XXII	Rule 78(1)(a)(ii): Register of Advances
Form XXIII	Rule 78(1)(a)(iii): Register of Overtime
Form XXIV	Rule 82(1): Return to be sent by the Contractor to the Licensing Officer
Form XXV	Rule 82(2): Annual Return of Principal Employer to be sent to the Registering Officer

### RETURNS

Rule 82 (1) of the Rules states that every contractor shall send half yearly return in Form XXIV (in duplicate) so as to reach the Licensing Officer concerned not later than 30 days from the close of the half year. It is critical to note that “Half year” for the purpose of this Rule means “a period of 6 months commencing from 1<sup>st</sup> January and 1<sup>st</sup> July of every year”. Further Rule 82(2) of the Rules states that every principal employer of a registered establishment shall send annually a return in Form XXV (in duplicate) so as to reach the Registering Officer concerned not later than the 15th February following the end of the year to which it relates.

### PENALTIES AND PROCEDURE

The contravention under Section 22(1) with reference to obstruction and negligence and Section 22(2) prevention of appearance of a person shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Further, under Section 23, whoever contravenes any provision of this Act or of any rules made thereunder shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

In *J.P. Gupta v. Union of India*, 1981 Lab IC 641 (Pat HC) it was held that mere allegation of contravention is not sufficient. The complainant has to allege as to who are those persons who have contravened the prohibition of or restriction on the employment of contract labour. Further an offence under section 24 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. Further an offence under section 25(1) which is committed by a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence, shall be liable to be proceeded against and punished accordingly.

### THE ROLE OF COMPANY SECRETARY IN COMPLIANCE

The role of a company secretary in compliance with the Act is of limited nature due to the dynamic nature of the Contract Labour engagement and more specifically in production which in fact shall be of less in control of the Company Secretary. The Company Secretary shall act more of an advisory to the concerned heads and inform violation and consequences thereof to the Management for corrective as well as preventive measures. The Company Secretary should inform the active departments engaging the Contract Labour and shall ensure that they are evenly sensitive to the fact of compliances on their own by regular interaction and involvement with such departments.

# Company Secretary and Compliance of Labour Laws

*Labour Laws are of great importance for all economies irrespective of their developmental status. Compliance of Labour Laws is a major aspect to ensure the employment standards like health of employees, safety, payments, etc. Labour Laws in India are quite exhaustive and have also gone through various amendments with the changing time and industrial environment to ensure the welfare of human resource.*



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## INTRODUCTION:

“Each year, Labour Day gives us an opportunity to recognize the invaluable contributions that working men and women make to our nation, our economy and our collective prosperity. It gives us a chance to show gratitude for worker’s grit, dedication, ingenuity and strength, which define our nation’s character.”----  
Thomas E. Perez

The above quote is expression of every human being irrespective of their nationality or country. Labour Laws are of great importance for all economies whether it is developed economy, developing economy or undeveloped economy. Labour laws play a vital role as regulator to ensure country’s industrialization, human resource development including their rights and economic development.

Labour laws govern various aspects related to health, safety, employment standards like daily working hours, leave and lay off procedure, severance pay, wages and bonus policies, etc. Labour Laws deal with industrial relations between employee and employer and trade unions, if any applicable, collective bargaining, registration/certification of workers’ trade union and its management. Labour Laws cover both organized and unorganized labour and their relations with employer irrespective of the type of industry.

In India, prior to independence, labour laws were laid by Britishers to ensure benefits/interests of British employers. In post-independence era, new legislations were passed to suit the development of economy and industrialization and to protect the interest/benefits of labours as well. In India labour laws are enacted and enforced by both the Central Government as well as State Governments for both the manufacturing and service sector/industry.

## LABOUR LAWS CAN BE CLASSIFIED AS UNDER\*

\*the list is illustrative/representative and not the

### comprehensive list

- Laws regulating working hours, conditions of service and employment:
  - Factories Act, 1948 (Amended in 1987 and 2016)
  - Plantation Labour Act, 1951
  - Mines Act, 1952
  - Merchant Shipping Act, 1958
  - Motor Transport Workers Act, 1961
  - Contract Labour (Regulation and Abolition) Act, 1970
  - Industrial Employment (Standing Orders) Act, 1946
  - Private Security Agencies (Regulation) Act, 2005
  - Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013
  - Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
  - Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
  - Sales Promotion Employees (Conditions of Service) Act, 1976
  - Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.
- Laws regulating social security:
  - Employers Liability Act, 1938
  - Employees Provident Fund and Miscellaneous Provisions Act, 1952
  - Payment of Gratuity Act, 1972
  - Workmen’s Compensation Act, 1923
  - Employees State Insurance Act, 1948
- Laws regulating deprived and disadvantaged sections of society:
  - Bonded Labour System (Abolition) Act, 1976
  - Children (Pledging of Labour) Act, 1933
  - Child Labour (Prohibition and Regulation) Act, 1986
  - Laws related to wages:
    - Payment of Wages Act, 1936
    - Minimum Wages Act, 1948
    - Payment of Bonus Act, 1965
    - Working Journalists (Fixation of Rates of Wages) Act, 1958
- Laws regulating industrial relations:
  - Industrial Disputes Act, 1947
  - Trade Unions Act, 1926
  - Industrial Employment (Standing Orders) Act, 1946

## COMPANIES ACT, 2013 AND COMPLIANCE OF APPLICABLE LAWS:

As per Section 134(5)(1) of companies Act, 2013, the Directors responsibility statement must confirm that Directors



had devised proper system to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. According to Section 204(1) of Companies Act, 2013, every listed company and companies belonging to other class of companies shall annex with its Boards Report, a Secretarial Audit Report given by a Company Secretary in Practice.

Other class of companies:

- Every public company having paid-up share capital of fifty crores rupees or more
  - Every public company having a turnover of two hundred and fifty crores rupees or more
- The scope of the Secretarial Audit *inter-alia* includes – “examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, and environmental laws.”

As per Section 205(1) of Companies Act, 2013 functions of a Company Secretary includes:-

- To report to the Board of Directors about compliance with the provisions of this Act, the rules made there under and the other laws applicable to the Company
- To ensure that the Company complies with the applicable Secretarial Standards
- To discharge such other duties as may be prescribed.

It is thus the responsibility of Company Secretary to ensure legal compliance by the Company under the Companies Act, 2013.

It is obligatory for Management/Employer to ensure timely compliance of the provisions of various labour laws whether it is listed or unlisted entity. For the corporate sector companies which are listed on Stock Exchanges in India or abroad it becomes more key parameter to periodically review and ensure compliance of all applicable labour laws. According to Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) (LODR) Regulations, it is obligatory for Board of Directors to periodically review compliance reports pertaining to all applicable laws to the listed entity and steps taken by the listed entity to rectify instances of non-compliance.

## MAJOR ASPECTS OF LABOUR LAWS COMPLIANCE SYSTEM CAN BE CLASSIFIED AS FOLLOWS:

1. Registration of establishment/Company/Factory under various laws.
2. Statutory Display at prominent Notice Board (preferably in vernacular language as well as English).
3. Laying down of system to adhere various legal provisions applicable to the Company/establishment/factory.
4. Periodically filing of Returns/e-forms under all applicable labour laws within due date.
5. Maintenance of various Statutory registers which are mandatory. Ensuring frequent updation and keep them available for inspection by prescribed authorities.
6. Formulating and implementation of system which will ensure timely compliance of the provisions of various laws, identify gaps and adequate measures to rectify them, prevention of law suits and penalties for non/delayed compliance.

Labour laws govern various aspects related to health, safety, employment standards like daily working hours, leave and lay off procedure, severance pay, wages and bonus policies, etc. Labour Laws deal with industrial relations between employee and employer and trade unions, if any applicable, collective bargaining, registration/certification of workers' trade union and its management. Labour Laws cover both organized and unorganized labour and their relations with employer irrespective of the type of industry.



Considering the huge number of labour laws applicable to an establishment/Factory/Company depending upon industry type, it becomes very difficult to keep close eye on slippages or delays for management. Hence, the role of Company Secretary becomes more important to ensure timely filing of Returns/e-forms/maintenance of registers from respective departments and keep the Board updated/briefed about the status of Compliance.

With the evolution of information technology, it has become easier to maintain records and keep track of deadlines and ensure timely filing of returns/e-forms. Now, it is not obligatory to keep every register/record manually, E-records and registers can be maintained by companies as legal documents with sufficient data back-ups and safety measures. It is the Company Secretary who keeps informed all functional managers about the amendments or any change in laws/rules/provisions and there implications as well implementation with the help of legal and compliance department. According to the amendments and /or changes in provisions/rules of legal laws it becomes necessary to upgrade and modify the version of software being used by the company to avoid delays in implementation and for the inspection by the prescribed authorities.

In pursuit of keeping up to date with the changing times, the Ministry of Labour and Employment has always come up with amendments in certain laws, introducing new Acts like Labour

Laws (Simplification of procedure for Furnishing Returns and Maintaining Registers By Certain Establishments) Act, 1988 (published in the Gazette of India, on 27<sup>th</sup> September, 1988), introduction of schemes like Unified Shram Suvidha Portal. This Unified Shram Suvidha Portal facilitates online maintenance of fourteen Central Labour related records/registers, resulting in availability of information in real time to establishments and Ministry of Labour and Employment. The Portal aims at online reporting of Inspection and submission of Returns. It is the single point of contact between employer, employee and enforcement agencies for integration of data among various enforcement agencies. Every inspectable unit under any labour law shall be assigned one Labour Identification Number (LIN). The Portal facilitates consolidation of more than eighty registers into approximately nine electronic registers to avoid data duplication.

Ease of Compliance to Maintain Registers under various Labour Law Rules, 2017 notified in Gazette of India on 21<sup>st</sup> February, 2017 have been prescribed for the effective, expedient and convenient compliance of the numerous provisions of labour laws. These Rules facilitate maintenance of combined registers for various labour laws. According to these Rules, Employers are required to maintain only five registers as compared to the earlier provision of mandatorily maintaining almost fifty six registers in total. As per these new Rules new registers have 144 data fields compared to previous 933 data fields. Ease of Compliance to Maintain Registers under various Labour Law Rules, 2017 enumerates compliance in regard to the following laws:

- Building and other construction workers (Regulation of Employment and Conditions of Service) Act, 1996
- Contract Labour (Regulation and Abolition) Act, 1970
- Equal Remuneration Act, 1976
- Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Mines Act, 1952
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Sales Promotion Employees' (Condition of Service) Act, 1976
- Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955.

As per Ease of Compliance to Maintain Registers under various Labour Law Rules, 2017, employers are supposed to maintain consolidated register under the total nine abovementioned labour laws. There is provision which states that these registers can be maintained electronically or in hard copy. Combined register maintenance will lead to ease of updation, compliance, inspection by prescribed authorities as also easy accessibility to the public which will lead to higher transparency.

The employers are presently required to maintain following registers according to abovementioned total nine labour laws.

1. Employee Register (Form-A)
2. Wage Register (Form-B)
3. Register of Loans and Recoveries (Form-C)
4. Attendance Register (Form-D)
5. Register of rest/leave/leave wages under Mines Act, 1952, the Sales Promotion Employees (Condition of Service) Act,

1976 and The Working Journalists (Condition of Service) and Miscellaneous Provisions Act, 1957: (Form-E).

Compliance of Various Labour Laws is of utmost importance for every employer irrespective of nature of his business. Let us enumerate mandatory compliance of few Labour Laws:

### COMPLIANCES FOR COMPANIES UNDER EQUAL REMUNERATION ACT, 1976 AND EQUAL REMUNERATION RULES, 1976

Rule -6: Regarding registers to be maintained by the Employer:  
Compliance: Every employer shall maintain a register in relation to the workers employed by him /her in Wage Register (Form-B).

### COMPLIANCES FOR COMPANIES UNDER CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 AND THE CONTRACT LABOUR (REGULATION AND ABOLITION) CENTRAL RULES, 1971

Rule-75: Regarding registers to be maintained by the Employer:  
Compliance: Every registered establishment shall maintain a register of contract labour in the Employer Register (Form A)  
Rule-78: Regarding Muster Roll, Wages Register, Deduction Register and Overtime.

Compliance: Every Contractor shall maintain a Muster Roll and a Register of Wages in Attendance Register (Form D) and Wage Register (Form B).

### COMPLIANCES FOR COMPANIES UNDER MINIMUM WAGES ACT, 1948 AND MINIMUM WAGES (CENTRAL) RULES, 1950

Rule-21(4): Regarding time and conditions of payment of wages and the deductions permissible from wages:  
Compliance: All such fines imposed and deductions made shall be recorded in the register maintained in the Register of Loan and Recoveries (Form C). Nil entry has to be made if no fine or deduction has been imposed.

Rule 25(2): Regarding extra wages for Overtime.  
Compliance: Every employer has to maintain a register of overtime in the Wage Register (Form B) in which entries under the column specified therein shall be made as and when overtime is worked in any establishment.

Rule 26(1): Regarding form of registers and records.  
Compliance: Every employer shall maintain a register of wages at the work spot in the Wage Register (Form B).

Rule 26(5): Regarding Form of Register and Records.  
Compliance: Every Employer shall maintain a Muster Roll at the work spot and kept in Attendance Register (Form D) within three hours of the commencement of the work shift or relay for the day as the case maybe.

### COMPLIANCE UNDER PAYMENT OF BONUS ACT, 1965

Every Employer is required to comply with following provisions:

- A register showing the computation of allocable surplus shall be maintained in Form A
- A register showing the set on and set off of the allocable surplus shall be maintained in Form B
- Details showing the amount of bonus due, deductions and actual bonus amount disbursed shall be maintained in Form C



**Ease of Compliance to Maintain Registers under various Labour Law Rules, 2017 notified in Gazette of India on 21st February, 2017 have been prescribed for the effective, expedient and convenient compliance of the numerous provisions of labour laws. These Rules facilitate maintenance of combined registers for various labour laws. According to these Rules, Employers are required to maintain only five registers as compared to the earlier provision of mandatorily maintaining almost fifty six registers in total.**

- Annual Returns to be filed in Form D before Feb.1<sup>st</sup>.

#### **COMPLIANCE UNDER PAYMENT OF GRATUITY ACT, 1972**

- Filing of Form A with the prescribed authorities after opening of an office/branch as intimation
- Copy of Form F/ Form G - Nomination submitted by the employee. It is the duty of management and the employee to update marital status and fill in the revised Form F or Form G to update dependents for nomination
- Processing application for gratuity in Form I
- - Gratuity has to be paid irrespective of whether employee fills Form I or not.
- Form U display of Notice: Form U needs to be displayed with the abstract of the Act and rules and the person responsible.

#### **COMPLIANCE UNDER EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952**

- An employer must prepare Contribution cards in Form 3-A as prescribed under Para 35 and 42 of Employees Provident Fund Scheme, 1952 and Para 19 of Employees' Family Pension Scheme, 1971
- Every Employee must file Declaration and Nomination Form in Form 2 according to Para 33 and 61(1) of the Employees Provident Fund Scheme, 1952 and Para 18 of the Employees' Family Pension Scheme, 1971
- Return of employees qualifying for membership of the

Employees Provident Fund, Employees Pension Fund and the Employee Deposit Linked Insurance Fund for the first time in month (to be sent to Commissioner with Form 2 EPF AND FPF) is to be sent to Commissioner in Form 5 within 15 days of each month as given in Para 36(2) (a) of Employees Provident Fund Scheme, 1952 and Para 15(2) of Employees' Family Pension Scheme, 1971

- Return of Ownership shall be sent to Regional State Commissioner in Form 5-A as mentioned in Para 36A of Employees Provident Fund Scheme, 1952 and Para 1 of Employees' Family Pension Scheme, 1971
- Employer within one month of expiration of the period of currency of contribution card should send the Contribution Cards to the Commissioner together with statement in Form 6 according to Para 43 of Employees Provident Fund Scheme, 1952
- Employer shall send within one month of the close of the currency, a consolidated Annual Contribution Statement as given in Form 6-A according to Para 30 and 38(3) of Employees Provident Fund Scheme, 1952 and Para 20(3) of Employees' Pension Scheme, 1995 to the Commissioner
- Returns of member leaving service shall be filed in Form 10 as prescribed under Para 36(2) (a) & (b) of Employees Provident Fund Scheme, 1952
- Statements of Contribution for every month in Form 12-A shall be sent to the Commissioner before 25th of every month as per Para 38(2) of Employees Provident Fund Scheme, 1952

#### **CONCLUSION**

It can be said that it is duty of Government to lay down various laws/provisions/Acts/Rules to protect, enhance the social security, improve conditions of service, industrial relations and identify, prevent and redress the matters related to deprived/disadvantaged sections of society, children, and women. With the electronic and digitization of filing of returns and maintenance of records it has become more cost effective, efficiency levels are improved significantly for both the employer and the prescribed authorities. Ultimately it is on the employer to thoroughly ensure the compliance of various labour laws in true letter and spirit for the wellbeing of the workers as well as to avoid penal provisions and prevent lawsuits to save the resources like time and money.

CS

# Secretarial Standard on Dividend

*The Secretarial Standards Board (SSB) of ICSI, while deliberating about the topics in respect of which a Standard should be issued after the issuance of Secretarial Standard-1 on Board Meetings and Secretarial Standard-2 on General Meetings, decided that provisions regarding payment and distribution of dividend should be harmonized taking into consideration the provisions of the erstwhile Companies Act, 1956. Accordingly, Secretarial Standard on Dividend (“SS-3”) was issued in the year 2003 to harmonize and standardize the provisions relating to the payment and distribution of Dividend. SS-3 thus laid down certain principles regarding the payment of final and interim dividend taking into consideration the provisions of the Companies Act, 1956. With the subsequent changes in law relating to Dividend and the introduction of the Companies Act, 2013 (“Act”), SS-3 has been revised. Unlike SS-1 and SS-2, the Act has not yet made it mandatory for companies to observe the provisions of SS-3. An attempt has been made in this paper to provide an overview of SS-3 issued by the ICSI.*



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**T**he Secretarial Standards Board (SSB) of ICSI while deliberating about the topics in respect of which a Standard should be issued after the issuance of Secretarial Standard-1 (“SS-1”) and Secretarial Standard-2 (“SS-2”) which deal with the provisions relating to Board Meetings and General Meetings, decided that provisions regarding payment and distribution of dividend should be harmonized taking into consideration the provisions of the erstwhile Companies Act, 1956. Accordingly, Secretarial Standard on Dividend (“SS-3”) was issued in the year 2003 to harmonize and standardize the provisions relating to the payment and distribution of Dividend. SS-3 thus laid down certain principles regarding the payment of final and interim dividend taking into consideration the provisions of the Companies Act, 1956. With the subsequent changes in law relating to Dividend and the introduction of the Companies Act, 2013 (“Act”), SS-3 has been revised. Unlike SS-1 and SS-2, the Act has not yet made it mandatory for companies to observe the provisions of SS-3. An attempt has been made in this paper to provide an overview of SS-3 issued by the ICSI.

Chapter VIII of the Act deals with declaration and payment of Dividend. Rules have also been issued by the Central Government

to supplement the provisions laid down in the Act. The present Standard has been framed taking into consideration the newly introduced provisions of the Act. The principles set out in the Standard deal with the declaration and payment of Dividend on equity as well as preference share capital by a going concern and apply to interim as well as to final Dividend. Listed companies are additionally required to comply with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. These have been separately indicated in Annexure ‘A’ to the Standard. This Standard does not deal with the provisions relating to Dividend under the provisions of the Income-tax Act, 1961 or under any other law for the time being in force. SS-3 is also not applicable to a company limited by guarantee not having a share capital and does not deal with Dividend, if any, declared by companies under liquidation.

Paragraph 1 of the Standard deals with the ascertainment of the amount available for payment/distribution as Dividend. It has been clarified in this paragraph that Dividend shall be paid out of the profits of the financial year for which the Dividend is sought to be declared or out of the profit for previous financial year(s) which have remained undistributed after providing for depreciation in accordance with the provisions of the Act. It has further been clarified in the said paragraph that Dividend may be paid out of the money provided by the Central or State Government in pursuance of the guarantee given by such Government for this purpose.

The term ‘profit’ has not been defined in the Act and therefore, it has been clarified in paragraph 1.1.1 that the term ‘profit’ should be understood in its natural and proper sense and in accordance with the statement of profit and loss prepared by a company in conformity with the generally accepted accounting principles, applicable accounting standards and provisions of the Act or other applicable laws. The issue with regard to the profits which can be utilised for the payment of Dividend has a historical perspective. As back as in the year 1889 in *Lee v. Neuchatel Asphalte Co.* (1886-90) All ER Rep 947, the court laid down even beyond the expectation of the accountants, that the reduction in wasting assets need not be taken care of for working out profits out of which dividend could be paid. A distinction was sought to be made between fixed and circulating capital and the court held that fixed capital may be lost or wasted, the circulating capital must be maintained out of revenue. There are many cases which followed the aforesaid decision in later years. The opinion of the Court was not in consonance with the basic

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accounting principle that fixed assets are subject to wear and tear as well as obsolescence and therefore an estimated amount should be a charge to the profits available for distribution as dividend. The legal position in India has been brought in conformity with the accountants' point of view and the erstwhile Companies Act, 1956, as well as the present Act, have included specific provisions that distribution of Dividend without providing for depreciation in accordance with the provisions of the Act is not permissible.

Paragraph 1.1.2 of the Standard specifically provides that no Dividend shall be declared unless various provisions of the Act relating to repayment of deposits accepted by the company alongwith interest due as per the terms and conditions of agreement have been complied with. This paragraph also specifies other restrictions regarding payment of Dividend if the company has defaulted in –

- (a) Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve,
- (b) Redemption of preference shares or creation of capital redemption reserve,
- (c) Payment of Dividend declared in the current or previous financial year(s), or
- (d) Repayment of any term loan to a bank or financial institution or interest thereon, till such time the default is subsisting.

The Act also debars a company from declaring Dividend out of premium received at the time of issue of securities as well as out of the revaluation reserve, amalgamation reserve or out of profits on re-issue of forfeited shares or out of profits earned prior to incorporation of the company. This aspect has been covered in paragraph 1.1.3. It may be pointed out that the Companies (Amendment) Act, 2017 amended the provisions regarding the payment and distribution of dividend. It seeks to provide that the amount representing unrealised gains, notional gains on revaluation of assets and any changes in carrying amount of an asset or of a liability on the measurement of the asset or the liability at fair value shall be excluded for the purpose of computing profits out of which dividend can be declared.

Paragraph 1.1.4 of the Standard deals with the declaration of interim dividend. The term interim dividend has not been defined in the Act. However as per various commentaries on company law it has been clarified that interim dividend means a dividend declared by the Board of Directors. Accountants held an opinion that interim dividend should be paid out of the profits of the current year in which the dividend is being declared. The Standard clarifies that interim dividend may also be declared out of surplus in the statement of profit and loss. The Standard however provides in Paragraph 1.2.2 that interim dividend should not be paid out of free reserves. This is in consonance with good corporate governance principles.

Paragraph 1.2.1 of the Standard deals with the declaration of final dividend out of free reserves in case of an inadequacy or absence of profits subject to the fulfillment of certain conditions specified in the said paragraph. Paragraph 2.3 of the Standard provides that no dividend shall be declared on equity shares for previous years in respect of which financial statements have already been adopted.

Paragraph 2 of the Standard deals with the procedure for declaration of dividend. It has been clarified in various sub-paragraphs that the final dividend should be declared at the Annual General Meeting and that the interim dividend should be declared by the Board of Directors in its meeting. It has also been clarified in one of the sub-



**Paragraph 1.1.4 of the Standard deals with the declaration of interim dividend. The term interim dividend has not been defined in the Act. However as per various commentaries on company law it has been clarified that interim dividend means a dividend declared by the Board of Directors. Accountants held an opinion that interim dividend should be paid out of the profits of the current year in which the dividend is being declared. The Standard clarifies that interim dividend may also be declared out of surplus in the statement of profit and loss.**

paragraphs that discount coupons issued to all the shareholders shall not be treated as Dividend. Paragraph 2.6 of the Standard clarifies that a company is prohibited from issuing bonus shares in lieu of Dividend.

Paragraph 3 of the Standard deals with shareholders' entitlement to dividend. Paragraph 3.4 clarifies that dividend on equity shares shall be paid in accordance with the rights of the respective classes, if any, of such shares. Paragraph 3.2 of the Standard clarifies that Dividend to preference shareholders shall be paid before Dividend is paid to the equity shareholders. Paragraph 3.3 of the Standard clarifies that the arrears on cumulative preference shares shall be paid before any payment of dividend on equity shares. Paragraph 4 of the Standard deals with the circumstances in which dividend can be held in abeyance.

Paragraph 5 of the Standard deals with requirements of the Act regarding the payment of Dividend and income tax thereon. Paragraph 5.3 clarifies that Dividend should be paid in cash and not in kind. This provision in the Act has been made so as to curb various fraudulent practices which had been reported to the committee formed under the chairmanship of Sh. C. H. Bhaba which submitted its report in March 1952. This led to the enactment of erstwhile Companies Act, 1956 which contained a similar provision.

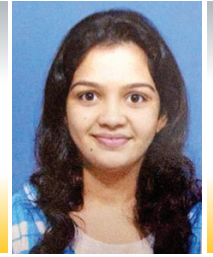
Paragraph 6 of the Standard deals with Unpaid Dividend and incorporates various provisions of the Act which have to be followed for the purpose of maintaining Unpaid Dividend Account with the bank, transfer of such Unpaid Dividend to Investor Education and Protection Fund and other requirements to be complied before transfer of such Unpaid Dividend to the aforesaid Fund.

Paragraph 7 of the Standard clarifies that a Dividend once declared, becomes a debt and cannot be revoked. Paragraph 8 of the Standard deals with the preservation of Dividend cheques, warrants and Dividend registers. Paragraph 9 of the Standard deals with the disclosure of the amount payable as Dividend in the Balance Sheet, director's report as well as the annual report.

It is hoped that the reader would find the above overview of SS-3 useful. However, the entire Standard should be read carefully so as to understand various implications of the provisions relating to payment and declaration of Dividend under the provisions of the Act. CS

# Secretarial Guidance for Preferential Issue by Listed Companies

*The objective of the present article, written on the basis of observations of the applications of preferential issue filed by various Listed Companies, is to address the shortcomings faced by the companies while raising the funds through preferential issue. The Article provides the broad framework for the companies to be in compliance with the Regulatory requirements.*



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## BACKGROUND

Prior to August 1994, a number of listed companies used to issue shares to the promoters, friends, relatives, associates etc., at a lower price as a result of which the promoters and promoters group benefitted both in terms of gains in value and increasing promoters' shareholding. At the same time such issue was unfair to other shareholders. It was then in August 1994, SEBI came out with guidelines to regulate the preferential offer of equity shares and other convertible instruments which will benefit allottees in preferential offer. These guidelines were eventually converted into preferential issues and are regulated by Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "ICDR Regulations"). Also, most of the SEBI guidelines have been incorporated in Section 62 of the Companies Act, 2013 which contains provisions relating to further issue of shares.

## MEANING AND PURPOSE OF PREFERENTIAL ISSUE

As per Regulation 2(z) of ICDR Regulations, "Preferential issue

*means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities".*

It is expected by the statute that a company will resort to Rights Issue for raising additional capital as and when required, but there are situations in which companies may prefer to raise capital through Preferential Offer rather than Rights Issue. Some situations are listed here in below:

1. Companies are required to appoint a Merchant Banker for raising of funds through Rights Issue. The same does not apply for preferential issue. This is a cost benefit to the company.
2. Rights Issue requires preparation of Prospectus which has to be filed with SEBI, whereas Preferential Issue requires approval only from Board of Directors and Shareholders, prior to approval from Stock Exchange.
3. In case of urgent need of money, the companies may prefer to choose Preferential Issue as the same for raising fund is faster and cost saving procedure than Rights Issue.

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\* Views expressed in this article are personal views of the authors and do not, in any way, reflect the views of NSE, Mumbai.

4. The company shall not withdraw the rights issue after announcement of record date. The same does not apply for preferential issue.
5. Companies prefer preferential issue route while restructuring their debts to improve the financial viability of the Company, as the same is more efficient and quicker process.
6. Company's financial situation is not attractive enough to get subscriptions to Rights Issue but the company is in urgent need of money; such financial infusion will help company revive its commercial prospects.

## REGULATORY FRAMEWORK GOVERNING PREFERENTIAL ISSUES BY LISTED COMPANIES

1. The listed entity raising funds through preferential issue shall ensure compliance with Chapter VII of ICDR Regulations.
2. Regulation 73(i) of ICDR Regulations mandates all issuers proposing to raise funds by way of Preferential Issue, to make the following **disclosures in the explanatory statement** to the notice:
  - a) Objects of the issue through preferential offer;
  - b) The proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;
  - c) The shareholding pattern of the issuer before and after the preferential issue;
  - d) The time within which the preferential issue shall be completed;
  - e) The identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer, consequent to the preferential issue; Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottees, no further disclosure will be necessary.
  - f) An undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;
  - g) An undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked-in till the time such amount is paid by the allottees;
  - h) Disclosures, similar to disclosures specified in Part G of Schedule VIII of ICDR Regulations, if the issuer or any of its promoters or directors is a willful defaulter.
3. **Relevant Date** has to be considered as per Regulation 71 of ICDR Regulations. For example, if the AGM/ EGM date is August 04, 2017 then the relevant date shall be July 05, 2017 i.e. 30 days prior to the date of shareholders' approval.

Further, where the Issuer proposes to issue preferential issue of convertible securities it has to be as per regulation 71(b) of ICDR Regulations.

Explanation: Where the relevant date falls on a weekend/



To curb the indirect routing of funds, SEBI has amended Regulation 73 of ICDR Regulations, thereby casting a responsibility on the Companies to disclose in the Explanatory Statement, the identity of the ultimate beneficial owners of the shares proposed to be allotted. Further, where ultimate beneficiary is a non-individual, then issuing companies are required to provide the complete chain of ownership.

holiday, the day preceding the weekend/holiday will be reckoned to be the relevant date.

4. In case Shareholders' approval is obtained through Postal ballot, the last date specified by the company for receipt of duly completed postal ballot forms or e-voting, shall be considered as deemed date of passing of special resolution and such date has to be considered for determining the relevant date.

For example, if the Shareholders' approval is obtained through Postal ballot, in the Notice, the members are requested to submit the signed physical copy of Postal Ballot to the Scrutinizer or complete the e-voting not later than 5.00 P.M. on March 18, 2018. In this case, the Shareholders' Meeting shall be considered as the last date of voting/submission of the signed Postal Ballot form, i.e. March 18, 2018. Thus, the Relevant Date shall be February 16, 2018 i.e. 30 days prior to the date of shareholders' approval.

5. To curb the indirect routing of funds, SEBI has amended Regulation 73 of ICDR Regulations, thereby casting a responsibility on the Companies to disclose in the Explanatory Statement, the identity of the ultimate beneficial owners of the shares proposed to be allotted. Further, where ultimate beneficiary is a non-individual, then issuing companies are required to provide the complete chain of ownership.

Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary. SEBI circular dated January 24, 2013 regarding 'Guidelines on Identification of Beneficial Ownership' can be referred.

6. While computing the **Pricing of equity shares** for frequently traded shares as per Regulation 76(1) of ICDR Regulations, if the equity shares of the issuer have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:
  - (a) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the twenty six weeks preceding the relevant date; or
  - (b) The average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two

weeks preceding the relevant date.

7. While calculating the **Minimum Applicable Price** as mentioned above, Companies often include the price as on relevant date in the calculation. However, it is to be noted that pricing calculations has to be computed till the date preceding the relevant date i.e. a working day before the relevant date. For example, if the relevant date is June 30, 2017 i.e. Friday, then for the purpose of calculations VWAP till June 29, 2017 is only to be considered.
8. **Lock-in of specified securities - Promoters:** The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be.

Provided that not more than twenty per cent of the total capital of the issuer shall be locked-in for three years from the date of trading approval. Provided further that equity shares allotted in excess of the twenty per cent shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

**Lock-in of specified securities - Other than Promoters:** The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked in for a period of one year from the date of trading approval.

9. **Penal Provisions:** As per Regulation 108(3) of ICDR Regulations, in case of delay in making application for listing beyond twenty days from the date of allotment, the issuing company, shall pay penal interest to allottees for each day of delay at the rate of at least ten per cent per annum from the expiry of thirty days from the date of allotment till the listing of such securities to the allottees.

If the application for Listing of shares is submitted to the Exchange after 20 days from the date of allotment of shares, the company shall comply with the requirements of Regulation 108(2) and (3) of ICDR Regulations & SEBI Circular dated June 15, 2017.

## COMMUNICATIONS/APPROVALS FROM STOCK EXCHANGES

1. As per Regulation 29(1) (d) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the listed entity shall give prior intimation to stock exchanges, at least two working days in advance, excluding the date of the intimation and date of the meeting, about the meeting of the board of directors in which proposal for fund raising by way of further Preferential Issue or any other method and for determination of issue price.
2. Also the outcome of Board meeting in which issue

of shares by way of Preferential Issues is approved is to be disclosed by the company as required under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with SEBI circular dated September 09, 2015.

3. The listed entity shall obtain In-principle approval (Pre allotment approval) under Regulation 28(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for issue of securities pursuant to preferential issue. The checklist of the same is available on the website of National Stock Exchange [https://www.nseindia.com/corporates/content/further\\_issues.htm](https://www.nseindia.com/corporates/content/further_issues.htm)
4. As per Regulation 74 of ICDR Regulations, the issuer shall apply to the Stock Exchange for obtaining the in-principle approval for listing immediately after the date of allotment of shares.
5. The shares shall be listed and traded on the Exchange after the grant of trading approval from the Stock Exchanges.

## SECRETARIAL PRACTICE TO MAKE A PREFERENTIAL OFFER

1. The issue is authorized by its Articles of Association - There should be authority in Articles of Association of the Company to issue shares/ securities through preferential allotment of shares. If such power is absent then amend the clauses of AoA to insert power to issue shares/securities through preferential allotment of shares.
2. The issue has been approved by the Board of Directors of the Company -

Notice of Board Meeting has been sent to all the directors of the company at least seven days before the date of Board Meeting. The Board shall approve the raising of funds through preferential issue. The listed entity shall give prior intimation to the stock exchanges, at least two working days in advance, excluding the date of the intimation and date of the meeting. The Number of shares or issue size shall be mentioned in the Board Resolution along with the issue price at which the shares shall be allotted.

3. The issue has been approved by a special resolution in the Shareholders' Meeting –

Shareholders' approval can be taken through Annual General Meeting or Extraordinary General Meeting or Postal Ballot. As per Rule 13(2) (b) of Companies (Share Capital and Debentures) Rules, 2014, raising of funds through Preferential Issue, requires Special Resolution from Shareholders.

4. The securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.
5. Existing Proposed allottees shall have all their holdings in dematerialized form.
6. Company is in compliance with the conditions of continuous listing requirements.



7. Company has obtained Permanent Account Number (PAN) of all the proposed allottees.
8. No sale by the proposed allottees during the period of six months prior to the relevant date. In case the allottee belongs to promoter group, then there should be no sale by any person from the promoter/promoter group of the company during the period of six months prior to the relevant date. Kindly note that Inter-se Transfer/Gift of securities by the proposed allottee/Promoter Group (in case of allotment to promoter) is also considered as sale.
9. The pre-preferential holdings of the proposed allottees should be locked in from the relevant date up to a period of six months from the date of trading approval issued by the Recognized Stock Exchange.
10. As per Regulation 74 of ICDR Regulations, Allotment of Equity Shares/Convertible securities pursuant to the special resolution shall be completed within a period of fifteen days from the date of Approval from Shareholders/Regulatory authorities/Central Government, whichever is later.
11. Full consideration of specified securities other than warrants issued shall be paid by the allottees at the time of allotment of such specified securities.
12. In case of Preferential Allotment of Shares on conversion of convertible security, following points are to be considered:
  - In case of allotment of Equity shares on conversion of any convertible security, Equity shares should be converted within 18 months from the date of allotment of convertible securities. Further allotment of equity shares shall be completed within 18 months from the date of allotment of convertible security as per Regulation 75 of ICDR Regulations and SEBI Circular dated June 15, 2017.
  - In case of allotment of warrants, 25% of the consideration is to be received before allotment of warrants & balance 75% of the consideration is to be received before allotment of Equity shares on conversion of warrants.

### EXTRACTS FROM GUIDANCE NOTE ISSUED BY NATIONAL STOCK EXCHANGE

The major issues the Exchange has observed while processing the applications are mentioned below:

1. Companies do not provide the intimation of Board Meeting as required under Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
2. Relevant Dates are miscalculated. Saturday, Sundays or Public Holidays are considered as Relevant Date.
3. Companies conducting Shareholders' Meeting through Postal Ballot consider wrong Shareholders' Meeting Date.
4. All the points mentioned in Regulation 73(1) of ICDR Regulations are not considered in the explanatory statement of the Notice of Shareholders' Meeting.
5. The identities of the ultimate beneficial owners of the shares proposed to be allotted are not disclosed as required.
6. The Company has not allotted shares within fifteen days from the date of Approval from Shareholders/Regulatory authorities/Central Government, whichever is later.
7. The Company has not applied to the Exchange within 20




**In case of allotment of Equity shares on conversion of any convertible security, Equity shares should be converted within 18 months from the date of allotment of convertible securities. Further allotment of equity shares shall be completed within 18 months from the date of allotment of convertible security as per Regulation 75 of ICDR Regulations and SEBI Circular dated June 15, 2017.**



- days of allotment of Equity shares.
8. The Company has not received full consideration for specified securities other than warrants as Allotment money.
9. The Companies are unaware that their allottees have sold their shares six months prior to Relevant Date. There has been a sale by any person from the promoter/promoter group of the company during the period of six months prior to the relevant date.
10. Lock in is not made as per Regulation 72(2) and Regulation 78 of ICDR Regulations.
11. Company is unaware about the PAN of the proposed allottee and do not provide the same. This is violation of Regulation 72(1) (d) and hence approval may not be provided.

The Exchange has also issued a Circular to all the listed companies on March 16, 2018 stating that the Exchange will not grant approval to any application for preferential issue if the explanatory statement to the notice, *inter alia*, is not disclosing ultimate beneficiary as required under Regulation 73(1) (e) of the ICDR Regulations. The said circular is made effective from April 02, 2018.

Listing on an Exchange and compliance with the regulations will assure sustaining public investment in the listed entity and may also help in raising further capital in the form of further issues. NSE will continue to play the role of facilitating compliance with Listing Regulations by listed entities and is happy to play the advocacy role if and when there is a need for changing regulations. 

# Fugitive Economic Offenders Bill and Opportunity for Company Secretaries

Growing instances of fraud incidences have shaken the Indian economy since last few years. With the additions of fugitive offenders, loan defaulters and economic cheaters, the list of economic offenders is widening day-by-day. The Central Government for the first time introduced the Fugitive Economic Offenders (FEO) Bill, 2018 in Lok Sabha on 12th March, 2018. The present article is an attempt to review the Bill that the Government is going to implement to counter the high profile business houses who are not only duping the banking system of the country but also wasting the valuable time of the Court by leaving the country. Further it analyses the opportunities that Company Secretaries will have after the implementation of this Act.



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## INTRODUCTION

Frequent instances of corporate frauds in India since last few years have hammered in the back bone of Indian economy. The frequency of so many scams and frauds has removed billions of rupees from the savings and pockets of some thousands of innocent investors.

The word 'fraud' as per law is defined as an activity done intentionally by one individual to another by misrepresentation of material existing fact. There are basically four types of frauds that an economy experiences with:

- Internal Corruption or Misappropriation (known as fraud against the concerned corporate organization)
- Fraudulent Financial Reporting (known as fraud for the corporate organization)
- Frauds like Money Laundering, corruption, bribery, etc.
- External fraud (fraud against the organization like credit card fraud, cyber crime, etc.)

## OBJECTIVES

The basic objectives of this study are:

- To review the corporate fraud befallen so far in our country
- To analyse the FEO Bill and its coverage in some sections of the Companies Act, 2013
- To explore the opportunities for Company Secretaries due to this new bill.

## METHODOLOGY

Since this bill is new which is recently introduced, hence, the literature explaining about various aspects including the pros and cons is scanty.

This is an analytical research which is based on the draft bill submitted at Lok Sabha on March 12, 2018. Various sources related to the study other than the bill have been considered for reference purposes during the study.



## EVILS OF CORPORATE FRAUDS

Corporate frauds not only cause losses to concerned corporate houses but also affect the economy as a whole. Following are some important losses due to corporate frauds:

- Financial Losses - When the company assets are misappropriated by someone, the incurred loss is very difficult to quantify. However, the concerned company where fraud has happened bears some additional financial costs along with the principal losses.
- Loss of Stakeholders' confidence - There is every possibility of losing public trust to the company. As a consequence, the company normally spends more and more to regain the earlier confidence of its stakeholders. It also loses the confidence of trade associations and strategic alliances.
- Company Morale - Fraudulent activity affects the company's working culture and employee morale. The situation is so worsened that when an employee leaves the company after getting another job option, he carries an association with the fraudulent company.
- Increases Audit cost - Frequent scrutinizing of company books by the auditors, increases the cost of audit of the company. The effects of fraud are more intensified when the offenders are leaving the jurisdiction of a country, anticipating the commencement, or during the pendency, of criminal proceedings. The important consequences are:
  - It dents the rule of law of that country
  - It hampers investigation, more particularly in criminal involvements

- (g) It wastes precious time of the court of law
- (h) Non-payment of bank loan affects the financial status of the concerned bank and also the economy of the country
- (i) It weakens people's faith on the working style of the government

## REVIEW OF 'ECONOMIC OFFENDERS'

The Indian economy is experiencing growing instances of "loots and scoot" crimes since last few years. Following pictorial presentation represents some of the most important fraud incidences that took place in India in value terms.

<ul style="list-style-type: none"> <li>• Mint Report Highlights that in 15 different cases pending before the Enforcement Directorate and CBI, the amount involved is around Rs. 40,000 crores to banks and public institutions</li> <li>• RBI's loan defaulters list reports bad loan of Rs. 2 trillion.</li> </ul>			
Rs. 12,636 Crores at PNB	Rs. 7,000 Crores	Rs. 9,000 Crores to a group of banks	Rs 125 Crores from Cricket Board
Nirav Modi & Choksi Group	Jatin Mehta of Winsome Diamonds	Vijay Mallya	Lalit Modi
Rs 5000 Crores Bank fraud	Rs. 1,500 Crores taking Out of the Country	Rs 770 Crores Bank Loss	Rs. 390 Crores of OBC Bank
Sterling Bio-tech Ltd	Diamond Trader Ritesh Jain	ABC Cotspin Pvt. Ltd	Sabhya Seth
Rs. 150 Crores Tax evasion	Rs. 1,394.43 Crores at Union Bank of India	Rs. 2,223 Crores Bank Fraud	Rs 824 Crores at SBI
Sanjay Bhandari	Totem Infrastructure Ltd	Shree Ganesh Jewellery	Kanishk Gold
Rs. 515 Crores at Canara Bank	Rs. 3695 Crores at Bank of Baroda	Rs. 109 Crores at OBC	Rs. 7121.93 Crores at Banks (at NCLT)
R P Infosystems	Rotomac Pens	Simbhaoli Sugars	IVRCL
Rs 5922.79 Crores at Banks (at NCLT)	Rs. 4793.12 Crores at Banks (at NCLT)	Rs. 2756.30 Crores at Banks (at NCLT)	Rs. 1302.88 Crores at Banks (at NCLT)
Ruchi Soya	SEL Manufacturing	Orchid Pharma	Castex Technologies
Rs 25,586.76 Crores at Banks	Rs. 19,505.92 Crores at Banks	Rs. 3,853.27 Crores at Banks	
Jaiprakash Associates	Videocon Industries	Jayaswal Neco Industries	

Source: Various Business daily like The mint, etc.

## WHAT DOES 'FUGITIVE ECONOMIC OFFENDERS' MEAN?

Fugitive Economic Offenders are those persons who are involved in double-dealing the operations of banking system and evading the process of law in their respective countries by fleeing to another country. These persons are involved in large scale corporate defaults. To counter this menace in India, The Fugitive



Fugitive Economic Offenders are those persons who are involved in double-dealing the operations of banking system and evading the process of law in their respective countries by fleeing to another country. These persons are involved in large scale corporate defaults. To counter this menace in India, The Fugitive Economic Offenders Bill, 2018 was passed by the Union Cabinet of India and was introduced in Lok Sabha.

Economic Offenders Bill, 2018 was passed by the Union Cabinet of India and was introduced in Lok Sabha. The following sections will analyse the detailed contents of the Bill.

## FUGITIVE ECONOMIC OFFENDERS BILL, 2018: AN ANALYSIS

The following table narrates a brief outline of the Bill.

Clauses	Description
1	Clause-1 of chapter-I (Preliminary) of the Bill narrates short title, extent and commencement of the proposed Act.
2	Defines various contexts used in the proposed Act
3	All provisions are applicable to any individual who is or becomes a fugitive economic offender on or after the date of coming into force of this Act.
4	(1) The director/ official authorised by director (not below the rank of deputy director), has to file an application as prescribed by the special court to declare an individual as fugitive economic offender. (2) The detailed contents of the application as outlined in the bill (3) The authorities mentioned for this Act are those as prescribed in the Prevention of Money Laundering Act, 2002
5	(1) With the permission of special court, the authorities clause-3 sub-clause-1 could attach any property in the application filed as per clause 4 (2) The authorities can also attach any properties before the filling of the application form. Application is to be filed within thirty days from the date of attachment (3) The attachment are allowed till 180 days or as directed by the special court
6	The authority for the purpose of execution of clause 4 enjoys all powers mentioned in civil court under the Code of Civil Procedure, 1908 and matters as specified in this clause
7	Explains the power of survey by the director or any official authorised by director (1) May enter within assigned area and for authorised purpose (2) May request any person to present at the time of survey of the property as specified (3) The authorities are required to furnish some details about the records.
8	(1) The authority on the basis of information could declare any individual (i) as a fugitive economic offender, (ii) is in possession of any proceeds of crime (iii) is in possession of any records which may relate to proceeds of crime, or (iv) is in possession of any property related to proceeds of crime, may authorise any sub-ordinate to search and seize any property or record related to property (2) In case of conformity of evidence to be concealed or tampered with, could enter and search the building or place and seize that evidence.
9	Specifies the procedure of search of a person and seize of property by the authority and follows other procedures as specified.

10	<p>Issue of Notice</p> <p>(1) After filing of application as per clause 4, special court has to issue notice to the alleged individual</p> <p>(2) Notice could also be issued to any other person who has any interest in the property as per sub-clause 2 of clause 4</p> <p>(3) A notice issued as per sub-clause 1 requires (i) the individual to appear not less than six weeks and (ii) failure to appear shall result to declare the individual as a fugitive economic offender. Accordingly, confiscation of property could be initiated</p> <p>(4) Notice shall also be forwarded to such authority for effecting service in a contracting State</p> <p>(5) The authority has to respond to the notice within two weeks</p> <p>(6) A notice under sub-clause 1 could also be served by electronic means</p>
11	<p>Procedure for Hearing Application</p> <p>(1) If an individual by obeying the notice appears in person, the special court may terminate the proceeding</p> <p>(2) If any individual fails to appear but enters appearance through counsel, one week period could be given to file a reply to the application under clause 4</p> <p>(3) If an individual fails to appear either in person or through counsel, the special court could proceed to hear the application</p> <p>(4) Notice issued to any individual under sub-clause 2 of clause 10, could be given a period of one week to file a reply to the application under clause 4.</p>
12	<p>Declaration of Fugitive Economic Offender</p> <p>(1) Special court after being satisfied could declare the individual as fugitive economic offender</p> <p>(2) On a declaration, the specified properties would be confiscated by the Central Government</p> <p>(3) The special court has to identify the properties in India or abroad</p> <p>(4) All properties owned by the offender has to be listed down in the order of confiscation</p> <p>(5) The special court has to issue a letter of request to a court or authority in the contracting State for execution of its order</p> <p>(6) During conclusion of proceedings, if it is proved that the individual is not an economic offender, the special court has to pass order for release of property or record it as attached or seized</p> <p>(7) Against any order under sub-clause (9), the authority could withhold the release of such property or order for ninety days</p>
13	<p>Supplementary Application</p> <p>(1) If any other property is discovered or identified after the inspection, then the authority could file supplementary application</p> <p>(2) All the provisions defined from clause 4 to clause 12 will be applicable to condition under sub-clause 1 of main clause 13.</p>
14	<p>Power to Disallow Civil Claims</p> <p>(a) When an individual is declared as a fugitive economic offender, no civil proceedings are allowed against him by any court or tribunal in India</p> <p>(b) If an individual filing the claim on behalf of any company or LLP having a controlling interest in LLP has been declared as a fugitive economic offender and no civil trial is allowed in any other court or tribunal</p>
15	<p>Management of Properties Confiscated under the Act</p> <p>(1) The Central Government may appoint any officer to perform the task of administrator</p> <p>(2) The administrator appointed by sub-clause (1) has to manage the property as prescribed</p> <p>(3) The administrator could also dispose of the property under clause 12 with the direction from the Central Government but not before ninety days from the date of order</p>
16	<p>Rules of Evidence</p> <p>The Director or a person authorised by him shall be responsible to prove an individual or its property as fugitive economic offender and so on</p>

17	<p>Appeal</p> <p>An appeal within a period of thirty to ninety days could be allowed for any judgement of order of a special court to high court</p>
18	<p>No Civil court shall have jurisdiction of any matter which the special court issues.</p>
19	<p>The officials involved in the legal proceedings under the proposed Act should not be involved in other legal proceedings</p>
20	<p>Power of the Central Government to amend the Schedule</p>
21	<p>Overriding effect</p>
22	<p>The provisions of this Act shall be applicable in addition to other laws</p>
23	<p>The Central Government has powers to make rules</p>
24	<p>Laying of rules before Parliament</p>
25	<p>If any difficulty arises while implementing any provisions of this proposed Act, the Central Government would remove the difficulties.</p>

## THE FEO BILL AND THE COMPANY LAW

Economic Offences amounting to Rs. 100 Crore or more will attract the provisions of the FEO Bill. The Bill clarifies the 'economic offences' as those defined under:

- The Indian Penal Code vide sections 255, 257, 258, 259, 260, 417, 418, 420, 421, 422, 423, 424, 467, 471, 472, 473, 475, 476, 481, 482, 483, 484, 485, 486, 487, 488, 489 A, 489 B.
- Section 138 of The Negotiable Instruments Act, 1881 (26 of 1881)
- Section 58B of the Reserve Bank of India Act, 1934 (2 of 1934)
- Section 9 of the Central Excise Act, 1944 (1 of 1944)
- Section 135 of the Customs Act, 1962 (52 of 1962)
- Section 3 of the Prohibition of Benami Property Transaction Act, 1988
- The Prevention of Corruption Act, 1988 (49 of 1988) vide Sections 7, 8, 9, 10 and 13.
- Sections 12A and 24 of the Securities and Exchange Board of India Act, 1992 (15 of 1992)
- Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (15 of 2003)
- Sub-section (2) of Section 30 of the Limited Liability Partnership Act, 2008 (6 of 2009)
- Sections 34 and 35 of the Foreign Contribution (Regulation) Act, 2010
- Section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015)
- Section 69 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
- Sub-section (5) of Section 132 of the Central Goods and Services Tax Act, 2017 (12 of 2017)
- Following sections of The Companies Act, 2013 (18 of 2013) are covered under the proposed Act:

Section	Description of Offences as per Companies Act, 2013
42(4)	Any contravention of the provisions of section 42 relating to offer or invitation shall be treated as a public offer. All provisions of this Act, for public offer and the Securities Contracts (Regulation) Act, 1956 and SEBI Act, 1992 shall be required to be complied with.
74	The deposit accepted before this Act comes into force by the company or any interest thereon shall be repaid within one year. The tribunal could extend the time on receiving of application.
76 A	<p>Punishment for Contravention of section 73 or section 76</p> <p>(a) In addition to the due amount, the company is punishable with a fine of rupees one crore and more up to ten crores</p> <p>(b) A default company shall be punishable with imprisonment up to seven years or a monetary fine not less than twenty five lakhs and could extend up to two crores or both.</p>

206 (4)	Power to call for information, inspect books and conduct inquiries The registrar after convinced of an illegal activity could ask any information from the company and could also carry out inquiry after providing the company a reasonable opportunity to represent. Provided further, every officer in default of the company shall be punishable as per section 447.
213 (b)	The business of the company is conducted for fraudulent or unlawful purpose and so on.
447	Imprisonment up to ten years but not less than six months with monetary fine amounting to three times the amount of fraud which should not be less than the fraud amount will be applicable to an individual found guilty of fraud charges against him. Where public interest is involved, the terms of imprisonment shall not be less than three years,
452	(1) if any officer or employee of a company- (a) Wrongfully obtains possession of any property including cash of the company, or (b) Having cash or property in his possession wrongfully withholds it or knowingly applies it for the purposes other than those specified and authorised A monetary fine amounting to one lakh to five lakh rupees should be imposed (2) The Court may ask for refund or deliver up the cash or property within the specified time

## FEO BILL & OPPORTUNITY FOR COMPANY SECRETARIES

The implementation of this Bill could bring new opportunities for Company Secretaries.

- (1) Clause-12 of the FEO Bill 2018 states that-
  - (a) The Special Court shall appoint an administrator to manage and deal with the confiscated property (clause-10)
  - (b) Only an insolvency professional under the Insolvency and Bankruptcy Code, 2016 could be eligible to be appointed as an administrator under this Act.

If this section comes into force then it could boost the career of the company secretary professionals. The insolvency professionals are on high demand as India's banks are trying to resolve the bad loans that are pressurising since long. Further, soon after this Act comes into force, it will further enhance the demand of insolvency professionals as 'administrators'. The ICSI insolvency agency, is



**RBI has tightened rules by asking banks to identify the cases of non-payment of loans. Under the new rules, if proper resolution plan is not initiated within 180 days of the default for an amount of loan of Rs. 2000 crore or more, insolvency proceedings would be initiated. Further, the law says that all banks have to report defaulters list on a weekly basis in case of borrowers with more than Rs 5 crore of loan. There is every chance that in near future there will be addition of more and more defaulters in the list. More defaulters may lead to demand for more administrators and hence, more demand for insolvency professionals.**

facilitating a whole range of activities to boost the scope of CS profession. Thus the enforcement of this Act could further raise the demand for Company Secretaries.

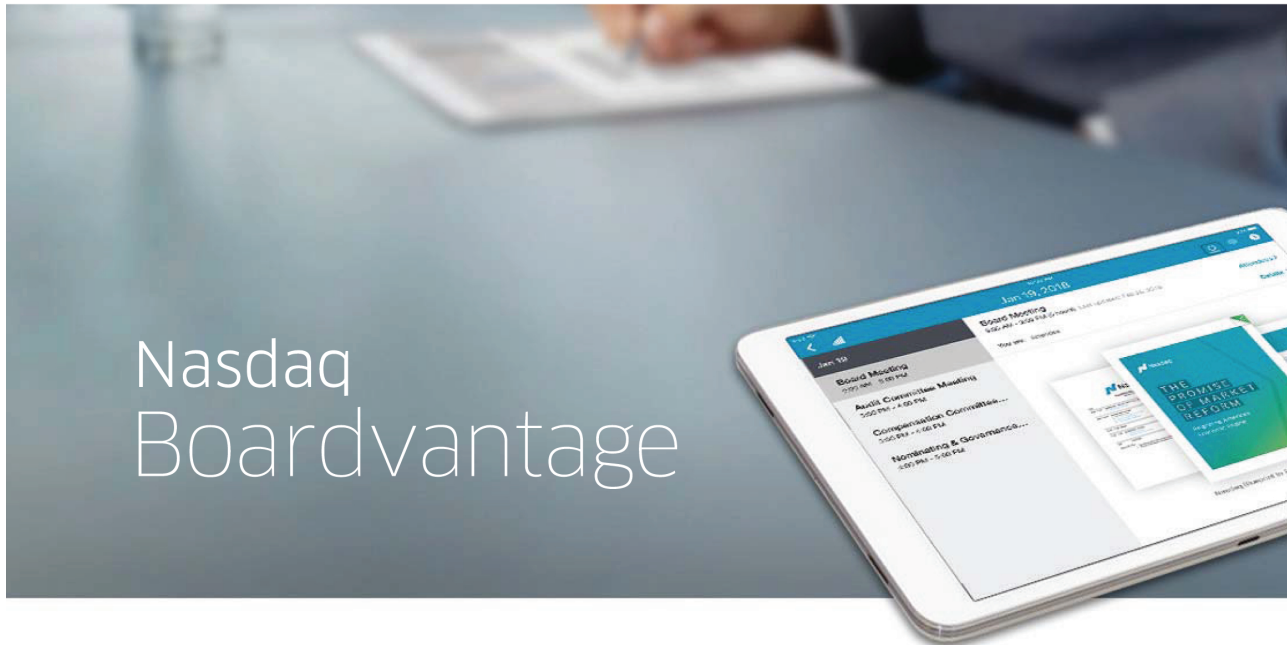
- (2) Recently RBI has tightened rules by asking banks to identify the cases of non-payment of loans. Under the new rules, if proper resolution plan is not initiated within 180 days of the default for an amount of loan of Rs. 2000 crore or more, insolvency proceedings would be initiated. Further, the law says that all banks have to report defaulters list on a weekly basis in case of borrowers with more than Rs 5 crore of loan. There is every chance that in near future there will be addition of more and more defaulters in the list. More defaulters may lead to demand for more administrators and hence, more demand for insolvency professionals.

## CONCLUSION

All are expecting that this step of the Government by bringing the Bill (will become an Act) would force the economic offenders to come back to our country to face trial for the offences charged against them. However, a deep observation of the present Bill shows that the Bill is more concentrated on seizure of the assets of the offenders. The detailed provisions for the forced return of the offender are yet expected to be incorporated in coming discussions on the Bill. Further, analysts point out some issues like sale of property by the offender without facing trial, deterioration in values of assets that are seized, getting suitable buyers for purchase of such assets during auctions (for example - Sahara's Amby Vally, Kingfisher house etc.), dealing with siphoning off of funds etc., as some other concerns around the new bill and the proposed Act. CS

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# 2

# RESEARCH CORNER



■ LABOUR REFORMS, SOCIAL AUDIT AND LABOUR LAW AUDIT

■ THE ICSI-CCGRT INVITES COMPREHENSIVE PAPERS ON FUNCTIONS OF COMPANY SECRETARY IN CHAMPION SECTORS

# Labour Reforms, Social Audit And Labour Law Audit\*

*Regulation of Indian labour market is lagging behind international labour standards, due to overarching complexities of archaic labour laws. Though a lot have been achieved due to persistent efforts made by the successive governments to bring Indian labour laws at par with global standards, yet we have miles to go. In this regard, labour law audit, can be proved to be an important tool, to ensure efficient and effective implementation of labour laws in India. Hence, labour law audit is urgent need of the day. The study analyses three important aspects related to Indian labour force like labour reforms, social security and labour law audit. Since, Labour reforms are linked to competitiveness by augmenting labour productivity, reforming Indian labour market is expected to boost labour productivity. Further, Social protection plays a key role in achieving sustainable development, promoting social justice.*

## INTRODUCTION

**L**abour force has the capability to define the growth and development of any country. It plays the most important role in any economic activity. It is in this context that the labour welfare poses major challenge for the policy makers in any country in terms of creating decent work environment and ensuring wellbeing and prosperity of its labour force.

Indian labour market has a sharp divide between organised and unorganised sector. The small proportion of organised labour enjoys an advantage with stringent laws and rules and regulations enabling them to fight for their rights. The major chunk, however, consists of unorganised labour with almost no job or social security. With India poised to have the largest workforce in the world by 2025 it is imperative that labour issues are given the attention and importance that they deserve.

It has become imperative to understand that unless there is an absolute convergence and alignment of personal goals and organizational goals in an industry, besides a symbiotic attitude, there is bound to be divergence, dissension or even desertion in human activity in it. The wise amongst the Industrialists has started pondering, as to whether the illiterate or unqualified cheap labour is really cheap and whether he can rely upon it in the event of technical up gradation. The Industry is seeing a change in attitude towards the workforce and realizing that in the long run, the welfare of workforce can only ensure sustainable development.

## THE CONSTITUTION

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

- that the State should direct its policies towards securing

the right of citizens, men and women, to an adequate means of livelihood

- that the ownership and control of material resources of the community be so distributed as best to sub-serve the common good
- that the economic system should not result in the concentration of wealth and the means of production to the common detriment
- that there should be equal pay for equal work for both men and women
- that the State should endeavour to secure the health and strength of workers
- that State should ensure that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age and strength
- that childhood and youth are protected from exploitation and from moral and material abandonment
- that State shall secure to all workers living wage, decent standard of living and free enjoyment of leisure.

## INDIAN LABOUR MARKET

- The Indian labour market is dichotomous in nature wherein 92 per cent of the workforce is in informal employment and less than 10 per cent is in formal employment. The reason for this large proportion of workforce being informal draws back to the socio-economic factors that existed since the colonial times. The pattern of industrialization followed during the colonial rule encouraged export of raw materials and import of finished products. The Industrial Revolution in Britain failed to create an impact on the Indian economy. It was only around the First World War that factory based manufacturing started and that to cater to the war needs. Hence at the time of Independence we were left with a largely peasant economy and the labour force was a minority and driven by inter-caste rivalry as non-farm occupations were mostly caste driven. Entrepreneurship was restricted to certain communities and the industries that did come up were iron, steel, mines, textiles, newsprint, etc. where the labour component was low. Based on application of the NCEUS definition to the NSSO unit level data the trend of informal employment that emerged maybe seen in Table-1.

\* This manuscript has been prepared in the ICSI-Research Cell under the guidance of Dr. Prasant Sarangi, Director (Research) and with overall supervision of CS Sonia Baijal, Director-PDPP & Studies.





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**Table1: Formal and Informal Employment across Organized and Unorganized Sectors (in millions, in parenthesis indicate percent share)**

1999-2000			
	Organized	Unorganized	Total
Formal	33.7 (62.3)	1.4 (0.41)	35 (8.8)
Informal	20.5 (37.9)	341.3 (99.6)	361.7 (91.2)
Total	54.1 (13.6)	342.6 (86.3)	396.8 (100)
2004-05			
Formal	32.06 (52)	1.35 (0.3)	33.41 (7.30)
Informal	29.54 (48)	396.66 (99.7)	426.2 (92.7)
Total	61.61 (13)	398.01 (87)	459.61 (100)
2011-12			
Formal	37.18 (45.4)	1.39 (0.4)	38.56 (8.1)
Informal	44.74 (54.6)	390.92 (99.6)	435.66 (91.9)
Total	81.92 (17.3)	392.31 (82.7)	474.23 (100)

Source: Computed using unit level data of NSSO Employment -Unemployment Survey 1999-2000, 2004-05 and 2011-12.

## LITERATURE REVIEW

Sundaram (2005) has in his study titled “Audit under Labour Legislations”, studied various aspects of labour audit including the scope, methodology, benefits etc. and concluded that labour audit will benefit all concerned.

Anupam Malik’s article on “Human resource management in the new Economic scenario”, has emphasised in the changing times, the human resource management needs to be rethought of and exploitative ways of handling Human resource has to change.

The Annual Report, 2016-17 of the Ministry of Labour and Employment talks about various labour reforms. It also talks about the working of various labour legislations and quantifies violations in respect of major labour legislations under its jurisdiction. Some data has been taken from the same.

The ILO report on World Social Security, explains social security and talks about the importance of social security in achieving sustainable development.

Jha (2017) has elaborated certain issues related to labour reforms in India.

Srija (2017) has narrated the differentiation between the formal labour market and informal labour market in India. He has also chucked down the market of India’s labour market in his publication.

## OBJECTIVES

Following are some basic objectives of the paper:

- To review various aspects on social security in India
- To study various labour related laws that are in force and labour law reforms in India



- To study various aspects related to labour audit in India

## SOCIAL SECURITY

Social protection, or social security, is a human right and is defined as the set of policies and programmes designed to reduce and prevent poverty and vulnerability throughout the life cycle. Social protection includes benefits for children and families, maternity, unemployment, employment injury, sickness, old age, disability, survivors, as well as health protection. Social protection systems address all these policy areas by a mix of contributory schemes (social insurance) and non-contributory tax-financed benefits, including social assistance.

Social protection plays a key role in achieving sustainable development, promoting social justice and realizing the human right to social security for all. Thus, social protection policies are vital elements of national development strategies to reduce poverty and vulnerability across the life cycle and support inclusive and sustainable growth by raising household incomes, fostering productivity and human development, boosting domestic demand, facilitating structural transformation of the economy and promoting decent work. The Sustainable Development Goals (SDGs) adopted at the United Nations General Assembly in 2015 reflect the joint commitment of countries to “implement nationally appropriate social protection systems for all, including floors” for reducing and preventing poverty (SDG 1.3). This commitment to universalism reaffirms the global agreement on the extension of social security achieved by the Social Protection Floors Recommendation No. 202, adopted in 2012 by the governments and workers’ and employers’ organizations from all countries.

## SOCIAL SECURITY IN INDIA

The social security schemes in India cover only a small segment of the organized work-force, which may be defined as workers who are having a direct regular employer– employee relationship within an organization. The social security legislations in India derive their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. These provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees.

While protective entitlements accrue to the employees, the responsibilities for compliance largely rest with the employers. The principal social security laws enacted for the organised sector in India are:

- The Employees’ State Insurance Act, 1948;
- The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952 (Separate provident fund legislations exist for workers employed in Coal mines and tea plantations in the state of Assam and for seamen);
- The Employee’s Compensation Act, 1923;
- The Maternity Benefit Act, 1961;
- The Payment of Gratuity Act, 1972

## WOMEN AND WORK

### Employment of Women – Protective Legal Provisions

Name of the Enactment	Protective Provisions
The Maternity Benefit Act, 1961	<ul style="list-style-type: none"> <li>• Maternity benefit (Paid Leave) for pregnancy/Child Birth up to 12 weeks</li> <li>• Two nursing breaks for women with child</li> <li>• Six week leave in case of Abortion/ Medical Termination of Pregnancy</li> <li>• Two week leave for tubectomy operation</li> <li>• Maximum leave of one month in case of pregnancy/ child-birth related illness</li> <li>• Medical Bonus to women who does not get medical facility from Employer for childbirth (Rs.3500/-)</li> <li>• Prohibition on dismissal on account of absence due to pregnancy. No reduction of wage during pregnancy/ maternity leave</li> <li>• Maternity Benefit Amendment Act, 2017, increases the paid maternity leave from 12 weeks to 26 weeks.</li> </ul>
The Equal Remuneration Act, 1976	<ul style="list-style-type: none"> <li>• Payment of equal remuneration to men and women workers for same or similar nature of work protected under the Act.</li> <li>• No discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by or under any law.</li> </ul>

## CHILDREN AND WORK

Article- 21A provides right to education to children. The State shall provide free and compulsory education to all children of

the age of 6 to 14 years in such manner as the State, by law, may determine.

Article-24-Prohibition of employment of children in factories, etc. - No child below the age of 14 years shall be employed in work in any factory or mine or engaged in any other hazardous employment.


Article-39 says that the State shall, in particular, direct its policy towards securing- the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

In the Survey conducted by NSSO, the number of working children was estimated at 90.75 lakh in 2004-05 and as per NSSO survey 2009-10, the working children are estimated at 49.84 lakh. The number of main workers in the age group of 5-14 years in the country is 43.53 lakh as per Census 2011 which shows a declining trend.

Government is laying lot of stress on the enforcement of the Child and Adolescent Labour (Prohibition & Regulation) Act. Under the Act, during the 5 years period (2011-15) about 10.00 lakh inspections were carried out, resulting in approximately 0.19 lakh prosecutions out of which more than 5000 convictions were obtained. Now, through the Amendment Act, the offence committed for violation of the provisions of the Act has become cognizable and the penalty provisions have also been made stricter.

## WORKERS IN INFORMAL SECTOR

In order to provide social security benefits to the workers in the unorganised sector, the Government has enacted the Unorganised Workers’ Social Security Act, 2008. The 2008 Act stipulates formulation of suitable welfare schemes for unorganised workers on matters relating to: (i) life and disability cover, (ii) health and maternity benefits, and (iii) old age protection. The social security schemes being implemented by various ministries/departments for unorganised workers listed in Schedule I are mentioned below: i) Indira Gandhi National Old Age Pension Scheme (Ministry of Rural Development); ii) National Family Benefit Scheme (Ministry of Rural Development); iii) Janani Suraksha Yojana (Ministry of Health and Family Welfare); iv) Handloom Weavers’ Comprehensive Welfare Scheme (Ministry of Textiles); v) Handicraft Artisans’ Comprehensive Welfare Scheme (Ministry of Textiles); vi) Pension to Master Craft Persons (Ministry of Textiles); vii) National Scheme for Welfare of Fishermen and Training and Extension

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(Department of Animal Husbandry, Dairying & Fisheries); viii) Aam Aadmi Bima Yojana (Department of Financial Services); and ix) Rashtriya Swasthya Bima Yojana (Ministry of Health and Family Welfare). Further, Central Government has also launched the Atal Pension Yojana, Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana for all citizens especially targeting unorganised workers to provide them comprehensive social security.

## REVIEW OF LABOUR RELATED LAWS IN INDIA

The list of labour related laws in India is as under:

1. The Employees' Compensation Act, 1923  
-The Employees' Compensation (Amendment) Act, 2017
2. The Trade Unions Act, 1926
3. The Payment of Wages Act, 1936  
-The Payment of Wages (Amendment) Act, 2017
4. The Weekly Holidays Act, 1942
5. The Mica Mines Labour Welfare Fund Act, 1946
6. The Industrial Employment (Standing Orders) Act, 1946.  
-Notification dated 07.10.2016 (Amendment to Schedule)
7. The Industrial Disputes Act, 1947
8. The Minimum Wages Act, 1948
9. The Employees' State Insurance Act, 1948
10. The Factories Act, 1948
11. The Plantation Labour Act, 1951
12. The Mines Act, 1952
13. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
14. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
15. The Working Journalists (Fixation of Rates of Wages) Act, 1958
16. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
17. The Motor Transport Workers Act, 1961
18. The Maternity Benefit Act, 1961  
-The Maternity Benefit (Amendment) Act, 2017
19. The Payment of Bonus Act, 1965  
-The Payment of Bonus (Amendment) Act, 2015
20. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
21. The Contract Labour (Regulation and Abolition) Act, 1970.
22. The Payment of Gratuity Act, 1972
23. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
24. The Bonded Labour System (Abolition) Act, 1976
25. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
26. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976
27. The Beedi Workers Welfare Cess Act, 1976
28. The Beedi Workers Welfare Fund Act, 1976
29. The Sales Promotion Employees (Conditions of Service) Act, 1976
30. The Equal Remuneration Act, 1976
31. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
32. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
33. The Cine Workers Welfare (Cess) Act, 1981
34. The Cine Workers Welfare Fund Act, 1981



The social security schemes in India cover only a small segment of the organized work-force, which may be defined as workers who are having a direct regular employer– employee relationship within an organization. The social security legislations in India derive their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. These provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees.

35. The Dock Workers (Safety, Health and Welfare) Act, 1986
36. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
37. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988  
-The Amendment Act, 2014
38. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
39. The Building and Other Construction Workers Welfare Cess Act, 1996
40. The Unorganized Workers' Social Security Act, 2008

## LABOUR LAW REFORMS IN INDIA

Labour reforms have often been viewed as changes in the labour laws to make it easy for the entrepreneurs and industrialists to run their businesses without the pain of compliance and fear of punitive action by the state. However, this has limited appeal as labour reforms essentially call for overhaul of labour market rather than making piecemeal changes in the labour laws or expanding the social security measures in a sporadic manner. Interestingly, it is the most opportune time for labour reforms in India for two reasons: first, China is fast losing its advantage as manufacturing hub as labour cost has trebled there in last one decade and second the Government of India is truly committed to 'Make in India' and attracting the investors and large businesses to set up their manufacturing bases in the country. Success of 'Make in India' will depend on how soon and how fast labour reforms are taken further.

## LEGISLATIVE INITIATIVES

- Under **Payment of Bonus Amendment Act**, eligibility limit for payment of bonus enhanced from Rs. 10000/- to Rs. 21000/- per month and the Calculation Ceiling from Rs. 3500/- to Rs. 7000/- or the minimum wages.
- **Payment of Wages (Amendment) Act, 2017** enabling payment of Wages to employees by Cash or Cheque or crediting it to their bank account.
- **Child Labour (Prohibition and Regulation) Amendment Act, 2016** provides for complete ban on employment of children below 14 years in any occupation or process.
- **Maternity Benefit Amendment Act, 2017**, increases the paid maternity leave from 12 weeks to 26 weeks.

- **The Employee's Compensation (Amendment) Act, 2017** seeks to rationalize penalties and strengthen the rights of the workers under the Act.
- **The Payment of Gratuity (Amendment) Act, 2018**, provides flexibility to the Central Government firstly to increase the ceiling limit of gratuity to such amount as may be notified from time to time and secondly to enhance the calculation of continuous service for the purpose of gratuity in case of female employees who are on maternity leave to such period as may be notified from time to time. **Vide Notification dated 29th March, 2018**, the ceiling limit of gratuity has been increased from Rs. 10 Lakh to 20 Lakh and the period of maternity leave for calculation purpose has been enhanced from 12 weeks to 26 weeks.

## GOVERNANCE REFORMS

- Ministry has notified "**Ease of Compliance to maintain Registers under various Labour Laws Rules, 2017**" on 21st February 2017 which has in effect replaced the 56 Registers/Forms under 9 Central Labour Laws and Rules made there under in to 5 common Registers/Forms. This will save efforts, costs and lessen the compliance burden by various establishments.
- **A Model Shops and Establishments (Regulation of Employment & Conditions of Service) Bill, 2016** has been circulated to all States/UTs for adoption with appropriate modification. The said Bill *inter alia* provides for freedom to operate an Establishment for 365 days in a year without any restriction on opening/closing time and enables employment of women during night shifts if adequate safety provisions exist.
- Under Industrial Employment (Standing Orders) Act, 1946, the category i.e. **Fixed Term Employment, with all Statutory Benefits**, has been extended to all Sectors to impart flexibility to an establishment to employ people to meet the fluctuating demands (the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018).
- Ministry has also notified **Rationalization of Forms and Reports under Certain Labour Laws Rules, 2017** on 28.03.2017 for reduction of number of Forms / Returns under 3 Central Acts / Rules from 36 to 12 by reviewing redundant and overlapping fields.

## NEW INITIATIVES UNDER HEALTH REFORMS AGENDA OF ESIC 2.0

- As part of its 2nd Generation Reform ESIC2.0, the ESI Corporation has decided to implement the ESI Scheme all over India. Accordingly, the ESI Scheme has already been implemented fully in around 250 districts out of 393 districts where it was earlier partly implemented.
- Wage ceiling for coverage under ESI Scheme enhanced from existing Rs.15000 to Rs.21, 000/- pm.
- Maternity benefit under ESI Act has been enhanced from 12 weeks to 26 weeks for women workers having less than 2 children. Benefits further extended to Commissioning and Adopting mothers also.
- Providing appropriate cancer detection/ treatment facilities, cardiology treatment facilities, dialysis facilities on PPP Model at different levels of ESI hospitals.
- First phase of Telemedicine Services for ESI beneficiaries launched in September, 2016. Second phase launched on

- 1.12.2016 by Hon'ble Minister for North-Eastern States.
- Pathological & X-ray facilities to be provided on PPP model in all the dispensaries in phases.
- Facilities of AYUSH extended to all dispensaries and ESIC Hospitals.
- Opening Health Scheme for selected group of unorganized workers like rickshaw pullers/auto rickshaw drivers and Domestic workers in Delhi/Hyderabad on pilot basis.
- Up-grading dispensaries to six bedded hospitals in phases.
- To start setting up State ESI Corporations/ Societies in all States as subsidiary of ESI Corporation.
- Increase in ceiling for medical expenditure from Rs.2150 to Rs.3000/- per year per Insured Person.

## SHRAM SUVIDHA PORTAL

The Ministry of Labour & Employment has developed a unified Web Portal 'Shram Suvidha Portal', to bring transparency and accountability in enforcement of labour laws and ease complexity of compliance. It caters to four major Organisations under the Ministry of Labour, namely:

- Office of Chief Labour Commissioner (Central)
- Directorate General of Mines Safety
- Employees' Provident Fund Organization; and
- Employees' State Insurance Corporation.

## FEATURES OF THE PORTAL

- Allotment of Unique Labour Identification Number (LIN) to Units to facilitate online registration. The unique Labour Identification Number (LIN) has been issued to 18, 26,879 Units as on 06.02.2017.
- Filing of self-certified and simplified Single Online Common Annual Return by the establishments. Units will only file a single consolidated Return online instead of filing separate Returns.
- Transparent Labour Inspection Scheme through computerized system based on risk based criteria and uploading the inspection reports within 72 hours by the Labour inspectors.

## TRANSPARENT LABOUR INSPECTION SCHEME IN CENTRAL SPHERE

- A computerized list of inspections is generated randomly based on risk based objective criteria.
- Serious matters are to be covered under the mandatory inspection list.
- Complaints based inspections determined centrally after examination based on data and evidence.
- Mandatory uploading of inspection Reports within 72 hours.
- 2, 76,060 inspections have been assigned as on 06.02.2017 since the launch of the Labour Inspection Scheme and out of which 2, 57,339 have already been uploaded on Shram Suvidha Portal.

Ministry of Labour & Employment has started Single Unified Annual Return for 8 Labour Acts. This facilitates filing of simplified Single Online Return by the establishments instead of filing separate Returns, under the following Acts.

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Contract Labour (Regulation and Abolition) Act, 1970.
- The Maternity Benefit Act, 1961.



Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over seven decades of independence, India is still plagued with victimisation, non-compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations. There is no system in place for reporting non-compliance of labour legislations by an independent professional like Company Secretary.

## LABOUR LAW COMPLIANCE AND AUDIT: A MUCH NEEDED LABOUR LAW REFORMS

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How to control resentful practices meted out to workers? Here is where the concept of Labour Audit assumes significance. Labour Audit envisages a systematic scrutiny of records prescribed under labour legislations by a Company Secretary in whole time practice (hereinafter referred to as PCS), who shall report the compliance and non-compliance/extent of compliance and conditions of labour in the Indian industry/Factory/Other Commercial Establishments. The Report should ideally, be addressed to the appropriate government. The appropriate government may provide for filing fees for such report on the lines of filing fees charged by Registrar of Companies for the documents filed with them.

### SCOPE OF LABOUR AUDIT

The Audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. If a particular piece of labour legislation is not applicable to a specific employer, the same should distinctly be disclosed in the report of a PCS. The mode of disclosure has to be decided in consultation with the Ministry of Labour.

### BENEFITS OF LABOUR AUDIT

#### **Benefits to the Labour**

- Introduction of Labour Audit will boost the morale of the workers to a large extent
- It will increase their Social Security
- It will inculcate on workers a sense of belongingness towards their employer
- It will secure timely payment of wages, gratuity, bonus, overtime, compensation etc. of the workers
- Timely payment of entitlements will reduce absenteeism in the organisation.

#### **Benefits to Employer**

- Increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit
- Status in the Society for the employers will increase, in view of the recognition that may be bestowed on them by the Government
- Strict compliance of all labour legislation will be ensured

by each of the employers, which, in turn, will reduce or even eliminate penalties / damages / fines that may be imposed by the Government

- Co-operation of and understanding with the workers will improve labour relations. The congenial atmosphere is indispensable for good corporate governance.

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#### **Benefits to the Government**

- Reduction in the number of field staff for inspection of Industries/Factories/Commercial Establishments as most of their work will be done by PCS. Besides, PCS will also certify the status of compliance for which he is fully equipped
- Compulsory Labour Audit will ensure compliance of past defaults. The Government is likely to realise more money
- In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the Appropriate Government will rise phenomenally
- India's image before the International Labour Organisation will improve as a country with negligible non-compliance of labour legislation.

### THIRD PARTY CERTIFICATION/ AUDIT SCHEME OF GOVERNMENT OF HARYANA- A CASE IN POINT


The Governor of Haryana has formulated "Third Party Certification / Audit Scheme" for the factories, shops and commercial establishments in the State to liberalize the enforcement of labour laws in pursuance of implementation of the 'Business Reform Action Plan 2016 - Ease of Doing Business' as formulated by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

Third Party Certification / Audit Scheme aims to simplify the business regulations (Ease of Doing Business), to facilitate the entrepreneurs for making the compliance of the provisions of the various labour laws and Rules framed thereunder and to curtail unnecessary visits of inspecting officers. The provisions of the scheme are as follows:

1. This scheme is optional and includes compliance of the Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour (R&A) Act, 1970, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Maternity Benefit Act, 1961, Child Labour (Prohibition & Regulation) Act, Punjab Shops & Commercial Establishments Act, 1958, Equal Remuneration Act 1976, Motor Transport Workers' Act, 1961, Punjab Industrial Establishments (National & Festival Holidays & Casual and Sick Leave) Act, 1965.
2. In this scheme unless the context otherwise requires (i) "Third Party Certification / Audit" means a systematic, objective and documented evaluation of the compliance of the various labour laws mentioned above. (ii) "Compliance Auditor" would be a qualified practising Company Secretary who is a member of Institute of Company

- Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government; and who has not been an employee or on the regular payroll of the establishment or has not been a consultant of the company for the last three years. The units which submit third party certification regularly on annual basis shall not be inspected through the random list of inspections. Such units may be inspected only in the event of serious complaints or unrest etc. (iii) "Institution" means a firm, association, body corporate, society registered in accordance with the law for the time being in force or an individual Company Secretary, auditing the compliance of various laws including labour laws.
3. The Compliance Audit shall be carried out as per the standards laid down under various labour laws mentioned above.
    - (i) The Company Secretary (hereinafter referred to as a Compliance Auditor), conducting the audit shall maintain a log book of all audits undertaken by him indicating the name and address of the audited establishment, name of the person who has carried out the audit, contact persons, date of the audit and date of submission of the audit report to the notified head of the establishment and the Labour Commissioner.
    - (ii) A Compliance Auditor and the person authorized to carry out shall not conduct Compliance Audit of any establishment where such auditor or person is employed, or an occupier, partner, director, or manager of that establishment, or of any other unit owned, operated, managed, or conducted by immediate family members, relatives or extended family members or wherein that Compliance Auditor or such person has any direct or indirect interest whatsoever. A Compliance Auditor or such person shall not carry out the compliance audit of those establishments to which that auditor or such person has any participation in its business within the last three years.
    - (iii) Compliance Auditor and the person authorized to carry out compliance audit shall not disclose, even after he ceases to be an auditor, any commercial secrets or working processes or other confidential information which may come to his knowledge in the course of his duty as an auditor. Any failure in this regard may make such auditor or person liable for criminal or civil proceedings, in accordance with the law for the time being in force.
    - (iv) If the Compliance Auditor has carried out the audit in violation of the provisions of the Act or rules or has acted in a manner inconsistent with the intent or the purpose of the Act or rules made thereunder or has omitted or failed to act as required under the Act and rules made thereunder; or for any other similar reason by which he has failed in duty as a Compliance Auditor, he shall be liable to be debarred from conducting such Compliance Audits;
  4. The Compliance Auditor shall within one week from the date of completion of audit forward the report to the Head of the establishment on his letter head and his recommendations regarding the compliance under various labour laws.
  5. The Head of the establishment as well as the Compliance Auditor shall inform in writing to the Labour Commissioner, thirty days in advance before commencement of the compliance audit in an establishment.
  6. The Head of the establishment shall, within thirty days of the receipt of the Compliance Audit Report in proforma prescribed, take action on the recommendation of the auditor as pointed out in the audit report and also submit the action taken report/compliance report along with proofs of compliance to the Labour Commissioner within sixty days pursuant to the recommendations made in the Audit Report.
  7. The compliance of the observation / discrepancies pointed out in the audit report shall be monitored at the level of Labour Commissioner, Haryana. He may grant ample opportunities for personal hearing for apprising the authorities regarding the steps taken by him and the status of compliance. In case he is not satisfied with the compliance made by the Head of the establishment, he may get it verified at his level.
  8. The establishment opting for this scheme shall not be inspected by the department till it carries out an audit every year regularly. The Labour Commissioner may issue directions for inspection of any such establishment in case of genuine complaint against it.
  9. No legal action shall be taken against the Head of the establishment / manager for any discrepancies / observations / violations of Acts / Rules pointed out by the auditor in his audit report.

### CONCLUSION:

For sustainable business and sustainable society, labour law compliance in letter and spirit is absolute prerequisite. The Constitution of India, clearly mandates protection of rights of labour and promoting labour welfare. The Government of India has formulated various laws and constantly kept reforming these laws with a view to protect labour rights and promote labour welfare. However as per data available, the track record of labour law compliance has been far from satisfactory. Company Secretary can be instrumental in helping realising the government vision by introduction of Labour Law Audit to help improve the situation in effective and efficient manner. The Government of Haryana has already taken steps in this direction, and introduced Labour Law Audit for the state of Haryana. The Government being committed to make India the largest investment destination and the manufacturing hub in the world, attempts are being made to look at labour reforms holistically with the intention to make them commensurate with economic growth and ensure labour welfare in its true sense. 

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## THE ICSI-CCGRT

Invites

# Comprehensive Papers on Functions of Company Secretary in Champion Sectors



ICSI-Research Cell is pleased to invite Comprehensive Papers on Functions of Company Secretary in Champion Sectors with an objective of exploring domain expert knowledge in specific industry that is reserve among its Members both in employment and practice. This invite is open for Company Secretary professionals who are either in employment or in practice.

### Prologue:

The expectations of the industry from a Company Secretary, both in employment as well as in practice, transcends beyond the role that has been assigned under various laws and subordinate legislations. The industry expects a Company Secretary to perform a vital role in corporate management because of breadth and depth of the professional qualification that he possess and the code of conduct of ICSI. He is well-recognised for the domain expertise. More importantly in the present day context, he is expected to act as a strategist, solution provider, trouble-shooter, business analyst, conscious keeper, custodian of governance mechanism, while remaining within the bounds of strict code of ICSI.

The law obligates, and, so the industry expects, that a Company Secretary acts as an eye, ear and mind of the board and also act as a custodian of the board room governance. He is expected to act independently on the one hand, and maintain cohesiveness in the Board room on the other. Through his presence and participation, he adds to value-creation at the board level.

### The Problem:

The industry in general expects the Company Secretary to assume role in one or more of the aforesaid areas apart from

conventional role as mandated in the law. One of the important objectives of ICSI Vision 2022 is to analyse segment wise role of Company Secretary as a process to create capacity building of members in the specific industries and to securing recognitions for members in the specific industry sector and realigning current recognitions.

**Framework:**

The experts have to keep in view on the following criteria while designing the paper:

- Functions of Company Secretary in Employment in specific industry as
  - » Advisory
  - » Procedural
  - » Compliance
  - » Representation
- Functions of Company Secretary in Practice in Specific Industry as
  - » Advisory
  - » Procedural
  - » Compliance
  - » Certification
  - » Audit
  - » Representation

**Coverage**

The experts should contribute papers based on the above framework from the champions sectors as specified below:

- IT and IT enabled services
- Tourism and hospitality sector
- Medical sector
- Transport and logistics sector
- Accounting and finance sector
- Audio visual
- Legal sector
- Communication sector
- Construction and related engineering sector
- Environment sector
- Education sector

**Research Paper Guidelines**

- » Original comprehensive papers on any specified sector are invited from Company Secretaries in employment & practice.
- » The paper must be accompanied with the author’s name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
- » Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, without any maximum limit of words.
- » The text should be typed in MS-Word.
- » Participants should email their correspondence on the following email id: prasant.sarangi@icsi.edu latest by 28.05.2018.
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# 3

## LEGAL WORLD



- HANUMAN PRASAD BAGRI & ORS v. BAGRESS CEREALS PVT. LTD. & ORS [SC]
- CHERAN PROPERTIES LTD v. KASTURI AND SONS LTD & ORS [SC]
- PENTA GOLD LIMITED v. NATIONAL STOCK EXCHANGE [SAT]
- BOI SHAREHOLDING LIMITED VS SEBI [SAT]
- J.P. ENGINEERS PVT. LTD v. MURTI UDYOG LTD [NCLAT]
- PROWESS INTERNATIONAL PVT. LTD v. ACTION ISPAT & POWER PVT. LTD [NCLAT]
- IN RE: CARTELISATION IN RESPECT OF ZINC CARBON DRY CELL BATTERIES MARKET IN INDIA AGAINST EVEREADY INDUSTRIES INDIA LTD & ORS [CCI]
- CREDAI-NCR v. DEPARTMENT OF TOWN AND COUNTRY PLANNING, HARYANA & ORS [CCI]
- PARADEEP PHOSPHATES LIMITED v. STATE OF ORISSA & ORS [SC]
- MARICO LTD v. MRS. JAGIT KAUR [DEL]



## Corporate Laws

LMJ 05:05:2018

HANUMAN PRASAD BAGRI & ORS v. BAGRESS CEREALS PVT. LTD. & ORS [SC]

Special Leave Petition (Civil) 17137 of 2000

S. Rajendra Babu & K.G. Balakrishnan, JJ. [Decided on 27/03/2001]

Equivalent citations: (2001) 105 Comp Cas 493; (2001) 41 CLA 238;

Companies Act, 1956 - section 397-399 - No case made out as to winding up of the company will cause prejudice to the appellants – High Court dismissed the petition - whether correct- Held, Yes.

### Brief facts:

A petition under Sections 397 & 398 of the Companies Act, 1956 [hereinafter referred to as the Act] was filed before the Calcutta High Court on grounds of oppression and mismanagement. The learned Company Judge held that the Petitioners grievance in regard to ouster from the management of the company is legitimate and justified; that respondent No.3 had manoeuvred the matters in such a manner to result in the ouster of the Petitioner No.1 from the management of the Company. The learned Company Judge further directed the Petitioner No.1 and his group members to sell their shares to respondents at a value to be determined by a Valuer as on 16.5.1988, that is, the date of the petition and also held that the Petitioner No.1 had been illegally removed as an Executive Director of the Company.

Appeal was preferred on behalf of the Company by respondent No.2 and also on his own behalf. The Petitioners also claimed in that appeal that the learned Company Judge should have given guidelines for valuation of the shares on the market value and should have also provided for payment of interest on the amount receivable by them both on account of share value and remuneration. The Division Bench of the Calcutta High Court allowed the appeal by the order made on 25.8.2000 holding that one of the conditions precedent for granting relief under Section 397 of the Act is that the Petitioners should prove that winding up of the company would unfairly prejudice the Petitioners who are claiming of oppression, that otherwise the facts will justify the making of a winding up on just and equitable grounds. Contesting the correctness of this view, this special leave petition is filed.

**Decision:** Petition dismissed

### Reason:

Section 397(2) of the Act provides that an order could be made on an application made under sub-section (1) if the court is of

the opinion (1) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members; and (2) that the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, and (3) that the winding up order would unfairly prejudice the applicants. No case appears to have been made out that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members. Therefore, we have to pay our attention only to the aspect that the winding up of the company would unfairly prejudice the members of the company who have the grievance and are the applicants before the court and that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. In order to be successful on this ground, the Petitioners have to make out a case for winding up of the company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the Petitioners. On the other hand the party resisting the winding up can demonstrate that there are neither just nor equitable grounds for winding up and an order for winding up would be unjust and unfair to them.

On these tests, the Division Bench examined the matter before it. It was noticed that the shareholding of the Petitioners is well under 20% while that of those opposing the winding up is more than 80%. Therefore, the adversary group has sufficient majority shareholding even to pass a special resolution.

In this background, the appeal having been dismissed, we do not find any good reason to interfere with such an order. However, the Petitioners sought to urge the legal question as to the interpretation placed by the Division Bench that if the facts fall short of a case upon which the company court feels that the company should be wound up on just and equitable grounds in that event no relief can be granted to the Petitioners in regard to Section 397 of the Act. We find adequate support to the view taken by the Division Bench and we cannot read the provisions of Section 397 of the Act in any other manner than what has been done by the Division Bench. Therefore we find no merit in this petition. The same shall stand dismissed. No costs.

LW 31:05:2018

CHERAN PROPERTIES LTD v. KASTURI AND SONS LTD & ORS [SC]

Civil Appeal Nos 10025-10026 of 2017

Dipak Misra, M.Khanwilkar & D.Y.Chandrachud, JJ. [Decided on 24/04/2018]

Companies Act, 2013 read with Arbitration and Conciliation Act, 1996 - arbitral award directing transfer of shares - NCLT ordered rectification of register of members accordingly - NCLAT affirmed the decision -whether correct - Held, Yes.

### Brief facts:

An arbitral award was passed against the Appellant directing him to transfer the shares to Respondent No.1, pursuant to which Respondent No.1 filed an application for rectification of members register before the NCLT which was allowed. The

appeal preferred by the appellant against this judgment and order before the NCLAT was dismissed. Hence the present appeal before the Supreme Court.

**Decision:** Appeal dismissed.

### Reason:

In the present case, as we have seen, the parent agreement dated 19 July 2004 envisaged the allotment of equity shares of KSL to KCP with the intent that KCP would take over the business, assets and liabilities of SPIL. While KCP was entitled to transfer his shareholding, this was expressly subject to the condition of the acceptance by the transferee of the terms and conditions of the agreement. KCP's letter dated 17 August 2004 to KSL contains a specific reference to the share purchase agreement dated 19 July 2004. It was in pursuance of that agreement that KCP indicated, as authorised signatory of the appellant that his group of companies had agreed to purchase the shares in SPIL. The shares were to be purchased by several entities in the same group. A supplementary agreement was to be entered into, to reflect the altered consideration. Eventually, no supplementary agreement was executed and the transaction was structured on the basis of the parent agreement dated 19 July 2004 which the appellant recognised in its letter dated 17 August 2004. Having regard to this factual context, the defence of the appellant against the enforcement of the award cannot be accepted. To allow such a defence to prevail would be to cast the mutual intent of the parties to the winds and to put a premium on dishonesty.

The arbitral award envisaged that KSL was entitled to the return of documents of title and the certificates pertaining to the shares of SPIL contemporaneously with the payment or tendering of a sum of Rs 3.58 crores together with interest. KSL is in terms of the arbitral award entitled to the share certificates. That necessarily means the transfer of the share certificates. To effectuate the transfer, recourse to the remedy of the rectification of the register under Section 111 was but appropriate and necessary. The arbitral award has the character of a decree of a civil court under Section 36 and is capable of being enforced as if it were a decree. Armed with that decree, KSL was entitled to seek rectification before the NCLT by invoking the provisions of Section 111 of the Companies Act, 1956. There can be, therefore, no question about the jurisdiction of NCLT to pass an appropriate order directing rectification of the register.

In the present case, the arbitral award required the shares to be transmitted to the claimants. The arbitral award attained finality. The award could be enforced in accordance with the provisions of the Code of Civil Procedure, in the same manner as if it were a decree of the Court. The award postulates a transmission of shares to the claimant. The directions contained in the award can be enforced only by moving the Tribunal for rectification in the manner contemplated by law.

In the present case, the arbitral award, in essence, postulates the transmission of shares from the appellant to the claimant. The only remedy available for effectuating the transmission is that which was provided in Section 111 for seeking a rectification of the register. There is, therefore, no merit in the challenge addressed by the appellant. The present case which arises under the Arbitration and Conciliation Act 1996 stands on even a higher pedestal. Under

the provisions of Section 35, the award can be enforced in the same manner as if it were a decree of the Court.

The award has attained finality. The transmission of shares as mandated by the award could be fully effectuated by obtaining a rectification of the register under Section 111 of the Companies Act. The remedy which was resorted to was competent. The view of the NCLT, which has been affirmed by the NCLAT does not warrant interference.

**LW 32:05:2018**

**PENTA GOLD LIMITED v. NATIONAL STOCK EXCHANGE [SAT]**

Appeal No. 116 of 2018

J.P. Devadhar & C.K.G. Nair. [Decided on 17/04/2018]

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 - regulation 106P - discharge of underwriter's obligation - done through procuring applications from third parties - whether permissible - Held, Yes.

### Brief facts:

Where a public issue is undersubscribed, whether, the underwriters to the public issue are entitled to discharge their obligation contained in regulation 106P of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations' for short) by procuring applications from third parties is the basic question raised in this appeal.

**Decision:** Appeal allowed.

### Reason:

In the present case, the underwriting agreement executed on September 26, 2017 in accordance with the model underwriting agreement prescribed by SEBI specifically records that the underwriters agree to underwrite and/or procure subscription for the issue of shares in case the issue is undersubscribed. Admittedly the said underwriting agreement was vetted by NSE before the public issue was opened.

Thus on one hand, regulation 106P(2) of ICDR Regulations require the merchant banker to underwrite at least 15% of the issue size on his own account and further regulation 106P(4) provides that if the other underwriters or the nominated investors fail to fulfil their obligation then the merchant banker shall fulfil their underwriting obligations. On the other hand, the model underwriting agreement prescribed by SEBI in the year 1993 which continues to be in force till date permits the underwriters to procure applications from the investors to subscribe to the unsubscribed shares if the issue is undersubscribed. The model underwriting agreement prescribed by SEBI further provides that in the event of failure by the underwriters to subscribe to the shares, the issuer company shall be free to make arrangement with one or more persons to subscribe to such shares without prejudice to the rights of the issuer company to take such measures and proceedings as may be available to it against the underwriters including the right to claim damage for any loss suffered by the company by reason of failure on part of the underwriters to subscribe to the shares.

In the present case the underwriting agreement executed

by and between the appellant and the underwriters was in accordance with the model underwriting agreement prescribed by SEBI and the said underwriting agreement was admittedly vetted by NSE. Having vetted the underwriting agreement executed by the appellant company and the underwriters which is in consonance with the model underwriting agreement prescribed by SEBI, NSE is not justified in rejecting the basis of allotment submitted by the appellant on ground that the underwriters have failed to subscribe to the unsubscribed shares as contemplated under regulation 106P of the ICDR Regulations.

In these circumstances, in the interest of investors and securities market, we dispose of the appeal by passing the following order:-

- (a) The impugned communication of NSE dated April 6, 2018 is quashed and set aside;
- (b) Appellant is at liberty to ascertain from the underwriters within 3 days from today as to whether they are ready and willing to discharge their obligation set out in regulation 106P of the ICDR Regulations and intimate the same to the NSE immediately thereafter.
- (c) If the underwriters express their inability to discharge their obligation under the ICDR Regulations, then the appellant company be permitted to take into consideration the shares subscribed by the 8 investors and proceed to complete the public issue process.
- (d) If the underwriters agree to discharge their obligation set out in the ICDR Regulations, then, in the peculiar facts of present case, no action need be taken against the underwriters.

Before concluding we deem it proper to bring to the notice of SEBI that there is no clarity between the ICDR Regulations and the model underwriting agreement prescribed by SEBI in the year 1993 (which is still in operation) in relation to the obligations to be discharged by the underwriters. Therefore, it would be just and proper that SEBI addresses itself on the above issue expeditiously and ensure that there is clarity in relation to the obligations to be discharged by the underwriters.

## LW 33:05:2018

BOI SHAREHOLDING LIMITED v. SEBI [SAT]

Appeal No. 256 of 2017

J.P. Devadhar & C.K.G. Nair. [Decided on 17/04/2018]

SEBI Act - Section 15HB - delay in implementation of anti-money laundering policy - imposition of penalty of Rs.40 lakhs - whether tenable - Penalty reduced.

### Brief facts:

This appeal is filed challenging the order of the Adjudicating Officer ('AO' for short) of SEBI whereby a penalty of Rs.40 Lakh has been imposed on the appellant under Section 15HB of SEBI Act read with Section 19G of the Depositories Act, 1996 for delayed implementation of the SEBI Circulars/Guidelines relating to anti-money laundering (AML) policy.

Decision: Quantum of penalty reduced.

### Reason:

We have perused the records produced before us. In the Master Circular on AML/CFT dated December 31, 2010 issued by SEBI we note that all the registered intermediaries were directed to comply with the requirements contained therein on an immediate basis. Similarly, subsequent amendments made on January 24, 2013 also required adoption on immediate basis though the Circular dated March 12, 2014 does not specify the implementation time schedule. However, following the spirit of the basic policy it has to be presumed that implementation has to be done at the earliest. From the evidence produced before us it is clear that the appellant has implemented all the requirements of the AML/CFT policy as specified in the SEBI Circulars though belatedly. We have also noted that for delayed implementation/violation SEBI has imposed varying penalty including no penalty in some cases. However, under the relevant Sections i.e. 15HB of SEBI Act read with Section 19G of the Depositories Act, 1996 the penalty imposable for each violation shall not be less than rupees 1 Lakh which may extend to 1 Crore rupees. Accordingly, the minimum penalty imposable in case of six violations committed by the appellant should be in tune with the statutory provisions relating to the penalty.

Given the fact that, though belatedly, the appellant has implemented all the required policies and procedures on AML/CFT policy as stipulated under various circulars of SEBI and by the penalty precedent set by SEBI itself we are of the view that the penalty of Rs.40 Lakh imposed on the appellant is excessive. We, therefore, reduce the amount of penalty imposed on the appellant to Rs.6 Lakh.

## LW 34:05:2018

J.P. ENGINEERS PVT. LTD v. MURTI UDYOG LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 321 of 2017

S.J. Mukhopadhyaya & Bansilal Bhat. [Decided on 19/04/2018]

Insolvency & Bankruptcy Code, 2016 - sections 9 - corporate debtor disputed the debt and also filed civil suit against the operational creditor - whether this is existence of dispute - Held, Yes.

### Brief facts:

This appeal has been preferred by the Appellant against the order dated 8th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi, whereby and where under the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been rejected on the ground that the Respondent has raised dispute with sufficient particulars.

Appellant issued the demand notice under sub-section (1) of Section 8 on 13th June, 2017. Thereafter, the amount having not paid, the application under Section 9 of the 'I&B Code' was filed on 13th September, 2017. The Respondent thereafter filed suit on 12th December, 2017 i.e. much after filing of the application under Section 9 of the 'I&B Code'. The adjudication authority dismissed the application holding that there is an 'existence of dispute'.

Decision: Appeal dismissed.

**Reason:**

The Respondents have filed reply and further affidavit and taken plea that the amount as was due was already paid to the Appellant by cheques, the details of which were brought to the notice of the Adjudicating Authority. However, such submission has been disputed by the Appellant. According to the Appellant, the Chartered Accountant has certified that the amount has not been paid.

Admittedly, there is no 'existence of dispute' relating to supply of goods or its quality as were supplied by the Appellant. Therefore, it cannot be stated that there is an 'existence of dispute'. However, what we find that the Respondent has disputed the debt as has been claimed by the Appellant. According to them, they have already paid and satisfied the claim amount by making payment through cheques.

The scheme of the 'I&B Code' fell for consideration before the Hon'ble Supreme Court in Innovative Industries Ltd v. ICICI Bank & Anr, (2018) 1 SCC 407, wherein the Supreme Court taking into consideration the provisions of the Code held that the 'Corporate Debtor' is entitled to point out that default has not occurred in a sense that the 'debt', which also may include a disputed claim, is not due.

In the present case, the Adjudicating Authority having noticed that the Respondent has satisfied with the evidence that there is no default on the part of the Respondent and the 'debt' is not due, we find no ground to interfere with the finding of the Adjudicating Authority. The appeal is accordingly dismissed. No cost.

LW 35:05:2018

**PROWESS INTERNATIONAL PVT. LTD v. ACTION ISPAT & POWER PVT. LTD [NCLAT]**

Company Appeal (AT) (Insolvency) No. 223 of 2017

S.J. Mukhopadhaya & Bansilal Bhat. [Decided on 26/03/2018]

Insolvency & Bankruptcy Code, 2016 - section 61 - appeal - limitation period to file - appellant filed appeal after six months of the passing of the order - whether delay condonable - Held, No.

**Brief facts:**

The appellant preferred the appeal against the judgment passed by the Adjudicating Authority rejecting the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code"), after delay of more than six months without any application for condonation of delay. When it was pointed out, the Appellant preferred an application for condonation of delay and taken plea that there is a delay of only two days.

**Decision:** Appeal dismissed.

**Reason:**

From the record, we find that the Appellant has not explained as to what action the Appellant had taken between 15th March, 2017 and 18th August, 2017 i.e. between the Day of Judgment and the day the application for certified copy was filed.

Learned counsel for the Appellant submitted that the copy of the impugned order was not forwarded to the Appellant. However, it is accepted that the impugned order was passed on 15th March, 2017 in presence of the counsel for the Appellant.

It is desirable to refer the relevant provisions under which appeals can be preferred before this Appellate Tribunal. Against an order passed by the Tribunal under Companies Act, an appeal is maintainable under Section 421 of the Companies Act, 2013. If an appeal is preferred under Section 421 of the Companies Act, 2013, the Appellate Tribunal counts the period of limitation from the date on which a copy of the order is made available by the Tribunal in terms of sub-section (3) of Section 421 of the Companies Act, 2013.

However, for preferring appeal under Section 61 of the 'I&B Code' against an order passed by the 'Adjudicating Authority' provision for counting the period of limitation is different. As per the aforesaid provision, the appeal is required to be filed within thirty-days, means within thirty-days from the date of knowledge of the order against which appeal is preferred.

In the present case, as Appellant had knowledge of the impugned order as on the date of pronouncement of the said order i.e. 15th March, 2017, it is not the case of the Appellant that its Lawyer has not informed of the order passed by the Adjudicating Authority. The ground as taken in the application for condonation of delay being not satisfactory, it is fit to be rejected.



LW 36:05:2018

**IN RE: CARTELISATION IN RESPECT OF ZINC CARBON DRY CELL BATTERIES MARKET IN INDIA AGAINST EVEREADY INDUSTRIES INDIA LTD & ORS [CCI]**

Suo Motu Case No. 02 of 2016

D.K.Sikri, Sudhir Mital, Augustine Peter, U. C. Nahta & G. P. Mittal [Decided on 19/04/2018]

Competition Act, 2002 - section 3 - zinc-carbon dry cell batteries - cartelisation - cease and desist order passed. Penalty imposed.

**Brief facts:**

The instant case was taken up by the Competition Commission of India suo motu, pursuant to the Lesser Penalty Application

submitted by OP-3 stating therein that there existed a cartel amongst OP-1, OP-2, and OP-3, [Manufacturers] which were all engaged in the business of, *inter alia*, manufacture and supply of zinc-carbon dry cell batteries, to control the distribution and price of zinc-carbon dry cell batteries in India, in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act. It was also disclosed that the Manufacturers were members of OP-4 which is a trade association, namely, Association of Indian Dry Cell Manufacturers which facilitated transparency between the Manufacturers by collating and disseminating data pertaining to sales and production by each of the Manufacturers.

### Decision: Penalty imposed. Cease and desist order passed.

Reason: The Commission has considered the Lesser Penalty Applications filed by the Manufacturers, the investigation report of the DG and the submissions of OPs and their individuals. It is noted that all the Manufacturers have admitted the fact that they were involved in the cartelisation of zinc-carbon dry cell batteries.

From the information and evidence furnished by OPs and the investigation by the DG, it is observed that the Manufacturers indulged in anti-competitive conduct of price coordination, limiting production/supply as well as market allocation. The price coordination amongst the Manufacturers encompassed not only increase in the MRP of the zinc carbon dry cell batteries but also exclusion of 'price competition' at all levels in the distribution chain of zinc-carbon dry cell batteries to ensure implementation of the agreement to increase price. In addition, the Manufacturers also agreed to control supply in the market to establish higher prices and indulged in market allocation by requesting each other to withdraw their products from the market. For these purposes, the Manufacturers exchanged amongst themselves confidential and commercially sensitive information about pricing as well as other information such as production and sales data.

In order to increase price of the zinc carbon dry cell batteries, the Manufacturers mutually agreed on the implementation modalities of MRP. They not only decided the schedule of start of production of units with new MRP but also the start of billing as well as availability of products, with revised rates in the market.

The evidence gathered during investigation and submission of OPs shows that the individuals of the Manufacturers regularly discussed and agreed when to give effect to the price increase during the personal/AIDCM meetings. OP-1 being the market leader would take lead by issuing press release to announce increase in price of its zinc-carbon dry cell batteries. Thereafter, OP-2 and OP-3 would respond to it immediately with corresponding increase in price of their batteries on the pretext of following the market leader.

Further, evidence collected during investigation shows that price coordination agreement amongst the Manufacturers was not limited to deciding and implementing increase in MRP of zinc-carbon dry cell batteries alone but extended to include monitoring and controlling of prices at all levels so as to exclude 'price competition' in the entire distribution chain of zinc-carbon

dry cell batteries.

Notably, in the distribution chain, the Manufacturers sold the batteries to the distributors/wholesalers and through them to the retailers on 'principal to principal' basis. Once the batteries were sold to wholesalers/retailers they pushed sales of the batteries by offering attractive margins/incentives. At the same time, sales staff of the companies tried to promote sales performance of their products by resorting to promotional schemes - like scratch coupons, gifts, combo offers, festival offerings etc. All this resulted in 'price competition' at various levels. For instance, if wholesalers/retailers of OP-1 tried to boost sale of OP-1's products, by offering incentives to the consumers, it would result in lower sales for OP-2 and OP-3.

Since the 'price competition' in the distribution chain, as stated above, could have rendered the agreement/understanding reached among the Manufacturers ineffective, they entered into agreement/understanding/coordination amongst themselves to cover all other elements of the price structure besides MRP, comprising trade discount, wholesale price, dealer/stockist landing cost, open market rates, retailers' margin, sales promotion schemes etc.

The evidence on record shows that despite the above agreement/understanding/coordination, the Manufacturers faced problem in actual implementation of increased MRP in the market. Since deviation from the agreed stand by any of the Manufacturers could result in drop of sales volume of others, they would bring to one another's notice concerns about slow implementation of the mutually agreed decisions and would seek corrective action if deviations from the agreement were observed in the market. Besides, they would regularly share amongst them information regarding operating margin rates, wholesale offer price etc. prevailing in various states/cities/towns collected by the sales staff and would even control supply in the market to establish higher prices of batteries.

The e-mails exchanged amongst the Manufacturers show that there was also an understanding amongst them to allocate market based on geographical area and types of batteries. They would often request each other to withdraw their products from a particular geographical area such as a state or town or city.

Apart from all this, Manufacturers in their meetings held under the aegis of AIDCM, would share common concerns about low rates of batteries offered by other maverick players, mostly importers/traders, as this occasionally caused constraints in raising/maintaining the higher market price of their battery products. The evidence gathered by the DG shows that on one occasion in AIDCM meeting on 10 February 2012, the Manufacturers deliberated the impact of alkaline and rechargeable batteries on the market of the zinc-carbon dry cell batteries and contemplated reduction in MRP of AA and AAA size batteries by reducing trade margins. Also, the Manufacturers discussed the low rates at which their batteries were being sold by the modern retail channels like 'Walmart' and 'Metro Cash & Carry' etc. and agreed on the strategy to counter such issues. The Commission observes that while it may be legitimate for enterprises engaged in the same line of business to share common concerns, the Manufacturers in the instant case used the platform of AIDCM to coordinate

their actions, inter alia, on pricing.

The top management of the Manufacturers played an active role in this collusion. It is observed that the coordination amongst the Manufacturers took place at the highest level in these companies. The top managerial personnel discussed various aspects of coordination in the meetings of AIDCM (reflected in the minutes of such meetings), on the side lines of meetings of AIDCM (reflected in the hand-written notes and agenda points prepared by the individual members for the meeting) and in private meetings. Moreover, there were frequent direct email/fax communications amongst the individuals of OPs, which show their close personal and friendly relations and the underlying deep commitment to adhere to 'gentlemen's agreement'.

There is further evidence to show that by collating and disseminating crucial business data of the competitors, AIDCM facilitated better coordination amongst the Manufacturers. The monthly data on production and sales of the Manufacturers collected by AIDCM was used to compare/assess the impact of the overall arrangement on pricing and other business strategies, on their market shares over a period.

The Commission finds that practice by AIDCM of compiling and disseminating commercially sensitive data was greatly helpful to the Manufacturers to monitor the outcome of overall 'agreement/understanding' reached at amongst them with regard to pricing, output, sale/supply, allocation of market, etc. In fact, comparison of the market shares of OPs for the past six years i.e. from 2010-11 to 2015-16 based on their sales of zinc carbon dry cell batteries shows that market share of each of the OPs remained stable over these years. This is a clear indicator of the effectiveness of the cartel arrangement.

In view of the foregoing, the Commission finds that OP-4 through its practices, decisions and conduct of the office bearers i.e. individuals of OP-4, facilitated anti-competitive agreement/understanding and concerted action amongst its members in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

In view of the foregoing, the Commission is of the opinion that OP-1, OP-2 and OP-3 have been involved in cartelisation of zinc-carbon dry cell batteries in India which has been facilitated by OP-4, in contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act. Further, the individuals of OPs have also been actively involved in the said cartelisation in the domestic market.

## LW 37:05:2018

[CREDAI-NCR v. DEPARTMENT OF TOWN AND COUNTRY PLANNING, HARYANA & ORS \[CCI\]](#)

Case No. 40 of 2017

Sudhir Mittal, Augustine Peter, U. C. Nahta & G. P. Mittal [Decided on 06/04/2018]

Competition Act, 2002 - section 4 - abuse of dominance - development of real estate in Haryana - licence to developers - restrictive and onerous

clauses - whether abuse of dominance - Held, Yes. Investigation ordered

### Brief facts:

It is alleged in the information that some of the terms and conditions of the Sohna License, Sohna LOI and Sohna Agreement are unfair and discriminatory. It is averred that through the Sohna LOI, the OPs impose unfair and extensive obligations on the developers in terms of the development works that the developer must carry out in the specified territory and the charges levied on them are also required to be paid within tight timelines. Further, the conditions therein obligate the developers to pay EDC as and when demanded. However, no claim for damages lies against the OPs for delay in provision of development facilities.

It is further alleged that the charges and payment schedule in the Sohna Master Plan has been decided by the OPs unilaterally without making available the basis of calculation of these charges or implementation schedule of the development work.

The Informant has further alleged that under the terms of the Sohna License, EDC are subject to revision as per the actual charges incurred including any enhanced land acquisition costs, which is to be worked out later and the developer is liable to pay an additional amount as and when directed. Furthermore, the assumption on costs or timelines with respect to the development of infrastructure is also not disclosed.

In addition, the Sohna LOI obligates the developers to pay interest on delayed payment of EDC and IDC to the OPs. It is alleged that the OPs are levying an exorbitant rate of interest on EDC and IDC on developers onerously without any authority under the Haryana Development Act. Further, the developers are forced to accept fulfilment of such supplementary obligations of payment of interest, which has not been contemplated in the Haryana Development Act.

Further, it is alleged that no activity on infrastructure development has been initiated by the OPs, which has further delayed the development of the projects. But under the license agreement, the charges and interest continue to be levied on the developers causing undue hardship in the development of their respective projects. It is alleged that in the light of inaction by the OPs, the developers are faced with the impossible task of fulfilling their obligations under the Sohna LOI, Sohna Agreement and Sohna License within strict timelines and potential penalties covering land that has not even been acquired by the OPs.

In view of the above facts, the Informant has prayed the Commission to direct the Director General (hereinafter, the 'DG') to cause an investigation into the affairs of the OPs in performing their obligations under the HUDA Act and Haryana Urban Development Act and abuse of their position in the State of Haryana; restrain the OPs from invoking the bank guarantee against the developers pending adjudication of this information; restrain the OPs and direct them to cease and desist from compelling developers to pay any pending EDC and IDC or any increase thereof along with interest; direct the OPs to renegotiate the licenses and bilateral agreements with realistic time-schedules based on mutually agreeable development milestones and payment schedules; direct the OPs to return interest on EDC and IDC paid in advance by the developers in territories where they have carried out no development work;

direct the OPs to revise the EDC and IDC as mutually feasible and as per reasonably acceptable development schedule; impose penalty on the OPs for abusing their dominant position to the prejudice of the developers; and pass such other and further order, as the Commission may deem fit and proper in the circumstances of the case.

**Decision:** Investigation ordered.

### Reason:

It has been submitted that the OPs do not fall within the definition of 'enterprise' and, therefore, the present information against them is not maintainable. In the instant case, it is observed that even if the activity of issuing licenses by OP-1 were to be construed as exercise of sovereign power, the levy of EDC/IDC by it on the developers and consequently upon the end-consumers i.e. allottees/home-buyers, cannot be construed as such. Clearly, the activities of OP-1 in the form of levying of EDC/IDC have a direct economic/commercial impact. In other words, OP-1 is performing actions relating to economic/commercial activities, which in turn is affecting provision of development and construction services by the developers. Thus, in view of foregoing, the Commission is of the opinion that OP-1 is covered within the ambit of the term 'enterprise' as defined in the Act.

Another contention raised by OP-1 is that the developers are not consumers under the Act. In this regard, the Commission observes that the OPs here are engaged in provision of commercial/economic services, which are being availed by the developers on payment of requisite fee and charges levied on them. Thus, the Commission finds that the developers in this case are covered within the definition of 'consumer' under the Act.

Having considered the submissions of the Informant and the response of OP-1 thereto, the Commission is of the opinion that even though the terms of Sohna LOI, Sohna Agreement and Sohna Licence relating to EDC/IDC emanate largely from the statutory provisions of the relevant statutes, *prima facie* the terms of these documents appear to be one-sided and in favour of the OPs. Further, the alleged conduct of the OPs such as failure to adhere to its obligations under the Sohna Master Plan in a time-bound manner and imposing onerous obligations on the developers to pay EDC/IDC, *prima facie*, appears to be abusive. In response to the allegations, OP-1 has not denied that it has not provided External Development Works in accordance with the Sohna Master Plan, rather it has justified that it is not possible to provide such services unless the entire EDC/IDC amount is paid by the developers along with interest and penal interest. The Commission finds that the conduct of the OPs whereby they have not undertaken any External Development Works related to the Sohna project is ultimately affecting the end consumers i.e. the allottees/home-buyers, as because of non-development by the OPs, the completion of the project is getting delayed and the same is rendered uninhabitable. Thus, in view of foregoing, the Commission is of the opinion that the conduct of the OPs *prima facie* appears to be in contravention of the provisions of Section 4(2)(a)(i) of the Act.

Accordingly, the DG is directed to cause an investigation into the matter, complete the investigation within a period of 60 days from the receipt of this order and submit its report.



LW 38:05:2018

PARADEEP PHOSPHATES LIMITED v. STATE OF ORISSA & ORS [SC]

Civil Appeal Nos.3997-3998 of 2018 (Arising out of Special Leave Petition (C) Nos.35347-35348 of 2016)

R.K. Agrawal & Abhay Manohar Sapre, JJ. [Decided on 19/04/2018]

Industrial Disputes Act, 1947 - section 9A - certified standing orders provided retirement age as 58 years - management enhanced the same to 60 and later reduced to 58 - whether violates change of working conditions provision - Held, Yes.

### Brief facts:

The certified standing orders of the appellant company provided that the retirement age of the workmen would be 58 years of age. In the year 1998, the appellant enhanced the retirement age to 60 years, as a temporary measure, to retain employees and to cut costs. However, in the year 2002 the appellant withdrew the enhancement and restored the retirement age to 58 years.

The trade Union agitated this before the Industrial tribunal contending that the change is in violation of the provisions of Section 9A of the Industrial Disputes Act. The Tribunal allowed the claim and on appeal the High Court affirmed it. Hence the present appeal before the Supreme Court by the appellant company.

**Decision:** Appeal dismissed.

**Reason:** We have given our solicitous consideration to the submissions of learned senior counsel for the parties and perused the relevant material placed before us.

The relationship of the employer and employee is of utmost faith and, as a result, it falls under the ambit of fiduciary relationship. In order to regulate such relationship, legislature came up with legislation i.e., the Industrial Disputes Act, 1947. The purpose of the Act is to protect the interest of employees as they are the weaker sections since time immemorial. In order to safeguard the rights of the employees, certain amendments have been made subsequently in the Statute. In 1956, legislature inserted Section 9A of the Act which makes it obligatory on the part of the employer that he is bound to give advance notice to the employee if he intends to change certain things as envisaged under Section 9A of the Act read with Fourth Schedule.

At the first sight of the provision, *prima facie*, it appears that the employer is bound to give minimum 21 days' notice to the employee if employer intends to change any material terms of service. Section 9A of the Act is a provision in consonance with the Constitutional mandate which assures the protection of principles of natural justice i.e., no one shall be condemned unless heard. For the



guidance, legislature prescribed the Fourth Schedule and it is clearly mentioned in Section 9A of the Act that before changing either of the things as envisaged in the Fourth Schedule, prior notice must be given to the employee. In the instant case, the grievance of the Trade Union before the Tribunal was that withdrawal of the age of superannuation i.e., restoration of the age from 60 years to 58 years, amounts to contravention of Clause 8 of the Fourth Schedule, hence, employer was bound to give prior notice which employer cannot escape. Therefore, the action of the employer is bad in law and liable to be set aside which was eventually upheld by the Tribunal and the High Court.

No doubt, the enhancement of the superannuation age was temporary in nature in order to achieve certain objectives and also it is not deniable that yet employees would be governed by the Service Rules and the Certified Standing Orders which were not amended. However, if we allow the plea of the appellant-Company then it would defeat the object of legislature because legislature could never have intended that employees would be condemned without giving them right of reasonable hearing. Naturally, every employee is under the expectation that before reducing his superannuation age, he would be given a proper chance to be heard. Right to work is a vital right of every employee and in our view, it shall not be taken away without giving reasonable opportunity of being heard otherwise it would be an act of violation of the Constitutional mandate.

Moreover, the contention of the appellant-Company that the object of enhancement of superannuation age was just to save the industries from huge losses, therefore, it does not violate any statutory right of the employees, cannot be sustained in the eyes of law and also it does not give the license to the appellant-Company to act in contravention of law since it is a cannon of law that everyone is expected to act as per the mandate of law.

To sum up, we are of the view that at the very moment when the order of enhancement of superannuation of the employees came into force though temporary in nature, it would amount to privilege to employees since it is a special right granted to them. Hence, any unilateral withdrawal of such privilege amounts to contravention of Section 9A of the Act and such act of the employer is bad in the eyes of law.



IPR  
Laws

LW 39:05:2018

MARICO LTD v. MRS. JAGIT KAUR [DEL]

RFA No. 17/2009

Prathiba M Singh. [Decided on 20 /94/2018]

Copyrights Act - subsequent registration of mark – whether an entry wrongly made in or remaining on the Copyright Register - Held, Yes.

### Brief facts:

It is the case of the Appellant that the trade mark NIHAR has been in use for several years in respect of coconut oil and the label that has been used, has the primary colour scheme of green, yellow and white with the representation of two coconut trees. Over the years though, the labels themselves have been amended, the fundamental get up and colour scheme continued to remain the same. The Appellant came across the Respondent's copyright registration bearing No A-64850/2003. The Appellant's contention was that the Respondent registered the impugned copyright as an "artistic work" under Section 2(c) of the Copyright Act, in the year 2003. The registration issued to the Respondent dated 25th July, 2003 claimed the first publication to be of 2002. Accordingly, a Rectification Petition came to be filed before the Copyright Board, seeking rectification/removal of the Respondent's registration from the Register of Copyrights. Before the Board, the Appellant was substituted as Petitioner in the petition after assignment of relevant rights from Hindustan Unilever Ltd. Accordingly, the Appellant herein would be deemed to include the present Appellant or its predecessor. The Rectification petition was dismissed on 21st September 2008 and the present appeal assails the said order.

Decision: Appeal allowed.

Reason: A perusal of the Respondent's impugned copyright registration and the Appellant's labels show that there are several similarities between the same.

The question that arises in this case is as to whether the Respondent's impugned copyright registration is an "entry wrongly made in or remaining on the Copyright Register". Any entry made of a work which is not an original work would be an entry wrongly made in the Register. A perusal of the Respondent's registration shows that the Respondent claims the "NIHAR UTTAM" label extracted above to be an "artistic work" published for the first time in 2002. Copyright registration can only be granted to original artistic works. Registration of copyright cannot be granted to works which are a reproduction or imitation of other original works. If any person has obtained registration of copyright of a work which is not an original work under Section 13 of the Copyright Act, such a registration or entry made in the register would be an entry wrongly made.

A perusal of the labels extracted hereinabove shows that the comparative features of the two labels are so similar that "NIHAR UTTAM" label can safely be termed as colourful imitation or substantive reproduction. Colour scheme between the two labels is the same. The manner in which the coconut tree is arranged is the same, the arrangement of two broken coconuts is similar. Due to the long user in the market, the Appellant's label was quite extensively used and hence the Respondent had access to the Appellant's label. It is the settled position in law that when two labels or artistic works are compared, the broad features are to be compared and not by putting the two labels side by side.

Under the Copyright Act, all that the Board needs to look at is the comparison of the artistic works. The Board is not examining all the factors that are relevant to a passing off action. The artistic works being so similar that one is almost an imitation of the other, there is no justification to reject the rectification application. The Appellant's products were openly advertised and have substantial sale in the market. Clearly, the Respondent had access to the Appellant's works and was copying the same. The Appellant being a person aggrieved, the registration is an entry which wrongly remains in the Register. The reasoning of the Copyright Board is contrary to law.



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# 4

## FROM THE GOVERNMENT



- RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF AOC-4 XBRL E FORMS USING IND AS UNDER THE COMPANIES ACT, 2013 -REG.
- CONDONATION OF DELAY SCHEME, 2018.
- NORTH EAST INDUSTRIAL DEVELOPMENT SCHEME (NEIDS), 2017
- DESIGNATED SPECIAL COURT FOR SPEEDY TRIAL OF OFFENCES PUNISHABLE WITH IMPRISONMENT OF 2 YEARS OR MORE
- ALTERATION TO SCHEDULE I OF THE COMPANIES ACT, 2013
- COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2018
- CHANGE IN DEFINITION OF STARTUP ENTITY
- MONITORING OF FOREIGN INVESTMENT LIMITS IN LISTED INDIAN COMPANIES
- MEASURES TO STRENGTHEN ALGORITHMIC TRADING AND CO-LOCATION/PROXIMITY HOSTING FRAMEWORK
- CLARIFICATION ON CLUBBING OF INVESTMENT LIMITS OF FOREIGN GOVERNMENT/ FOREIGN GOVERNMENT RELATED ENTITIES
- KNOW YOUR CLIENT REQUIREMENTS FOR FOREIGN PORTFOLIO INVESTORS (FPIS)
- REVIEW OF FRAMEWORK FOR STOCKS IN DERIVATIVES SEGMENT
- PERFORMANCE DISCLOSURE POST CONSOLIDATION/ MERGER OF SCHEMES
- INVESTMENTS BY FPIS IN GOVERNMENT AND CORPORATE DEBT SECURITIES
- GUIDELINES FOR ISSUANCE OF DEBT SECURITIES BY REAL ESTATE INVESTMENT TRUSTS (REITS) AND INFRASTRUCTURE INVESTMENT TRUSTS (INVTs)
- SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2018



## Corporate Laws

# 01

### Relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E-Forms using Ind AS under the

#### Companies Act, 2013 -reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 04/2018 E.No. 01/19/2013-CL-V (Pt.) dated 27.04.2018]

1. In continuation of this Ministry's General Circular No. 13/2017 dated 26.10.2017, General Circular No. 01/2018 dated 28.03.2018 and upon consideration of requests received from various stakeholders for extending the last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013, it has been decided to extend the last date for filing of AOC-4 XBRL for all eligible companies required to prepare or voluntarily prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015 for the financial year 2016-17, without additional fee till 31st May, 2018.
2. This issues with the approval of competent authority.

**SUDHIR KAPOOR**

Deputy Director

# 02

### Condonation of Delay Scheme, 2018.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 03/2018 E.No. 02/04/2017-CL-V dated 27.04.2018]

1. In continuation to the Ministry's General Circular No. 16/2017 dated 29.12.2017 and General Circular No. 02/ 2018 dated 28.03.2018 on the subject cited above and to state that the closing date of the scheme viz. 30.04.2018 is falling under gazetted holiday on account of 'Budh Purnima', therefore, this Ministry has decided to give one day extension of the said scheme i.e. upto 01.05.2018.
2. This issues with the approval of the competent authority.

**KMS NARAYANAN**

Assistant Director

# 03

### North East Industrial Development Scheme (NEIDS), 2017

[Issued by the Ministry of Corporate Affairs vide [E. No. 10(6)/2016-DBA-II/NER. dated 12.04.2018. To be published in the Gazette of India, Extraordinary, Part-I, Section(1)] In pursuance of the decision taken by the Cabinet in its meeting

held on 21.03.2018, the Government of India is pleased to announce North East Industrial Development Scheme (NEIDS), 2017 for industrial units in the North Eastern Region comprising States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura to boost industrialization.

1. **Scheme title:** - The scheme may be called "North East Industrial Development Scheme (NEIDS), 2017".
2. **Coverage:** - The scheme will cover States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.
3. **Commencement and duration:-** It will be effective from 01.04.2017 and will remain in force up to 31.03.2022.
4. **Eligibility:**
  - 4.1 Unless otherwise specified, all new industrial units in manufacturing sector and services sector including Bio-technology and Hydel Power Generation Units upto 10 MW located in NER, will be eligible for incentives under the scheme.
  - 4.2 The scheme shall not be applicable to the industries listed in the **Annexure-I**.
  - 4.3 All eligible industrial units will be entitled to benefits under one or more components of this (present) scheme, even if such units are getting benefits under other schemes of the Government of India.
  - 4.4 The total benefits from all components of the scheme put together shall be limited to the total investment in plant and machinery subject to a maximum limit of Rs.200.00 crore per unit. Plant and Machinery for the service sector industrial unit shall include cost of construction of building and all other durable physical assets basic to the running of that particular service industry but exclude cost of land and consumables, disposables or any other item charged to revenue.
  - 4.5 Only new industrial unit shall be eligible under the scheme. A new unit will be required to fulfil the following conditions:-
    - (a) it is not formed by splitting up, or reconstruction of a business already in existence.
    - (b) it is not formed by transfer to the new unit of plant or machinery previously used for any other purpose.
    - (c) it has not relocated from elsewhere and/or is not an existing unit reopened under a new name and style.
5. **Definitions**
  - (a) '**Commencement of Commercial Production**' means starting of manufacture of finished products on commercial scale which is preceded by trial production and installation of complete plant and machinery and on that day the plant must be ready in all respects for manufacture of finished products in commercial quantity and all raw materials, consumables, etc. required for manufacture are available and as per date of registration with Central Excise/Goods and Services Tax (GST) authorities.
  - (b) '**Effective steps**' means one or more of the following steps:-
    - (i) that 10% or more of the capital issued for the industrial unit has been paid up.
    - (ii) that any part of the factory building has been constructed.
    - (iii) that a firm order has been placed for any plant and machinery required for the industrial unit.
  - (c) '**Finished Goods**' means the goods actually produced

- by an industrial unit and for which it is registered.
- (d) **'Industrial Unit'** means any industrial undertaking or eligible service sector unit, other than that run departmentally by Government, which is a registered business enterprise under Goods & Services Tax.
- (e) **'Manufacturing Activity'** means "an activity which brings about a change in non-living physical object or article or thing (i) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (ii) bringing into existence of a new and distinct object, article or thing with a different chemical composition or integral structure".
- (f) **'Eligible Service Sector Unit'** is an enterprise in the services sector that requires significant capital expenditure and has significant employment generation potential.
- (g) **'New industrial unit'** means an industrial unit which registers itself on DIPP portal on or after the first day of April, 2017 but not later than 31<sup>st</sup> day of March, 2022. Such units have to commence commercial production/operation within 18 months of registration.
- (h) **'Existing Industrial unit'** means an industrial unit which commences commercial production/operation before 01.04.2017.
- (i) **'Physical Working Capital'** is defined to include all physical inventories owned, held or controlled by the factory as on the closing day of the accounting year such as the materials, fuels & lubricants, stores etc., that enter into products manufactured by the factory itself or supplied by the factory to other for processing. Physical working capital also includes the stock of materials, fuels & stores etc., purchased expressly for re-sale, semi-finished goods and work in progress on account of others and goods made by the factory which are ready for sale at the end of the accounting year. However, it does not include the stock of the materials, fuels, stores etc. supplied by others to the factory for processing. Finished goods processed by others from raw materials supplied by the factory and held by them are included and finished goods processed by the factory from raw materials supplied by others are excluded.
- (j) **'Raw Material'** means any raw material actually required and used by an industrial unit in manufacturing of the finished goods for which it is requested.
- (k) **'Working Capital'** is the sum total of the physical working capital as defined in Para (i) above and the cash deposits in hand and at bank and the net balance of amounts receivable over amounts payable at the end of the accounting year.  
Working capital, however, excludes unused overdraft facility, fixed deposits irrespective of duration, advances for acquisition of fixed assets, loans and advances by proprietors and partners irrespective of their purpose and duration, long term loans including interest thereon and investments.
- (l) **'Plant and Machinery'** shall cover the cost of newly purchased industrial plant and machinery as erected at site. Relocated/Recycled/Refurbished plant and machinery is not eligible for assistance under the

Scheme. Components to be included/excluded for the purpose of scheme and for a manufacturing unit is at **Annexure II**. The purchase of machinery should be from open market at normal market price. It will be ascertained whether the purchase has been made from a Related Party or without following an arms-length price discovery.

6. The total incentives availed by an eligible industrial unit under the scheme should not exceed the total investment in plant and machinery subject to a maximum limit of Rs.200.00 crore per unit. The following incentives will be provided to eligible industrial units on reimbursement basis:
1. Central Capital Investment Incentive for access to credit (CIIAC)
  2. Central Interest Incentive(CII)
  3. Central Comprehensive Insurance Incentive (CII)
  4. Goods and Services Tax (GST) Reimbursement
  5. Income Tax (IT) Reimbursement
  6. Transport Incentive(TI); and
  7. Employment Incentive (EI)

6.1 There will be an Empowered Committee chaired by Secretary, Department of Industrial Policy and Promotion with Secretaries of Ministry of Development of North Eastern Region, D/o Expenditure, representative of NITI Aayog and Secretary of the concerned Ministries/Departments of Government of India dealing with the subject matter of that industry as its members as also the concerned Chief Secretary/Secretary (Industry) of the NER State where the beneficiary unit claiming incentive is located for selection of beneficiaries under the scheme. While examining the proposals for incentive, due consideration will be given to factors like cost disadvantage, project viability, bankability, employment generation and promoters' risk capital. Preference will also be given to eligible industrial units under the Micro, Small and Medium Enterprises (MSME).

#### 6.2 Central Capital Investment Incentive for access to credit (CIIAC)

6.2(a) All eligible new industrial units in the manufacturing and service sector located anywhere in the North Eastern Region will be provided Central Capital Investment Incentive for access to credit (CIIAC) @ 30% of the investment in plant and machinery with an upper limit of Rs.5.00 crore.

6.2(b) The project cost will need to be appraised by a Scheduled Commercial Bank or Financial Institution before the proposal of assistance is approved by the Empowered Committee of DIPP. The specific absolute amount of total assistance shall be indicated in the government sanction. 10% of government assistance will be allowed to be used for project financing in the beginning and the balance 90% will be kept in an escrow account. The government assistance will be reduced pro -rata in case the project is completed at a lesser cost. Full assistance will be released on the basis of certificate issued by Competent Authority of the bank that the capex on the project report

and sanction thereof is in place and Plant & Machinery has been put to use.

6.2(c) The government does not commit itself to increase in the scale of assistance in case of cost escalation. In case the project is foreclosed or abandoned midway the entire assistance released by government will be refunded to DIPP.

### 6.3 Central Interest Incentive (CII)

6.3(a) All eligible new industrial units located anywhere in the North Eastern region shall be given an interest incentive @3% on working capital credit advanced by the Scheduled Banks or Central/State financial institutions for first 5 years from the date of commencement of commercial production/ operation. The based Lending Rates (MCLR) of the lending institution.

6.3(b) For the purpose of this Scheme, the working capital requirement of a unit shall be capped at @ 25 % of their annual turnover. Inventory norms may be applied, if necessary, after providing for aforesaid maximum level. In respect of such units for which norms have not been laid down/are not applicable, the request of working capital should be considered favorably by the Empowered Committee so long as the working capital is not very much above such maximum level. Special norms can also be evolved for inventory and receivables.

### 6.4 Central Comprehensive Insurance Incentive (CCII)

6.4(a) All eligible new industrial units located anywhere in the North Eastern region will be eligible for reimbursement of 100% insurance premium on insurance of building and Plant & Machinery for a maximum period of 5 years from the date of commencement of commercial production/ operation.

6.4(b) For the purpose of insurance incentive, Industrial Unit shall mean any industry which is included in Fire Policy 'C' as per All India Fire Tariffs. The policy shall be issued by the Insurance Company on market valuation to be declared by the proposer.

### 6.5 Goods and Services Tax (GST) Reimbursement

6.5(a) All eligible new industrial units will be eligible for reimbursement of Goods and Services Tax (GST) paid on finished products manufactured in the North Eastern Region up to the extent of the central share of the CGST and IGST for a period of 5 years from the date of commencement of commercial production subject to the following condition:

(i) GST reimbursement on finished goods is applicable only on the net GST paid, other than the amount of Tax paid by utilization of Input Tax credit under the Input Tax Credit Rules, 2017.

### 6.6 Income Tax (IT) Reimbursement

The industrial unit set up under this Scheme can claim reimbursement of central share of income tax

for first 5 years, including the year of commencement of commercial production by the unit.

### 6.7 Transport Incentive (TI)

6.7(a) All eligible new industrial units can avail incentive on transportation of only finished goods through Railways or the Railway Public Sector Undertakings, Inland Waterways or scheduled airline for a period of five years from the date of commencement of commercial production/ operation, subject to production of actual receipts. The terms and conditions of Transport incentive through different modes are as follows:

- (i) Up to 20% of the cost of transportation including the incentive currently provided by Railways or the Railway PSUs for movement of finished goods by rail from the railway station nearest to the location of industrial unit to the railway station nearest to the location of the buyer.
- (ii) 20% of the cost of transportation for finished goods for movement through Inland Waterways Authority of India from the port nearest to the location of industrial unit to the port nearest to the location of the buyer.
- (iii) 33% of cost of transportation of air freight by scheduled airlines and Non-Scheduled Operator Permit (NSOP) holders approved by DGCA for perishable items/goods (as defined by IATA) from the airport nearest to the place of production to any airport within the country, nearest to the location of the buyer.

### 6.8. Employment Incentive (EI)

DIPP shall be paying additional 3.67% of the employer's contribution to Employees' Provident Fund (EPF) in addition to Government bearing 8.33% Employee Pension Scheme (EPS) contribution of the employer in the Pradhan Mantri Rojgar Protsahan Yojana (PMRPY).

## 7. Mandatory requirement

7.1 The Scheme requires that all eligible industrial units would have to register under the Scheme with Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India, through the portal prior to being eligible for any benefit under this scheme. In this regard, an online application process shall be developed under which the applicants have to submit applications along with the DPR.

7.2 The Department of Industrial Policy and Promotion would separately issue detailed instructions for the use of online portal for NEIDS and registration of eligible units.

7.3 The final grant of registration/in-principle approval will be decided by the Committee, which will, *inter-alia*, consider the *prima-facie* eligibility of the industrial unit, availability of budget and decide the eligibility for registration under the Scheme. No Industrial unit will have the right to register under NEIDS or claim the benefits unless it is specifically approved by the Central Government. No interest on account of

delay in payment of incentive can be claimed by the unit. The beneficiary of this Scheme has to furnish an undertaking to abide by the terms and conditions of the Scheme.

- 7.4 The units should start commercial production within 18 months of approval.
- 7.5 Units which have commenced production on or after 1<sup>st</sup> of April, 2017 will be allowed to register with DIPP on or before 30th of September, 2018.
- 8. Nodal agency**
- 8.1 The North East Industrial Development Finance Corporation Ltd. (NEDFi) will be the nodal agency for disbursement of incentives under various components of the Scheme. NEDFi will release incentive only through e-transfer to designated bank accounts of the eligible industrial units.
- 9. Process of Scrutiny of claims**
- 9.1 Incentive claims under Capital Investment Incentive and Transport Incentive received in DIPP will be pre-scrutinized by a recognized independent audit agency. NEDFi will conduct post-audit of 10% of claims released every time. The Chief Controller of Accounts of DIPP will also conduct post-audit of 20% of incentive claims released in each financial year.
- 9.2 Government reserves the right to modify any part of the Scheme in public interest.
- 9.3 All concerned Ministries/Department of Government of India are required to amend their respective Acts/Rules/ Notification etc. and issue necessary instructions for giving effect to these decisions.
- 10. Rights of the Centre/State Government/Financial Institutions**
- 10.1 If the Central Government/State Government/Financial Institution concerned is satisfied that an industrial unit has obtained incentive(s) by misrepresenting an essential fact, furnishing of false information or if the unit goes out of commercial production/ operation within 5 years after commencement of commercial production/ operation, the Central Government/ State Government/NEDFi may ask the unit to refund the grant or incentive after giving an opportunity of being heard to the unit. The incentive(s) will be released through digital payment and NEDFi would collect all information required by the DBT Mission in respect of beneficiary industrial units. NEDFi may take an affidavit in this regard from authorized signatory of the beneficiary unit. An indemnity bond may also be signed between the industrial unit and NEDFi prior to disbursement of incentives, providing for undertaking on the part of the beneficiary unit to comply with all the requirement of the scheme.
- 10.2 Concealment of input supplies or routing of third party or non-NER production for claims or malpractices of similar kinds will render the industrial unit liable for forfeiture of further claims and recovery of all previous subsidies with interest @ 15% per annum.
- 10.3 Without taking prior approval of the Union Ministry of Commerce & Industry (Department of Industrial Policy and Promotion) /State Government/Financial Institution concerned, no owner of an industrial unit after receiving a part or the whole of the incentive will be allowed to change the ownership of the whole or any part

of industrial unit or effect any substantial contraction or dispose of a substantial part of its total fixed capital investment within a period of 5 years after its going into commercial production. The unit will also be required to keep DIPP informed about change in location or contact information.

- 10.4 In respect of all units to whom the incentive is disbursed by NEDFi, certificate of utilization of the incentive(s) in Form 12(C) of General Financial Rules, 2017 for the purpose for which it was given shall be furnished to the Department of Industrial Policy and Promotion by the financial institution/State Government concerned, within a period of three months from the date of receipt of the last installment/full amount.
- 10.5 After receiving the incentive(s), each industrial unit shall submit Annual Progress Report (APR) to the Department of Industrial Policy and Promotion/ State Government concerned, about its working for a period of 5 years after going into production.
11. Detailed guidelines for implementation of scheme shall be issued separately.

**DR. VANDANA KUMAR**

Joint Secretary

### Annexure-I

#### Negative List:

The following industries will not be eligible for benefits under NEIDS, 2017

- (i) All goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which pertains to tobacco and manufactured tobacco substitutes.
- (ii) Pan Masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).
- (iii) Plastic carry bags of less than 20 micron as specified by Ministry of Environment and Forests Notification No. S.O. 705 (E) dated 02.09.1999 and S.O. 698 (E) dated 17.6.2003.
- (iv) Goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) produced by Petroleum or Gas refineries.
- (v) Plantation, Refineries and Power generating Units above 10 MW.
- (vi) Coke (including Calcined Petroleum Coke), Fly Ash, Cement, Steel Rolling Mills
- (vii) Units not complying with environment standards or not having applicable Environmental Clearance from M/o Environment & Forests and Climate Change or State Environmental Impact Assessments Authority (SEIAA) or not having requisite consent to establish and operate from the concerned Central Pollution Control Board/State Pollution Control Board also will not be eligible for incentive under the scheme.
- (viii) Low value addition activities like preservation during storage, cleaning, operations, packing, repacking or re-labelling, sorting, alteration of retail sale price etc. take place excluding high value packaging and processing.
- (ix) Any other industry/activity placed in negative list through a separate notification as and when considered necessary by the Government. It will be effective from the date of such notification.
- (x) Gold and gold dore.

## Annexure-II

## A. Components to be included for computing the value of Plant and Machinery under CCIAC in the manufacturing sector :

- (i) Cost of Industrial Plant & Machinery including taxes and duties i.e. cost of mother production equipment used for carrying out manufacturing activities.
- (ii) Cost of Productive equipment such as tools, jigs, dyes and moulds, insurance premium etc. including taxes and duties.
- (iii) Electrical components necessary for plant operation on the plant side from where meter is installed up to the point where finished goods is to be produced/ dispatched (i.e. H.T. Motors, L.T. Motors, Switch Boards, Panels, Capacitors, Relay, Circuit Breakers, Panel Boards, Switchgears).
- (iv) Freight charges paid for bringing Plant & Machinery and equipment from the supplier's premises to the location of the unit.
- (v) Transit Insurance premium paid.
- (vi) The amount invested in goods carriers to the extent they are actually utilized for transport of raw materials and marketing of the finished products.

## B. Components which will not be considered for computing the value of Plant &amp; Machinery under CCIAC in the manufacturing sector:

- (i) Loading and unloading charges
- (ii) Sheds/ buildings for Plant & Machinery
- (iii) Miscellaneous fixed assets such as DG sets, Excavation/ Mining equipments, handling equipments, electrical components other than those mentioned at A (iii) above.
- (iv) Working Capital including Raw Material and other consumable stores.
- (v) Commissioning cost
- (vi) Captive Power Plants
- (vii) Storage equipments
- (viii) Weigh bridge, Laboratory testing equipment.

## C. Admissibility of erection and installation charges in the manufacturing sector

Erection and installation charges will be payable on actual basis and will be restricted to the cost indicated in the Appraisal Note of the Financial Institutions which provided loan to the industrial unit.

## 04 Designated Special Court for Speedy Trial of Offences Punishable with Imprisonment of 2 Years or More

[Issued by the Ministry of Corporate Affairs vide F. No. 01/12/2009 CL-I Vol. IV dated 23.04.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section-(ii)]

1. In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court of Allahabad hereby designates the following Court mentioned in column (1) of the Table below as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said sub-section, namely:-

Table

Court (1)	Jurisdiction as Special Court (2)
9th Court of Additional District and Sessions Judge, Kanpur Nagar	State of Uttar Pradesh.

**K V R MURTY**  
Joint Secretary

## 05

### Alteration to Schedule I of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide FN 11/ 08/ 2012-CL V-Vol XVII dated 10.04.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3), Sub Section(i)]

1. In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following alteration to the Schedule I of the said Act, namely:-
2. In the Companies Act, 2013, in Schedule I, -
  - (i) in Table F, in paragraph II, -
    - (a) in sub-paragraph (2), for item (ii), the following item shall be substituted, namely:-  
"Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed a company secretary:  
  
Provided that in case the company has a common seal it shall be affixed in the presence of the persons required to sign the certificate.  
Explanation.- For the purposes of this item, it is hereby clarified that in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary, wherever the company has appointed a company secretary, or any other person authorised by the Board for the purpose." ;
    - (b) in sub-paragraph (79), after item (ii), the following explanation shall be inserted, namely:-  
"Explanation.- : For the purposes of this sub-paragraph it is hereby clarified that on and from the commencement of the Companies (Amendment) Act, 2015 (21 of 2015), i.e. with effect from the 29th May, 2015, company may not be required to have the seal by virtue of registration under the Act and if a company does not have the seal, the provisions of this sub-paragraph shall not be applicable."
  - (ii) in Table H, in paragraph II, in sub-paragraph (30), after item (ii) but before the 'Note', the following explanation shall be inserted, namely:-  
"Explanation.- For the purposes of this sub-paragraph it is hereby clarified that on and from the commencement of the Companies (Amendment) Act, 2015 (21 of 2015), i.e. with effect from the 29th May, 2015, company may not be required to have the seal by virtue of registration under the Act and if a company does not have the



seal, the provisions of this sub-paragraph shall not be applicable.”

**K V R MURTY**  
Joint Secretary

# 06

## Companies (Share Capital and Debentures) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01 /04/2013-CL-V Part-III dated 10.04.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3), Sub Section(i)]

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

1. Short title and commencement. - (1) These rules may be called the Companies (Share Capital and Debentures) Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Share Capital and Debentures) Rules, 2014, in rule 5, for sub-rule (3) of, the following sub-rule shall be substituted, namely:-  
“(3) Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary: Provided that in case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate.  
Explanation.- For the purposes of this sub-rule, it is hereby clarified that,-  
(a) in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary or any other person authorised by the Board for the purpose.  
(b) a director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitally signed, but not by means of rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

**K V R MURTY**  
Joint Secretary

# 07

## Change in Definition of Startup Entity

[Issued by the Ministry of Corporate Affairs vide [F. No. 5(4)/2018-SI dated 11.04.2018. Published in the Gazette of India Extraordinary, Part-II, Section3, Sub Section(i) vide notification no. G.S.R. 364(E) dated 11.04.2018]

This notification is being issued in supersession of Gazette Notification No. G.S.R. 501(E) dated May 23, 2017.

### Definitions

1. In this notification,—

- (a) An entity shall be considered as a Startup:
  - i. Upto a period of seven years from the date of incorporation/registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India. In the case of Startups in the biotechnology sector, the period shall be upto ten years from the date of its incorporation/ registration.
  - ii. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs. 25 crore
  - iii. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.  
Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a ‘Startup’.

### Explanation-

An entity shall cease to be a Startup on completion of seven years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rupees 25 crore. In respect of Startups in the biotechnology sector, an entity shall cease to be a Startup on completion of ten years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rs. 25 crore.

- (b) “Act” means the Income-tax Act,1961;
- (c) “Board” means the Inter-Ministerial Board of Certification comprising of the following members: —
  - (i) Additional Secretary, Department of Industrial Policy and Promotion, Convener
  - (ii) Representative of Ministry of Corporate Affairs, Member
  - (iii) Representative of Ministry of Electronics and Information Technology, Member
  - (iv) Representative of Department of Biotechnology, Member
  - (v) Representative of Department of Science & Technology, Member
  - (vi) Representative of Central Board of Direct Taxes, Member
  - (vii) Representative of Reserve Bank of India, Member
  - (viii) Representative of Securities and Exchange Board of India, Member
- (d) “limited liability partnership” shall have the meaning as assigned to it in clause (n) of sub-section(1) of Section 2 of the Limited Liability Partnership Act, 2008;
- (e) “merchant banker” means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (f) “partnership firm” means a firm registered under section 59 of the Partnership Act, 1932;
- (g) “private limited company” shall have the meaning as assigned to it in clause (68) Section 2 of the Companies Act, 2013;
- (i) “turnover” shall have the meaning as assigned to it in clause

- (91) Section 2 of the Companies Act, 2013;
- (j) All references to "Forms" in this notification shall be construed as references to the forms set out in Appendix-I hereto.

#### Recognition

2. The process of recognition of an eligible entity as startup shall be as under: —
- (i) A Startup shall make an online application over the mobile app or portal set up by the Department of Industrial Policy and Promotion.
- (ii) The application shall be accompanied by—
- a copy of Certificate of Incorporation or Registration, as the case may be, and
  - a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.
- (iii) The Department of Industrial Policy and Promotion may, after calling for such documents or information and making such enquires, as it may deem fit, —
- recognise the eligible entity as Startup; or
  - reject the application by providing reasons.

#### Certification for the purposes of section 80-IAC of the Act

3. A Startup being a private limited company or a limited liability partnership incorporated on or after 1<sup>st</sup> day of April 2016 but before 1<sup>st</sup> day of April 2021 may, for obtaining a certificate for the purposes of section 80-IAC of the Act, make an application in Form-1 along with documents specified therein to the Board and the Board may, after calling for such documents or information and making such enquires, as it may deem fit, —
- grant the certificate referred to in sub-clause (c) of clause (ii) of the Explanation below sub-section (4) of Section 80-IAC of the Act; or
  - reject the application by providing reasons

#### Approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act

4. (1) A Startup being a private limited company and in conformity with the definition as per definition stipulated at Para 1 (a) shall be eligible to apply for approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act, if the following conditions are fulfilled: —
- the aggregate amount of paid up share capital and share premium of the startup after the proposed issue of shares does not exceed ten crore rupees,
  - the investor/ proposed investor, who proposed to subscribe to the issue of shares of the startup (hereinafter in this notification referred to as "investor") has, —
    - the average returned income of twenty five lakh rupees or more for the preceding three financial years; or
    - the net worth of two crore rupees or more as on the last date of the preceding financial year, and
  - the startup has obtained a report from a merchant banker specifying the fair market value of shares in accordance with Rule 11UA of the Income-tax Rules, 1962.
- (2) the application for approval under this para shall be made in Form-2 to the Board and shall be accompanied by the documents specified therein.
- (3) The Board may, after calling for such documents or

information and making such enquiries, as it may deem fit, —

- grant approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act, specifying the relevant details, including details of investor, amount of premium on which shares are to be issued, and the latest date by which the shares are to be issued; or
- decline to grant the said approval after providing reasons.

#### Revocation

5.(1) In case it is found that any certificate or approval referred to para 3 or para 4 have been obtained on the basis of false information, the Board reserves the right to revoke such certificate or approval.

(2) Where the certificate or approval has been revoked under sub-para(1), such certificate or approval shall be deemed never to have been issued or granted by the Board.

#### Effect

6. This notification shall come into effect on the date of its publication in the Official Gazette. The Government will undertake independent evaluation of the benefits of this Notification and carry out a review before 31.03.2019.

**ANIL AGRAWAL**

Joint Secretary

#### APPENDIX-I Form-1

#### Application for certificate for the purposes of section 80-IAC of the Income-tax Act, 1961

- Name of the Startup - .....
  - Date of incorporation/ registration of Startup - .....
  - Incorporation No./ registration No.....
  - Address and business location- .....
  - Nature of business.....
  - Contact details of Startup (Phone No. and Email)- .....
  - Permanent Account No - .....
  - Existing/ proposed activities - .....
- (Enclose copy of Memorandum of Association, LLP/partnership Deed, Board Resolution etc.)

#### Declaration

I/ We hereby certify that the above information furnished by me is true and no relevant information has been concealed.

For (Name of the Startup)  
(Name of the authorised signatory) Designation  
Place: \_\_\_\_\_  
Date: \_\_\_\_\_

This form shall be accompanied by the following documents (if applicable)-

- Annual Accounts of the startup for the last three financial years
- Copies of income-tax returns for the last three financial years

#### Form-2

#### Application for approval for the purposes of section 56(2)(viib) of the Income-tax Act, 1961

- Name of the Startup - .....
- Date of incorporation/ registration of Startup - .....
- Incorporation No./ registration No.....
- Address and business location- .....
- Nature of business.....
- Contact details of Startup (Phone No. and Email)- .....

7. Permanent Account No. - .....
8. Startup Recognition number allotted by DIPP - .....
9. Existing/ proposed activities - .....
- (Enclose copy of Memorandum of Association, LLP/partnership Deed, Board Resolution etc.)
10. Details of certificate granted under section 80-IAC of Income-tax Act, 1961, if any.....
11. Details of share capital as on the date of application-
- (i) Amount of share capital.....
- (ii) Amount of share premium.....
- (iii) Type of shares.....
- (iv) Number of shares.....
- (v) Face value.....
- (vi) Issue price.....
12. Details of proposed issue of shares-
- (i) Type of shares.....
- (ii) Number of shares.....
- (iii) Face value.....
- (iv) Premium per share.....
- (v) Issue price.....
- (vi) Proposed date of issue of shares.....
13. Details of the investor-
- (i) Name of the investor(s)- .....
- (ii) Address - .....
- (iii) Contact Details (Phone No. and Email) - .....
- (iv) Permanent Account No. - .....
- (v) Nature of business- .....
- (Enclose copy of Memorandum of Association, LLP/Partnership Deed, Board Resolution etc., if applicable)
- (vi) Residential status.....
- (vii) Amount of investment proposed .....
- (viii) Average Returned income of the investor in the last three financial years-
- (ix) Net-worth of the investor on the last date of the preceding financial year-
14. Fair market value of shares as per the report of a merchant banker.....

#### Declaration

I/We hereby certify that the above information furnished by me is true and no relevant information has been concealed.

For (Name of the Startup)  
(Name of the authorised signatory) Designation  
Place: \_\_\_\_\_  
Date: \_\_\_\_\_

This form shall be accompanied by the following documents —

- the annual accounts of the startup from the date of its incorporation;
- name, PAN and address of the existing shareholders along with their shareholding and the amount at which shares are issued to them;
- copy of income-tax returns of the investor for the last three financial years;
- copy of balance sheet of the investor as on the last day of the preceding financial year; and
- merchant banker's report.

**CIR/P/2018/61 dated 05.04.2018.]**

- Foreign Investment in India is regulated in terms of clause (b) of sub-section 3 of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017 issued vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017. FEMA prescribes the various foreign investment limits in listed Indian companies. These include the aggregate FPI limit, the aggregate NRI limit and the sectoral cap. The RBI Master Direction (FED Master Direction No. 11/2017-18) dated January 04, 2018 provides a compilation of the instructions issued on Foreign Investment in India and its related aspects under FEMA.
- As per FEMA, the onus of compliance with the various foreign investment limits rests on the Indian company. In order to facilitate the listed Indian companies to ensure compliance with the various foreign investment limits, SEBI in consultation with RBI has decided to put in place a new system for monitoring the foreign investment limits. The architecture of the new system has been explained in Annexure A.
- The depositories (NSDL and CDSL) shall put in place the necessary infrastructure and IT systems for operationalizing the monitoring mechanism described at Annexure A. The Stock Exchanges (BSE, NSE and MSEI) shall also put in place the necessary infrastructure and IT systems for disseminating information on the available investment headroom in respect of listed Indian companies.
- The depositories shall issue the necessary circulars and guidelines for collecting data on foreign investment from listed companies. The system for collecting this data from the companies shall go live on the date of the issuance of this circular. The companies shall provide the necessary data (details of which have been mentioned in Annexure A) to the depositories latest by April 30, 2018.
- The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on May 01, 2018. The existing mechanism for monitoring the foreign investment limits shall be done away with once the new system is operationalized. RBI shall issue the necessary guidelines in this regard.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circulars" on our website [www.sebi.gov.in](http://www.sebi.gov.in). Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

**ACHAL SINGH**

Deputy General Manager

#### Annexure A

#### Architecture of the System for Monitoring Foreign Investment Limits in listed Indian companies

##### Housing of the System

- The system for monitoring the foreign investment limits in listed Indian companies shall be implemented and housed at the depositories (NSDL and CDSL).

##### Designated Depository

- A Designated Depository is a depository which has been

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## Monitoring of Foreign Investment limits in listed Indian companies

**[Issued by the Securities and Exchange Board of India vide Circular No. IMD/FPIC/**

appointed by an Indian company to facilitate the monitoring of the foreign investment limits of that company. As defined at Regulation 2(xxiii) of FEMA, the term 'Indian company' means a company incorporated in India and registered under the Companies Act, 2013.

3. The Designated Depository shall act as a lead depository and the other depository shall act as a feed depository.

#### **Company Master**

4. The company shall appoint any one depository as its Designated Depository for the purpose of monitoring the foreign investment limit.
5. The stock exchanges (BSE, NSE and MSEI) shall provide the data on the paid-up equity capital of an Indian company to its Designated Depository. This data shall include the paid-up equity capital of the company on a fully diluted basis. As defined at Regulation 2(xvii) of FEMA, the term "fully diluted basis" means the total number of shares that would be outstanding if all possible sources of conversion are exercised.
6. The depositories shall provide an interface wherein the company shall provide the following information to its Designated Depository:
  - i. Company Identification Number (CIN)
  - ii. Name
  - iii. Date of incorporation
  - iv. PAN number
  - v. Applicable Sector
  - vi. Applicable Sectoral Cap
  - vii. Permissible Aggregate Limit for investment by FPIs
  - viii. Permissible Aggregate Limit for investment by NRIs
  - ix. Details of shares held by FPI, NRIs and other foreign investors, on repatriable basis, in demat as well as in physical form
  - x. Details of indirect foreign investment which are held in both demat and physical form
  - xi. Details of demat accounts of Indian companies making indirect foreign investment in the capital of the company
  - xii. Whether the Indian company that has total foreign investment in it, is either not owned and not controlled by resident Indian Citizens or is owned or controlled by person's resident outside India (Yes or No)
  - xiii. ISIN-wise details of the downstream investment in other Indian companies

The information provided by the companies shall be stored in a Company Master database. The Designated Depository, if required, may seek additional information from the company for the purpose of monitoring the foreign investment limits. The companies shall ensure that in case of any corporate action, the necessary modification is reflected immediately in the Company Master database.
7. In the event of any change in any of the details pertaining to the company, such as increase/decrease of the aggregate FPI/NRI limits or the sectoral cap or a change of the sector of the company, etc. the company shall inform such changes along with the supporting documentation to its Designated Depository. Such documentation may include:
  - i. Board of Directors resolution approving the increase/decrease
  - ii. General body resolution approving the increase/decrease
  - iii. Company Secretary certificate for compliance with FEMA, 1999

#### **Reporting of trades**

8. At present, as per SEBI guidelines, the custodians are reporting confirmed trades of their FPI clients to the depositories on a T+1 basis. This reporting shall continue and the data shall be the basis of calculating FPI investments/holding in Indian companies.
9. With respect to NRI (repatriable) trades, Authorized Dealer (AD) Banks shall report the transactions of their NRI clients to the depositories. The AD Banks shall be guided by the circulars issued by RBI in this regard.

#### **Activation of a Red Flag Alert**

10. The monitoring of the foreign investment limits shall be based on the paid-up equity capital of the company on a fully diluted basis to ensure that all foreign investments are in compliance with the foreign investment limits.
11. A red flag shall be activated whenever the foreign investment within 3% or less than 3% of the aggregate NRI/FPI limits or the sectoral cap. This shall be done as follows :
 

Aggregate NRI investment limit in the company

  - 11.1. The system shall calculate the percentage of NRI holdings in the company and the investment headroom available as at the end of the day with respect to the aggregate NRI investment limit
  - 11.2. If the available headroom is 3% or less than 3% of the aggregate NRI investment limit, a red flag shall be activated for that company.
  - 11.3. Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
  - 11.4. The data on the available investment headroom shall be updated on a daily end-of-day basis as long as the red flag is activated.

Aggregate FPI investment limit of the company

  - 11.5. The system shall calculate the percentage of FPI holding in the company and the investment headroom available as at the end of the day with respect to the aggregate FPI investment limit
  - 11.6. If the available headroom is 3% or less than 3% of the aggregate FPI investment limit, a red flag shall be activated for that company.
  - 11.7. Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
  - 11.8. The data on the available investment headroom shall be updated on a daily end-of-day basis as long as the red flag is activated.

Sectoral cap of the company

  - 11.9. The system shall calculate the total foreign investment in the company by adding the aggregate NRI investment on the stock exchange, the aggregate FPI investment in the company and other foreign investment as provided by the company in the company master.
  - 11.10. If the total foreign investment in a company is within 3% or less than 3% of the sectoral cap, then a red flag shall be activated for that company.
  - 11.11. Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
  - 11.12. The data on the available investment headroom shall

be updated on a daily end-of-day basis as long as the red flag is activated.

12. The depositories shall inform the exchanges about the activation of the red flag for the identified scrip. The exchanges shall issue the necessary circulars/public notifications on their respective websites. Once a red flag has been activated for a given scrip, the foreign investors shall take a conscious decision to trade in the shares of the scrip, with a clear understanding that in the event of a breach of the aggregate NRI/FPI limits or the sectoral cap, the foreign investors shall be liable to disinvest the excess holding within five trading days from the date of settlement of the trades.

**Breach of foreign investment limits**

13. Once the aggregate NRI/FPI investment limits or the sectoral cap for a given company have been breached, the depositories shall inform the exchanges about the breach. The exchanges shall issue the necessary circulars/public notifications on their respective websites and shall halt all further purchases by :
- 13.1. FPIs, if the aggregate FPI limit is breached
  - 13.2. NRIs, if the aggregate NRI limit is breached
  - 13.3. All foreign investors, if the sectoral cap is breached
14. In the event of a breach of the sectoral cap/aggregate FPI limit/ aggregate NRI limit, the foreign investors shall divest their excess holding within 5 trading days from the date of settlement of the trades, by selling shares only to domestic investors.

**Method of disinvestment**

15. The proportionate disinvestment methodology shall be followed for disinvestment of the excess shares so as to bring the foreign investment in a company within permissible limits. In this method, depending on the limit being breached, the disinvestment of the breached quantity shall be uniformly spread across all foreign Investors/FPIs/NRIs which are net buyers of the shares of the scrip on the day of the breach. The foreign investors are required to disinvest the excess quantity by selling them only to domestic investors, within 5 trading days of the date of settlement of the trades that caused the breach.
16. This method has been illustrated with the help of an example provided below.

Total shares that can be purchased by foreign investors till sectoral cap is not breached	600
Total quantity purchased by foreign investors on T day	1000
Breach quantity	400

Time	Foreign Investor	Purchased quantity	Cumulative Purchase by foreign investor	Quantity to be disinvested by the foreign investor
1000 hrs	ABC	100	100	40
1015 hrs	XYZ	250	350	100
1145 hrs	TYU	50	400	20
1230 hrs	POI	180	580	72
1300 hrs	QSX	120	700	48
1400 hrs	REW	150	850	60
1410 hrs	LOP	150	1000	60
<b>Total</b>		<b>1000</b>		<b>400</b>

17. As can be observed from the above table, the foreign investors/FPIs/NRIs which are required to disinvest shall be identified and shall be informed of the excess quantity that they are required to disinvest.
18. In the case of FPIs which have been identified for disinvestment of excess holding, the depositories shall issue the necessary instructions to the custodians of these FPIs for disinvestment of the excess holding within 5 trading days of the date of settlement of the trades.
19. In the case of NRIs which have been identified for disinvestment of excess holding, the depositories shall issue the necessary instructions to the Authorized Dealer (AD) Banks for disinvestment of the excess holding within 5 trading days of the date of settlement of the trades.
20. The depositories shall utilize the FPI trade data provided by the custodians, post custodial confirmation, on T+1 day, where T is the trade date. The breach of investment limits (if any) shall be detected at the end of T+1 day and therefore, the announcement pertaining to the breach shall be made at the end of T+1 day. The foreign investors who have purchased the shares of the scrip during the trading hours on T+1 day shall also be given a time period of 5 trading days from the date of settlement of such trades, to disinvest the holding accruing from the aforesaid purchase trades. In other words, the purchase trades of such foreign investors which have taken place of T+1 day, shall be settled on T+3 day and thereafter a time period from T+4 day to T+8 day shall be available to them to disinvest their entire holding arising from purchases on T+1 day.
21. If T+1 is a settlement holiday, then the custodial confirmation of the trade executed on T day shall be done on T+2 day and the subsequent settlement of the trade on T+3 day. In such a scenario, the breach would be detected at the end of T+2 day.
22. A table summarizing the breach-disinvestment scenario is given below

Parameter	Purchase on T Day	Purchase on T+1
Date of breach	T day	T day
Date of trade	T day	T+1 day
Date of detection of breach	T+1 day (End of day) T+2 day (End of Day, if T+1 is a settlement holiday)	T+1 day (End of day) T+2 day (End of Day), if T+1 is a settlement holiday
Date of settlement of transaction	T+2 day T+3 day, if either T+1 day or T+2 day is a settlement holiday	T+3 day T+4 day, if either T+2 day or T+3 day is a settlement holiday
Disinvestment time frame	5 trading days from the date of settlement of the transactions which were executed on the day of the breach i.e. 5 trading days from T+2 day  If T+1 day or T+2 day is a settlement holiday, then 5 trading days from T+3 day	5 trading days from the date of settlement of the transactions which were executed on T+1 day i.e. 5 trading days from T+3 day  If T+2 day or T+3 day is a settlement holiday, then 5 trading days from T+4 day

23. In the event the foreign shareholding in a company comes within permissible limit during the time period for disinvestment, on account of sale by other FPI or other group of FPIs, the original FPIs, which have been advised to disinvest, would still have to do so within the disinvestment time period, irrespective of the fresh availability of an investment headroom during the disinvestment time period.
24. There shall be no annulment of the trades which have been executed on the trading platform of the stock exchanges and which are in breach of the sectoral caps/aggregate FPI limits/aggregate NRI limits.

#### **Failure to disinvest within 5 trading days**

25. If a breach of the investment limits has taken place on account of the FPIs and the identified FPIs have failed to disinvest within 5 trading days, then necessary action shall be taken by SEBI against the FPIs.

#### **Fees**

26. The Designated Depository shall levy reasonable fee/charges on the company towards development, ongoing maintenance and monitoring costs at an agreed upon frequency.

## 09

### Measures to strengthen Algorithmic Trading and Co-location/Proximity Hosting framework

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DP/CIR/P/2018/62 dated 09.04.2018.]**

1. SEBI, vide circular CIR/MRD/DP/09/2012 dated March 30, 2012 and circular CIR/MRD/DP/16/2013 dated May 21, 2013 put in place the broad guidelines for algorithmic trading in the securities market. Further, SEBI, vide circular CIR/MRD/DP/07/2015 dated May 13, 2015 and circular SEBI/HO/MRD/DP/CIR/P/2016/129 dated December 01, 2016 laid down guidelines to ensure fair and equitable access to the Co-location/proximity hosting facility offered by stock exchanges.
2. In order to address the concerns relating to algorithmic trading and colocation / proximity hosting facility offered by stock exchanges and to provide a level playing field between Algorithmic/ Co-located trading and manual trading, SEBI issued a discussion paper on August 5, 2016 requesting market participants to provide their views on the efficacy and need to introduce further mechanisms to address the aforementioned concerns.
3. In light of the public comments received and in consultation with Technical Advisory Committee (TAC) of SEBI and Secondary Market Advisory Committee (SMAC) of SEBI, it has been decided to introduce the following measures in connection with algorithmic trading and co-location / proximity hosting framework facility offered by stock exchanges.

#### Managed Co-location Service

4. In order to facilitate small and medium sized Members, who otherwise find it difficult to avail colocation facility, due to various reasons including but not limited to high cost, lack of expertise in maintenance and troubleshooting, etc. to avail co-location facility, stock exchanges shall introduce 'Managed Co-location Services'. Under this facility, space/rack in co-location facility shall be allotted to eligible vendors by the stock exchange along with provision for receiving market data for further dissemination of the same to their client members

and the facility to place orders (algorithmic / non-algorithmic) by the client members from such facility.

5. The vendors shall provide the technical knowhow, hardware, software and other associated expertise as services to trading members and shall be responsible for upkeep and maintenance of all infrastructure in the racks provided to them.
6. Stock exchanges shall supervise and monitor such facilities on a continuous basis. While allowing such services, stock exchanges shall continue to abide by the provisions of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 and circular SEBI/HO/MRD/DP/CIR/P/2016/129 dated December 01, 2016, including remaining responsible and accountable for actions of vendors providing Managed Co-location Services and ensuring integrity, security and privacy of data, being handled at the facility.
7. Further, in order to have fair competition, stock exchanges are advised to ensure that multiple vendors are permitted for providing Managed Co-location Services at their co-location facility.

#### Measurement of Latency for Co-location and Proximity Hosting

8. Clause 3.9 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015, mandated stock exchanges to publish suitable quarterly reports on their websites on latencies observed at the exchange.
9. Currently, latency is measured by the Stock Exchange as the time taken to complete the round trip from the Core Router (Core Router is the place where both Colo-location orders and Non-colocation orders meet) to the matching engine and back. In order to bring in greater transparency, stock exchanges shall additionally publish minimum, maximum and mean latencies and latencies at 50th and 99th percentile.
10. Stock Exchanges shall also publish reference latency, which is the time taken for an order message to travel between a reference rack in the Colocation facility and the Core Router.

#### Free of Charge Tick-by-Tick Data feed (TBT Feed)

11. Tick-by-Tick (TBT) data feed offered by stock exchanges provides a detailed view of the entire order-book, which includes details relating to addition, modification and cancellation of orders and trades on a real-time basis.
12. In order to create a more level playing field among the different types of market participants, Stock Exchanges shall provide TBT Feeds to all the trading members, free of cost, subject to trading members creating the necessary infrastructure for receiving and processing it.
13. After assessing the needs of the market participants, stock exchanges may increase the depth of snapshot of 5 best bid and ask quotes currently being provided by them.

#### Penalty on Order to Trade Ratio (OTR)

14. In order to ensure orderly trading in the market, vide circulars no. CIR/MRD/DP/ 09 /2012 dated March 30, 2012 and CIR/MRD/DP/ 16 /2013 dated May 21, 2013, stock exchanges were advised to put in place effective economic disincentives for high daily order-to-trade ratio (OTR) of algo orders placed by trading members. In order to encourage algo traders to place more orders closer to the last traded price (LTP), the following modification shall be carried out in the existing OTR framework:
  - a. Instead of orders placed within  $\pm 1\%$ , orders placed within  $\pm 0.75\%$  of the LTP shall be exempted from the framework for imposing penalty for high OTR.
  - b. Orders placed in the cash segment and orders placed

under the liquidity enhancement schemes shall also be brought under the OTR framework.

#### Unique Identifier for Algorithms / Tagging of Algorithms

15. Clause 6 (vi) of SEBI circular CIR/MRD/DP09/2012 dated March 30, 2012, prescribed that all algorithmic orders be tagged with a unique identifier provided by the stock exchange in order to establish audit trail.
16. In order to ensure enhanced surveillance, stock exchanges shall now allot a unique identifier to each algorithm approved by them. Stock exchanges shall ensure that every algorithm order reaching on exchange platform is tagged with the unique identifier allotted to the respective algorithm and that such unique identifier tags are part of the data set sent / shared with SEBI for surveillance purpose.

#### Testing Requirement for Software and Algorithms

17. SEBI, vide Circular no. CIR/MRD/DP/24/2013 dated August 19, 2013, inter alia, prescribed the testing procedure to be followed by market participants before deployment of software and algorithms. In order to further streamline and strengthen the process of testing of software and algorithms, stock exchanges may provide a simulated market environment for testing of software including algos. Such a facility may be made available over and beyond the current framework of mock trading prescribed by SEBI.
18. Stock exchanges shall ensure that the tagging of each order each algorithm with its unique identifier is completed by September 30, 2018, while the other provisions of the circular shall be complied with at the earliest but not later than June 30, 2018.
19. Stock Exchanges 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 the stock brokers/clearing members and also disseminate the same on their website;
  - c. communicate to SEBI the status of implementation of the provisions of this circular through monthly development report.
20. 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, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
21. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) at "Legal Framework→Circulars".

**SUSANTA KUMAR DAS**

Deputy General Manager

# 10

## Clarification on clubbing of investment limits of foreign Government/ foreign Government related entities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated 10.04.2018.]

1. SEBI has been monitoring investment by foreign Governments and their related entities viz. foreign central

banks, sovereign wealth funds and foreign Governmental agencies registered as foreign portfolio investors (hereinafter referred to as FPIs) in India. Since various stakeholders have been seeking guidance on clubbing of investment limits to be applied to foreign Government/ its related entities, the following clarifications are issued:

#### a. What is the investment limit for foreign Government/ foreign Government related entities registered as Foreign Portfolio Investors (FPI)?

**Reply:** The purchase of equity shares of each company by a single FPI or an investor group shall be below ten percent of the total paid up capital of the company. [Ref. Regulation 21(7) of FPI Regulations].

#### b. What is an investor group?

**Reply:** In case, same set of beneficial owners are constituents of two or more FPIs and such investor(s) have a common beneficial ownership of more than 50% in those FPIs, all such FPIs will be treated as forming part of an investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor. [Ref. Regulation 23(3) of FPI Regulations and FAQ 58].

#### c. How to ascertain whether an FPI is forming part of any investor group?

**Reply:** The designated depository participant engaged by an applicant seeking registration as FPI shall ascertain at the time of granting registration and whenever applicable, whether the applicant forms part of any investor group. [Ref. Regulation 32(2)(a) of FPI Regulations].

Further, at para 2.2 in the Form A of first schedule, the applicant seeking registration as FPI is required to furnish information regarding foreign investor group. Accordingly, it is the prime responsibility and obligation of the FPI to disclose the information with regard to investor group.

#### d. How is the beneficial ownership of foreign Government entities/ its related entities determined for the purpose of clubbing of investment limit?

**Reply:** The beneficial owner (BO) of foreign Government entities/ its related entities shall be determined in accordance with Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as PMLA Rules). The said PMLA Rules provide for identification of BO on the basis of two methodologies namely (a) controlling ownership interest (also termed as ownership or entitlement) and (b) control in respect of entities having company or trust structure. In respect of partnership firms and unincorporated associations, ownership or entitlement is basis for identification of BO.

#### e. Whether two or more foreign Government related entities from the same jurisdiction will individually be permitted to acquire equity shares in an Indian company up to the prescribed limit of 10%?

**Reply:** In case the same set of beneficial owner(s) invest through multiple entities, such entities shall be treated as part of same investor group and the investment limits of all such entities shall be clubbed as applicable to a single FPI. [Ref. Regulation 23(3) of FPI Regulations].

Accordingly, the combined holding of all foreign Government/ its related entities from the same jurisdiction shall be below ten percent of the total paid up capital of the company.

However, in cases where Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it. [Ref. Regulation 21(9) of FPI Regulations].

**f. How will the investment by a Foreign Government Agency be treated?**

**Reply:** Foreign Government Agency is an arm/ department/ body corporate of Government or is set up by a statute or is majority (i.e. 50% or more) owned by the Government of a foreign country and has been included under "Category I Foreign portfolio investors". [Ref. Regulation 5(a) of FPI Regulations].

The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government/ its related entities for the purpose of calculation of 10% limit for FPI investments in a single company, if they form part of an investor group.

**g. Whether any investment by World bank group entity viz. IBRD, IDA, MIGA and IFC should be clubbed with the investment from a foreign Government having ownership in such World bank group entity?**

**Reply:** Government of India, vide letter No. 10/06/2010-ECB dated January 06, 2016 has exempted World Bank Group viz. IBRD, IDA, MIGA and IFC from clubbing of the investment limits for the purpose of application of 10% limit for FPI investments in a single company.

**h. Where Provinces/States of some countries with federal structure have set up their separate investment funds with distinct beneficial ownership constituted with objectives suitable for their respective provinces, such funds not only have separate source of financing but also have no management, administrative or statutory commonality. Kindly inform whether investments by these foreign Government entities shall be clubbed?**

**Reply:** The investment by foreign Government/ its related entities from provinces/ states of countries with federal structure shall not be clubbed if the said foreign entities have different BO identified in accordance with PMLA Rules.

**i. How will the foreign Government/ its related entities know the available limit for investment, to avoid breach of the limit?**

**Reply:** The custodian of securities reports the holdings of FPIs/ investor groups to depositories who monitor the investment limits. As such, NSDL is in ready possession of aggregate holdings of FPIs/ investor groups in any particular scrip. [Ref. Regulation 26(2)(d) of FPI Regulations]. To this effect, SEBI, vide communication dated November 02, 2017 has already advised DDPs/ custodians of securities to approach NSDL to get information regarding aggregate percentage holdings of the group entities on whose behalf they are acting in any particular company before making investment decisions. SEBI has no objection to the said arrangement for sharing of data.

**j. What if the investment by foreign Government/ its related entities cause breach of the permissible limit?**

**Reply:** The FPIs investing in breach of the prescribed limit shall divest their holdings within 5 trading days from the date of settlement of the trades causing the breach. Alternatively,

the investment by such FPIs shall be considered as investment under Foreign Direct Investment (FDI) at the FPI's option. However, the FPIs need to immediately inform of such option to SEBI & RBI, since they cannot hold equity investments in a particular company under FPI and FDI route, simultaneously.

2. 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.
3. A copy of this circular is available at the links "Legal Framework→Circulars" and "Info for →F.P.I." on our website www.sebi.gov.in. The DDPs/ Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

**ACHAL SINGH**

Deputy General Manager



## Know Your Client Requirements for Foreign Portfolio Investors (FPIs)

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated 10.04.2018.]

1. This has reference to SEBI circular No CIR/MIRSD/11/2012 dated September 05, 2012 and subsequent SEBI circular No. CIR/MIRSD/07/2013 dated September 12, 2013 whereby risk based documentation requirements were prescribed for Know Your Client (KYC) requirements of eligible foreign investors classified as category I, II and III investing under Portfolio Investment Scheme (PIS) route. KYC of FPIs is accordingly being done.
2. Upon a review, it has been decided to make the following changes :-

**(a) Identification and verification of Beneficial Owners**

- (i) Beneficial Owner (BO) is the natural person(s) who ultimately owns or controls an FPI and should be identified in accordance with Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as PMLA Rules).
- (ii) Accordingly, BOs of FPIs having structure of company or trust should be identified on controlling ownership interest (also termed as ownership or entitlement) and control basis. The BOs in case of partnership firm and unincorporated association of individuals should be identified on ownership or entitlement basis.
- (iii) The materiality threshold for identification of BOs of FPIs on controlling ownership interest (or ownership/ entitlement) basis shall be same as prescribed in PMLA Rules i.e. 25% in case of company and 15% in case of partnership firm, trust & unincorporated association of persons.
- (iv) In respect of FPIs coming from "high risk jurisdictions" as referred in SEBI Master circular No. CIR/ISD/AML/2010 dated December 31, 2010 the intermediaries may apply lower materiality threshold of 10% for identification of BO and also ensure KYC documentation as applicable for category III FPIs. All the intermediaries are again directed to ensure compliance with the requirements contained in the



Master circular dated December 31, 2010.

- (v) The materiality threshold (referred at (iii) & (iv) above) to identify the beneficial owner should be first applied at the level of FPI and next look through principle shall be applied to identify the beneficial owner of the material shareholder/ owner entity. Only beneficial owner with holdings equal & above the materiality thresholds in the FPI need to be identified through the aforesaid look through principle.
- (vi) Where no material shareholder/owner entity is identified in the FPI using the materiality threshold ((referred at (iii) & (iv) above) for controlling ownership interest basis and also on control basis (for companies and trusts), BO shall be the senior managing official of the FPI.
- (vii) In case of companies/ trusts represented by service providers like lawyers/ accountants, FPIs should provide information of the real owners/ effective controllers of those companies / trusts.
- (viii) If the BO exercises controls through means like voting rights, agreements, arrangement etc., that should also be specified. It is clarified that BO should not be a nominee of another person.
- (ix) BO should not be a person mentioned in United Nations Security Council's Sanctions List notified from time to time;
- (x) BO should not be from jurisdiction, which is identified in the public statement of Financial Action Task Force (FATF) as:
  - a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
  - b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.

**(b) Format for reporting of BOs**

Category II & III FPIs are required to maintain a list of BOs. In order to bring consistency, it has been decided that Category II & III FPIs should provide list of their BOs in following format:-

Sl. No.	Name & Address of the Beneficial Owner (Natural Person)	Date of Birth	Tax Residency Jurisdiction	Nationality	Whether acting alone or together through one or more natural persons as group, with their name & address	BO Group's percentage Shareholding / Capital / Profit ownership in the FPIs	Tax Residency Number/ Social Security Number/ Passport Number of BO (Please provide any)
1.							
2.							

This List should be certified by FPI. FPI should also certify that there are no other BOs other than those referred in list. The existing FPIs should provide the list of BOs (in aforementioned format) within six months from the date of this circular.

**(c) Indians as BO of FPIs**

In reply to FAQ 91, it has been clarified that "NRI/PIO is not eligible to make investments as an FPI. Accordingly, a company which is majority owned by one or more NRI/PIOs shall not be allowed to make investments as an FPI. However, if such company is appropriately regulated it may

be given registration as Category II FPI for the purpose of acting as investment manager for other FPIs. This position is the same as in FII regime where companies promoted by NRIs were registered as non investing FIIs."

In order to bring further clarity, it is informed that Non Resident Indians (NRIs) / Overseas Citizen of India (OCI) cannot be BO of FPIs. However, if an FPI is Category II Investment manager of other FPIs & is non- investing entity, it may be promoted by NRIs/ OCIs. It is also clarified that Resident Indian cannot be a BO of FPI. Existing FPI structures not in conformity with the above requirements henceforth should not create fresh position at the end of expiry of derivative contract of April 2018. Further, these FPIs are given time of six months from the date of this circular to change their structure or close their existing position in Indian securities market.

**(d) Bearer share structure**

- (i) It should be ensured that FPIs or the investors identified on basis of threshold for identification of BO in accordance with PMLA Rules in the FPIs have not issued any bearer shares, or
- (ii) If the legal constitution of FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules and/or applicable home jurisdiction regulations permit issue of bearer shares, then FPIs should certify that they have not issued and do not maintain any outstanding bearer shares. Also, FPIs should certify that they will not issue bearer shares.

In case existing FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules do not conform to the above requirements, they shall ensure compliance within six months of the date of this circular.

**(e) KYC review**

As per SEBI circular dated September 12, 2013, eligible foreign investors shall be subject to KYC review as and when there is any change in material information / disclosure.

It is however decided that there should be comprehensive KYC review of FPIs on a periodical basis. The KYC review (including change in BOs / their holdings) should be done based on risk categorization of FPIs. In case of high risk clients (including those coming from high risk jurisdictions) it should be done on yearly basis. In case of all other clients, the KYC review should be conducted every 3 years preferably at the time of continuance of FPI registration.

**(f) KYC documentation for Category III FPI**

The stakeholders have requested for clarifications on KYC documentations for category III FPIs.

Sl. No.	Query	Present Status	Reply
1	There is uncertainty around the specific financials required for Category III FPIs. Kindly clarify the specific documents that are acceptable for the financial data and whether there is need for these to be audited.	SEBI has prescribed "Financial Data" as mandatory for Category III FPIs only.  During discussions with DDPs it is gathered that there is no clarity on nature of financial data needed.	Audited Annual financial statement or a certificate from auditor certifying networth may be obtained from Category III FPIs.  In case of new funds/ companies/ family offices, the audited financial statement of promoter person may be obtained.

2.	Whether prospectus and information memorandum are acceptable in lieu of an official constitutional document.	SEBI circular prescribes the requirement of "Constitutional document" for all category of FPIs.	Yes
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**(g) Exempted documents to be provided during investigations/ enquiry**

- (i) SEBI vide circular dated September 12, 2013 has exempted FPIs from furnishing certain supporting KYC documents depending on risk involved. It has been decided that in respect of exempted documents, FPIs concerned should submit an undertaking to DDP/ Custodians that upon demand by Regulators/ Law Enforcement Agencies, the relevant documents would be provided.
  - (ii) Further, SEBI vide circular dated September 12, 2013 has exempted Category III FPIs from submission of proof of address of BOs, Senior Management and Authorised Signatories. Since Category III FPIs are high risk investors, it is decided that "declaration on letter head" be provided by them.  
In respect of (i) and (ii) above, the existing FPIs should provide these documents within six months from the date of this circular.
3. In view of manner of identifying Beneficial Ownership of FPIs having been specified in this circular, it is decided that clubbing of investment limit for FPIs shall also be on said basis.  
All existing FPIs whose clubbed investment in equity shares of a company is in breach of the provisions of Regulation 21(7) in view of this circular are hereby given time of six months from the date of this circular to ensure compliance. In respect of any future breach of clubbing limit, there shall be two options:-
- (a) The said investments shall be treated as Foreign Direct Investment from the date of breach, or,
  - (b) FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company.
4. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Sub-rule 14(i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
5. A copy of this circular is available at the links "Legal Framework→Circulars" and "Info for →F.P.I." on SEBI website [www.sebi.gov.in](http://www.sebi.gov.in). The DDPs/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

**ACHAL SINGH**  
Deputy General Manager

# 12

## Review of Framework for Stocks in Derivatives Segment

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ MRD/DP/CIR/P/2018/67 dated 11.04.2018.]

1. Please refer to SEBI circular CIR/DNPD/3/2012 dated July 23, 2012 captioned 'Revision of Eligibility Criteria for Stocks in Derivatives Segment' and circular CIR/DNPD/4/2010 dated July 15, 2010 captioned 'Physical Settlement of Stock Derivatives'.
2. **Discussion Paper/public consultation on Growth and Development of Derivative Market in India**  
With a view to improve market integrity and provide better alignment of cash and derivatives segment, SEBI published discussion papers on July 12, 2017 and September 7, 2017 requesting stakeholders to provide their comments/views thereon. In light of the comments received and assessment thereof, discussion with the stock exchanges and market participants and further discussion in the meeting of Secondary Market Advisory Committee (SMAC) of SEBI held on March 07, 2018, it has been decided to take the following measures in connection with the eligibility criteria, exit criteria and settlement of stock derivatives as given hereunder:  
**Physical settlement of stock derivatives**
3. In line with the recommendations made by the L.C Gupta committee regarding physical settlement of stock derivatives and discussion in SMAC regarding the functioning of the Securities Lending and Borrowing mechanism (SLBM), it has been decided that physical settlement of stock derivatives shall be made mandatory in a phased/calibrated manner.  
**Enhanced eligibility criteria for introduction of stocks in Derivatives Segment ('Enhanced criteria')**
4. A stock, on which option and future contracts are proposed to be introduced, shall conform to the following broad eligibility criteria: -
  - (i) The stock shall be chosen from amongst the top 500 stocks in terms of average daily market capitalization and average daily traded value in the previous six months on a rolling basis',
  - (ii) The stock's median quarter-sigma order size over the last six months, on a rolling basis, shall not be less than ₹ 25 Lakh,
  - (iii) The market wide position limit in the stock shall not be less than ₹ 500 crore on a rolling basis, and
  - (iv) Average daily delivery value in the cash market shall not be less than ₹ 10 crore in the previous six months on a rolling basis.
 Above criteria are to be met for a continuous period of six months.
5. Derivatives on stocks (new/existing) which meet the enhanced eligibility criteria (given at para 4 above) shall be cash settled until further notification, however such stocks, if they fail to satisfy any of the enhanced eligibility criteria for a continuous period of three months, shall move from cash settlement to physical settlement. After moving to physical settlement, if such stocks do not meet any of the eligibility criteria (specified vide circular CIR/DNPD/3/2012 dated July 23, 2012) for a continuous period of three months, then they shall exit from derivatives segment.
6. Stocks which are currently in derivatives segment and meet the eligibility criteria (specified vide circular CIR/DNPD/3/2012 dated July 23, 2012) but do not meet the enhanced criteria shall be physically settled. Such stocks, however, shall exit from derivatives segment in case;
  - (a) They fail to meet any of the eligibility criteria (specified vide circular CIR/DNPD/3/2012 dated July 23, 2012) for

- a continuous period of three months, or
- (b) They fail to meet any of the enhanced eligibility criteria after a period of one year from the date of this circular.
7. After a period of one year from the date of this circular, only those stocks which meet the enhanced eligibility criteria shall remain in derivatives segment.
  8. The risk management framework, settlement mechanism and other procedures of the cash segment shall be applicable when a stock derivatives devolves into physical settlement.
  9. Stock which meet the enhanced eligibility criteria shall also move to physical settlement albeit in a phased/calibrated manner.
  10. The other provisions regarding single stock derivatives shall remain as specified in SEBI circulars CIR/DNPD/3/2012 dated July 23, 2012 and CIR/DNPD/4/2010 dated July 15, 2010.
  11. Exchanges are directed to put in place proper systems and procedures for smooth implementation of physical settlement and take necessary action to give effect to this circular. No new contract shall be issued on stocks that may exit the derivatives segment, however, the existing unexpired contracts may be permitted to trade till expiry and new strikes may also be introduced in the existing contract months.
  12. Stock Exchanges 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 the stock brokers/clearing members and also disseminate the same on their website;
    - c. communicate to SEBI the status of implementation of the provisions of this circular through monthly development report.
  13. 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.
  14. The circular shall come into force from the date of the circular.
  15. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) at "Legal Framework→Circulars".

**AMIT TANDON**

Deputy General Manager

13

### Performance disclosure post consolidation/ Merger of Schemes

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF3/CIR/P/2018/69 dated 12.04.2018.]

1. Reference is drawn to Schedule VI under Regulation 30 of SEBI (Mutual Funds) Regulations, 1996 and SEBI circular dated March 15, 2017 which govern the depiction of past performance of schemes.
2. Currently, there are no specific guidelines governing the depiction of performance of the surviving scheme, pursuant to merger of schemes. Further, it is observed that Mutual Funds adopt varied practices, such as disclosing the weighted

average performance or performance of surviving schemes, while making such disclosures.

3. In order to standardize the disclosure of performance of schemes post-merger, the issue was discussed in Mutual Fund Advisory Committee (MFAC) and based on the recommendations, it has been decided to disclose the performance, post-merger of schemes as given below:
  - i) When two schemes, for example, Scheme A (Transferor Scheme) & Scheme B (Transferee Scheme), having similar features, get merged and the merged scheme i.e., surviving scheme also has the same features, the weighted average performance of both the schemes needs to be disclosed.
  - ii) When Scheme A (Transferor Scheme) gets merged into Scheme B (Transferee Scheme) and the features of Scheme B are retained, the performance of the scheme whose features are retained needs to be disclosed.
  - iii) When Scheme A (Transferor Scheme) gets merged into Scheme B (Transferee Scheme) and the features of Scheme A (Transferor scheme) are retained, the performance of the scheme whose features are retained needs to be disclosed.
  - iv) When Scheme A (Transferor Scheme) gets merged with Scheme B (Transferee Scheme) and a new scheme, Scheme C emerges after such consolidation or merger of schemes, the past performance need not be provided.
4. In addition to disclosing the performance of the scheme as mentioned in para 3 above, past performance of such scheme(s) whose features are not retained post-merger may also be made available on request with adequate disclaimer.
5. This circular shall be applicable with effect from May 01, 2018.
6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with 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

14

### Investments by FPIs in Government and Corporate debt securities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/IMD/FPIC/CIR/P/2018/70 dated 12.04.2018.]

1. RBI in its Fourth Bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015 had announced a Medium Term Framework (MTF) for FPI limits in Government securities in consultation with the Government of India. Accordingly, SEBI had issued circulars CIR/IMD/FPIC/8/2015 dated October 06, 2015, IMD/FPIC/CIR/P/2016/45 dated March 29, 2016 and IMD/FPIC/CIR/P/2016/107 dated October 03, 2016, IMD/FPIC/CIR/P/2017/30 dated April 03, 2017, IMD/FPIC/CIR/P/2017/74 dated July 04, 2017, IMD/FPIC/CIR/P/2017/113 dated October 04, 2017 and IMD/FPIC/CIR/P/2017/129 dated December 20, 2017 regarding the allocation and monitoring of FPI debt investment limits in Government securities.
2. Vide circular SEBI/HO/IMD/FPIC/CIR/P/2017/112 dated

- September 29, 2017, a sub-Limit for investment by Long Term FPIs in the infrastructure sector was created within the Corporate Debt Investment Limits (CDIL).
3. In accordance with the A.P. (DIR Series) Circular No. 22 dated April 06, 2018 issued by RBI, it has been decided to revise the CDIL and the limit for investment by FPIs in Government Securities and State Development Loans (SDL), for the Financial Year 2018-19, as follows:
    - a. Limit for FPIs in Central Government securities shall be enhanced to INR 207,300 cr on April 12, 2018 and INR 223,300 cr on October 01, 2018 respectively from the existing limit of INR 191,300 cr.
    - b. Limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government securities shall be enhanced to INR 78,700 cr on April 12, 2018 and INR 92,300 cr on October 01, 2018 respectively from the existing limit of INR 65,100 cr.
    - c. The debt limit category of State Development Loans (SDL) shall be revised as follows:
      - i. SDL-General shall be enhanced to INR 34,800 cr on April 12, 2018 and INR 38,100 cr on October 01, 2018 respectively from the existing limit of INR 31,500 cr
      - ii. SDL-Long Term shall be revised to INR 7,100 cr
    - d. In partial modification to Para 4 of the SEBI circular SEBI/HO/IMD/FPIC/CIR/P/2017/112 dated September 29, 2017, the sub-limit for investment by Long Term FPIs in the infrastructure sector shall be done away with and the existing investment and free limits shall be merged into the CDIL. Further, all the existing sub-categories under the category of corporate bonds will be discontinued and there would be a single limit for FPI investment in all types of corporate bonds.
    - e. The CDIL shall be enhanced to INR 266,700 cr on April 12, 2018 and INR 289,100 cr on October 01, 2018 respectively from the existing limit of INR 244,323 cr.
  4. Accordingly, with effect from April 12, 2018, the revised FPI debt limits shall be as follows:

Type of Instrument	Upper Cap as on April 11, 2018 (INR cr)	Revised Upper Cap with effect from April 12, 2018 (INR cr)	Revised Upper Cap with effect from October 01, 2018 (INR cr)
Government Debt – General	191,300	207,300	223,300
Government Debt – Long Term	65,100	78,700	92,300
SDL – General	31,500	34,800	38,100
SDL – Long Term	13,600	7,100	7,100
<b>Total Government Debt</b>	<b>301,500</b>	<b>327,900</b>	<b>360,800</b>
<b>CDIL</b>	<b>244,323</b>	<b>266,700</b>	<b>289,100</b>

5. Investment of coupons by FPIs in Government securities, which was hitherto outside the investment limit, will now be reckoned within the Government Debt – General limit. FPIs may, however, continue to invest the coupons without any constraint, as they do now. Only at the time of periodic re-setting of limits, coupon investments would be added to the amount of utilization. Accordingly, the stock of coupon

investment of Rs. 4,760 crore as on March 31, 2018, shall be added to the actual utilization under Government Debt – General.

6. All other existing conditions with regard to allocation and monitoring of debt limits shall continue to apply.
7. A separate notification will be issued announcing coupon reinvestment arrangements in respect of SDL and corporate debt and other changes affecting operational aspects of FPI investments in debt.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page “Circulars” on our website [www.sebi.gov.in](http://www.sebi.gov.in). Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

**ACHAL SINGH**

Deputy General Manager

# 15

## Guidelines for issuance of debt securities by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2018/71 dated 13.04.2018.]

1. SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) and SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) were amended vide notifications dated December 15, 2017. The said amendments, inter alia, clarified that REITs and InvITs can issue debt securities.
2. For issuance of debt securities, REITs/InvITs shall follow provisions of SEBI (Issue and Listing of Debt Securities Regulations), 2008 (“ILDS Regulations”) in the following manner:-
  - 2.1. Regulation 4 (5) and Regulation 16 (1) of SEBI ILDS Regulations, 2008 shall not be applicable for issuance of debt securities by REITs/InvITs.
  - 2.2. The compliances required to be made with respect to Companies Act, 2013 or any filing to be made to Registrar of Companies in terms of the ILDS Regulations, shall not apply to REITs/InvITs for issuance of debt securities unless specifically provided in this circular.
  - 2.3. All other provisions of ILDS Regulations shall apply to REITs/InvITs subject to there being no conflict with REIT Regulations and/or InvIT Regulations or circulars issued thereunder. In case of conflict, provisions of REIT Regulations and/or InvIT Regulations or circulars issued thereunder shall prevail over ILDS Regulations.
3. For the issuance of debt securities REITs/InvITs shall appoint one or more debenture trustee registered with SEBI under Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. Provided that a trustee to the REIT/InvIT shall not be eligible to be appointed as debenture trustee to such issue of debt securities.
4. Any secured debt securities issued by REITs/InvITs shall be

secured by the creation of a charge on the assets of the REIT/ InvIT or holdco or SPV, having a value which is sufficient for the repayment of the amount of such debt securities and interest thereon.

5. In addition to the disclosures and compliances prescribed under Circular CIR/IMD/DF/146/2016 dated December 29, 2016 and Circular CIR/IMD/DF/127/2016 dated November 29, 2016, as applicable, REITs/InvITs which have issued debt securities shall be required to comply with following continuous disclosure requirements:-

5.1. Regulations 50, 51, 54, 55, 56, 57, 58, 59 and 60 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) and any other provisions of the aforesaid regulations as may be applicable to REITs/ InvITs.

5.2. In addition to Financial disclosures made by REITs and InvITs in terms of circular dated December 29, 2016 and November 29, 2016 the following requirements shall apply:

5.2.1. Additional line items that shall be disclosed by REITs/InvITs which have issued/listed their debt securities are as follows:-

- Asset cover available;
- debt-equity ratio;
- debt service coverage ratio;
- interest service coverage ratio;
- net worth;

5.2.2. Modified opinion(s) in audit reports having a bearing on the interest payment or redemption or principal repayment capacity of the REITs/InvITs shall be appropriately and adequately addressed by the board of the manager while publishing the accounts for the said period.

5.2.3. REITs/InvITs shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of debt securities from the objects stated in the offer document.

6. With reference to ILDS Regulations and LODR Regulation and circulars issued thereunder, the reference to the following terms made therein, should, for the purpose of this circular, be construed as follows, unless otherwise required:-

Reference to	To be construed as
Articles of Association/ Memorandum of Association	Trust Deed
Board of directors	Board of Director/Governing Body of the Manager
Directors of the company	Directors of the manager
Shares	Units
Shareholder	Unit holder
Shareholding pattern	Unit holding pattern
Share capital	Unit capital

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

8. This Circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories “Legal Framework” and under the drop down “Circulars”.

**RICHA G. AGARWAL**

Deputy General Manager

# 16

## Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018

**[Issued by the Securities and Exchange Board of India vide Notification No.SEBI/LAD-NRO/GN/2018/10 dated 09.05.2018.]**

In exercise of the powers conferred by section 11, sub section (2) of section 11A and section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 31 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India hereby makes the following regulations to further amend the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, namely -

- These regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018.
  - Save as otherwise specifically provided for in these regulations, they shall come into force with effect from April 1, 2019.
  - In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, -
    - in regulation (2), in sub-regulation (1), in clause (zb), -
      - the following proviso shall be inserted after the definition and before the existing proviso, namely,-  
“Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.”
      - in the existing proviso, which shall be renumbered as the second proviso, the word “further” shall be inserted after the word “Provided” and before the word “that”.
    - in regulation 15, in sub-regulation (2) as well as in the proviso to clause (b) of sub-regulation (2), the figure “17A” shall be inserted after the figure “17” and the figure “24A” be inserted after the figure “24”.
    - in regulation (16), in sub-regulation (1), -
      - in clause (b), -
        - in sub-clause (ii), the words “or member of the promoter group of the listed entity” shall be inserted after the words “associate company”.
        - after the existing sub-clause (vii), the following new sub-clause shall be inserted, namely,-  
“(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.”
- The aforesaid amendments mentioned in clause (i) shall come into force with effect from October 1, 2018.
- in clause (c), the word “twenty” shall be substituted with the word “ten”.
  - in clause (d), the words “executive directors, including all functional heads” shall be substituted with the following –

“chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer.”

- (d) in regulation 17, -
- i. in sub-regulation (1), -
    1. in clause (a), the following proviso and explanation shall be inserted-  
“Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;  
Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”
    2. after the existing clause (b), the following new clause shall be inserted, namely,-  
“(c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.  
Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.”
  - ii. after the existing sub-regulation (1), the following new sub-regulation shall be inserted, namely,-  
“(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.”
  - iii. after the newly inserted sub-regulation (1A) as above, the following new sub-regulation shall be inserted, namely, -  
“(1B). With effect from April 1, 2020, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -  
(a) be a non-executive director;  
(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013:  
Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.  
Explanation - The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”
  - iv. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, -  
“(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect

from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director;

Explanation I – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

- v. in sub-regulation (6), -
  1. after clause (c), the following new sub-clause shall be inserted, namely,-  
“(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.”
  2. after the existing clause (d), the following new clause shall be inserted, namely,-  
“(e) 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) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or  
(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:  
Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.  
Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.”
- vi. the sub-regulation (10) shall be substituted with the following, namely, -  
“(10) The evaluation of independent directors shall be done by the entire board of directors which shall include -  
(a) performance of the directors; and  
(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:  
Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.”
- vii. after the existing sub-regulation 10, the following new sub-regulation shall be inserted, namely,-  
“11. The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special

- business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.”
- (e) after the existing regulation 17, the following new regulation shall be inserted, namely, -  
**“17A. Maximum number of directorships.**  
 The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -
- (1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:  
 Provided that a person shall not serve as an independent director in more than seven listed entities.
- (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.  
 For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”
- (f) in regulation 19, -
- a. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely,-  
**“(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.”**
- b. after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely, -  
**“(3A) The nomination and remuneration committee shall meet at least once in a year.”**
- (g) in regulation 20, -
- a. in sub-regulation (1), for the words “the mechanism of redressal of grievances” the words “various aspects of interest” shall be substituted.
- b. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, -  
**“(2A) At least three directors, with at least one being an independent director, shall be members of the Committee.”**
- c. sub-regulation (3) shall be substituted with the following, -  
**“(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.”**
- d. after sub-regulation 3, the following new sub-regulation shall be inserted, namely -**“(3A) The stakeholders relationship committee shall meet at least once in a year.”**
- (h) in regulation 21, -
- a. after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely,-  
**“(3A) The risk management committee shall meet at least once in a year.”**
- b. in sub-regulation (4), after the words “as it may deem fit” and before the symbol “.”, the words “such function shall specifically cover cyber security” shall be inserted.
- c. in sub-regulation (5), the figure “100” shall be substituted with the figure “500”.
- (i) in regulation 23, -
- a. in sub-regulation (1), the words “including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly” shall be inserted after the words “related party transactions” and before the symbol “:”.
- b. after sub-regulation (1), the following new sub-regulation shall be inserted, namely,-  
**“(1A) Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.”**
- c. in sub-regulation (4), the words “the related parties shall abstain from voting on” shall be substituted with the words “no related party shall vote to approve”.
- d. in sub-regulation (7), the words “abstain from voting” shall be substituted with the words “not vote to approve the relevant transaction”.
- e. after the existing sub-regulation (8), the following new sub-regulation shall be inserted, namely, -  
**“(9) The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.”**  
 The amendment shall come into force with effect from the half year ending March 31, 2019.
- (j) in regulation 24, -
- a. the existing sub-regulation (1) shall be substituted with the following, namely, -  
**“(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.**  
 Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.”
- b. in the Explanation to sub-regulation (4), the word “material” appearing after the word “unlisted” shall be omitted.
- (k) after the existing regulation 24, the following new

regulation shall be inserted, namely,-  
 “24A. Secretarial Audit.

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.”

- (l) in regulation 25, -
- i. the existing sub-regulation (1) shall be substituted with the following new sub-regulation, namely, -  
 “(1) No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.”
  - ii. after the existing sub-regulation 7, the following new sub-regulations shall be inserted, namely, -  
 “(8) Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.  
 (9) The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.  
 (10) With effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance (‘D and O insurance’) for all their independent directors of such quantum and for such risks as may be determined by its board of directors.”
- (m) in regulation 29, in sub-regulation (1), in clause (f), the proviso thereto shall be omitted with effect from October 1, 2018.
- (n) in regulation 32, after the existing sub-regulation (7), the following new sub-regulation shall be inserted, namely, -  
 “(7A) 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.”
- (o) in regulation 33, in sub-regulation (3), -
- i. in clause (b), -
    - a. the word ‘may’ shall be replaced with the word ‘shall’ ;
    - b. the words and symbol “subject to following:” shall be substituted with the symbol “.” ; and
    - c. sub-clauses (i) and (ii) shall be omitted.
  - ii. in clause (e), the words “or limited reviewed” shall be inserted after the words “audited” and before the words “financial results”.
  - iii. after the existing clause (f), the following new

clauses shall be inserted, namely, -

“(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.

(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.”

- (p) in regulation 33, the following new sub-regulation shall be inserted, namely, -  
 “(8) The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/ companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.”
- (q) in regulation 34, -
- i. the existing sub-regulation (1) shall be substituted with the following new sub-regulation, namely, -  
 “(1) The listed entity shall submit to the stock exchange and publish on its website-  
 (a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;  
 (b) in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.”  
 The amendment at clause (q) shall be applicable in respect of the Annual report filed for the year ended March 31, 2019 and thereafter.
- (r) in regulation 36, -
- i. in sub-regulation (1), in clause (a), the words “ for the purpose” shall be omitted and the words “either with the listed entity or with any depository” shall be inserted.

The amendment at clause (r)(i) shall be applicable in respect of the Annual report filed for the year ended March 31, 2019 and thereafter.

ii. after the existing sub-regulation (3), the following new sub-regulations shall be inserted, namely, -  
 “(4) The disclosures made by the listed entity with immediate effect from date of notification of these amendments-

- (a) to the stock exchanges shall be in XBRL format in accordance with the guidelines specified by the stock exchanges from time to time; and
- (b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool:

Provided that the requirement to make disclosures in searchable formats shall not apply in case there is a statutory requirement to make such disclosures



in formats which may not be searchable, such as copies of scanned documents.

(5) The notice being sent to shareholders for an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:

- (a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;
- (b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed."

(s) in regulation 44, -

(i) the title 'Voting by shareholders' shall be replaced with the title 'Meetings of shareholders and voting' ; and

(ii) after the existing sub-regulation (4), the following new sub-regulations (5) and (6) shall be inserted, namely, -

"(5) The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year.

(6) The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

Explanation: The top 100 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year."

(t) in regulation 46, in sub-regulation (2), -

i. for the words "on its website", the words "under a separate section on its website" shall be substituted;

ii. after the existing clause (q), the following new clauses shall be inserted, namely, -

"(r) With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.

(s) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year."

(u) in Schedule II, -

a. in Part C, in clause A, after the existing sub-clause (20), the following new sub-clause shall be inserted, namely, -

"(21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments existing as on the date of coming into force of this provision."

b. in Part D, -

i. in clause A, after the existing sub-clause (5),

the following new sub-clause shall be inserted, namely, -

"(6) recommend to the board, all remuneration, in whatever form, payable to senior management."

ii. the contents under clause B shall be substituted with the following new provisions, namely, -

"The role of the committee shall inter-alia include the following:

(1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.

(2) Review of measures taken for effective exercise of voting rights by shareholders.

(3) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

(4) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company."

c. in Part E, clause D shall be omitted.

The amendment in clause c. above shall come into effect from April 1, 2020.

(v) in Schedule III, in Part A, under the Clause A dealing with 'Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of Regulation (30)', after the existing sub-clause 7, the following new sub-clauses shall be inserted, namely, -

"(7A) In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor.

(7B) Resignation of auditor including reasons for resignation: In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities:

i. Detailed reasons for the resignation of independent directors as given by the said director shall be disclosed by the listed entities to the stock exchanges.

ii. The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided.

iii. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the detailed reasons as specified in sub-clause (i) above."

(w) in Schedule IV, in Part A, in clause BB, the existing sub-

clauses (i) and (ii) thereunder shall be substituted with the following, namely,-

- "i. The management shall mandatorily make an estimate which the auditor shall review and report accordingly.
  - ii. Notwithstanding the above, the management may be permitted to not provide estimate on matters like going concerns or sub-judice matters; in which case, the management shall provide the reasons and the auditor shall review the same and report accordingly."
- (x) in Schedule V, -
- a. in Part A dealing with 'Related Party Disclosure', after the existing clause 2, the following new clause shall be inserted, namely,-
    - "(2A) Disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results."
  - b. in Part B dealing with 'Management Discussion and Analysis', in clause 1, after the existing sub-clause (h), the following new sub-clauses shall be inserted, namely,-
    - "(i) details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:
      - (i) Debtors Turnover
      - (ii) Inventory Turnover
      - (iii) Interest Coverage Ratio
      - (iv) Current Ratio
      - (v) Debt Equity Ratio
      - (vi) Operating Profit Margin (%)
      - (vii) Net Profit Margin (%)
 or sector-specific equivalent ratios, as applicable.
    - (j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof."
  - c. in Part C dealing with 'Corporate Governance Report', -
    - i. in clause (2), -
      - 1. in sub-clause (c), after the word "chairperson", the symbol and words ", and with effect from the Annual Report for the year ended 31st March 2019, including separately the names of the listed entities where the person is a director and the category of directorship" shall be inserted.
      - 2. after the existing sub-clause (g), the following new sub-clauses shall be inserted, namely, -
        - "(h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following:
          - (i) With effect from the financial year ending March 31, 2019, the list of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to

function effectively and those actually available with the board; and

- (ii) With effect from the financial year ended March 31, 2020, the names of directors who have such skills / expertise / competence
  - (i) confirmation that in the opinion of the board, the independent directors fulfill the conditions specified in these regulations and are independent of the management.
  - (j) detailed reasons for the resignation of an independent director who resigns before the expiry of his tenure along with a confirmation by such director that there are no other material reasons other than those provided."
- ii. in clause (9), after the existing sub-clause (p), the following new sub-clause shall be inserted, namely, -
  - "q) list of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, 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."
- iii. in clause (10), after the existing sub-clause (g), the following new sub-clauses shall be inserted, namely, -
  - "(h) Details of utilization of funds raised through preferential allotment or qualified institutions placement as specified under Regulation 32 (7A).
    - (i) a certificate from a company secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority.
    - (j) where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year, the same to be disclosed along with reasons thereof:
      - Provided that the clause shall only apply where recommendation of / submission by the committee is required for the approval of the Board of Directors and shall not apply where prior approval of the relevant committee is required for undertaking any transaction under these Regulations.
    - (k) 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."

Save as specified otherwise, the amendments to Schedule V shall be applicable in respect of Annual reports filed for the year ended March 31, 2019 and thereafter.

**AJAY TYAGI**  
Chairman

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## NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF MARCH 2018
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MARCH 2018
- KNOW YOUR MEMBER (KYM)
- PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019
- COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018
- PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2018-2019



# Institute News

## MEMBERS RESTORED DURING THE MONTH OF MARCH 2018

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	30013	CS KRISHNA SHARMA	WIRC
2	F	1420	CS ANIL KUMAR JAIN	NIRC
3	A	18811	CS RAJESH MAHESHWARI	WIRC
4	A	43834	CS HARSHA KUMAWAT	NIRC
5	A	19864	CS KAVITHA NATRAJAN IYER	WIRC
6	A	46546	CS SANJAY JHINGAN	NIRC
7	A	22955	CS KANU PRIYA TULSYAN	WIRC
8	A	10152	CS SHIV KRISHAN BIHANI	EIRC
9	A	46589	CS SHREYA K	SIRC
10	A	30456	CS KHUSBOO AGARWAL	SIRC
11	A	39497	CS SHAILJA DUBEY	wIRC
12	A	32394	CS SUMIT KAWARIYA	SIRC
13	A	19707	CS PINKESH KUMAR JAIN	WIRC
14	A	40569	CS GURPREET SINGH SIAL	NIRC
15	A	47288	CS KOMAL BHANDARI	WIRC
16	A	17352	CS KOMAL BHANDARI	WIRC
17	A	17217	CS NAMRATA MALUSHTE	WIRC
18	A	33982	CS PRATEEK AGRAWAL	EIRC
19	A	47466	CS ANUBHAV PRAKASH JAIN	WIRC
20	A	13334	CS DURGESH KUMAR PALIWAL	WIRC
21	A	45802	CS TABASSUM KAGZI	NIRC
22	A	37565	CS PRABHU G	SIRC
23	A	5405	CS S VELUSWAMY	SIRC
24	A	20988	CS BHAWNA SANGWAN	NIRC
25	A	21161	CS VIGNESH J	SIRC
26	A	37372	CS MONIKA GANDHI	NIRC
27	A	14395	CS MANVINDER SINGH	NIRC
28	A	11770	CS NARENDRA Y GANGAN	WIRC
29	A	46289	CS NEHA MAHESHWARI	WIRC
30	A	42240	CS SUMAT SINGHAL	NIRC
31	A	36938	CS SWEETY SHARMA	NIRC
32	A	38696	CS POOJA SHARMA	NIRC
33	A	45337	CS SRITY AGARWAL	EIRC
34	A	17291	CS G V KRISHNA KANTH	SIRC
35	A	31357	CS ADITI MALOO	NIRC
36	A	11682	CS VINAY GUPTA	WIRC
37	A	47191	CS POOJA GOPALDAS CHANDAK	WIRC
38	A	6196	CS D K GUPTA	EIRC
39	A	45922	CS RISHI KUMBHAT	NIRC
40	A	11350	CS KISHOR MADHAV THATTE	WIRC
41	A	26518	CS ABHISHEK MISHRA	NIRC
42	F	5610	CS UMAKANTA PATTANAYAK	EIRC
43	A	35949	CS BHUMIKA MEHUL THAKKAR	WIRC
44	A	12104	CS M NAGESWARA RAO	SIRC
45	A	36702	CS SISODIYA JANKIBEN JAYDEEPSINH	WIRC
46	A	22785	CS KAJAL GUPTA	NIRC

47	A	27308	CS DAPINDER KAUR	NIRC
48	A	23115	CS ANIL KUMAR DULANI	NIRC
49	A	32412	CS RAHUL BHANUDAS SHINDE	WIRC
50	A	6947	CS ANIL KUMAR GOEL	NIRC
51	A	9581	CS SURENDRA GUPTA	NIRC
52	F	3106	CS SRIRAMAN VENKATARAMAN	SIRC
53	A	12083	CS NEERAJ DEWAN	NIRC
54	A	17153	CS ANU AGRAWAL	NIRC
55	A	27382	CS KUNJAL NARESH SHAH	WIRC
56	A	23958	CS ANIRUDDHA DUTTA	EIRC
57	A	21496	CS ANITA JENA	SIRC
58	A	29064	CS AAKRITI TAMBI	WIRC
59	A	11317	CS SHIV KUMAR MITTAL	NIRC
60	A	24429	CS SANJAY KASTURE	EIRC
61	A	37495	CS NEERAJ NAGAR	WIRC
62	A	40119	CS MANISH JAIN	NIRC
63	A	28699	CS ASHUTOSH AVINASH MUGLIKAR	WIRC
64	A	25057	CS SUNITA TIWARI	WIRC
65	A	40273	CS PRATIK SUBHASHCHANDRA SHAH	WIRC
66	A	38947	CS ANUJ JAIN	NIRC
67	A	44158	CS LATA KARAMCHANDANI	NIRC
68	A	30541	CS POOJA BANSAL	NIRC
69	A	13648	CS AMIT JYOTINDRA PAREKH	WIRC
70	A	26325	CS NEHA GUPTA	NIRC
71	A	23327	CS K ULLAS KAMAT	SIRC
72	A	36012	CS SHWETA MADAN	NIRC
73	A	13016	CS MANISH KUMAR GANGWAL	EIRC
74	A	26581	CS GANESH DATT	NIRC
75	A	31585	CS PRAGYA VIRENDRA TIWARI	WIRC
76	F	3889	CS SUDHIR A BIDKAR	NIRC
77	A	29713	CS MONIKUNTALA BOWRA	WIRC
78	A	40834	CS LALITA BOHRA	EIRC
79	A	41349	CS V SUDHA	SIRC
80	A	38403	CS AKANSHA CHUGH	NIRC
81	A	11999	CS S VENKATACHALAM	WIRC
82	A	29506	CS PRIYANKA SHASTRI	NIRC
83	A	3372	CS V RAVICHANDRAN	NIRC
84	A	33070	CS BRAJESH GUPTA	WIRC
85	A	17466	CS MINI TRIPATHI	NIRC
86	A	41036	CS DIBYA KANT SARAF	EIRC
87	F	8760	CS ANURAG GUPTA	NIRC
88	A	37087	CS SHAFALI AGARWAL	NIRC
89	A	29456	CS HARDIK MEHTA	WIRC
90	A	36062	CS NIMISHA AGARWAL	NIRC
91	A	47251	CS SAGNIK SANYAL	EIRC
92	A	24219	CS ANIL NAGENDRA KALEKAR	WIRC
93	A	47177	CS PRERANA TIBREWAL	EIRC
94	A	34276	CS CHANDNI MOHINDRA	EIRC
95	A	43182	CS KINSHUK RAJKUMAR TIWARI	WIRC
96	A	46480	CS PRASHANT BALASAHEB GAIKWAD	WIRC
97	A	9545	CS ANAND MADHUSUDAN KHOT	WIRC
98	A	45417	CS SHIVANGI CHOUDHRY	NIRC
99	A	23842	CS MUGDHA VIREN MERCHANT	WIRC
100	A	47157	CS ASHWINI ANIL MHATRE	wIRC
101	A	25410	CS KAJAL GURNANI	NIRC
102	A	38075	CS KALPANA JAIN	wIRC
103	A	45776	CS SHREOSHI CHATTERJEE	EIRC
104	A	46942	CS PARUL JAIN	NIRC
105	A	45580	CS M H SUHAZ	SIRC





341	F	4231	CS MANOJ PRASAD SINGH	NIRC
342	A	25686	CS PANKAJ NANDAWAT	NIRC
343	A	5222	CS RAJ KUMAR SINGH	EIRC
344	A	41187	CS ADITYA MOHAN KHANDALWAL	EIRC
345	A	29592	CS SHUBHAM SHARMA	SIRC
346	A	7761	CS UMA RAMASWAMY	WIRC
347	A	21805	CS VENKATA NARAYANA PULLELA	SIRC
348	A	22442	CS HRUDAYA PURNA RAJESHWARI AN-NAVAJHALA	SIRC
349	A	28455	CS ANKIT KHATTAR	NIRC
350	A	44805	CS NEELAM DILIP CHOTRANI	WIRC
351	A	38315	CS DHEERAJ KUMAR	NIRC
352	F	7951	CS PAWAN KUMAR	NIRC
353	F	4211	CS SUNIL BANSAL	NIRC
354	A	22666	CS SHIKHA RAMPRAKASH PODDAR	NIRC
355	A	10985	CS MANISH SANSI	NIRC
356	A	34291	CS PRASHI CHOPRA	NIRC
357	A	5309	CS M R BHAT	SIRC
358	F	5295	CS SANJEEV KUMAR SINGH TOMAR	NIRC
359	A	26569	CS PRACHI MITTAL	NIRC
360	A	33281	CS ROHIT TANDON	NIRC
361	A	23318	CS MEENAKSHI N S BALA	SIRC
362	A	28724	CS SWEENA KHANUJA	WIRC
363	A	32494	CS DIMPLE MANGLA	NIRC
364	A	43464	CS ANGEERAJENDRAKUMAR SHAH	WIRC
365	A	43139	CS SIMRAN KHOSA	NIRC
366	A	44858	CS SEEMA YADAV	NIRC
367	A	22261	CS R SRIVIDHYA	SIRC
368	A	34457	CS VIVEK KISHORE DIDWANIA	WIRC
369	A	16167	CS SANDEEP SHANTILAL CHORDIA	WIRC
370	A	15195	CS RICHA KALIA	NIRC
371	A	17706	CS LALIT KUMAR KASLIWAL	WIRC
372	A	28674	CS AYUSHI ABHAY	NIRC
373	A	42934	CS YASSER KHAN	NIRC
374	A	16811	CS GAURAV JAIN	NIRC
375	A	46286	CS NIKITA BANSAL	WIRC
376	A	27792	CS ANUJ KESHARI	NIRC
377	A	28732	CS SANGITA BAJAJ	EIRC
378	A	22634	CS PAYAL VISHAL VYAS	WIRC
379	A	28425	CS MADHU KAUSHIK	NIRC
380	A	2217	CS NIREN KUMAR GUPTA	NIRC
381	A	11579	CS DEEPAK BANSAL	NIRC
382	A	12528	CS NAVEEN CHOUDHARY	NIRC
383	A	47332	CS NITIN JINDAL	NIRC
384	F	4323	CS ANAND PRAKASH GARG	NIRC
385	F	1377	CS S PONRAJ	SIRC
386	F	1834	CS MAN MOHAN GUPTA	NIRC
387	F	7214	CS RAKESH KUMAR PRUSTI	NIRC
388	F	3404	CS SUNIL KUMAR MALHOTRA	NIRC
389	F	4220	CS MINNI KATARIA	NIRC
390	F	3110	CS SUNIL KATARIYA	NIRC
391	F	362	CS RAMJI LAL BATHWAL	EIRC
392	F	3463	CS V CHANDRASEKAR	SIRC
393	F	2575	CS LALIT KUMAR SADANI	EIRC
394	F	9036	CS HARPREET KAUR	NIRC
395	F	2025	CS G P AGRAWAL	NIRC
396	F	4387	CS PARDEEP VERMA	NIRC
397	F	4609	CS RAJ KUMAR ARORA	NIRC
398	F	2635	CS ARVIND SHARMA	NIRC

399	F	3568	CS ANTIMA GOEL	NIRC
400	F	3569	CS RAVI BHUSHAN GOEL	NIRC
401	A	45712	CS BHARAT VINOD GOYAL	WIRC
402	A	13962	CS ANITA ANANT HALBE	WIRC
403	A	25722	CS RENU ATTREE	SIRC
404	A	13612	CS ANIL KUMAR AGGARWAL	NIRC
405	A	10460	CS S RAGHUNATH	WIRC
406	A	13548	CS GEETHA SRINIVASAN	SIRC
407	A	8138	CS V SATYANARAYANAN	WIRC
408	A	10682	CS SUNIL AGRAWAL	WIRC
409	A	33880	CS HANI THOMAS MAMPILLY	SIRC
410	A	45863	CS NIDHI SAMKIT SHAH	WIRC
411	A	16090	CS GANESH RAM JAIN	NIRC
412	A	50239	CS KAMLESH KUMAR MISHRA	NIRC
413	A	23025	CS DIVYA PINCHA	EIRC
414	A	18119	CS ARUNMOZHI G.	SIRC
415	A	33623	CS KRITIKA SHARMA	NIRC
416	A	10970	CS K RAMESH	SIRC
417	A	6955	CS HEMANT SINGHAL	NIRC
418	A	19151	CS PUNEET GOYAL	NIRC
419	A	3871	CS K SELVANAYAGAM	SIRC
420	A	7144	CS SHIV RATAN KANODIA	SIRC
421	A	17515	CS SAPNA PARWAL	WIRC
422	A	9974	CS PRAN GOPAL CHANDA	EIRC
423	A	3160	CS K NARAYANA RAO	NIRC
424	A	10983	CS ANIL BINDURAO SHEDBAL	SIRC
425	A	16760	CS MANOJ KUMAR BHATT	NIRC
426	A	13212	CS OM PRAKASH GUPTA	WIRC
427	A	44624	CS SHWETA SHARMA	EIRC
428	A	18177	CS ANUP KUMAR CHANDAK	EIRC
429	A	42624	CS SHRUDHI HARIDAS MENON	WIRC
430	A	24893	CS OMKAR VILAS DEOSTHALE	WIRC
431	A	18928	CS SOFIA H SURANA	SIRC
432	A	23843	CS AJAY KUMAR GUPTA	EIRC
433	A	26688	CS SIMRAT AHLUWALIA BHASKAR	NIRC
434	A	34033	CS ISHA DUHAN	NIRC
435	A	34115	CS SHIVANI JAIN	NIRC
436	F	2115	CS RAMAUTAR SHRINIWAS BUBNA	WIRC
437	F	7010	CS SHASHI KUMAR TANEJA	NIRC
438	A	12713	CS VIKAS GOELA	NIRC
439	A	19862	CS VIVEKANANDA S.	SIRC
440	A	35373	CS KIRTI M SAWANT	WIRC
441	A	12433	CS GOVIND PANI	SIRC
442	A	17081	CS SANAM SANDEEP BALANI	WIRC
443	A	10733	CS SURESH RAJAGOPAL	WIRC
444	A	26874	CS GEETANJALI SHEKHAWAT	WIRC
445	A	6699	CS R J SABOO	WIRC
446	A	23110	CS SHELLY SHARMA	NIRC
447	A	18530	CS VANDANA VIVEK PRABHU	WIRC
448	A	7694	CS KRISHNAMACHARY RAMESH	SIRC
449	A	22905	CS BRIJESH KOTHARI	EIRC
450	A	7309	CS V R JAIN	NIRC
451	A	8769	CS VINOD KUMAR GUPTA	EIRC
452	A	45211	CS PREETHI S	SIRC
453	A	11511	CS BIPASHA BANERJEE	EIRC
454	A	4821	CS SUSHIL KUMAR JAIN	NIRC
455	A	6347	CS P S DESHPANDE	WIRC
456	A	15578	CS ABHINARAYAN MISHRA	NIRC
457	A	8299	CS M S SREENEVAS	SIRC





574	A	12923	CS PRADEEP KUMAR JHALANI	NIRC
575	A	15055	CS VINAY G. NADKARNI	WIRC
576	A	15980	CS MUKUN ARORA	NIRC
577	A	4505	CS R R MIRANDA	WIRC
578	A	12750	CS M S SHARADA	SIRC
579	A	25428	CS AMRITA KUMARI	WIRC
580	A	21266	CS AMIT YADAV	NIRC
581	A	14376	CS NARAYAN CHAKRAPANI	SIRC
582	A	21070	CS LATA KUMARI	NIRC
583	A	26308	CS SAUMYA PADMASHEKHAR PUTHRAN	WIRC
584	A	43984	CS KRUTIKA MAHESHWARI	WIRC
585	A	21176	CS ANKITA HALWAI	WIRC
586	A	38764	CS APOORVA BUDHIRAJA	NIRC
587	A	21542	CS SHEETAL CHITLANGE	WIRC
588	A	24109	CS SUYOG SATHYA NARAYAN CHITLANGE	WIRC
589	A	11092	CS S CHANDRASEKAR	SIRC
590	A	8395	CS A P MATHEW	SIRC
591	A	11712	CS S KASTHURIRANGAN	SIRC
592	A	34880	CS MITHILA MOHAN RATHOD	WIRC
593	A	41810	CS JANNADA VIJAY KUMAR	SIRC
594	A	21652	CS SAKET KUMAR SINGH	NIRC
595	A	4701	CS NIRMAL KUMAR GANGWAL	WIRC
596	A	30470	CS PINKY LALWANI	WIRC
597	A	12615	CS SAURABH PARIKH	WIRC
598	F	5100	CS KRISHAN ARORA	NIRC
599	A	26081	CS DINESH KUMAR AGARWAL	EIRC
600	F	3469	CS GIRISH N SANGHAVI	WIRC
601	A	30266	CS RUPAL AGRAWAL	WIRC
602	A	36929	CS TEJASWI ANANDKUMAR VASTRAD	WIRC
603	A	24308	CS DEEPAK JAIN	NIRC
604	A	23477	CS SANDEEP GUPTA	NIRC
605	A	23049	CS ROHIT SABOO	WIRC
606	A	13042	CS SHIPRA SINGHAL	F/NIRC
607	A	30986	CS ARCHANA SONI	NIRC
608	A	20221	CS ANKUR MEHROTRA	SIRC
609	A	17065	CS SAMEER SHAM WAGH	WIRC
610	A	31275	CS DENZIL RALPH DSOUZA	WIRC
611	A	24979	CS ANIL MOTILAL PANDYA	WIRC
612	A	3201	CS M NACHIMUTHU	SIRC
613	A	18166	CS SOURABH AGRAWAL	SIRC
614	A	19727	CS HIMANSHU AGGARWAL	NIRC
615	A	13201	CS KUNTAL ROY CHOWDHURY	EIRC
616	A	18455	CS BRIJMOHAN JAIPRAKASH BOHRA	WIRC
617	A	35834	CS RAJ RAMESH GUPTA	WIRC
618	A	40518	CS SARAL SHARMA	NIRC
619	A	24971	CS YUDHVEER MAAN	NIRC
620	A	44082	CS JATINDER KUMAR	NIRC
621	F	4883	CS SAMEER RAI	NIRC
622	F	4219	CS VIRAJ SHAMBHU KULKARNI	WIRC
623	F	5241	CS KAMALJEET KAUR SIDDHU	WIRC
624	A	11512	CS RANAJIT KUMAR MISHRA	NIRC
625	F	8905	CS SOHAN LAL JALAN	EIRC
626	A	38448	CS BHASKAR KUMAR CHATURVEDI	NIRC
627	A	28745	CS VIJAYA AGRAWAL	WIRC
628	A	17951	CS SUNIL KUMAR JHA	WIRC
629	A	16773	CS CHANDREYEE BANERJEE	EIRC
630	A	13278	CS K M GOPI KUMAR	SIRC
631	F	7817	CS SANJAY KUMAR JAIN	NIRC
632	A	22898	CS SURABHI PAWAR	NIRC

633	A	34306	CS ABHISHEK VED	WIRC
634	A	17832	CS VISHWASH AGRAWAL	SIRC
635	A	12776	CS RAHUL BHANDARI	WIRC
636	A	34367	CS CHAITANYA KUMAR JHA	NIRC
637	A	28045	CS MANJEETA ASTHANA	NIRC
638	A	44653	CS HARSIMRAN PAHWA	NIRC
639	A	29207	CS SHEKHAR CHOPRA	NIRC
640	A	38061	CS RITU	NIRC
641	A	22111	CS SANJAY GOSWAMI	NIRC
642	A	31432	CS VENKATESHAN S	SIRC
643	A	42839	CS KAVITA RAI	NIRC
644	A	34981	CS PARUL RASTOGI	NIRC
645	A	22489	CS SUKHPREET KAUR MAKKAR	NIRC
646	A	28050	CS SARADA ADHIKARI	NIRC
647	A	47842	CS ABHISHEK	NIRC
648	A	27102	CS SIMRANJEET SINGH	NIRC
649	A	45637	CS MAHIMA BANSAL	NIRC
650	A	5093	CS AMISH HAMIR MEHTA	WIRC
651	A	47584	CS VIRENDRA CHHATWANI	WIRC
652	F	3543	CS PRADEEP KUMAR PANDA	NIRC
653	F	7914	CS JAYESH KUMAR RAMJIBHAI DOBARIA	WIRC
654	F	7179	CS VINIT KUMAR	NIRC
655	F	2329	CS VISHNU GOPAL GUPTA	NIRC
656	A	48291	CS NISHANT CHAUHAN	NIRC
657	A	4761	CS JINENDRA KUMAR SETHI	NIRC
658	F	7203	CS NITI DWIVEDI	NIRC
659	F	1736	CS RAJINDER KUMAR	NIRC
660	F	7268	CS JAYAKRUSHNA DAS	EIRC
661	A	10146	CS PANKAJ KALANI	WIRC
662	A	19745	CS RUDRA KUMAR PANDEY	NIRC
663	A	32428	CS RAJNEESH THAKUR	NIRC
664	A	17545	CS JYOTI ARORA	NIRC
665	A	40964	CS PRASUN TIBREWAL	EIRC
666	A	1080	CS A SAMPATH	SIRC
667	A	28896	CS SANDEEP CHOUDHARY	NIRC
668	A	24492	CS NEELU GROVER	NIRC
669	F	7492	CS BRAJ MOHAN PRASAD	SIRC
670	F	7626	CS YOGESH KUMAR SHARMA	NIRC
671	F	1975	CS SUNIL KUMAR GOEL	NIRC
672	A	23414	CS NISHANT K UPADHYAY	SIRC
673	A	28974	CS ISHA KHOSLA	NIRC
674	A	32929	CS ANJALI PUROHIT	NIRC
675	F	5747	CS RACHNA BATRA	NIRC
676	A	38653	CS PUNITA LOHARKA	NIRC
677	F	7902	CS MANOJ JOSHI	WIRC
678	A	24146	CS HONEY GUPTA	NIRC
679	A	18036	CS S ARAVINTHAN	SIRC
680	A	36991	CS SANJEEV LOHANI	WIRC
681	A	43810	CS HIMANSHU KHURANA	NIRC
682	A	25469	CS SHABNAM SIDDIQUI	SIRC
683	A	16416	CS RAJIV KUMAR VIRMANI	NIRC
684	A	7480	CS NARENDRA DAHYABHAI SHAH	WIRC
685	A	12490	CS MANISH KUMAR SITLANI	WIRC
686	A	37574	CS NISHA VIJAY PATIL	SIRC
687	A	7927	CS VIJAY VALLABHADAS PAREKH	WIRC
688	A	30871	CS VIKAS GARG	WIRC
689	A	8840	CS RAMAKRISHNAN SRIDHAR	SIRC
690	F	7977	CS SASMITA PARIDA	NIRC
691	A	5812	CS PRAKASH A DOSHI	WIRC

## CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MARCH 2018

SL. NO	NAME	ACS/FCS NO.	COP NO.	REGN.
1	MR. RAHUL MATHUR	ACS - 41855	15842	NIRC
2	MRS. PRIYA GARG	ACS - 22866	8483	SIRC
3	MR. NITUL BORUAH	ACS - 45582	18340	EIRC
4	MS. BHAVYA SHARMA	ACS - 44168	17421	NIRC
5	MS. SHAHANA ISTAK KHAN	ACS - 45259	16728	WIRC
6	MR. SOURAV AGARWAL	ACS - 35960	13340	EIRC
7	SH. COYALKAR UDAYA RAJ	FCS - 4866	19222	SIRC
8	MS. CHEMBOLU SHARDA SHASTRY	ACS - 23602	15420	SIRC
9	MS. KOMAL SULANIYA	ACS - 39819	15162	NIRC
10	MR. ADIL KHAN	ACS - 43737	18746	NIRC
11	MS. ANNU CHANDAK	ACS - 48519	19949	WIRC
12	MS. DIVYA GUPTA	ACS - 45062	16727	NIRC
13	MR. SHARON JOSH	ACS - 48960	18200	SIRC
14	MS. AYUSHI MAURYA	ACS - 35923	14604	SIRC
15	MS. RULIJ AGARWAL	FCS - 8777	9463	SIRC
16	MR. RAJESHKUMAR GOBARBHAI JOGANI	ACS - 35734	13208	WIRC
17	MS. ARTIKUMARI RAMSUBANSH SHARMA	ACS - 28379	16863	WIRC
18	MS. PUJA KUMARI AGARWAL	ACS - 42762	15852	EIRC
19	MR. SAIBAL CHATTOPADHYAY	ACS - 29220	19612	WIRC
20	MR. NARESH KUMAR GOEL	ACS - 31967	16901	NIRC
21	MS. NEELAM HARDIK SHAH	ACS - 25006	11192	WIRC
22	MS. ARUNA KUMARPAL JAIN	ACS - 25577	9924	WIRC
23	MR. YASH GUPTA	ACS - 40508	15031	WIRC
24	MS. POOJA JAIN	ACS - 38495	16216	EIRC
25	MR. ANKUR JAIN	ACS - 37788	14112	NIRC
26	MR. VIK MOHAPATRA	ACS - 44600	17644	WIRC
27	SH. VIRINICHPURAM JAGANNATHAN BALAKRISHNAN	ACS - 23831	17453	SIRC
28	MS. POOJA GUPTA	ACS - 42583	15843	NIRC
29	SH. YOGESH KUMAR CHOUHAN	ACS - 18669	17413	NIRC
30	SH. GAURAV KAPOOR	ACS - 17160	15150	NIRC
31	MR. RAHUL KUMAR BANSAL	ACS - 50382	18487	NIRC
32	MR. VIVEK RANJAN SAHU	ACS - 35169	14274	NIRC
33	MS. SHANU BHANDARI	ACS - 31268	19926	WIRC
34	SH. SATISH CHANDRA JAIN	FCS - 4070	16263	WIRC

35	MS. TAPASI DAS	ACS - 22310	14533	WIRC
36	MS. SWETA AGARWAL	ACS - 33983	12874	EIRC
37	MS. RAMASWAMY KANAKATHARA	ACS - 36147	13389	SIRC
38	MS. MITI SHIKHAR SRIVASTAVA	ACS - 45756	19573	NIRC
39	MS. SONAL BAJAJ	ACS - 49653	18009	NIRC
40	MS. AYUSHI AGARWAL	ACS - 43520	16550	NIRC
41	MS. SONIA MANORANJAN KHURANA	ACS - 35395	19912	WIRC
42	MS. GUNJAN GAUR	ACS - 37407	19000	NIRC
43	MS. JELPHINE ANGEL IRUDAYARAJ NADAR	FCS - 9204	10602	SIRC
44	MR. MINAAL CHAWLA	ACS - 49987	19869	NIRC
45	MRS. DEBARATI GUPTA	ACS - 27763	14461	EIRC
46	MS. NANCY GULATI	ACS - 40670	17504	NIRC
47	MS. MONIKA LATH	ACS - 37485	14059	WIRC
48	MS. HIMA GOEL	ACS - 40688	16475	NIRC
49	MS. KINJAL PRAKASH MEHTA	ACS - 31196	17222	SIRC
50	MS. MEGHA KHANDLWAL	ACS - 46837	17523	NIRC
51	MS. DIPIKA SENAPATI	ACS - 36536	14737	EIRC
52	MS. POONAM KUMARI	ACS - 37057	14454	NIRC
53	MR. JIT ROY CHOUDHURY	ACS - 44368	19260	EIRC
54	MS. AKSHARA PAREEK	ACS - 41780	16807	NIRC
55	MS. NIKITA GANDHI	ACS - 31075	18635	NIRC
56	MR. HIMANSHU YADAV	ACS - 44654	16676	NIRC
57	SH. BIRENDRA KUMAR JAIN	ACS - 8305	19647	EIRC
58	SH. VINOD KUMAR	FCS - 5463	4689	EIRC
59	MS. NEHA SHARMA	ACS - 38029	14227	EIRC
60	MR. SAURABH ARORA	ACS - 47131	17235	NIRC
61	MRS. JAYSHREE NARENDRA KAKANI	ACS - 21475	17128	WIRC
62	MS. DEEPMALA MALL	ACS - 28146	10054	WIRC
63	MS. RADHA SHARMA	ACS - 47855	18412	NIRC
64	MS. SUMAN GUPTA	ACS-52408	19255	EIRC
65	MR PANKAJ KUMAR SINGHAL	FCS-6385	6958	NIRC
66	MR AKSHAT CHECHANI	ACS-23506	17500	WIRC
67	MR VAGHELA RAVIRAJ SINH PRAVINSINH	ACS-51017	19230	WIRC
68	MS SHUCHI KHANDLWAL	ACS-30549	16467	NIRC
69	MS MARILYN JACOB	ACS-42445	17080	SIRC
70	MR MOHAMMAD SHAMSHUDDIN NALBAND	ACS-34059	14594	SIRC
71	MS PRIYANKA SHEKHAR SHIRODKAR	ACS-46920	18917	WIRC

## Know Your Member (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link:  
[https://www.icsi.in/student/Portals/0/Manual/KYM\\_Usermanual.pdf](https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf)

## ATTENTION MEMBERS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiatees and issuance of Certificate of Practice, kindly refer to the link <http://www.icsi.edu/Member.aspx>

## PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019

The annual membership fee and certificate of practice fee for the year 2018-2019 has become due for payment w.e.f. 1<sup>st</sup> April, 2018. The last date for the payment of fee is 30<sup>th</sup> June, 2018.

The membership and certificate of practice fee payable is as follows:

Particulars	Associate (admitted till 31.03.2015)	Associate (admitted on or after 01.04.2015)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee *	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

\* Fee inclusive of applicable GST @ 18%.

A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration to that effect. Please note the members possessing the Certificate of Practice can not avail the benefit of concession in annual membership fee.

The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu)

### MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

- I. (i) Online (through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu)))
- II. (ii) Cheque at par/Demand draft/Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter. The members are requested to ensure that their cheque/DD reaches us latest by 25-06-2018.
- III. (iii) At ICSI HQ at Delhi or Noida in person by cash/cheque at par/DD at the reception counter from 9:00 am to 4:00 pm.

For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id [jitendra.kumar@icsi.edu](mailto:jitendra.kumar@icsi.edu)

## CONGRATULATIONS !!!

**Ms. Shivani Kapur (ACS 43326)** on securing All India Rank 469 in UPSC Civil Services Examinations, 2017.

*The Institute of Company Secretaries of India and the entire CS fraternity is proud on her achievement.*

*We are hopeful that the budding students and members of the Institute shall look upto her as a role model and work with greater diligence and zeal towards achievement of their goals.*

*The Institute wishes Ms. Kapur the very best of luck in her future endeavours !!!*

## APPOINTMENTS

### Required Company Secretary

**Last Date of Submission  
of Applications:  
20 June, 2018**

**CS as Employees required by our  
client at Delhi Lakshmi Nagar  
Area and at Meerut.**

**Minimum 3 Years Experience  
is required,  
Please Contact at  
9837064956.**

## COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018

### PAYMENT OF ANNUAL MEMBERSHIP FEE FOR FY 2018-19 AND UPLOADING OF PHOTOGRAPH AND SIGNATURE ON THE PORTAL OF THE INSTITUTE

The term of the existing Council and the Regional Councils will expire on 18th January 2019 and the elections for the new Council / Regional Councils will be held during the month of December 2018. In accordance with Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006, a member, whose name is borne on the Register of Members on the 1st day of April 2018 shall be eligible to vote in the election from the Regional constituencies within whose territorial jurisdiction his/her professional address falls on the 1st day of April 2018, provided that on the date of publication of the list of voters, his/her name has not been removed from the Register in terms of Section 20 of the Company Secretaries Act, 1980. If the professional address is not borne on the Register on the 1st day of April 2018, the residential address borne on the Register on the 1st day of April 2018 shall be determining his/her Regional constituency. In the case of members having their professional address outside India and eligible to vote, their Regional Constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register on the relevant date, whichever is later.

The members who have not yet applied for the issue of the identity cards may apply for the same at [kedar.singh@icsi.edu](mailto:kedar.singh@icsi.edu)

Members should also ensure that their scanned photograph and signature in .jpg format are uploaded on the online portal of the Institute.

#### Online Steps for Uploading of photo image:

- Login to portal [www.icsi.edu](http://www.icsi.edu)
- Click Online services on the right top corner and then click Member Login
- Fill the User name which is the membership number (e.g. A1234) and then the Password.
- (In case a member does not have/remember his/her password, he/she can get the password by clicking on to the Retrieve option. The password will be sent to his/her email registered with the Institute. Alternately, he/she may email at [jitendra.kumar@icsi.edu](mailto:jitendra.kumar@icsi.edu) from his/her email registered with the Institute to get the password on the said email id)
- After login, go to Members Option (from top menu) then click on Manage Account and then click on Manage Image
- Then upload Photo (passport size) and Signature and click on Upload button

In case members face any problem in uploading, they may send their scanned photo / signature in .jpg format at the email id – [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu)

**(Dinesh Chandra Arora)**  
Secretary, ICSI

### PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2018-2019

The annual Licentiate subscription for the year 2018-2019 has become due for payment w.e.f 1st April, 2018. The last date for the payment of same is 30th June, 2018. The Licentiate subscription payable is Rs.1180/- per year inclusive of applicable GST@18%.

You are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1180/- by way of Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating your name and Licentiate number on the reverse of the Demand Draft/ Cheque. The details of remittance may please be intimated at email id [licentiate@icsi.edu](mailto:licentiate@icsi.edu)

# 6

## MISCELLANEOUS CORNER



- GST ACCOUNTS ASSISTANT COURSE
- ETHICS & SUSTAINABILITY CORNER
- CG CORNER
- GST CORNER



Dear Student,

## Sub: GST Accounts Assistant Course

Hon'ble Prime Minister, Shri Narendra Modi while inaugurating Golden Jubilee Year Celebrations, addressed the CS fraternity and conveyed the need of the hour for the Company Secretaries to play an active role in producing a new business culture. Shri Narendra Modi shared that nearly 19 lakh new citizens have come under the scope of indirect taxes following the implementation of GST. He emphasized that a small trader or a big trader, everyone should adopt the honest tax system inbuilt in the GST and it was also the duty of Company Secretaries to encourage the business community in this regard. The Prime Minister reposed confidence that ICSI would shoulder the responsibility to train One Lakh youth about minutest nuances related to GST to build their capacities and hone up their skills so that they can help small businesses and traders in their area linking them with GSTN, in filing returns after receiving a short term training and earning their livelihood in return.

The Institute took up this opportunity endowed by the Hon'ble Prime Minister and joined hands with National Skill Development Corporation (NSDC) to organize a Training Program on GST for students. The Institute is inviting students for taking up this Training Programme being organized all across the nation through the Skill Development Centres empanelled with NSDC.

### GST Accounts Assistant

The Course trains candidates for the job of a "Goods & Services Tax (GST) Accounts Assistant", in the "BFSI" Sector/ Industry and aims at building the key competencies amongst the learners about GST. With access to around 500 Training Centres, the course is accessible across India and is 'Free of Cost'. The course enables the students to help the small/ big size business entities, traders and others in understanding GST and help them in filing their taxes and maintaining the proper systems/data for the same.

### Deliverables

- » Compute Tax Liabilities namely GST, Filing of Returns and maintaining records of the same for audit purpose
- » Fill the form and register under GST
- » Make payment electronically of such amount of tax liability
- » Fill-up the tax return form in the prescribed format with relevant transaction details
- » File periodic GST Returns independently

We enclose the course detail and request interested students to confirm their willingness for the GST Course by filling up the form at: [https://www.icsi.edu/GST\\_AAC.aspx](https://www.icsi.edu/GST_AAC.aspx) latest by May 06, 2018.

For more information please write to [gstcourse@icsi.edu](mailto:gstcourse@icsi.edu) or speak to the following helpline number: 88000-55555 (NSDC) (Toll-free)

We look forward to your enrollment to enhance your skills and abilities and get benefitted from the same.

Best Regards,  
**CS Makarand Lele,**  
President

*PS: All candidates successfully completing the training should send their details to the Institute to [gstcourse@icsi.edu](mailto:gstcourse@icsi.edu) for hosting the same on the ICSI website and dissemination amongst the prospective employers and other stakeholders.*

# Goods & Services Tax (GST) Accounts Assistant

## Curriculum

This program is aimed at training candidates for the job of a “Goods & Services Tax (GST) Accounts Assistant”, in the “BFSI” Sector/Industry and aims at building the following key competencies amongst the learner.

<b>Program Name</b>	<b>Goods &amp; Services Tax (GST) Accounts Assistant</b>		
<b>Qualification Pack Name &amp; Reference ID.I D</b>	BSC/Q0910		
<b>Version No.</b>	1.0	<b>Version Update Date</b>	20 <sup>th</sup> June, 2017
<b>Pre-requisites to Training</b>	Graduation in commerce or allied subject		
<b>Training Outcomes</b>	<p><b>After completing this programme, participants will be able to:</b></p> <ul style="list-style-type: none"> <li>• Compute tax liabilities namely GST, making to the Government, filing of returns and maintaining records of the same for audit purpose.</li> <li>• Fill the form and register under GST</li> <li>• Make payment electronically of such amount of tax liability.</li> <li>• Fill-up the tax return form in the prescribed format with relevant transaction details.</li> <li>• File periodic GST Returns independently</li> </ul>		

This course encompasses 2 out of 2 National Occupational Standards (NOS) of “Goods and Services Tax (GST) Accounts Assistant” Qualification Pack issued by “BFSI”.

Sr. No.	Module	Key Learning Outcomes	Equipment Required
1	<p><b>Understanding GST Concepts</b></p> <p><b>Theory Duration</b> (hh:mm) 09:00</p> <p><b>Practical Duration</b> (hh:mm) 06:00</p> <p><b>Corresponding NOS Code</b> <b>BSC/N0910</b></p>	<ul style="list-style-type: none"> <li>• Describe Goods &amp; Services with their cross linkages</li> <li>• Identify the Fundamental Concepts of GST</li> <li>• Identify cases where CGST and SGST will work simultaneously</li> <li>• Explain how IGST is levied</li> <li>• Identify whether a transaction is taxable under CGST, IGST or SGST</li> </ul>	White board, Marker, Overhead projector, Laptop, Internet access

## Goods & Services Tax (GST) Accounts Assistant

2	<p><b>Incidence of Taxation</b> <b>Theory Duration</b> (hh:mm) 06:00</p> <p><b>Practical Duration</b> (hh:mm) 04:00</p> <p><b>Corresponding NOS Code</b> <b>BSC/N0910</b></p>	<ul style="list-style-type: none"> <li>• Identify the Incidence of Taxation</li> <li>• Learn about Time of Supply of Goods</li> <li>• Learn on Purpose of place of supply</li> <li>• Define Location of supplier of goods</li> <li>• Define the recipient with respect to supplies involving payment and supplies not involving payment</li> </ul>	<p>White board, Marker, Overhead projector, Laptop, Internet access</p>
3	<p><b>Registration</b> <b>Theory Duration</b> (hh:mm) 06:00</p> <p><b>Practical Duration</b> (hh:mm) 04:00</p> <p><b>Corresponding NOS Code</b> <b>BSC/N0911</b></p>	<ul style="list-style-type: none"> <li>• Outline the PAN based Registration Process, its rules, and the Purpose of registration</li> <li>• Explain single or separate registration for business vertical</li> <li>• Identify whether registration should be done centrally or selectively in each state</li> <li>• List the details to be furnished during registration</li> <li>• Identify common mistakes made during registration</li> <li>• Differentiate between Taxable Person vs. Registered Person</li> <li>• Identify the Registration Timelines – Migrations</li> <li>• Explain the benefits of registration</li> <li>• Demonstrate form filling with case studies</li> </ul>	<p>White board, Marker, Overhead projector, Laptop, Internet access</p>
4	<p><b>Calculation of Tax Liability</b></p> <p><b>Theory Duration</b> (hh:mm) 19:00</p> <p><b>Practical Duration</b> (hh:mm) 14:00</p> <p><b>Corresponding NOS Code</b> <b>BSC/N0911</b></p>	<ul style="list-style-type: none"> <li>• Define Input Credit</li> <li>• Identify Input Tax Credit eligibility using case studies</li> <li>• Explain the concept of reversal of VAT</li> <li>• Define tax liability for Goods in Transit</li> <li>• Define Consideration</li> <li>• Value transactions having non-monetary consideration</li> <li>• Define Consideration</li> <li>• Value transactions having nonmonetary consideration</li> </ul>	<p>White board, Marker, Overhead projector, Laptop, Internet access</p>
5	<p><b>Maintenance of Books &amp; Records</b> <b>Theory Duration</b> (hh:mm) 09:00</p> <p><b>Practical Duration</b> (hh:mm) 15:00</p>	<ul style="list-style-type: none"> <li>• Maintain different types of ledgers</li> <li>• Prepare documents such as Invoice, Credit Note and Debit Note.</li> <li>• Identify the different types of returns and their applicability to the business- Monthly Returns, Quarterly Returns</li> </ul>	<p>Marker, Overhead projector, Laptop,</p>



	<b>Corresponding NOS Code BSC/N0911</b>	<ul style="list-style-type: none"> <li>• Navigate the GST Websites-GSTN, CBEC etc.</li> <li>• File periodic returns online</li> </ul>	Internet access
6	<b>Payment under GST Theory Duration</b> (hh:mm) 04:00  <b>Practical Duration</b> (hh:mm) 04:00  <b>Corresponding NOS Code BSC/N0911</b>	<ul style="list-style-type: none"> <li>• Identify the Types of Payment, Modes of Payment, Rules of Collection of Tax</li> <li>• Prepare different Challans, CPIN &amp; CIN</li> <li>• Distinguish between TDS and TCS</li> <li>• Identify cases for reversal of credit</li> <li>• Calculate tax based on various Case studies</li> <li>• Memorize the due dates for payment</li> <li>• List the Penalties for late payments</li> <li>• Demonstrate the process of online payment</li> </ul>	Marker, Overhead projector, Laptop, Internet access
	<b>Total Duration</b>  <b>Theory Duration 53:00</b>  <b>Practical Duration 47:00</b>	<b>Unique Equipment Required:</b> Laptop, white board, marker, projector, Internet Access	

Grand Total Course Duration: **100 Hours, 0 Minutes**

## Criteria For Assessment Of Trainees

**Job Role :** GST Accounts Assistant

**Qualification Pack :** BSC/0910

**Sector Skill Council** BFSI Sector Skill Council

### Guidelines for Assessment

1. Criteria for assessment for each Qualification Pack will be created by the Sector Skill Council. Each Performance Criteria (PC) will be assigned marks proportional to its importance in NOS. SSC will also lay down proportion of marks for Theory and Skills Practical for each PC.
2. The assessment for the theory part will be based on knowledge bank of questions created by the SSC.
3. Assessment will be conducted for all compulsory NOS, and where applicable, on the selected elective/option NOS/set of NOS.
4. Individual assessment agencies will create unique question papers for theory part for each candidate at each examination/training centre (as per assessment criteria below).
5. Individual assessment agencies will create unique evaluations for skill practical for every student at each examination/training centre based on this criterion.
6. To pass the Qualification Pack, every trainee should score a minimum of 70% of aggregate marks to successfully clear the assessment.
7. In case of unsuccessful completion, the trainee may seek reassessment on the Qualification Pack.

Compulsory NOS				Marks Allocation	
Total Marks: GST Account Assistant - 150 BSC/N0910 : Identifying GST Taxable Event – 50 BSC / N0911: Maintaining GST Records and Filing GST Returns - 100					
Assessment outcomes	Assessment Criteria for outcomes	Total Marks (150)	Out Of	Theory	Skills Practical
1. BSC/N0910:  <b>Identifying GST Taxable Event</b>	PC1. Recognise the applicability of SGST, CGST and IGST		50	20	30
	PC2. Define the concept of supply				
	PC3. Differentiate between taxable and nontaxable supply				
	PC4. Define the taxable event with respect to supply of goods				
	PC5. Identify the place of supply so as to decide the applicability of the tax				
	PC6. Define what is meant by the location of supplier of goods				
2. BSC/N0911:  <b>Maintaining GST Records and Filing GST Returns: Registration under GST</b>	PC1. List down the registration process for single or separate business		25	10	15
	PC2. Note down the details to be furnished during the registration				
	PC3. Differentiate between taxable person versus registered person				
	PC4. Understand the benefits of registration				
	PC5. Register an Assessee under GST Independently				
3. BSC/N0911:  <b>Maintaining GST Records and Filing GST Returns: Calculation of Tax Liability</b>	PC6. Identify instances for eligibility of input credit		25	10	15
	PC7. Identify set-offs under GST wherever applicable				
	PC8. Identify in detail carry over credit, capital goods credit, embedded credits etc.				
	PC9. Differentiate between consideration and valuation				
4. BSC/N0911:  <b>Maintaining GST Records and Filing Returns: Maintenance of Books and Records and Filing of Returns</b>	PC10. Maintain the different types of ledgers		25	10	15
	PC11. Prepare different types of periodic returns to be filed				
	PC12. File Returns Online				
4. BSC/N0911:  <b>Maintaining GST Records and Filing Returns: Maintenance of Books and Records and Filing of Returns</b>	PC13. List the different types of payment, due dates, modes of payment with rules and collection of tax, penalties etc.		25	10	15
	PC14. Differentiate on TDS versus TCS				
	PC15. Calculate the amount of tax payable				
	PC24. Make the payment online				
<b>Total</b>		<b>150</b>	<b>150</b>	<b>60</b>	<b>90</b>

## Developments – April, 2018

### Japan: Revision of the Corporate Governance Code and Establishment of Guidelines for Investor and Company Engagement

The Financial Services Agency (under the Government of Japan) established a Council of Experts on Japan's Corporate Governance and Stewardship Codes for further improvements of corporate governance. The Council of Experts is proposing revisions to the Governance Code and the introduction of Guidelines on investor engagement.

The Council of Experts has examined the progress of Japan's corporate governance reform, and has made proposals to revise the Corporate Governance Code in order to make it more deepen and substantive. In addition, in order to encourage institutional investors and companies to effectively implement the Stewardship Code and the Corporate Governance Code on a "comply or explain" basis, the Council has proposed the drafting of Guidelines for Investor and Company Engagement.

The basic ideas underlying this proposal for the Code Revision Draft and the Engagement Guidelines Draft are as follows:

#### 1. Management Decisions in Response to Changes in the Business Environment

The aim of corporate governance reform is to promote sustainable growth and increase corporate value over the mid to long-term by encouraging decisive decisions by management.

#### 2. Investment Strategy and Financial Management Policy

Strategic and systematic investments in fixed assets, R&D, and human resources are important for companies to generate sustainable growth and increase corporate value over the mid- to long-term. In making such investments, it is also important to conduct appropriate financial management which is consistent with investment strategies and recognizes a company's cost of capital.

#### 3. Responsibilities of the Board

The board has the responsibility to support management including the CEO, and it is necessary for the board as a whole to possess appropriate knowledge, experience, and skills. In addition, the ratio of female officers at Japanese listed companies is currently only 3.7%, and it is important to ensure sufficient diversity, including gender and international experience, in order for the board to sufficiently fulfil its responsibilities.

#### 4. Cross-Shareholdings

While cross-shareholdings have decreased recently, the decrease by non-financial corporations is modest and the ratio of voting rights accounted for by cross shareholdings remains high.

#### 5. Asset Owners

Asset owners are positioned closest to the ultimate beneficiaries and are able to encourage and monitor asset managers that are the direct counterparties in engagement with companies. The role of asset owners is thus extremely important to deepen corporate governance reform and promote the smooth functioning of the investment chain.

The revised draft of Japan's Corporate Governance Code is available at: <https://www.fsa.go.jp/en/news/2018/follow-up/20180330-1/01.pdf>

### Zimbabwe: Company Law Reform - the Companies and Other Business Entities Bill, 2018

The Companies and Other Business Entities Bill, which will set out Zimbabwe's new company law framework, has been published. The present Companies Act was passed in 1951 and needs updating. This Bill seeks to replace and update the law relating to companies and private business corporations. Few among the most outstanding new features that will be introduced by this Bill are the following:

- Provision for the issuance of non-par-value shares rather than shares with a fixed value, together with provisions for the valuation of no-par-value shares;
- The introduction of an Electronic Registry for the incorporation and registration of domestic and foreign companies and private business corporations;
- The substitution of criminal penalties by civil penalties wherever possible;
- To establish an inspectorate to better enforce the provisions of this Bill;
- To make new provision for the merger and takeover of companies and other business entities;
- The licensing of business entity incorporation agents and business entity service providers;
- To clarify and improve the common law principle of bona vacantia (i.e. the vesting in the State of unclaimed properties of defunct companies and private business corporations) by instituting a fair and transparent method of declaring such properties to be bona vacantia;
- To make the beneficial ownership of companies more transparent;
- The introduction of a continuous system of updating the Registry;
- Further provision to combat the use of the company form for criminal purposes;
- To define in greater detail the corporate responsibilities of directors and boards of companies and to encourage good corporate governance;
- Additional measures to protect shareholders and investors, in particular minority shareholders and investors;

Details of the above development may be reached at: [http://veritaszim.net/sites/veritas\\_d/files/Companies%20and%20Other%20Business%20Entities%20Bill%20-%20Memorandum-.pdf](http://veritaszim.net/sites/veritas_d/files/Companies%20and%20Other%20Business%20Entities%20Bill%20-%20Memorandum-.pdf)

# Building Transparency through Rajyoga Meditation

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

## Silence Please!

We constantly live in a noisy world today. All the time we hear traffic snarls, blaring sirens, and churning of machines. There are beeps of incoming messages on smart phones and laptops, and overly loud music on personal stereos. Even the places like bookstores, cafes, movie halls or libraries, once considered havens of silence are not immune to the incessant ringing, roaring, buzzing, or clicking. In such a scenario, it's difficult to imagine a work place that is all calm and peaceful. But the question we need to ask is what and who can make a working environment peaceful. The answer is 'calmer the minds, quieter the working environment'.

Delhi-based Priya Sharma, an IT professional, has been going to Cha Bar in Connaught Place which is a library-cum-café. "I have been frequenting this café ever since I took up my job. After a noise-filled day, this place gives me a sense of calm and I experience a deep silence here. All you have to do is sit in a corner with a book, whether you read it or not" says Priya. But there are also people out there who find complete silence unsettling and uncomfortable, which is a side effect of living in a clamoured world.

It is commonly noticed that silence is observed with so much of planning and with an ordinance on some occasions like, many countries observe a minute of silence after a tragic event. On November 11th, many countries observe a two-minute silence to remember those who have died in World Wars. During the moment of silence, people often bow their heads, remove their hats, and do not speak or move. The tradition was started in 1919 exactly one year after the end of World War I. In India, every year on January 30th on the death anniversary of Mahatma Gandhi, two minutes of silence is observed at 11 am throughout the country in the memory of Mahatma Gandhi and those who were martyred in India's freedom struggle. All movement is stopped throughout the country during the two minutes. On the other hand, it is also a mark of punishment during which silence is imposed on someone, making silence seem so awkward. But let us ponder, where is the silence during such moments? Is mere absence of noise known as silence? Even if so, the physical noise might be getting subsided, but what about our minds, are they silent too? In this noisy, restless, and bewildering age there is a great need for silence of the mind.

Silence is often equated with doing nothing or with an idle mind which is further equated with a devil's workshop. Therefore, silence is not valued and since it is not valued, it is not developed, either. But Indian tradition and spiritual seekers have long intuitively grasped the value of silence reflecting in sayings such as, "Speech is silver, silence is golden". On a full moon day in May, when Buddha got enlightened, he kept silent for a long time. Despite the insistence of angels to speak something at least, he remained silent proving that words cannot capture existence, but silence can. When Jesus was asked to prove, "Are you the son of God?" he kept silent. Martin Farquhar Tupper, a 19th century English poet and philosopher too understood the value of silence and wrote, "Well-timed silence hath more eloquence than speech."

There's no denying the fact that it's not easy to be calm when there's chaos all around you. Workplace stress has never been higher than today. There are many situations at the work place during the course of a day that can make us lose our cool: getting into an argument, making a mistake in plain view, having to listen to criticism, dealing with bad news or facing a looming project deadline with everyone involved moving way too slowly, growing complexity of most industries and even in relations, and many more. Whatever the reason, it's never been tougher to stay calm at work and still excel. But staying stressed at the workplace is no solution, either. To survive and excel, we need to find ways to deal with pressure and uncertainty. There are several scientific studies done that show the deep connection between staying calm and productivity. Calmness of the mind is one of the beautiful and necessary condition for the jewels of wisdom to settle. It is said that the more tranquil a man becomes, the greater is his success, his influence, his power for good. In late 1939 after the outbreak of World War II, the British government designed a number of morale boosting posters preempting the eventual mass bombings of the United Kingdom. One such poster read, "Keep Calm and Carry On". That's what we need to do today when our inner and outer worlds are in perpetual state of war.



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Calmness of the mind is one of the beautiful and necessary condition for the jewels of wisdom to settle.

▣ The practice of Rajyog Mediation aims to impart king-like qualities of confidence, better awareness, good decision- making skills and independence. With its regular practice overall well-being is maximized and rapid stress reduction takes place.

In a world where so many are overwhelmed with everything there is to do, that silent pause is critical for life, health, relations and work efficiency. Neurophysiological research suggests that the United States annually loses a million years of healthy life because of noise. Scientists conducting research on the health effects of noise actually stumbled on a surprise truth - silence is more than just the lack of noise pollution. It's an active good that has profound positive effects on us physiologically and psychologically. Psychotherapists talk of the creative value of silence in their practices as do perhaps many musical composers and practitioners do. We need silence and stillness to become our true selves and to be truly happy.

Chetan Godbole from Mumbai realized that observing silence for a day ignites his creativity. "When I want to create new work, I go into silence for full 24 hours. Free from the chatter of the world, my mind creates thousand ideas and one of them clicks definitely". Well-known writer Kafka once described his creative process "Writing is utter solitude, the descent into the cold abyss of oneself." But why and how does it happen? Silence enables us to listen to our inner voice and to detect our unique methods of thinking. It gives us a chance to understand our selves better. Intellectuals, thinkers, poetry writers, inventors and creators in all fields always seek absolute silence and quiet environment so that they could work comfortably and get inspiration. Imagination also springs from silence. "Silence and quiet are to an artist, an author or inventor etc, what fertilizer is to crops" writes Cuckson.

Research is showing that a regular meditation practice of just 10 minutes each day can bring about amazing and noticeable differences in individuals, teams and overall business success. Often meditation is understood as some kind of tough practice where you need to close your eyes and sit for long hours in one position without thinking. But meditation means awareness. Whatever you do with awareness is meditation. Watching your breath is meditation; listening to the birds is meditation. As long as these activities are free from any other distraction to the mind, it is effective meditation. A Tibetan Lama was being monitored on a brain scan machine by a scientist wishing to test physiological functions during deep meditation. The scientist said - "Very good Sir. The machine shows that you are able to go very deep in brain relaxation, and that validates your meditation". "No", said the Lama, "This (pointing to his brain) validates the machine!"

Various types of meditation are in vogue today. Some schools only teach concentration techniques, some relaxation, and others teach free form contemplative activities like just sitting and awaiting absorption. With regular practice of a balanced series of techniques, the energy of the body and mind can be liberated and the quality of consciousness can be expanded. This is not a subjective claim but is now being investigated by the scientists and being shown by an empirical fact.

Rajyog Mediation, practised at the Brahma Kumaris World Spiritual University, is a form of meditation that is performed without rituals or mantras and can be practiced anywhere at any time. Rajyoga word has been derived from 'raja' meaning king and 'yoga' meaning union. This union is mainly explored at 3 levels- the union of the self with the self which is a Soul (spiritual energy), between self and Supreme Soul (ocean of spiritual energy) and then between other Souls. The practice of Rajyog Mediation aims to impart king-like qualities of confidence, better awareness, good decision- making skills and independence. With its regular practice overall well-being is maximized and rapid stress reduction takes place. Also, Rajyog meditation increases productivity. It also helps de-escalate tense circumstances because it enhances creative problem-solving skills and improves communication.

Anxious thoughts can be overwhelming making it difficult to make decisions and take action to deal with whatever issue bothers you. Anxiety also leads to over thinking making you even more anxious. Rajyog actually teaches you how to give your thoughts a right direction. Stop being fused with your thoughts. Think of your thoughts passing through your mind as moving objects on a conveyer belt, from which you have to choose the one appropriate for you, rather than the objective truth about a situation. Our brains are hypersensitive to threat and danger because this kept our ancestors alive in the wild. Some of your thoughts may just be automatic conditioned reactions generated by a brain that is oriented to survival. Choose whether or not to believe these thoughts, rather than just accepting them.

Secondly, see what type of thought you are having, rather than paying attention to its content. Watch your thoughts and when you notice a judgment (e.g., how good or bad the situation is),



Think of your thoughts passing through your mind as moving objects on a conveyer belt, from which you have to choose the one appropriate for you, rather than the objective truth about a situation.

then label it as 'judging'. If you notice a worry (e.g., that you will be criticized for your decision in a meeting) label it as 'worrying'. If you are criticizing yourself, label it as 'criticizing'. This gets you away from the literal content of your thoughts and gives you more awareness of your mental processes. Do you want to be spending your time judging and worrying? Ask your intellect, if there are less judgmental or worried ways to see the situation. Sometimes most of us focus too narrowly on the threatening aspects of a situation, rather than seeing the whole picture. It happens when anxiety makes our minds contract and focus on the immediate threat without considering the broader context. Always check if the situation really is as important as your anxiety says it is? Will you still care about this problem in 5 or 10 years? If not, then ease up on the worry. Also think if the circumstances, or your knowledge and coping abilities, have changed since the last time. As an adult, you have more choice about whom to associate with and more ability to identify, preempt, or leave a bad situation than when you were a child or teenager.

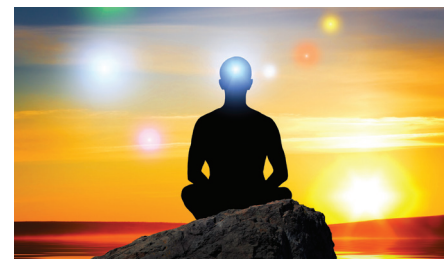
Rajyog Meditation also helps you to stay in the present and not wander between the past and the future. Staying in the present means focusing on your present thoughts and tasks making your tasks finish before the round of the clock. It also makes us more aware and cautious of our feelings rather than avoiding them. Feelings are momentary. Rather than feeling helpless or trying to distract yourself, you may realize that they are not going to kill you and that they will eventually pass. Watching feelings rise and fall in your mind, gives you a sense of them as transient experiences, rather than as who you are in essence. With the help of Rajyog Meditation, you are able to lift the veil of self-deception which subsequently goes a long way towards getting you focused on the right track, which is –the track of self-realization.

Having your staff or employees to spend moments of silence during their work day could be the key to turning your business or performance around in many more ways than just getting a little peace and quiet. But let's admit that like any habit, to bring about this change takes time and effort. Therefore, you may likely be uncomfortable for a while. It takes time to change your brain pathways and to have other people notice you are different and behave differently towards you. Like losing a lot of weight, you have to work hard for a long time before seeing noticeable results. But don't just give up.

Besides time and effort, it also needs power to bring about any change in the thinking pattern. In Rajyog meditation you get the power from the Supreme Soul to change your thoughts and behavior. It's a silent and the most effective way to get the powers and bring about a change in yourself and others as well. With powers bestowed upon you from Him you no longer avoid uncomfortable thoughts, feelings, or situations by zoning out, not showing up, addictions, anger, or procrastinating.

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Having your staff or employees to spend moments of silence during their work day could be the key to turning your business or performance around in many more ways than just getting a little peace and quiet.



With powers bestowed upon you from Him you no longer avoid uncomfortable thoughts, feelings, or situations by zoning out, not showing up, addictions, anger, or procrastinating.



PD, PP&S/BM/17 May 11,2018

*Dear Professional Colleagues,*

**Sub. : Recognition for Company Secretary under SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018**

The Securities and Exchange Board of India had constituted a Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak with the aim of improving standards of Corporate Governance of listed companies in India. ICSI also had a representation on the Kotak Committee where significant recommendations were made in the Report submitted to the SEBI relating specifically to the profession keeping in sight their significance in strengthening the existing governance scenario.

The SEBI in its Board Meeting held on 28th March, 2018 accepted majority of the Kotak Committee recommendations to be included in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Further, SEBI has issued the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 vide its notification No. SEBI/LAD-NRO/GN/2018/10 dated May 09, 2018 which provides for more stringent Corporate Governance Framework and enhanced compliance mechanism for listed entity in India.

SEBI has recognised the significant role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulations and recognised the role to be played by a Company Secretary under various provisions of the aforesaid notification, which are discussed below:

- **“Senior Management”** shall mean Officers/Personnel of the listed entity who are members of its core management team excluding Board of directors and normally this shall comprise all members of management one level below Chief Executive Officer/ Managing Director/ Whole Time Director/ Manager (including Chief Executive Officer/Manager, in case they are not part of the board) and shall specifically include **Company Secretary** and Chief Financial Officer [**Regulation 16 (1) (d)**]
- **Secretarial Audit** - Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its Annual Report, a Secretarial Audit Report, given by a **Company Secretary in Practice**, in such form as may be specified with effect from the year ended March 31, 2019 [**Regulation 24A**]
- A certificate from a **Company Secretary in Practice** that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as Directors of Companies by the Board/ Ministry of Corporate Affairs or any such Statutory Authority [**Schedule V, Part C, Clause(10) (i)**]

The ICSI is in process of organising a series of capacity building knowledge sessions on this opportunity. The Institute is taking all necessary steps to strengthen the Company Secretary Professionals to stand tall to Expectations and Responsibilities cast on us by various stakeholders.

Wishing all the luck for future Professional Endeavors.

Sincerely Yours

**CS Makarand Lele**  
President, ICSI

### 1. E-way bill mandatory for inter-state movement of goods

- Businesses and transporters moving goods worth over Rs 50,000 from one state to another to carry an electronic or e-way bill from April 1, 2018.
- It is an anti-evasion measure that would help boost tax collections by clamping down on trade that currently happens on cash basis, the e-way bill provision of GST was first introduced on February 1, 2018.
- To ensure a fool proof system, the GSTN has activated only that facility on its portal where e-way bill can be generated when goods are transported from one state to another by either road, railways, airways or vessels.

### 2. Government sanctions Rs 127 billion of GST refund claims

- The government has sanctioned GST refunds worth about Rs 127 billion or 80 per cent of the eligible claims of exporters.
- The Central Board of Excise and Customs had organised refund facilitation camps in field offices between March 15-31, 2018 to assist exporters in filling up refund claim forms and correct errors.

### 3. More than 5 lakh GST e-way bills issued on Day 2 of rollout

- GST e-way bill was off to a successful start with more than five lakh e-way bills generated on the first working day of its implementation.
- The roll-out of e-way bill without any glitches came as a relief to businesses that feared disruption to trade.

### 4. Government sets up grievance redressal mechanism for technical glitches on GST portal

- The government had set up a grievance redress mechanism to address difficulties faced by taxpayers due to technical glitches on the Goods and Services Tax portal
- Under the new mechanism, if any taxpayer was unable to file any form or return due to a technical glitch by the due date, he or she would be allowed to do so within a stipulated time period.
- In case any taxpayers could not complete the process of filing TRAN-1 (transitional credit form) in time due to IT glitch, he or she would be allowed to complete the process by April 30, 2018.
- The filing of GSTR 3B return for such TRAN-1 will have to be completed by May 31, the Finance Ministry said.
- Goods and Services Tax Council has delegated powers to an IT-Grievance Redressal Committee to approve and recommend steps to be taken to redress the grievances and provide relief to the taxpayers.

### 5. Railway catering services in trains, stations to attract 5% GST

- Finance Ministry clarified that food and drinks supplied by Indian Railways or IRCTC in trains, platforms and stations, will attract 5% GST.

- The Finance Ministry has written to the Railway Board on March 31 about the 5% rate to remove any doubt or uncertainty in the matter.
- This would bring about uniformity in the rate of GST applicable to supply of food and drinks made available in trains, platforms or stations.

### 6. Government mulls to convert GST Network into 100% state-owned company

- The government is considering converting GST Network- which is handling the IT infrastructure of this new indirect tax regime - into a state-owned company.
- Currently, private financial institutions are the majority owners in GSTN with 51 per cent stake, while the centre and states together hold 49 per cent.

### 7. Intra-state e-way bill roll-out in 5 states from 15 April - Finance Ministry

- E-way bill for movement of goods within the state have been rolled out from 15 April, 2018 starting with 5 states including Gujarat, UP and Kerala.
- The same for intra, or within the state movement, will be rolled out from 15 April, 2018 finance ministry said in a statement. The five states which would form part of the first phase are Andhra Pradesh, Telangana, Gujarat, Kerala and Uttar Pradesh.
- Karnataka is the only state which had rolled out e-way bill system for intra-state movement of goods from 1 April, 2018.

### 8. Four more States, Puducherry to roll out intra-State e-way bill

The Finance Ministry has announced that e-way bill will be mandatory for intra-State trade in four more States and the Union Territory of Puducherry from April 25, 2018.

The four States are Madhya Pradesh, Arunachal Pradesh, Meghalaya and Sikkim.

The Ministry also clarified on who should generate e-way bill in 'bill to ship to' situations.

It may be recalled that e-way bill is already mandatory for intra-State trade in 12 States — Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Telangana, Tripura, Uttarakhand and Uttar Pradesh.

E-way bills are being generated successfully and till April 22, 2018 more than 1.84 crore e-way bills have been successfully generated which include more than 22 lakh e-way bills for Intra-State movement of goods, an official release.

### 9. GST applicability on food, drinks supplied to students by schools

Union Finance Ministry clarified GST is not applicable on food and drinks supplied by schools directly to the students, while it is 5 per cent without input tax credit for mess and canteens in educational institutions.

If schools up to higher secondary level supply food directly to students, then the same is exempt from GST, ministry



said in an official statement

#### 10. GST Consumer Welfare Fund can be given as grant to Centre, states: CBIC

- The proceeds from the consumer welfare fund, constituted under GST, can be given as grant to Centre and state governments as well as regulatory authorities- CBIC.
- In a notification, the Central Board of Indirect Taxes and Customs (CBIC) said the government shall constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other members for managing the fund.

#### 11. Govt advances deadline for GST seller returns for April, May, June, 2018

- Government has advanced the deadlines for filing of seller forms under the Goods and Services Tax, GSTR-1, for April, May and June, in comparison to those given for previous months.
- GSTR-1 for the month of April will have to be filed by May 31, 2018.
- Earlier, 40 days were given for filing these, which would have made June 10 the deadline.
- Returns for May have to be filed by June 10 and for June by July 10. So, only 10 days after the month ends, against the earlier 40 days.
- However, the government has not changed the deadline for filing GSTR-3B. These are to still be filed by the 20th of the following month.
- The idea is to allow reconciliation between the two forms, GSTR-3B and GSTR-1.
- According to the original plan, the GST Council had decided to give only 10 days to file GSTR-1, after which GSTR-2, the return for buyers, had to be finalised and filed within the next five days. These were to be then used for filing GSTR-3 forms, to claim credits.

#### 12. Single-page GST filing system to be ready in 3-6 months, confirms Finance Secretary

- Union Finance Secretary said the proposed new single page GST return filing system will be in place over the next three to six months that will ease the present problems.
- Ministerial panel in its April 17, 2018 meeting decided to roll out a new simplified model for GST return filing system in single-page, as per which credit could be given on a provisional basis once the supplier uploads the sales invoice.

#### 13. 'Duty Free' shops at Delhi International airport liable to pay GST: AAR

- International passengers buying goods at airport 'Duty-Free' shops in India will have to pay GST, with the Authority for Advance Ruling (AAR) saying that such outlets at Delhi International Airport is not 'free from duties' under the Goods and Services Tax regime.
- In the earlier regime of Excise and Service Tax prior to GST roll out on July 1, 2017, the duty-free

shops were exempt from the levy of Central Sales Tax (CST) and Value Added Tax (VAT) as sale from such shops were considered as exports and supplies were taking place beyond the 'customs frontiers' of India.

- New Delhi bench of AAR in a recent ruling held that the supply of goods to international passengers going abroad from 'Duty Free' shops may be taking place beyond the customs frontiers of India under Integrated GST Act, however, the said shops are within the territory of India under the Central GST Act.

#### 14. March GST mop-up hits Rs 96,000 crore

- GST collections for March exceeded Rs 96,000 Crore by April 23, 2018 the largest mop-up for any month since the comprehensive indirect tax's launch in July last year, an official source said.
- The March 2018 collections could cross the coveted Rs 1 lakh crore mark by April-end, as payments are still being made by a section of taxpayers with late penalties, analysts feel.
- The forecast is based on the customary spurt in tax payments in the last month of financial year and the fact that only 55 lakh assesseees had paid tax by April 23 — three days past the deadline for payment without fines — against an average of around 65 lakh in the previous months.

#### 15. GST Council may consider sugar cess in next meeting

- GST Council is likely to take up as early as in its next meeting, a proposal for imposition of a cess on sugar to create a fund, to help sugar mills to clear cane dues owed to farmers.
- The fund is proposed to finance the gap between the cane price mills can pay to farmers in accordance with a revenue-sharing formula recommended by the Rangarajan Committee and the benchmark rate — fair and remunerative price (FRP) — fixed by the central government.
- Proposals such as a production-linked subsidy on cane and a reduction in the GST rate on ethanol (a cane by-product) from the current 18% would be placed before the Cabinet as well.

#### 16. Finance ministry to shift to cash basis accounting for GST this fiscal

- To bridge the lag in actual revenue accrual, the finance ministry will shift to cash basis accounting for GST this fiscal. Monthly collections will be reported on the first working day of the following month.
- Till now, monthly tax returns under GST, which has combined 17 central and state taxes into one, were allowed to be filed by the 20th of the following month and revenues collected were reported on 26th, almost a month-long lag between collections and their reporting.
- Only the Integrated-GST, levied on inter-state movement of goods as well as imports, will be shown in March tax collection.



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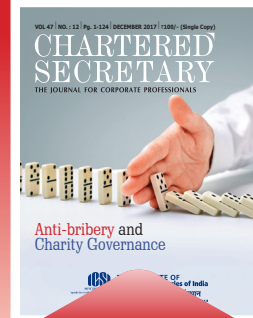
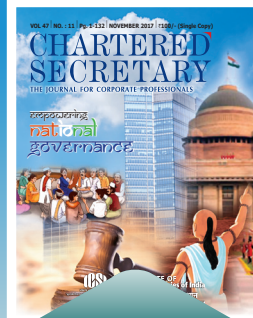
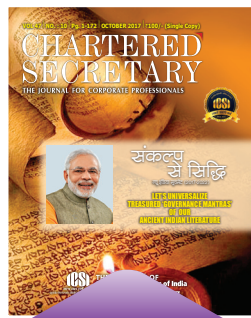
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